

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JUNE 1996 SESSION

FILED
August 9, 1996
Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,

Appellant,

VS.

WILLIAM ODOM,

Appellee.

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C.C.A. NO. 01C01-9510-CC-00353

RUTHERFORD COUNTY

HON. J. S. DANIEL,
JUDGE

(Theft - State appeal)

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The defendant was indicted in Rutherford County, Tennessee, for theft over ten thousand dollars (\$10,000). The case was dismissed by the trial judge for lack of jurisdiction. The State now appeals as of right. We affirm the lower court.

On April 1, 1994, Tropical Plant Express (“TPE”) entered into a contract with SGS Leasing, Inc. (“SGS”) for the lease of several tractor-trailer rigs. This lease prohibited any subleases of the rigs by TPE to anyone else. However, on June 17, 1994, TPE entered into a “Vehicle Lease Agreement” with the defendant for the sublease of one of the rigs, a 1990 Peterbilt. The defendant signed this lease and took possession of the Peterbilt in Murfreesboro, Rutherford County, Tennessee. The defendant did not know that SGS was the actual owner of the truck, did not know about TPE’s contract with SGS, and did not know that his lease with TPE violated any other agreement.

TPE defaulted on its lease with SGS. Accordingly, TPE began returning the leased equipment to SGS. SGS and the defendant were mutually unaware of each other, and each other’s relationship to the Peterbilt, until August 1994. At that time, TPE informed SGS of the sublease and told the defendant that it did not have the right to lease the truck to him. On August 18, 1994, SGS called the defendant in Florida, explained that it was the actual owner of the truck, and demanded its return. The defendant refused to return the truck on the basis that TPE owed him money in conjunction with his operation of the truck. Despite repeated requests by SGS, the defendant never returned the truck to it. Eventually, SGS commenced criminal action against the defendant in Kentucky,¹ which was dismissed for lack of jurisdiction. SGS

¹SGS maintained an office in Kentucky.

then pursued this prosecution of the defendant. The only transaction which the defendant took in Tennessee with respect to this truck was signing the lease with TPE and taking delivery of the truck.

Tennessee courts have jurisdiction over those criminal offenses which are:

1. "committed in this state;"
2. "commenced outside this state and consummated in this state;" and
3. "commenced within this state [and] consummated outside its boundaries."

T.C.A. § 39-11-103 (1991 Repl.). The State argues that Rutherford County criminal court has jurisdiction over this matter because the theft commenced there and was consummated outside of Tennessee. We disagree.

The defendant was charged with theft of property over ten thousand dollars (\$10,000). "A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." T.C.A. § 39-14-103 (1991 Repl.). The State argues that the defendant commenced this offense when he took delivery of the truck in Murfreesboro, thereby obtaining control over it. That the defendant had absolutely no criminal mens rea at the time he initially took control is irrelevant according to the State, because such a showing "would require the State to show that the crime was consummated here in order to establish jurisdiction," in contravention of the jurisdiction statute.

The State's argument attempts to make a lawful taking of property an inchoate crime: merely awaiting the formation of the requisite evil intent for the offense to spring full-blown into existence. We do not think that such a construction is "according

to the fair import” of the terms of our jurisdiction and theft statutes. T.C.A. § 39-11-104 (1991 Repl.). We agree with the State that our new theft statute incorporates the old crime of fraudulent breach of trust, which involves an authorized taking of property followed by a wrongful appropriation of the property: for instance, a bailee refusing to return bailed property as required by the terms of the bailment. See, e.g., State v. Silberman, 644 S.W.2d 410 (Tenn. Crim. App. 1982). However, as was reiterated in that case,

it is the fraudulent appropriation of the property which constitutes the offense [of fraudulent breach of trust], and not the hiring or obtaining possession as bailee, and consequently the place where [the fraudulent appropriation occurs] is the place where the offense is committed and where it is punishable.

Id. at 413 (quoting Lovelace v. State, 80 Tenn. (12 Lea) 721, 723 (1883) (changes in Silberman)).

At the time the defendant took possession of the truck in Tennessee, he did so pursuant to a valid contract. That the contract violated another agreement of which the defendant was unaware does not render wrongful, in the criminal context, the defendant’s original taking of the truck. The defendant did not become aware that SGS was the actual owner until August, 1994. At that time the defendant was in Florida and at that time, he decided to continue exercising control over the truck in contravention of SGS’s wishes. Only then did the defendant engage in conduct which might be considered theft under Tennessee law. No part of this conduct, however, occurred in Tennessee. Accordingly, our courts do not have jurisdiction over the defendant’s allegedly criminal behavior in Florida.

The State’s argument that jurisdiction attaches because the defendant

failed to account for the property in Tennessee is also misplaced. Accepting the State's contention that SGS was the legal owner of the truck, the defendant's duty to account arose in favor of SGS, not TPE.² SGS had no office or other facility in Tennessee, and any duty to account was therefore located elsewhere.

The ruling of the court below is affirmed.

JOHN H. PEAY, Judge

CONCUR:

DAVID G. HAYES, Judge

WILLIAM M. BARKER, Judge

²Moreover, contrary to the State's argument, the record does not make clear that TPE ever made a rightful demand upon the defendant for return of the truck to it. Even if TPE had made a rightful demand, it appears that TPE had closed its Tennessee office prior to contacting the defendant about the truck's return. Thus, the defendant could not have accounted for the truck to TPE in Tennessee.