2006

State of Utah v. Jacob A. Webb : Brief of Appellee

Utah Court of Appeals

Joanne C. Slotnik; Assistant Attorney General; Mark L. Shurtleff; Attorney General; George W. Preston; Rich County Attorney; Attorneys for Appellee.
A.W. Lauritzen; Attorney for Defendant.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	Case No. 20061109-CA
JACOB A. WEBB,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM A CONVICTION ON ONE COUNT OF BURGLARY, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-202 (WEST 2004), IN THE FIRST JUDICIAL DISTRICT COURT IN AND FOR WEBER COUNTY, THE HONORABLE CLINT S. JUDKINS, PRESIDING

JOANNE C. SLOTNIK (4414)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Attorney General
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114-0854
Telephone: (801) 366-0180

GEORGE W. PRESTON
Rich County Attorney

Attorneys for Appellee

A.W. LAURITZEN
15 East 600 North, #1
P.O. Box 171
Logan, Utah 84321

Attorney for Appellant

NO ORAL ARGUMENT REQUESTED
NO ADDENDUM NECESSARY

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JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a conviction on one count of burglary, a third degree felony (R. 105-06). This Court has jurisdiction over the appeal pursuant to Utah Code Ann. § 78-2a-3(2)(e)(West 2004).

STATEMENT OF THE ISSUE ON APPEAL AND

STANDARD OF APPELLATE REVIEW

Did the trial court correctly sentence defendant for felony burglary rather than misdemeanor burglary of a vehicle where defendant admitted to breaking into and stealing multiple items from two camping trailers, which the trial court properly categorized as "buildings" within the meaning of the burglary statute?

A sentence will not be overturned on appeal unless the trial court has abused its discretion, failed to consider all legally

relevant factors, or imposed a sentence that exceeds legally prescribed limits. State v. Gibbons, 779 P.2d 1133, 1135 (Utah 1989)(citations omitted).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 76-6-202 (West 2004), governing burglary, provides:

> (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:
>
> . . .
>
> (b) theft[.]
>
> (2) Burglary is a felony of the third degree unless it was committed in a dwelling, in which event it is a felony of the second degree.

Utah Code Ann. § 76-6-201 (West 2004), governing definitions applicable to burglary and criminal trespass, provides:

> For purposes of this part:
>
> (1) "Building," in addition to its ordinary meaning, means any watercraft, aircraft, trailer, sleeping car, or other structure or vehicle adapted for overnight accommodation of persons or for carrying on business therein . . . .
>
> (2) "Dwelling" means a building which is usually occupied by a person lodging therein at night, whether or not a person is actually present. . . .

Utah Code Ann. § 76-6-204 (West 2004), governing burglary of a vehicle, provides:

> (1) Any person who unlawfully enters any vehicle with intent to commit a felony or theft is guilty of burglary of a vehicle.

(2) Burglary of a vehicle is a class A misdemeanor.

STATEMENT OF THE CASE

Defendant was charged with one count each of burglary, a third degree felony, and theft, a class A misdemeanor (R. 1). After a preliminary hearing, defendant filed a motion to quash the bindover, which the trial court denied (R. 31-30, 137: 5). Thereafter, defendant entered a conditional guilty plea to one count of burglary and the court dismissed the theft charge. (R. 87-96). The court sentenced defendant to a suspended zero-to-five-year prison term, 180 days in jail with credit for time served, a fine of $800, restitution of $1065, and a panoply of probation conditions (R. 105-06, R. 140: 5-6). Defendant filed a timely appeal (R. 115).

STATEMENT OF THE FACTS

Defendant admitted to breaking into two camping trailers parked in Pole Canyon in October 2005 and taking a variety of items from the trailers, including a distinctive hooded sweatshirt, a hunting vest, a deer print blanket, camp chairs, a gun cleaning kit, and nine boxes of ammunition (R. 52-54).

SUMMARY OF ARGUMENT

Defendant contends that where he admitted to breaking into and stealing property from two camping trailers, the State could have charged him with either felony burglary or misdemeanor burglary of a vehicle. Defendant bases this argument on the premise that a camping trailer is a vehicle as a matter of law.

Relying on State v. Shondel, he concludes that, because he could have been charged with either offense, the trial court erred by sentencing him for the greater of the two crimes.

Defendant's argument fails for two reasons. First, the definition he cites for "camping trailer" comes from a section of the Code governing automobile franchises, wholly irrelevant here. The relevant definition appears in the part of the Code governing burglary and criminal trespass. The applicable statute clearly defines a "trailer . . . or other structure or vehicle adapted for overnight accommodations of persons" as a "building." Utah Code Ann. § 76-6-201(1). Defense counsel conceded the camping trailer "was equipped with a sleeping area" (R. 137: 3). The trailer, therefore, is plainly a "building" within the meaning of the burglary statute.

Second, the Shondel doctrine does not apply because burglary and vehicle burglary do not describe the same crime. An additional element—adaptation for overnight accommodation—distinguishes felony burglary from misdemeanor burglary of a vehicle. Thus, for burglary, the State had to prove the additional element that the crime occurred in a "trailer. . . or other structure or vehicle adapted for overnight accommodation of persons." Utah Code Ann. § 76-6-201(1). There is no such requirement for vehicle burglary. Because the statutory elements of the two crimes are not "wholly duplicative," the Shondel doctrine is inapplicable.

ARGUMENT

THE TRIAL COURT CORRECTLY SENTENCED DEFENDANT FOR FELONY BURGLARY RATHER THAN MISDEMEANOR BURGLARY OF A VEHICLE WHERE DEFENDANT ADMITTED TO BREAKING INTO AND STEALING MULTIPLE ITEMS FROM TWO CAMPING TRAILERS, WHICH THE COURT PROPERLY CATEGORIZED AS "BUILDINGS" FOR PURPOSES OF THE BURGLARY STATUTE

Defendant admitted to stealing property from two camping trailers (R. 87-96). Because a camping trailer is a "vehicle" as a matter of law, he argues that the State could have charged him with either felony burglary or misdemeanor burglary of a vehicle. Thus, despite his conviction for felony burglary, defendant contends that he is entitled to the punishment applicable to misdemeanor burglary of a vehicle. See Br. of Aplt. at 6-8, 9, 11-12. For this argument, he relies on State v. Shondel, 453 P.2d 146 (Utah 1969).

Defendant's argument fails for two related reasons. First, he premises it on the incorrect notion that a camping trailer is a "vehicle" as a matter of law. To support this argument, defendant extracts definitions from Title 13 (Commerce and Trade), chapter 14 (New Automobile Franchise Act), a part of the Utah Code governing the relationship between the State, franchised car dealerships, and the public. See Utah Code Ann. § 13-14-101 (West 2004)(outlining legislative purpose of Act); Br. of Aplt. at 6-7. Notably, the limiting phrase, "[a]s used in this chapter" precedes the definitional section on which

defendant relies. See Utah Code Ann. § 13-14-102 (West 2004). The definitions cited by defendant thus expressly relate only to automobile franchises, which are plainly not at issue here.

The statute governing burglary provides that "[a]n actor is guilty of 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 (West 2004). The definitions applicable to the burglary statute provide that a "building," "in addition to its ordinary meaning, means any . . . trailer, sleeping car, or other structure or vehicle adapted for overnight accommodation of persons . . . ." Utah Code Ann. § 76-6-201 (West 2004).

The trial court looked to these statutorily-relevant definitions, not to the New Automobile Franchise Act, when it denied defendant's motion to quash the bindover because the State had charged felony burglary rather than misdemeanor burglary of a vehicle. That is, the trial court correctly recognized that for purposes of burglary and burglary of a vehicle, a camping trailer is clearly categorized as a "building" and so falls squarely within the burglary statute.

Specifically, the trial court ruled that "the trailer would comply with a habitable dwelling, so it would qualify under the burglary statute" (R. 137: 5). In essence, the court recognized that the Code section governing both burglary and vehicle

burglary categorizes a camping trailer as, generally, a "building" and, more specifically, a "dwelling."

A camping trailer is categorized as a "building" because, "in addition to its ordinary meaning," a building includes "any trailer . . . or other structure or vehicle adapted for overnight accommodations of persons."[1] Utah Code Ann. §76-6-201 (1). A camping trailer may more specifically be categorized as a "dwelling," because it is a particular kind of "building," one that is "usually occupied by a person lodging therein at night, whether or not a person is actually present." Id at (2).[2]

The law is well settled that "[t]he plain language of a statute is to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and 'with other statutes under the same and related chapters.'" Lyons v. Burton, 2000 UT 55, ¶ 17, 5 P.3d 616 (quoting Roberts v. Erickson, 851 P.2d 643, 644 (Utah 1993)(citation omitted)); accord State v. Holm, 2006 UT 31, ¶ 22, 137 P.3d 726. Where the trial court categorized a camping trailer correctly as a building, it did not err in concluding that the State had properly charged defendant with burglary, rather than burglary of

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[1] Defendant conceded that the camping trailer "was equipped with a sleeping area" (R. 89, 137: 3).

[2] Burglary of a building is a third degree felony, while burglary of a dwelling is a second degree felony. See Utah Code Ann. § 76-6-201(1). Despite the court's reference to a dwelling, defendant was convicted only of the lesser offense, burglary of a building.

a vehicle and, consequently, in denying defendant's motion to quash the bindover.

Second, defendant's argument also fails because when a camping trailer is correctly categorized as a building within the meaning of the burglary statute, the Shondel doctrine does not apply. Under Shondel and its progeny, if two statutes proscribe precisely the same conduct but assess different penalties, the defendant is entitled to receive the lesser penalty and conviction. Shondel, 453 P.2d at 147-48; State v. Gomez, 722 P.2d 747, 749 (Utah 1986); see also, State v. Bryan, 709 P.2d 257, 263 (Utah 1985); State v. Kent, 945 P.2d 145, 147 (Utah App. 1997); State v. Vogt, 824 P.2d 455, 457 (Utah App. 1991); State v. Duran, 772 P.2d 982, 987 (Utah App. 1989).

The test for determining whether two statutes proscribe the same conduct is whether the "two statutes are wholly duplicative as to the elements of the crime." Bryan, 709 P.2d at 263; see also Kent, 945 P.2d at 147; Gomez, 722 P.2d at 749; Duran, 772 P.2d at 987. If they are not, defendant may be sentenced for the crime carrying the greater penalty, "even if the defendant *could have been* charged with the crime carrying the less severe sentence, so long as there is a rational basis for the legislative classification." Kent, 945 P.2d at 147 (citations omitted).

Here, the statutory requirements for burglary of a vehicle are not "wholly duplicative" of the elements of burglary.

Vehicle burglary requires a person to unlawfully enter a vehicle with intent to commit a felony or theft only. Utah Code Ann. § 76-6-204. Burglary requires a person to enter or remain unlawfully in a building with intent to commit a felony or theft or to commit certain other specified crimes. Utah Code Ann. § 76-6-202. Without question, the State had to prove something different than the elements of vehicle burglary in order to establish that defendant committed burglary. That is, the State had to prove that the crime occurred in a "trailer . . . or other vehicle adapted for overnight accommodation." Utah Code Ann. § 76-6-201(1). The locus of the crime thus distinguishes felony burglary from misdemeanor vehicle burglary.

Moreover, a rational basis exists for the differing classifications of the two crimes. The law has always accorded the greatest privacy rights to one's home. Historically, a lesser expectation of privacy and autonomy has been accorded one's vehicle. A greater penalty for a home invasion and a lesser penalty for invasion of one's vehicle thus rationally relates to society's interest in according people a greater degree of protection in places where they stay overnight. Certainly, when a vehicle serves as a home, even if only temporarily, by accommodating overnight stays, then it makes good sense that the legislature would extend to such a vehicle the greater protection typically granted to homes.

Because the trial court properly characterized a camping trailer as a building within the meaning of the burglary statute and because the Shondel doctrine does not apply here, the trial court committed no error in sentencing defendant for a felony conviction for burglary.

CONCLUSION

For the reasons stated, this Court should affirm defendant's conviction on one count of burglary, a third degree felony.

RESPECTFULLY submitted this 11th day of July, 2007.

MARK L. SHURTLEFF
Attorney General

Joanne C. Slotnik

JOANNE C. SLOTNIK
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing brief of appellee were mailed first-class, postage prepaid, to A.W. Lauritzen, 15 East 600 North, #1, P.O. Box 171, Logan, Utah 84321, this 11th day of July, 2007.

Joanne C. Slotnik