SUPREME COURT OF ARKANSAS

Shepherd v. State

246 Ark. 744 (1969) · Decided April 21, 1969

SUMMARY

The Arkansas Supreme Court held that the evidence was insufficient to convict Shepherd of acting as a broker-dealer or selling an unregistered security under the Arkansas Securities Act. The court concluded that the transaction was an isolated non-issuer transaction exempt from the Act and reversed the judgment, dismissing the charge.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	John A. Fogleman
JURISDICTION	Arkansas
DECIDED	April 21, 1969
DISPOSITION	reversed
PROCEDURAL POSTURE	On the State's petition for rehearing after a criminal conviction under the Arkansas Securities Act.
STANDARD OF REVIEW	The conviction was reviewed for sufficiency of the evidence.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Shepherd v. State

TOPICS

criminal procedure · statutory interpretation · oil and gas · appellate procedure · minerals

PRACTICE AREAS

Criminal law · Securities regulation · Appellate procedure · Oil and gas law

QUESTIONS PRESENTED

1. Whether the evidence established that Shepherd operated as a broker-dealer in violation of Ark. Stat. Ann. § 67-1237.
2. Whether the evidence supported a conviction for selling an unregistered security under Ark. Stat. Ann. § 67-1241.

3. Whether the isolated sale of an interest in an oil and gas lease was exempt from the Arkansas Securities Act as an isolated non-issuer transaction.

HOLDINGS

1. The evidence was insufficient to establish that Shepherd operated or purported to act as a broker-dealer because there was no evidence that he was engaged in the business of effecting securities transactions.
2. The conviction for selling an unregistered security could not stand because the evidence did not establish the required broker-dealer conduct and the transaction was exempt as an isolated non-issuer transaction.

KEY QUOTATIONS

> *"Thus regardless of whether an oil and gas lease is a security under the Arkansas Securities Act, the conviction in this case must be reversed and the charge dismissed."* (246 Ark. 744)

> *"The opinion delivered February 17, 1969, in this case is withdrawn and this opinion substituted."* (246 Ark. 744)

FACTUAL BACKGROUND

The prosecution arose from an isolated sale by Shepherd of an interest in an oil and gas lease. The evidence did not show that Shepherd was engaged in the business of effecting securities transactions or that he acted or purported to act as a broker-dealer. The State conceded that the evidence was insufficient to support the conviction.

PROCEDURAL HISTORY

The State conceded on rehearing that the evidence was insufficient to support Shepherd's conviction. The Supreme Court of Arkansas withdrew its February 17, 1969 opinion, substituted this opinion, reversed the judgment, and dismissed the charge.

DISPOSITION

reversed

OPINION

FOGLEMAN, J.

John A. Fogleman, Justice. In its petition for rehearing the state admits that the evidence in this case was insufficient to support a conviction. The basis of this confession is the fact that under the evidence, appellant was not shown to have operated as a broker-dealer in violation of Ark. Stat. Ann. § 67-1237. There is no evidence that appellant acted or purported to act as a broker-dealer in this isolated transaction.

A broker-dealer is one engaged in the business of effecting transactions in securities, according to the definition in Ark. Stat. Ann. $ 67-1247. For the same reason appellant could not be guilty of the sale of an unregistered security in violation of Ark. Stat. Ann. ^ 67-1241. Regardless of whether the sale of an interest in an oil and gas lease by the owner constitutes a security in the sense of that section and the definition given in § 67-1247(1), this sale is exempted Prom the operation of the act by § 67-1248(b) (1), as an isolated non-issuer transaction.

With respect to certificates of interest or participation in oil, gas, or mining titles or leases, or in payments out of production out of such titles or leases, there is not considered to be any issuer. Section 67-1247(g).

Thus regardless of whether an oil and gas lease is a security under the Arkansas Securities Act, the conviction in this case must be reversed and the charge dismissed. The opinion delivered February 17, 1969, in this case is withdrawn and this opinion substituted.

The judgment is reversed and the cause dismissed.