

2006

State of Utah v. Brady Hamilton : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/ Appellee,

v.

BRADY HAMILTON,

Defendant/ Appellant.

Case No. 20060131-CA

BRIEF OF APPELLEE

Appeal from convictions for burglary, a second degree felony, and theft,
a Class A misdemeanor, in the Fourth Judicial District Court, Utah
County, The Honorable Samuel McVey presiding

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BRADY HAMILTON,

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Case No. 20060131-CA

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF THE PROCEEDINGS

Defendant appeals his convictions for one count each of burglary, a second degree felony, and theft, a Class A misdemeanor. This Court has jurisdiction pursuant to UTAH CODE ANN. § 78-2a-3(2)(e) (West 2004).

ISSUE PRESENTED ON APPEAL AND STANDARD OF REVIEW

Was evidence that a co-defendant implicated defendant in the burglary, and that defendant was attempting to start the stalled car containing stolen tools shortly after the burglary, sufficient to withstand a motion for directed verdict?

Standard of Review. “In reviewing the denial of a motion for a directed verdict based on a claim of insufficiency of the evidence, ‘[this Court] will uphold the trial court’s decision if, upon reviewing the evidence and all

inferences that can be reasonably drawn from it, we conclude that some evidence exists from which a reasonable jury could find that the elements of the crime had been proven beyond a reasonable doubt.” *State v. Montoya*, 2004 UT 5, ¶ 29, 84 P.3d 1183 (quoting *State v. Dibello*, 780 P.2d 1221, 1225 (Utah 1989)). A trial court may deny a motion for directed verdict if, viewing the evidence in a light most favorable to the State, it “finds that the state has established a ‘prima facie case against the defendant by producing believable evidence of all the elements of the crime charged.’” *Id.* (quoting *State v. Emmett*, 839 P.2d 781, 784 (Utah 1992)) (additional quotation and citation omitted).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Resolution of this case involves interpretation of the burglary and theft statutes, the relevant portions of which are reproduced below.

Burglary. (1) An actor is guilty of burglary if he enters or remains unlawfully in a building or any portion of a building with intent to commit:

(a) a felony;

(b) theft;

UTAH CODE ANN. § 76-6-202 (West 2004).

Theft. A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

UTAH CODE ANN. § 76-6-404 (West 2004).

STATEMENT OF THE CASE

The State charged defendant with one count each of burglary, a second degree felony, in violation of UTAH CODE ANN. § 76-2-202, and theft, a Class A misdemeanor, in violation of UTAH CODE ANN. § 76-6-404. R.1. At the close of the State's case, defendant moved for a directed verdict of acquittal on the ground that the evidence was insufficient. R.222:5-8. Defendant argued that the only evidence supporting his guilt was his co-defendant's out-of-court statement that the co-defendant denied at trial. R.222:8. The trial court denied the motion. R.222:20-23 (a copy of the trial court's oral ruling is included as Addendum A). A jury convicted defendant as charged. R.121.

The trial court sentenced defendant to serve one to fifteen years in the Utah State Prison on the burglary conviction. R.153. However, the trial court suspended the prison sentence and placed defendant on probation for thirty-six months with several conditions, including that he serve 270 days in the Utah County Jail. R.155-54. The trial court imposed a ninety-five-day jail sentence on the theft conviction. R.154.¹

Defendant timely appealed. R.195.

¹ Defendant filed a timely motion for new trial alleging that he had obtained newly discovered evidence. R.159. The trial court denied that motion. R.193-91. Defendant does not appeal that decision.

STATEMENT OF THE FACTS

In June, 2004, Ethan Gale was driving through his Provo neighborhood on his way home. R.223:17-18. As he passed his neighbor's house, he became suspicious of a gold car parked in front of his neighbor's driveway. R.223:17-18. Gale observed someone carry some bulky items out of his neighbor's garage and throw the items into the back seat of the gold car. R.223:18, 19-20. Gale noticed two other persons in the front seat of the car. R.223: 18-19. Gale watched as the person who carried the items from the garage jumped into the back seat of the car and the car sped off with that person's legs still hanging out of the open car door. R.223:18-20.

Gale described the individuals as "younger kids," but did not get a good look at their faces. R.223:21. Suspecting that he had just witnessed a burglary, Gale followed the gold car for about two minutes until it stopped at an apartment complex. R.223:20, 21. Gale then went to a nearby gas station and called police. R.223:20. While waiting for police to arrive, Gale drove back past the gold car and noticed that the three individuals were no longer in the car. R.223:22-23. He assumed that they had gone into the apartment complex. R.223:22-23.

Meanwhile, Nick Bandley was walking up his parent's driveway when he heard someone holler from two or three houses away asking if he could help jump-start a car. R.223:27, 29. Police later discovered that it was the same car that had been used in the burglary. R.223:71-73. As Bandley approached the car he saw defendant and another male. R.223:28, 30. A third male joined the group after Bandley arrived. R.223:28, 30. Bandley and the others tried to start the car without success. R.223:28. Eventually, Bandley offered to give the three a ride, and they directed him to a home in Springville. R.223:28.

A short while later, Officer Hubbard arrived at the stalled car and interviewed Ethan Gale. R.223:71-72. Officer Hubbard looked inside the car and saw what he believed to be stolen tools in the back seat. R.223:72-73. He then organized other officers to watch the car to see if any suspects returned. R.223:72-73.

When Bandley returned from dropping off the three males in Springville, he noticed several police cars surrounding the car he had been trying to help jump-start. R.223:31-32. When Officer Hubbard approached Bandley and asked him if he knew anything about the car, Bandley explained that he had just given a ride to three people who had been trying to start the car. R.223:32. Bandley was "a hundred percent positive" that defendant was one of the three who had been trying to start the car. R.223:33.

"[A]n hour or two" after the burglary, an officer saw a suspicious car approach the stalled car with the stolen tools inside. R.223:53, 75. A female was driving the car, defendant was in the back seat, and his friend, Justin Broderick was in the front passenger seat. R.223:75, 76, 78, 82.

Officer Hubbard stopped the car and questioned the occupants. R.223:75-76. Broderick told Officer Hubbard that he and his friends were driving around Provo when defendant told him to stop in front of a house. R.223:83. Broderick explained that defendant then went into the garage and took some items. R.223:84, 118. Broderick also admitted that he had a drug problem, that he was stealing things to obtain money for drugs, and that he had warrants for his arrest. R.223:84. Officer Hubbard then questioned the other suspects. R.223:84-85.

Officer Hubbard again spoke with Broderick and asked him to fill out a written statement. R.223:84. During this second conversation, Officer Hubbard asked Broderick, "[W]ho took the items from the garage?" R.223:85. Broderick again responded that it was defendant. R.223:85, 96-98, 118. Broderick's written statement included his admission that "driv[ing] in Provo my friend got out and took some st[uff] from a g[a]ra[ge]." R.223:49-50; State's Exhibit 2 (contained in an unpaginated manila envelope). Officers recovered a Dewalt sliding

compound miter saw and a Craftsman compressor set from the stalled car. R.223:37.

At trial, Broderick testified that he grew up in Springville with defendant and that he considers defendant to be a “[p]retty good friend.” R.223:47. Broderick admitted that he was driving a car in Provo on 6 June 2004 and that the car broke down. R.223:48. He admitted that defendant was with him later that day, but could not remember whether defendant was with him when his car broke down. R.223:48. He also admitted that the stolen items were found in his car. R.223:52. Broderick confirmed that he was the one driving the car; however, he also testified that he was the one who ran into the garage and stole the tools. R.223:52. Broderick denied having told Officer Hubbard that defendant was the one who stole the tools. R.223:50-51.

By the time of defendant’s trial, Broderick had pleaded guilty to burglary and theft based on the same facts in defendant’s case. R.223:49, 55, 120-21. The factual basis in Broderick’s plea affidavit originally stated that “On June 6, 2004, Justin Broderick was the driver of a vehicle that was used to commit a burglary of a residence in Utah County. Justin drove the car while his friend, Brady Hamilton, ran into a garage and took a \$600 compound miter saw and a craftsman air compressor.” State’s Exhibit 3 at 2, contained in a unpaginated manila envelope. However, the words “his friend, Brady Hamilton,” were

crossed out and the words, “another individual,” were written in the margin. *Id.* Broderick testified at defendant’s trial that he had insisted that defendant’s name be removed from the plea affidavit and that he refused to plead guilty otherwise. R.223:56.

SUMMARY OF ARGUMENT

The evidence was sufficient to send the case to the jury because the State’s case was not based entirely on Broderick’s out-of court statement to Officer Hubbard implicating defendant. Rather, the State also presented evidence that, shortly after the burglary, defendant, Broderick, and another male, were attempting to start the stalled car containing the stolen tools in the back seat. The State’s evidence also demonstrated that, within two hours of the burglary, defendant and Broderick returned again to the stalled car containing the stolen tools. Viewed together, and in a light most favorable to the jury’s verdict, this evidence was sufficient to establish a prima facie case of burglary and theft.

ARGUMENT

THE CO-DEFENDANT’S STATEMENT AND DEFENDANT’S CONNECTION TO THE CAR CONTAINING THE STOLEN TOOLS ESTABLISHED A PRIMA FACIE CASE THAT DEFENDANT COMMITTED BURGLARY AND THEFT

Defendant claims that the trial court erroneously denied his motion for a directed verdict because the only evidence of his guilt was Broderick’s unsworn statement to police that Broderick ultimately denied at trial. Br. Applt. at 9.

However, the trial court correctly found that when evidence of defendant's connection to the car containing the stolen tools was considered with Broderick's statement, the evidence established a prima facie case that defendant had committed burglary and theft. R.222: 20-23 (Add. A).

"In reviewing the denial of a motion for a directed verdict based on a claim of insufficiency of the evidence, '[this Court] will uphold the trial court's decision if, upon reviewing the evidence and all inferences that can be reasonably drawn from it, we conclude that some evidence exists from which a reasonable jury could find that the elements of the crime had been proven beyond a reasonable doubt.'" *State v. Montoya*, 2004 UT 5, ¶ 29, 84 P.3d 1183 (quoting *State v. Dibello*, 780 P.2d 1221, 1225 (Utah 1989)). A trial court may deny a motion for directed verdict if, viewing the evidence in a light most favorable to the State, it "finds that the state has established a 'prima facie case against the defendant by producing believable evidence of all the elements of the crime charged.'" *Id.* (quoting *State v. Emmett*, 839 P.2d 781, 784 (Utah 1992)) (additional quotation and citation omitted).

Broderick told Officer Hubbard that defendant was the one who ran into the garage and stole the tools. R.223:84-85, 96-98, 118. However, after pleading guilty himself, Broderick denied making the statement and testified at defendant's trial that he was the one who ran into the garage and stole the tools.

R.223:50-51. Broderick also testified that he was driving the car when the tools were stolen from the garage. R.223:52.

“[A] conviction that is based entirely on a single, uncorroborated hearsay out-of-court statement that is denied by the declarant in court under oath cannot stand.” *State v. Ramsey*, 782 P.2d 480, 484 (Utah 1989). Thus, if Broderick’s statement had been the only evidence of defendant’s guilt, the State would not have established a prima facie case against defendant.

However, the State’s case was not “based entirely” on Broderick’s statement. *See id.* Rather, the State also presented evidence that, shortly after the burglary, defendant and Broderick jointly enlisted Nick Bandle’s help to try and jump-start the car containing the stolen tools. R.28, 30. The stolen tools were in plain view in the back seat of the car. R.223:72-73. The evidence also demonstrated that defendant and Broderick returned to the car containing the stolen tools within two hours of the burglary. R.223:53, 75, 76, 78, 82.

Defendant responds that “‘mere presence with the perpetrators of the substantive crime is insufficient to support a conviction.’” Aplt. Br. at 12 (quoting *United States v. Summers*, 414 F.3d 1287, 1294 (10th Cir. 2005)). However, defendant’s connection to the car containing the stolen tools was not the only evidence of defendant’s guilt. The jury also heard evidence of Broderick’s

admission to police that defendant was the one who ran into the garage and stole the tools. R.223:84-85, 96-98, 118.

Defendant's claim fails because he analyzes each piece of evidence in isolation. However, the trial court properly considered the entirety of "the evidence, and all inferences that can be reasonably drawn from it" in denying defendant's motion for directed verdict. *See Montoya*, 2004 UT 5 at ¶ 9 (quoting *Dibello*, 780 P.2d at 1225). Neither Broderick's statement to police, nor defendant's connection to the car with the stolen tools, would alone be sufficient to establish a prima facie case against defendant. However, when viewed together, this evidence suffices.

A person commits burglary if he "enters or remains unlawfully in a building or any portion of a building with intent to commit . . . theft." UTAH CODE ANN. § 76-6-202(1)(b) (West 2004). "A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof." UTAH CODE ANN. § 76-6-404 (West 2004).

Properly viewed as a whole, the evidence was sufficient to justify sending the case to the jury. Broderick told police that defendant was the one who ran into the garage and stole the tools. R.223:84-85, 96-98, 118. Shortly after the burglary, defendant was trying to start the stalled car containing the stolen tools and he again returned to that car within two hours of the burglary. R.191,

223:27-30, 75, 76, 78, 82. The victim also testified that neither defendant nor Broderick had his permission to take his tools. R.223:41-42. These facts constituted ““some evidence . . . from which a reasonable jury could find that the elements of [burglary and theft] had been proven beyond a reasonable doubt.”” See *Montoya*, 2004 UT 5 at ¶ 29 (quoting *Dibello*, 780 P.2d at 1225).

Defendant argues that “the evidence was unequivocal that only one person went into the garage and took the tools—and Broderick [both] testified under oath that he was that person [and] pled guilty to having done so.” Br. Aplt. at 10. However, Broderick’s attempt to accept full responsibility for the crime lacked credibility. Broderick testified that he both drove the car used in the burglary, and was the individual who ran into the garage to steal the tools. R.223:52. But an eyewitness, Ethan Gale, testified that the person who had stolen the tools jumped into the backseat of the car and that the car sped off with that person’s legs still hanging out of the open rear door. R.223:18-20. Gale’s testimony renders Broderick’s account factually impossible. Therefore, viewed in a light most favorable to the State, Broderick’s acceptance of full responsibility did not diminish the State’s *prima facie* case against defendant.

Defendant also complains that, in both his written and oral statements to police, Broderick never identified defendant by name as the person who ran into the garage and stole the tools. Br. Aplt. at 10. While Broderick did not use

defendant's name, Officer Hubbard explained that there was no confusion that Broderick identified defendant as the person who stole the tools from the garage.

Defendant and Broderick returned to the stalled car containing the stolen tools in another car driven by a female. R.223:75, 76, 78, 82. Broderick was in the front seat of that car and defendant was in the back seat. R.223:75, 76, 78, 82. Officer Hubbard testified that he stopped that car and questioned Broderick while the two sat in his patrol car. R.75-76, 78. When he asked Broderick "[W]ho took the items from the garage?" Broderick replied, "Hamilton" (the defendant). R.223:85.

On cross-examination, Officer Hubbard explained that Broderick never actually used defendant's name, but responded that it was "[t]he back seat passenger" who had stolen the items from the garage. R.223:96-97, 98, 104. However, Officer Hubbard further explained that when Broderick referred to "the backseat passenger," Officer Hubbard clarified the response by asking Broderick if he was referring to the backseat passenger in "[t]hat car right there, the one I just pulled over, the one we're parked right behind, that one right now, where there's a guy sitting in the back[?]" R.223:97. Broderick responded, "Yes." R.223:97. Therefore, although Broderick may not have identified defendant by name, there was no question that he was referring to defendant as the person who stole the items from the garage.

Taken together, and viewed in a light most favorable to the State, Broderick's statement, and the evidence of defendant's connection to the car containing the stolen tools, sufficed to send the case to the jury. *See Montoya*, 2004 UT 5, ¶ 29. Therefore, the trial court properly denied defendant's motion for a directed verdict.

CONCLUSION

The Court should affirm defendant's convictions.

Respectfully submitted // December 2006.

MARK L. SHURTLEFF
Utah Attorney General

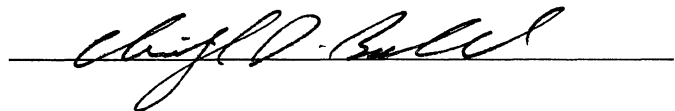


CHRISTOPHER D. BALLARD
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MAILING CERTIFICATE

I hereby certify that on // December 2006, I mailed, postage prepaid, two accurate copies of the foregoing BRIEF OF APPELLEE to:

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Addendum A

1 sole evidence, dismissal would be appropriate."

2 They recognize this at the meetings. They recognize
3 the problem and worry for prior inconsistent statements. They
4 have no other direct evidence that Mr. Hamilton committed the
5 crime. They're relying solely upon a prior inconsistent
6 statement of a codefendant to convict Mr. Hamilton. And it's
7 wrong. It should not be sent to a jury. We should not
8 entrust -- this should stop now.

9 THE COURT: Thank you.

10 Anything else before I rule?

11 In this case, I'm going to deny the motion for the
12 directed verdict. There is sufficient evidence to allow the
13 case to go to the jury. I'm going to recite that really
14 briefly.

15 True, we have an out-of-court statement. The only
16 direct evidence of identification in this case -- I'm saying
17 direct rather than circumstantial evidence -- is the statement
18 by Mr. Broderick where he identifies -- at least there's
19 evidence that he identifies Mr. Hamilton as the one who went
20 in the garage and took the DeWalt miter saw and the compressor
21 out.

22 Now, if that were uncorroborated by any
23 circumstantial evidence, then I think the defense motion would
24 be well taken because, like in the Ramsay case, that alleged
25 out-of-court statement would be the only evidence that would

1 support the conviction on that particular count.

2 Where we're different from Ramsay is, on that
3 particular count, there was no corroboration. The Court
4 determined, in other words, the only evidence, uncorroborated
5 or not, was the boy's out-of-court statement. Here we
6 actually have quite a bit of corroboration which, if the jury
7 believes it, could support a conviction beyond a reasonable
8 doubt.

9 The evidence would be that the first witness,
10 Mr. Gale, sees these three individuals in the car and sees one
11 of them jump into the car, take off with his legs hanging out
12 of the back seat, sees where the cars goes, reports it to the
13 police. Admittedly, the car is out of his sight for probably
14 about a half hour while he's at the service station. However,
15 during that time, or shortly after that time, we have
16 Mr. Bandle coming up to the car to help these three gentlemen
17 jump their car and definitely recognizes Mr. Hamilton as being
18 present.

19 Now, this is fairly quickly after the alleged offense
20 had occurred. You have this vehicle there within a fairly
21 proximate time of when the offense occurred, perhaps as early
22 as 15 to 30 minutes. Probably not more than that. And so you
23 have that going on. You have an identification there, at
24 least of this gentleman being in the area of this stolen
25 property within a very proximate time to its having been

1 stolen.

2 Then, finally, we have the statement of Mr. Broderick
3 given to the patrolman who is investigating this case,
4 basically telling him that, yeah, this is the gentleman who
5 went in the garage and took the property out. And Detective
6 Hubbard has given him his Miranda warnings. He knows he's in
7 trouble. He's making a statement, and then he comes in here
8 and contradicts the statement. Nevertheless, he has made an
9 out-of-court statement which is admissible under the rules of
10 hearsay under a couple of rules for substantive purposes. So
11 I think that that statement is corroborated.

12 Even had it not been corroborated, the fact that
13 Mr. Hamilton is with the property within less than an hour
14 after it's taken and is associated with this vehicle less than
15 an hour after it's taken I think would probably be
16 circumstantial evidence that could even support a conviction
17 on its own, being in the possession of recently stolen
18 property. But we don't even have that circumstance here
19 because we do have the statements being made and the
20 corroboration.

21 I think, based on that, there is substantial evidence
22 that would justify the jury being able to determine
23 credibility and weigh the evidence. When I say substantial
24 evidence, I don't mean overwhelming evidence. I mean the
25 legal definition of substantial evidence which would be

1 allowed to go to a jury. On that basis, I'm going to deny the
2 motion. I think the jury can consider this case and determine
3 whether or not there is sufficient evidence to support a
4 finding beyond a reasonable doubt. That will be the ruling of
5 the Court.

6 MR. LARSON: Thank you, Judge.

7 THE COURT: Anything else? I think you preserved
8 that issue. You even cited case authority. I think you've
9 done a good job on the motion, Mr. Howell. Anything else that
10 you wanted to bring up?

11 MR. HOWELL: No, Judge.

12 THE COURT: Are you ready to proceed with your case,
13 then?

14 MR. HOWELL: Just a second, Judge.

15 (Counsel and Defendant confer off the record.)

16 MR. HOWELL: Judge, the defense rests.

17 THE COURT: What we could do, then, is go ahead and
18 go through jury instructions. There may be some we need to
19 add in light of the defense posture. We'll have to check.
20 I'll let counsel decide. Do either of you think that it would
21 be best to tell the jury that we're going to take a half hour
22 or so to go through jury instructions? We'll have to go
23 through them and copy them, which takes at least 15 minutes.
24 Craig will have lots of copy machines involved, but it takes
25 at least 15 minutes.