DISTRICT OF COLUMBIA COURT OF APPEALS

Peery v. United States

849 A.2d 999 (D.C. 2004) · No. No. 01-CF-719 · Decided May 13, 2004

SUMMARY

The District of Columbia Court of Appeals reversed David Van Buren Peery's convictions for five counts of second-degree theft involving personal charges on his law firm's corporate credit card. The court held that the government presented insufficient evidence that Peery knew he lacked authority to use the card for personal expenses, particularly because no written or oral policy prohibited such use and his conduct was ambiguously consistent with an innocent explanation. The case was remanded with instructions to enter a judgment of acquittal.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	King, Senior Judge; Terry, Associate Judge; Ruiz, Associate Judge
JURISDICTION	District of Columbia
DECIDED	May 13, 2004
DOCKET	No. 01-CF-719
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Peery appealed his bench-trial convictions on five counts of second-degree theft, challenging the sufficiency of the evidence and asserting that the trial court improperly shifted the burden of proof. The court addressed only the sufficiency challenge.
STANDARD OF REVIEW	The sufficiency of the evidence is reviewed in the light most favorable to sustaining the conviction, with deference to the factfinder's ability to weigh evidence and determine credibility. In a bench trial, reversal is required when the trial court's factual findings are plainly wrong or unsupported by evidence. The appellate court applies the same sufficiency standard as the trial court and asks whether a reasonable factfinder could find guilt beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the District of Columbia Court of Appeals.
PARTIES	David Van Buren Peery v. United States

TOPICS

criminal procedure · evidence · burden of proof · appellate procedure · standard of review

PRACTICE AREAS

criminal law · criminal procedure · appellate practice

QUESTIONS PRESENTED

1. Whether the government presented sufficient evidence to prove that Peery knowingly used the firm's corporate charge card for personal expenses without authority, an essential element of second-degree theft.
2. Whether the trial court improperly shifted the burden of proof from the government to the defense.

HOLDINGS

1. The evidence was insufficient to prove beyond a reasonable doubt that, at the time of the personal purchases, Peery knew he lacked authority to use the firm's card. His convictions therefore could not stand.
2. The court did not decide the burden-shifting issue because it reversed the convictions on the ground that the evidence was insufficient.

KEY QUOTATIONS

> *"Thus, "if the evidence, when viewed in the light most favorable to the government, is such that a reasonable [fact-finder] must have a reasonable doubt as to the existence of any of the essential elements of the crime," then the evidence is insufficient and we must say so."* (849 A.2d at 1001)

> *"Recognizing such an ambiguity, in a criminal case, under a standard of beyond a reasonable doubt, "an innocent person in [Peery's] shoes might have acted exactly as he did,"; thus a reasonable fact-finder must have had a reasonable doubt as to Peery's knowledge at the time of the purchases."* (849 A.2d at 1002)

FACTUAL BACKGROUND

Peery, an attorney working as of counsel at Bernabei and Katz, received the firm's corporate American Express card and used it for both business and personal expenses. The firm had no written or oral policy informing him that personal use was prohibited, and Peery testified that he believed such use was reasonable based on his experience with an identical card at a prior law firm. After he disclosed that he had charged some personal expenses and would reimburse the firm, he continued using the card for personal purchases, leading to the theft charges.

PROCEDURAL HISTORY

Peery was convicted after a bench trial of five counts of second-degree theft based on personal charges made on his law firm's corporate American Express card. The trial court denied his motion for judgment of acquittal. The District of Columbia Court of Appeals held that the evidence was insufficient to prove beyond a reasonable doubt that Peery knew he lacked authority to use the card for personal expenses and reversed, remanding with instructions to enter a judgment of acquittal.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Remand with instructions to enter judgment of acquittal.

CASES CITED

- Jones v. United States, 716 A.2d 160, 162 (D.C. 1998)
- Lewis v. United States, 767 A.2d 219, 222 (D.C. 2001)
- Mihas v. United States, 618 A.2d 197, 200 (D.C. 1992)
- Owens v. United States, 688 A.2d 399, 402 (D.C. 1996)
- Robinson v. United States, 506 A.2d 572, 573 (D.C. 1986)
- Nowlin v. United States, 782 A.2d 288, 291 (D.C. 2001)
- United States v. Covington, 459 A.2d 1067, 1071 (D.C. 1983)
- United States v. Hubbard, 429 A.2d 1334, 1337-38 (D.C. 1981)
- Rivas v. United States, 783 A.2d 125, 134, 137 (D.C. 2001) (en banc)
- Curry, 520 A.2d at 263
- Speight v. United States, 599 A.2d 794, 798 (D.C. 1991)
