7-20-1951

People v. Nor Woods

Roger J. Traynor

87 Cal.2d 584

PEOPLE v. NOR WOODS.

Cr. 5211.

Supreme Court of California.

July 20, 1951.

Rehearing Denied Aug. 16, 1951.

Woodrow Nor Woods was convicted in Superior Court of San Diego County, John A. Hewicker, J., of grand theft and he appealed. The Supreme Court, Traynor, J., held that evidence sustained conviction for grand theft committed by misrepresenting condition of title of automobile when selling same.

Judgment affirmed.

1. False pretenses ⇐49(1)

Evidence sustained conviction for grand theft committed when defendant made misrepresentation to buyer of automobile of condition of title. Pen.Code, §§ 484, 487.

2. False pretenses ⇐26

Under statute providing that in charging theft it shall be sufficient to allege in information that defendant unlawfully took labor or property of another it was unnecessary, in information charging grand theft by seller's misrepresenting to buyer condition of title of automobile, to allege particular type of theft involved. Pen. Code, § 952.

3. Larceny ⇐14(1)

Where defendant falsely represented condition of title of automobile to buyer and accepted purchase price and finance company later repossessed automobile from buyer, if defendant seller intended that only possession of automobile should pass at time of sale, defendant was guilty of larceny by trick or device.

4. False pretenses ⇐20

Where defendant falsely represented condition of title of automobile to buyer and accepted purchase price and finance company later repossessed automobile from buyer, if defendant seller intended title should pass, defendant was guilty of obtaining property by false pretenses. Pen. Code, § 952.

5. False pretenses ⇐52
Larceny ⇐70(1)

Where defendant seller falsely represented to buyer condition of title of automobile and accepted purchase price and finance company later repossessed automobile from buyer, defendant was guilty of theft by either larceny by trick or device or by obtaining property by false pretenses, depending upon whether defendant intended title or merely possession to pass, and it was not necessary that jury be instructed upon method by which theft was committed, since it was immaterial whether they agreed as to technical pigeonhole into which theft fell.

6. False pretenses ⇐54

Where defendant seller falsely represented to buyer of automobile that title was in certain condition and seller accepted purchase price and another automobile in trade-in, and finance company later repossessed automobile from buyer, although defendant was guilty of either larceny by trick or device or of obtaining property by false pretenses, depending upon whether he intended possession or title to pass at time of transaction, there was only one theft and imposing of two sentences to run concurrently was error. Pen. Code, § 952.

7. Criminal law ⇐1177

Where two sentences were imposed for transaction which constituted but one theft, fact that sentences were ordered to run concurrently did not cure error.

Woodrow Nor Woods, in pro. per.

Edmund G. Brown, Atty. Gen., Gilbert Harelson and Frank Richards, Deputy Attys. Gen., for respondent.

TRAYNOR, Justice.

Defendant has appealed from an order denying his motion for a new trial and from the judgment of conviction on two counts of grand theft.

Defendant, a used car dealer, offered to sell a 1949 Ford to the complaining witness, Campouris, in exchange for a 1946 Ford

and $1,183.14 in cash. Campouris accepted the offer and delivered his car and a check for the money to defendant on the latter's representation that the title to the 1949 Ford was clear except for a $1,183.14 lien, which defendant promised to discharge with the cash payment. Defendant gave Campouris a bill of sale and in the place provided for liens wrote, "No exceptions will del title as soon as from Sacramento, California." Campouris agreed to give defendant the ownership certificate for the 1946 Ford, when defendant gave him the certificate for the 1949 Ford. At the time of the sale the ownership certificate of the 1946 Ford was in the possession of the Bank of America. The bank had made a loan on the car that had been paid. Defendant sold the 1946 Ford to a third party who was able to secure the ownership certificate from the bank. Actually the lien on the 1949 Ford was greatly in excess of $1,183.14, and defendant did not use that money or the money that he obtained from the sale of the 1946 Ford to discharge it. Approximately a year after the sale to Campouris the finance company repossessed the 1949 Ford. Defendant has not returned to Campouris either the cash or the 1946 Ford.

[1] From the foregoing evidence the jury was justified in finding that defendant, by misrepresenting the condition of the title of the 1949 Ford, defrauded Campouris of the price he agreed to pay for that car and was guilty of grand theft. Penal Code, §§ 484, 487.

[2] Defendant contends that the information was defective in failing to specify the kind of grand theft with which he was charged. Penal Code section 952 provides, however, that "In charging theft it shall be sufficient to allege that the defendant unlawfully took the labor or property of another." Accordingly, it was not necessary for the information to allege the particular type of theft involved, such as false pretenses embezzlement, or larceny by trick and device. People v. Fewkes, 214 Cal. 142, 149, 4 P.2d 538.

[3–5] Similarly, there was no error in failing to instruct the jury that they must agree upon the method by which the theft was committed. If Campouris intended that only possession of the property should pass at the time of the sale, defendant was guilty of larceny by trick or device, but if Campouris intended that title should pass, defendant was guilty of obtaining property by false pretenses. People v. Delbos, 146 Cal. 734, 736, 81 P. 131; People v. De Graaff, 127 Cal. 676, 679, 60 P. 429; People v. Fawver, 29 Cal.App.2d Supp. 775, 777–779, 77 P.2d 325, and cases cited. Irrespective of Campouris's intent, however, defendant could be found guilty of theft by one means or another, and since by the verdict the jury determined that he did fraudulently appropriate the property, it is immaterial whether or not they agreed as to the technical pigeonhole into which the theft fell. People v. Jones, 61 Cal.App.2d 608, 622–623, 143 P.2d 726; People v. Caldwell, 55 Cal.App.2d 238, 256, 130 P.2d 495.

[6, 7] Defendant contends that at most he was guilty of the commission of one offense. We agree with this contention. It is unnecessary to determine under what circumstances the taking of different property from the same person at different times may constitute one or more thefts. See, People v. Howes, 99 Cal.App.2d 808, 818–821, 222 P.2d 969, and cases cited. In the present case both the car and the money were taken at the same time as part of a single transaction whereby defendant defrauded Campouris of the purchase price of the 1949 Ford. There was, accordingly, only one theft, and the fact that the sentences were ordered to run concurrently does not cure the error. See, People v. Kehoe, 33 Cal.2d 711, 715, 716, 204 P.2d 321; cf., People v. Slobodion, 31 Cal.2d 555, 562, 191 P.2d 1.

In the light of the record, defendant's contentions that the trial was improperly conducted, that his attorney concealed his innocence, and that the case against him was a conspiracy cannot be sustained. By returning a verdict of guilty the jury rejected defendant's version of the transactions, and its determination is binding on appeal.

The order denying the motion for a new trial is affirmed. The judgment is reversed

insofar as it adjudges defendant guilty on the second count of grand theft. In all other respects the judgment is affirmed.

GIBSON, C. J., and SHENK, EDMONDS, and CARTER, JJ., concur.

SCHAUER, J., concurs in the judgment.

87 Cal.2d 609

KESSLOFF v. PEARSON et al.

L. A. 21918.

Supreme Court of California, in Bank.

July 27, 1951.

Rehearing Denied Aug. 23, 1951.

Alex Kessloff brought action against Edward F. Pearson, and others, for declaratory relief and an accounting, alleging employment contract whereby plaintiff was to receive salary and percentage of net profits earned by defendants' company. Defendants filed cross-complaint for reformation of the contract. The Superior Court, Los Angeles County, David Coleman, J., entered judgment dismissing action on ground that complaint did not state cause of action for declaratory relief, and plaintiff appealed. The Supreme Court, Shenk, J., held that complaint stated cause of action for an accounting, and dismissal of complaint was improper.

Reversed.

Prior opinion, 226 P.2d 27.

1. Declaratory Judgment ⇐6

Under statutes providing for declaratory judgment as to mutual rights and obligations of persons under a contract in advance of breach, and providing that court can refuse to exercise such power where it is unnecessary or improper at the time under all the circumstances, discretion in refusing to exercise power is not unlimited but is a legal or judicial discretion subject to appellate review, and declaratory relief must be granted when the facts in the case justifying that course are sufficiently alleged. Code Civ.Proc. §§ 1060, 1061.

2. Declaratory Judgment ⇐145

Where employee alleged in complaint that he was to receive salary and 10% of net profits as compensation and that employers improperly computed net profits, and employers answered that their method of computation of net profits was proper and filed cross-complaint for reformation alleging that contract did not show true intention of parties as to how percentage compensation was to be computed, an actual controversy as to terms and construction of contract was presented within statute providing for declaratory relief. Code Civ. Proc. § 1060.

3. Declaratory Judgment ⇐362

Where employee brought action for declaratory relief and an accounting, alleging contract whereby employee was to receive salary and percentage of net profits, and that employers improperly computed net profits in arriving at actual amounts due to employee, breach of contract was alleged on which action for accounting could be based and wherein questions as to terms and construction of contract would become triable issues, and therefore, dismissal of action on ground of insufficiency of complaint was improper. Code Civ.Proc. §§ 1060 to 1062a.

4. Trial ⇐13(3)

Where employee brought action for declaratory judgment and an accounting, alleging contract whereby employee was to receive salary and percentage of net profits, if it should appear that employee mistitled action as in declaratory relief for sole purpose of obtaining preference on calendar, trial court would have power to prevent accomplishment of that purpose by appropriate order or procedure. Code Civ.Proc. §§ 1060 to 1062a.

Aaron Sapiro and Hyman O. Danoff, Los Angeles, for appellant.

Louis Licht, Mitchell, Silberberg & Knupp and Arthur Groman, all of Los Angeles, for respondent.