

FILED
Court of Appeals
Division III
State of Washington
9/7/2018 1:32 PM
35907-7-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

WALTER MARTIN, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

LAWRENCE H. HASKELL
Prosecuting Attorney

Larry Steinmetz
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

INDEX

I. ISSUES PRESENTED 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 5

 A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY NOT INSTRUCTING ON A DEFENSE OF GOOD FAITH CLAIM OF TITLE BECAUSE THE DEFENDANT FAILED TO PROVIDE ANY OBJECTIVE EVIDENCE TO CORROBORATE HIS CLAIM THAT HE TOOK HIS OWN BICYCLE, WHICH HE HAD PREVIOUSLY GIFTED TO MR. BROWN..... 5

 Standard of review. 5

 1. At trial, the defendant did not establish a factual basis to assert a good faith claim of title to Mr. Brown’s bike. 7

 2. The defendant did not have a legal basis to assert a good faith claim in Mr. Brown’s bike..... 8

IV. CONCLUSION 10

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Ager, 128 Wn.2d 85, 904 P.2d 715 (1995) 6, 7

State v. Aleshire, 89 Wn.2d 67, 568 P.2d 799 (1977)..... 5

State v. Barnes, 153 Wn.2d 378, 103 P.3d 1219 (2005)..... 5

State v. Bosio, 107 Wn. App. 462, 27 P.3d 636, 637 (2001) 5

State v. Brown, 36 Wn. App. 549, 676 P.2d 525 (1984),
review denied, 101 Wn.2d 1024 (1984)..... 8, 9

State v. Chase, 134 Wn. App. 792, 142 P.3d 630 (2006),
review denied, 160 Wn.2d 1022 (2007)..... 6

State v. Self, 42 Wn. App. 654, 713 P.2d 142 (1986),
review denied, 105 Wn.2d 1017 (1986)..... 9

State v. Trout, 125 Wn. App. 403, 105 P.3d 69 (2005) 8

Tank v. State Farm Fire & Casualty Co., 105 Wn.2d 381,
715 P.2d 1133 (1986)..... 7

STATUTES

RCW 9A.56.010..... 6

RCW 9A.56.020..... 6, 7

RCW 9A.56.040..... 5

RCW 9A.56.200..... 6

OTHER

BLACKS LAW DICTIONARY (10th ed. 2014) 7

I. ISSUES PRESENTED

1. Did the trial court abuse its discretion when it refused the defendant's request to instruct the jury on a good faith claim of title to the theft of Mr. Brown's new bicycle, if the defendant did not present any objective evidence to support giving that instruction?

2. Did the defendant present any evidence that he had an ownership interest in or was entitled to Mr. Brown's new bicycle?

II. STATEMENT OF THE CASE

The defendant was charged by information with residential burglary and second degree theft. CP 1. A jury convicted him of the second-degree theft, but acquitted him of the residential burglary. CP 201, 203. This appeal timely followed.

Candace Brown and William Brown lived in the Spokane Valley in 2017. RP 122-24.¹ The Browns had known the defendant for a number of years, as he was the brother of Mike Martin, a family friend, and would accompany him to the Browns' residence on occasion. RP 134-36, 174-75. Neither of the Browns had seen or spoken to the defendant for several years before the incident. RP 142, 179-80.

¹ The Verbatim Report of Proceedings for the trial and as referred to commenced on December 18, 2017.

On August 4, 2017, Ms. Brown left the family residence on an errand around noon and returned about 2:00 p.m. RP 138. When she returned, the front screen door of the residence was not opening properly. RP 138-41; Ex. 1. She entered the residence, and observed a note² from the defendant on the dining room table. RP 139. The note read as follows:

Billy Tangle Ass, LOL, hey, big brother,³ this is Walt. But, anyway, Brother Mike has a great job opportunity for me and told me to get out there. It's by state line. Walking so I stopped to grab my bike real quick and will drop it back off when you get home. Thanks, Bill, big brother. See you around eight or seven more like it. Ron seems great. Is always nice to see him. Might have my phone back on in about an hour, 294-7946. K.

RP 141; Ex. 1.

Ms. Brown had no knowledge of the defendant borrowing anything from her husband in the past, and she did not give the defendant permission to remove anything, including the bicycle, from the home. RP 142-43. Likewise, Mr. Brown never gave the defendant permission to take the bicycle.⁴ RP 207.

² During the investigation, the defendant admitted to writing the note. RP 242.

³ The defendant commonly used "Big Brother" as a moniker for Mr. Brown. RP 141.

⁴ Similarly, Mr. Brown never gave the defendant permission to enter his home if he was not there. RP 208.

Approximately two years before the theft of Mr. Brown's bicycle from his residence, Mr. Brown went bike riding several times with his friend, Mike Martin, and the defendant. RP 178-79. Eventually, the defendant gave Mr. Brown his white "Specialized" road bike, without cost, because the defendant no longer wanted the bike. RP 181, 184, 187, 213.

Roughly a year after that, and after Mr. Brown had sold the white "Specialized" bike for between \$150 and \$250, the defendant indicated directly or indirectly that he wanted some money for the bike. RP 184, 213-14.⁵

Mr. Brown subsequently purchased a new black/blue, carbon fiber "Trek Diamante" bike on February 28, 2016, which listed at \$2700, but he bought it for \$1900. RP 137, 183, 189-90; Ex. 2. Mr. Brown subsequently placed a \$300 GPS device and a tool bag, with accessories, on the new bicycle. RP 197.

After being told by his wife that his new bicycle had been taken, Mr. Brown, on his way home from work, attempted to call the defendant

⁵ Mr. Brown subsequently asked his friend, Mike Martin, to give the defendant \$150, which was the approximate amount Mr. Brown received for the sale of the bike, and Mr. Brown would then reimburse Mr. Martin. RP 184. However, the defendant never requested the money from his brother, Mr. Martin. RP 184-85. Other than the time the defendant had requested money from Mr. Brown for the bike, Mr. Brown had no contact with the defendant for several years before the theft incident. RP 187-88.

using a dated telephone number. RP 200-203. Mr. Brown also called his friend, Mike Martin, who was dumbfounded and gave Mr. Brown the defendant's last known telephone number. RP 201. Mr. Brown did not hear back from the defendant after the theft. RP 201. Mr. Brown subsequently called the police. RP 202.

Deputy Cassandra Erickson contacted Mike Martin and received a possible address for the defendant in the Spokane Valley. RP 235-36. The deputy drove to that address around 4:00 p.m., and found both the defendant and Mr. Brown's bicycle present at the address.⁶ RP 237, 260. The defendant told the deputy he was allowed into the Browns' home by a relative of the Browns.⁷ RP 239-40. He admitted that he had no discussion with either of the Browns regarding the stolen bicycle. RP 242. However, he claimed that he did not have the time to ask the Browns if he could take their bike and then remarked that the stolen bike was his bike. RP 242. The defendant explained that it was the same kind of bike he had previously given to Mr. Brown.⁸ RP 242-43.

⁶ The bike was leaning against the back porch of the residence located on the property. RP 282.

⁷ The trial court had previously conducted a CrR 3.5 hearing and determined the defendant's statements admissible at the time of trial. RP 53-81. No error has been assigned to the court's ruling.

⁸ The defendant did not testify at trial.

III. ARGUMENT

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY NOT INSTRUCTING ON A DEFENSE OF GOOD FAITH CLAIM OF TITLE BECAUSE THE DEFENDANT FAILED TO PROVIDE ANY OBJECTIVE EVIDENCE TO CORROBORATE HIS CLAIM THAT HE TOOK HIS OWN BICYCLE, WHICH HE HAD PREVIOUSLY GIFTED TO MR. BROWN.

The defendant claims that the court erred in refusing to instruct the jury on the defense of good faith claim of title.

Standard of review.

A trial court's refusal to give a requested instruction, when based on the facts of the case, is a matter of discretion and will not be disturbed on review except upon a clear showing of abuse of discretion. *State v. Bosio*, 107 Wn. App. 462, 464, 27 P.3d 636, 637 (2001). In that regard, “[a]n instruction not warranted by the evidence need not be given.” *State v. Aleshire*, 89 Wn.2d 67, 71, 568 P.2d 799 (1977), *abrogated on other grounds by State v. Dowling*, 98 Wn.2d 542, 656 P.2d 497 (1983). However, when the decision to deny a jury instruction is based on rulings as to law, review is de novo. *State v. Barnes*, 153 Wn.2d 378, 382, 103 P.3d 1219 (2005).

In the present case, the defendant was charged,⁹ in part, with second degree theft under RCW 9A.56.040(1)(a), which states, in relevant part: “a

⁹ CP 1.

person is guilty of theft in the second degree if he or she commits theft of [] [p]roperty or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value.” Under RCW 9A.56.200(1)(a), “theft” means “[t]o wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services.” “Wrongfully obtains” or “exerts unauthorized control” means “[t]o take the property or services of another.” RCW 9A.56.010(23)(a).

The defendant requested the trial court instruct the jury that it was a defense to the theft charge under a good faith claim of title. RP 343-45.

A defendant relying on the good faith claim of title defense “must do more than assert a vague right to property.” *State v. Ager*, 128 Wn.2d 85, 95, 904 P.2d 715 (1995). Rather, a defendant must present evidence, under RCW 9A.56.020(2)(a), that (1) the taking was open and avowed, and (2) has shown circumstances which permit an inference that the defendant has some legal or factual basis for a good faith belief that he has title to the property. *Ager*, 128 Wn.2d at 95. There is no entitlement to the instruction if there is no evidence supporting one of these elements. *Id.* at 93. Furthermore, there must be evidence other than a defendant’s subjective beliefs; objective evidence must support the defendant’s assertions of a good faith claim of title. *State v. Chase*, 134 Wn. App. 792, 805-06,

142 P.3d 630 (2006), *review denied*, 160 Wn.2d 1022 (2007). On a showing of a good faith belief of ownership supported by evidence of some legal or factual basis for the belief, the defendant is entitled to a jury instruction on the defense. *Ager*, 128 Wn.2d at 96-97. The matter is then for the jury to decide. *Id.*

In the present case, the trial court found there was not a sufficient factual or legal basis to instruct on a good faith claim of title. RP 345-48. The defendant failed to produce evidence of either prong of the defense under RCW 9A.56.020(2)(a).

1. At trial, the defendant did not establish a factual basis to assert a good faith claim of title to Mr. Brown's bike.

“Good faith” is not defined by statute, but in other contexts, it has been defined as a state of mind indicating honesty and lawfulness of purpose. *See Tank v. State Farm Fire & Casualty Co.*, 105 Wn.2d 381, 385, 715 P.2d 1133 (1986); *see also* BLACKS LAW DICTIONARY 808 (10th ed. 2014) (“A state of mind consisting in (1) honesty in belief or purpose”).

Here, the defendant's note and self-serving statements to the deputy did not establish a factual basis for a good faith belief that he was entitled to Mr. Brown's bicycle. The defendant offered nothing more than proclaiming his subjective belief that Mr. Brown's bike was his bike. Absent some corroborative evidence, the defendant's note to the Browns

and his self-serving statement to the deputy that Mr. Brown's bike was his bike, which establishes his subjective belief only, was insufficient to infer an objective, legal or factual basis for a good faith belief that the defendant had title to or was otherwise entitled to Mr. Brown's bicycle. The defendant fails to establish the fundamental requirements for the good faith claim of title defense. The trial court did not abuse its discretion when it refused to give the requested instruction.

2. The defendant did not have a legal basis to assert a good faith claim in Mr. Brown's bike.

In addition to the above argument, the defendant failed to present any evidence at trial that he had an ownership interest or was entitled to Mr. Brown's new bicycle. Accordingly, the trial court did not abuse its discretion because "good faith claim of title" defense to theft applies only when a claim of title can be made to the *specific* property acquired. *State v. Trout*, 125 Wn. App. 403, 416, 105 P.3d 69 (2005) (Division III – robbery); *State v. Brown*, 36 Wn. App. 549, 559, 676 P.2d 525 (1984), *review denied*, 101 Wn.2d 1024 (1984) (Division I – burglary).

In *Brown*, the defendants broke into the victim's home and took a stereo to secure the return of a purse and a gun allegedly taken by the victim from one of the defendants early in the day. The appeals court found that the defendant was not entitled to an instruction on good faith claim of title

because the defendant did not claim, and there was no evidence to show the stereo belonged to any one of the defendants. Ultimately, the court held: “[t]he good faith claim of title defense to theft applies only when a claim of title can be made to the specific property acquired.” *Id.* at 559; *see also State v. Self*, 42 Wn. App. 654, 657, 713 P.2d 142 (1986), *review denied*, 105 Wn.2d 1017 (1986) (an instruction on the good faith claim of title defense is appropriate if “self-help is used to recover specific property”). However, the good faith claim of title defense is not appropriate for debt collection. *Id.* at 657-58.

Here, the record is totally devoid of any evidence that the defendant had any claim of ownership or was entitled to Mr. Brown’s new “Trek” bicycle, or that the defendant had any belief, let alone a good faith belief, that he was recovering his used bicycle that he had previously gifted to Mr. Brown two years before the theft incident. Surely, by his own admission, the defendant knew he was not taking his used bike, which he had given to Mr. Brown. Undoubtedly, the defendant told the deputy that he did not have time to ask the Browns if he could take Mr. Brown’s “Trek” bike, and he asserted that Mr. Brown’s new “Trek” bike was the “same kind of bike” that he had previously given to Mr. Brown. Thus, even by his own admission, there was no evidence that the defendant recovered the bike he

previously gifted to Mr. Brown, which was a prerequisite to asserting a good faith claim of title.

Finally, it was not until Mr. Brown sold the used bike that the defendant demanded some money for that bike. It is apparent the defendant felt slighted by Mr. Brown's sale of the used "Specialized" bike and improvidently used "self-help" to collect what he perceived as a debt owing for giving the used bike to Mr. Brown, who then sold that bike. The defendant fails to establish he had any claim of ownership in or entitlement to Mr. Brown's new bicycle, and the trial court did not err by not instructing the jury on the good faith claim of title defense.

IV. CONCLUSION

For the reasons stated herein, the State requests this Court affirm the judgment and sentence.

Respectfully submitted this 7 day of September, 2018.

LAWRENCE H. HASKELL
Prosecuting Attorney



Larry Steinmetz #20635
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

WALTER MARTIN,

Appellant.

NO. 35907-7-III

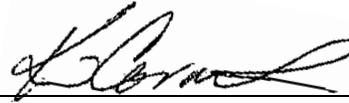
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on September 7, 2018, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Andrea Burkhart
andrea@2arrows.net

9/7/2018
(Date)

Spokane, WA
(Place)



(Signature)

SPOKANE COUNTY PROSECUTOR

September 07, 2018 - 1:32 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35907-7
Appellate Court Case Title: State of Washington v. Walter Byard Martin
Superior Court Case Number: 17-1-03063-6

The following documents have been uploaded:

- 359077_Briefs_20180907133201D3224826_7276.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Martin Walter - 359077 - Resp Br - LDS.pdf
- 359077_Designation_of_Clerks_Papers_20180907133201D3224826_3319.pdf
This File Contains:
Designation of Clerks Papers - Modifier: Supplemental
The Original File Name was Desig CP - Exhibits - LDS.pdf

A copy of the uploaded files will be sent to:

- Andrea@2arrows.net
- bobrien@spokanecounty.org

Comments:

Sender Name: Kim Cornelius - Email: kcornelius@spokanecounty.org

Filing on Behalf of: Larry D. Steinmetz - Email: lsteinmetz@spokanecounty.org (Alternate Email: scpaappeals@spokanecounty.org)

Address:
1100 W Mallon Ave
Spokane, WA, 99260-0270
Phone: (509) 477-2873

Note: The Filing Id is 20180907133201D3224826