12-28-2017

State v. Coats Respondent's Brief Dckt. 44872

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 44872**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2016-5674**
	)	
SHAWN JERRI COATS,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Shawn Jerri Coats appeals from his convictions for three counts of grand theft, three counts of forgery, and one count of fraudulent use of a financial transaction card, enhanced for being a persistent violator. On appeal, he asserts (1) that there was insufficient evidence to support one of the charges of grand theft (Count V) and (2) that conviction on both that contested charge of grand theft (Count V) and on the charge of fraudulent use of a financial transaction card (Count VII) violated double jeopardy.

Statement Of The Facts And Course Of The Proceedings

On June 28, 2015, Theodore Morgan found himself in a very poor financial situation. (Tr., vol. II, p.48, Ls.20-22.) Between his house bill, two vehicle bills, and other household expenses, he was reduced to borrowing money just to make ends meet each month. (Id., p.49, L.8 – p.50, L.5.) That evening, Mr. Morgan spoke with Coats, and Coats offered to help him by writing him a check. (Id., p.51, L.2 – p.52, L.2.) Coats asked for nothing in return, and Mr. Morgan was very grateful. (Id., p.52, Ls.12-17.) They drove together to Mr. Morgan's bank and, with Coats standing right behind Mr. Morgan, deposited a check for $955.00, made out on the account of Zacarias Garcia, at the ATM. (Tr., vol. I, p.118, Ls.11-13; vol. II, p.52, L.18 – p.54, L.22; State's Ex. 6.)

Coats told Mr. Morgan that he needed $500.00, so they inserted another check for $950.00, again made out on the account of Zacarias Garcia, and Mr. Morgan returned $500.00 to Coats. (Tr., vol. I, p.118, Ls.14-15; vol. II p.54, L.23 – p.55, L.12; State's Ex. 7.) Later that evening, Coats asked to borrow Mr. Morgan's truck. (Tr., vol. II, p.56, Ls.18-20.) Reluctantly, Mr. Morgan agreed to allow Coats to borrow his truck to quickly drive to Garden City and back,

and Mr. Morgan went to bed. (Id., p.57, Ls.9-25.) It was four days later before Mr. Morgan saw his truck again. (Id., p.58, Ls.22-24; p.132, L.25 – p.133, L.6.)

In the meantime, Mr. Morgan's truck was not the only thing missing; he also could not find his ATM card. (Id., p.59, Ls.18-22.) He had not authorized anyone to use it. (Id., p.59, L.23 – p.60, L.11.) Yet Coats was out using Mr. Morgan's ATM card to finance, *inter alia*, a Walmart shopping spree. (See Tr., vol. I, p.132, L.10 – p.134, L.7; p.137, L.17 – p.138, L.8; p.142, L.21 – p.143, L.15; vol. II, p.44, Ls.5-22; p.104, Ls.15-25.) Recognizing fraudulent activity, the bank shut down the account. (Tr., vol. I, p.145, Ls.2-4; vol. II, p.28, Ls.14-20; p.61, L.23 – p.62, L.4.)

The state charged Coats with three counts of grand theft, three counts of forgery, and two counts of criminal possession of a financial transaction card, and the state filed a persistent violator enhancement. (R., pp.89-91, 123-25.) Coats pleaded not guilty and went to trial on all counts. (Tr., vol. I, pp.15-148; vol. II, pp.20-280.) At the end of that jury trial, the jury returned guilty verdicts on all counts of grand theft and forgery, and on one of the counts of criminal possession of a financial transaction card (R., pp.185-91); the jury returned a not guilty verdict on the second count of criminal possession of a financial transaction card (R., p.192); and the jury found the persistent violator enhancement (R., p.196).

The district court entered judgment against Coats on all guilty verdicts and enhancement, and sentenced him to concurrent terms of 15 years with five years fixed on each count. (R., p.199-202.) Coats filed a timely notice of appeal. (R., pp.204-05.)

ISSUES

Coats states the issues on appeal as:

> I. Did the State fail to prove beyond a reasonable doubt Mr. Coats committed grand theft of retail goods or services during a criminal episode?
>
> II. Did Mr. Coats's convictions and punishments for grand theft of retail goods or services during a criminal episode and fraudulent use of a financial transaction card violate his right to be free of double jeopardy?

(Appellant's brief, p.4.)

The state rephrases the issues as:

1. Was substantial competent evidence admitted at trial from which the jury could conclude beyond a reasonable doubt that Coats was guilty of the grand theft charged in Count V of the amended information?

2. Does Coats's conviction on both Counts V and VII, under the specific facts of this case, violate his double jeopardy rights?

ARGUMENT

I.
Substantial Competent Evidence Admitted At Trial Supports The Jury's Conclusion That Coats Was Guilty Of Grand Theft (Count V)

A. Introduction

The state charged Coats with, *inter alia*, grand theft, under the theory that he

> did wrongfully obtain retail goods or other services with an aggregate value over $50, stolen [during] three or more incidents of theft, which was stolen as part of a criminal episode over a period of up to three days from the owner, Theodore Morgan and/or Walmart, with the intent to appropriate to himself certain property of another.

(R., pp.123-24 (Count V).) At the conclusion of his trial, the jury returned a guilty verdict on that charge. (R., p.189.) On appeal, Coats argues that there was insufficient evidence for a jury to convict him of this specific charge of grand theft. (Appellant's brief, pp.5-11.) Review of the trial record, however, demonstrates that the jury's verdict is supported by substantial competent evidence presented at trial.

B. Standard Of Review

An appellate court will not set aside a judgment of conviction entered upon a verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997); State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992). In conducting this review, the appellate court will not substitute its view for that of the finder of fact as to the credibility of witnesses, the weight to be given to the testimony, or the reasonable inferences to be drawn from the evidence. Miller, 131 Idaho at 292, 955 P.2d at 607. The facts, and inferences to be drawn from those facts, are construed in favor of upholding the verdict. Id.

In determining whether sufficient evidence to support a conviction was presented at trial, the Court reviews the evidence that was actually presented to the jury without regard to its ultimate admissibility. State v. Moore, 148 Idaho 887, 894, 231 P.3d 532, 539 (Ct. App. 2010).

C. Coats's Conviction Is Supported By Substantial Evidence

Under Idaho Code § 18-2407, grand theft is defined, among other things, as "a theft" wherein property that "has an aggregate value over fifty dollars ($50.00)" is "stolen during three (3) or more incidents of theft during a criminal episode," meaning within the course of three consecutive days. I.C. § 18-2407(1)(b)(9). The Idaho Code defines "theft" as the wrongful taking, obtaining, or withholding property from the owner, with the intent to deprive that owner of the property. I.C. § 18-2403(1). Evidence presented at Coats's criminal trial established that he committed grand theft by using Theodore Morgan's ATM card to obtain retail goods and services from Walmart with an aggregate value of more than $50, over the course of three or more incidents within a single criminal episode.

An investigation by an employee for Walmart's loss prevention/asset protection team identified Coats making several transactions at their Meridian store on June 29 and 30, 2015. (Tr., vol. II, p.44, Ls.5-20; State's Exs. 25, 28.) On June 29, Coats used Mr. Morgan's ATM card to make purchases at Walmart totaling at least $1,487.15 in at least four separate transactions: the first for $348.53; the second for $504.00; the third for $503.95; and the fourth for $130.67. (State's Ex. 1; see also Tr., vol. II, p.104, Ls.15-25.) On June 30, Coats again used Mr. Morgan's ATM card to make purchases at Walmart, this time totaling $2,415.00 in four separate transactions: the first for $903.00; and three subsequent transactions for $504.00, each. (Id.) Coats did not have Mr. Morgan's authorization to use his ATM card. (Tr., vol. II, p.59, L.23 – p.60, L.11.) All told, Coats unlawfully used Mr. Morgan's ATM card to make at least

$3,902.15 in purchases from Walmart across at least eight transactions over the course of two days.

On appeal, Coats acknowledges that the evidence presented at trial showed that, across several transactions in two days, he used Mr. Morgan's debit card to make more than $50.00 in purchases from Walmart. (Appellant's brief, pp.8-9.) Coats argues, however, that the state failed to show that he *stole* the property from Walmart because Walmart was paid in full, and that the state failed to show that he *stole* the property from Mr. Morgan because Mr. Morgan never owned or possessed the goods. (Appellant's brief, pp.6-11.) Coats is mistaken.

Theft, as shown above, is not merely *taking* property from the lawful owner, but also *obtaining* and *withholding* property from the owner, with the intent to deprive the owner of the property. See I.C. § 18-2403(1). And, as defined in the Idaho Code, the owner of property is "any person who has a right to possession [of such property] superior to that of the taker, obtainer, or withholder." I.C. § 18-2402(6). It is undisputed that Coats, without authorization, used money from Mr. Morgan's banking account to purchase goods and obtain cash from Walmart. Because Coats used Mr. Morgan's money to obtain those goods, Mr. Morgan has a superior claim on those goods. Coats did not then relinquish those goods to Mr. Morgan; he withheld them. The jury could draw the reasonable inference from the evidence presented at trial (such as Coats never returning with Mr. Morgan's truck (see Tr., vol. II, p.83, Ls.4-13)) that Coats intended to deprive Mr. Morgan of those goods, to which Mr. Morgan had the superior claim. That is theft.

Coats's criminal transactions at Walmart fall squarely under the definition of grand theft in Idaho Code § 18-2407(1)(b)(9), set forth above. The state presented substantial competent

evidence of Coats's crimes, whereby the jury could conclude that he was guilty beyond a reasonable doubt. The jury's verdict is therefore proper and should be affirmed.

II.
Conviction On Both Counts V And VII, Under The Specific Facts Of This Case, Violated Coats's Double Jeopardy Rights

A. Introduction

The state charged Coats with, *inter alia*, grand theft, I.C. §§ 18-2403(1), -2407(1)(b), -2409 (Count V), and criminal possession of a financial transaction card, I.C. §§ 18-3125, -3128 (Count VII). The factual bases for these charges were, respectively,

> That the Defendant, SHAWN TERRI COATS, on or between the 29th day of June, 2015, and the 30th day of June, 2015 in the County of Ada, State of Idaho, did wrongfully obtain retail goods or other services with an aggregate value over $ 50, stolen [during] three or more incidents of theft, which was stolen as part of a criminal episode over a period of up to three days from the owner, Theodore Morgan and/or Walmart, with the intent to appropriate to himself certain property of another.

(R., p.124 (Count V).) And:

> That the Defendant, SHAWN TERRI COATS, on or between the 29th day of June, 2015 and the 30th day of June, 2015, in the County of Ada, State of Idaho, did, with the intent to defraud, knowingly obtain goods and/or property from Walmart by the use of a fraudulently obtained financial transaction card.

(R., p.125 (Count VII).)

For the first time on appeal, Coats claims that these two charges, as pled, subjected him to double jeopardy. (Appellant's brief, pp.11-16.) Because this issue was not preserved below, Coats correctly presents his argument under the fundamental error doctrine articulated by the Idaho Supreme Court in State v. Perry, 150 Idaho 209, 245 P.3d 961 (2010). (Id., pp.12-16.) It appears that Coats is correct.

B. Standard Of Review

Absent a timely objection, the appellate courts will only review an alleged error under the fundamental error doctrine. Perry, 150 Idaho at 226, 245 P.3d at 978. Whether a defendant has been placed in jeopardy twice is a question of law, given free review. State v. Bush, 131 Idaho 22, 33, 951 P.2d 1249, 1260 (1997).

C. Because, Under The Specific Facts Of This Case, Count VII Is An Included Offense Of Count V, It Should Be Merged Into Count V

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. This clause affords a defendant three basic protections: It protects against a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple criminal punishments for the same offense. Schiro v. Farley, 510 U.S. 222, 229 (1994).

The test for determining whether a single act that violated two statutes constituted one or two separate offenses was articulated by the United States Supreme Court in Blockburger v. United States, 284 U.S. 299 (1932). Under that test, a single criminal act may be considered two separate offenses only where each statute requires the prosecution to prove some fact that the other does not. Id. at 304. The state agrees that, under the specific facts of this case, the fraudulent use of the financial transaction card, I.C. § 18-3125(4), was a lesser included offense of the grand theft, I.C. § 18-2407(1)(b)(9), because to be guilty of the fraudulent use of the debit card did not require Coats's withholding from, with an intent to deprive, the rightful owner of the property acquired, which was required to sustain the grand theft charge, I.C. § 18-2403(1).

"Under both the federal and Idaho double jeopardy clauses, a defendant may not be convicted of both a greater and lesser included offense." State v. McKinney, 153 Idaho 837, 841, 291 P.3d 1036, 1040 (2013) (internal quotation omitted). While criminal possession of a financial transaction card would not always be an included offense of grand theft, under the specific facts of this case, the charges should have been set forth in the alternative, and the conviction for fraudulent use of the financial transaction card should be merged into the grand theft conviction.

CONCLUSION

The state respectfully requests that this Court affirm Coats's conviction for grand theft, Count V, and merge his conviction for fraudulent possession of a financial transaction card, Count VII, into that conviction.

DATED this 28th day of December, 2017.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of December, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd