

SUPREME COURT OF NEW HAMPSHIRE

State v. Reilly O. Leith

205 A.3d 171 (N.H. 2019) · No. Rockingham No. 2017-0425 · Decided March 7, 2019

SUMMARY

The Supreme Court of New Hampshire affirmed Reilly O. Leith’s felony theft conviction. The court held that a Kohl’s inventory form and the underlying price-tag information were admissible under the business-records exception, did not violate the best-evidence rule or the Sixth Amendment Confrontation Clause, and did not improperly shift the burden of proof. The court also held that sufficient evidence supported valuing the stolen merchandise above \$1,000 based on the tagged prices and New Hampshire’s statutory definition of value.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Lynn, C.J.; Hicks, J.; Bassett, J.; Hantz Marconi, J.; Donovan, J.
JURISDICTION	New Hampshire
DECIDED	March 7, 2019
DOCKET	Rockingham No. 2017-0425
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed her Superior Court conviction for theft by unauthorized taking, challenging the admission and sufficiency of evidence used to establish that the value of the stolen merchandise exceeded \$1,000.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for an unsustainable exercise of discretion, meaning the ruling must have been clearly untenable or unreasonable to the defendant's prejudice. Sufficiency of the evidence is reviewed de novo, viewing the evidence and reasonable inferences in the light most favorable to the State and asking whether any rational trier of fact could have found guilt beyond a reasonable doubt.
PRECEDENTIAL VALUE	published opinion
PARTIES	Reilly O. Leith v. State of New Hampshire

TOPICS

hearsay

evidence

best evidence rule

sixth amendment

criminal procedure

PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether the inventory form recording the tagged prices of the stolen merchandise was admissible under the business-records exception to the hearsay rule.
2. Whether the price tags constituted hearsay within hearsay and were sufficiently supported by the business-records exception.
3. Whether admission of the inventory form violated the best evidence rule.
4. Whether admission of the inventory form violated the defendant's Sixth Amendment Confrontation Clause rights.
5. Whether allowing the State to prove value through tagged prices impermissibly shifted the burden of proof to the defendant.
6. Whether the evidence was sufficient for a rational jury to find that the stolen merchandise had a value exceeding \$1,000 under New Hampshire law.

HOLDINGS

1. The inventory form was admissible under New Hampshire Rule of Evidence 803(6) because the loss prevention officer established the requirements for a regularly kept business record and nothing indicated a lack of trustworthiness.
2. The tagged prices were hearsay within hearsay, but each level was supported by the business-records exception; the price tags therefore provided a sufficient foundation for the inventory form and would themselves have been admissible if offered.
3. Admission of the inventory form rather than the original price tags did not violate the best evidence rule where the defendant did not dispute the accuracy of the transcribed prices and the original tags had been returned to Kohl's.
4. The inventory form was not testimonial because it was created for Kohl's business administration rather than for the purpose of establishing or proving a fact at trial.
5. The admission of tagged-price evidence did not shift the burden of proof to the defendant because the State retained the burden to prove the value element and presented admissible evidence supporting it.
6. The evidence was sufficient for a rational jury to find beyond a reasonable doubt that the stolen merchandise had a value exceeding \$1,000 and therefore constituted class B felony-level theft.

KEY QUOTATIONS

“The purpose of [rules requiring the production of original writings] is simple and practical. That purpose is to secure the most reliable information as to the contents of documents, when those terms are disputed.” (at 6)

“the mere fact that a decisionmaker is more apt to accept as true evidence that is not controverted than evidence that is controverted — a seemingly universal phenomenon — hardly amounts to unlawful burden shifting.” (at 8)

FACTUAL BACKGROUND

A Kohl's loss prevention officer apprehended Leith outside the store after observing suspected shoplifting and recovered 30 items. The officer prepared an inventory form by matching each item to its attached price tag, yielding a total tagged price of \$1,174. The jury also heard that five items were premium products that did not go on sale, none were on clearance, and a sweater was shown to be on sale; the jury nevertheless found the merchandise value exceeded \$1,000.

PROCEDURAL HISTORY

After a jury convicted Leith of felony-level theft, the Superior Court denied her motion to dismiss for insufficient evidence and admitted a Kohl's inventory form recording the tagged prices of the stolen merchandise. Leith appealed to the Supreme Court of New Hampshire, which affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Lynch, 169 N.H. 689, 701 (2017)
- State v. Hammell, 155 N.H. 47, 48 (2007)
- State v. Wall, 154 N.H. 237, 242, 244 (2006)
- In re Brittany L., 144 N.H. 139, 144 (1999)
- Stephans v. State, 262 P.3d 727, 731-32 (Nev. 2011)
- State v. Odom, 393 S.E.2d 146, 151 (N.C. Ct. App. 1990)
- State v. Downing, 654 N.W.2d 793, 799 (S.D. 2002)
- McNamara v. Moses, 146 N.H. 729, 732 (2001)
- People v. Mikolajewski, 649 N.E.2d 499, 504 (Ill. App. Ct. 1995)
- Robinson v. Commonwealth, 516 S.E.2d 475, 478-79 (Va. 1999)
- Pace v. State, 375 S.W.3d 751, 757 (Ark. Ct. App. 2010)
- State v. Farrer, 787 P.2d 935, 936 (Wash. Ct. App. 1990)
- Cities Service Oil Co. v. Coleman Oil Co., 470 F.2d 925, 932 (1st Cir. 1972)
- Clooney v. Clooney, 118 N.H. 754, 755 (1978)
- Crawford v. Washington, 541 U.S. 36, 68 (2004)
- Ohio v. Roberts, 448 U.S. 56, 66 (1980)
- State v. Watson, 170 N.H. 720, 728 (2018)
- State v. Morrill, 169 N.H. 709, 718 (2017)

- State v. Stanin, 170 N.H. 644, 648 (2018)
- State v. Scott, 405 N.W.2d 829, 833 (Iowa 1987)

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