

LIBRARY

State v. Baker

Franklin Criminal Code

§ 11. Liability for conduct of another; complicity:

(1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when he is an accomplice of such other person in the commission of the offense.

(3) A person is an accomplice of another person in the commission of an offense if, for the purpose of promoting or facilitating the commission of the offense, he

(a) solicits such other person to commit it; or

(b) aids or agrees or attempts to aid such other person in planning or committing it.

(4) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted,

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§ 94. Larceny; defined: If any person obtains unauthorized control over the property of another with the intent permanently to deprive the owner of that property, he shall be guilty of larceny.

§ 95. Grand larceny; how punished: Any person who (1) commits larceny from the person of another of money or any other thing of value of \$5 or more, (2) commits simple larceny not from the person of another of goods and chattels of the value of \$200 or more, or (3) commits simple larceny not from the person of another of any handgun, rifle or shotgun, regardless of the handgun's, rifle's or shotgun's value, shall be guilty of grand larceny, punishable by imprisonment in a state correctional facility for not less than one nor more than twenty years or, in the discretion of the jury or court trying the case without a jury, by confinement in jail for a period not exceeding twelve months or by a fine of not more than \$2,500, either or both.

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§ 98. Grand larceny; obtaining money, property or signature, etc., by false pretense: If any person obtains, by any false pretense or token, from any person, with intent to defraud, money or other property which may be the subject of larceny, he shall be deemed guilty of larceny by false pretense thereof; or if he obtains, by any false pretense or token, with such intent, the signature of any person to a writing, the false making whereof would be forgery, he shall be guilty of larceny by false

pretense. In both instances the person shall be punishable by imprisonment in a state correctional facility for not less than five nor more than thirty years or, in the discretion of the jury or court trying the case without a jury, be confined in jail for a period not exceeding two years or fined not more than \$5,000, either or both.

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§ 231. Amendment of indictment, presentment or information: If there be any defect in form in any indictment, presentment or information, or if there shall appear to be any variance between the allegations therein and the evidence offered in proof thereof, the court may permit amendment of such indictment, presentment or information, at any time before the jury returns a verdict or the court finds the accused guilty or not guilty, provided the amendment does not change the nature or character of the offense charged. After any such amendment, the accused shall be arraigned on the indictment, presentment or information as amended, and shall be allowed to plead anew thereto, if he so desires, and the trial shall proceed as if no amendment had been made; but if the court finds that such amendment operates as a surprise to the accused, he shall be entitled, upon request, to a continuance of the case for a reasonable time.

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§ 247. When judgment not to be arrested or reversed: Judgment in any criminal case shall not be arrested or reversed upon any exception or objection made after a verdict to the indictment or other accusation, unless it be so defective as to be in violation of the Constitution.

Franklin Code of Professional Responsibility

DR 7-103 Performing the duty of public prosecutor or other government lawyer.

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

Davies v. State of Franklin
Franklin Supreme Court (1992)

In a jury trial, Ralph Donald Davies (Davies) was convicted of two counts of grand larceny by false pretense. On appeal, he contends that the trial court erred in refusing to instruct the jury that it must find that Davies obtained title to the property.

On August 21, 1990, Davies filed a credit application in the name of Brian Stark at a Circuit City store. He produced an identification card in the name of Brian Stark. Upon approval of his credit application, Davies purchased on credit a camcorder, a tripod, and a car stereo. The value of this property totaled \$1,306.16. Davies signed the sales slip acknowledging his receipt of the property and took it *from* the store premises.

On the credit application, Davies claimed to be Brian Stark, an attorney employed by the firm of Tate and Bywater. However, neither "Brian Stark" nor Davies had ever been employed by that firm. On September 5, 1990, Davies admitted that Brian Stark was not his real name and he was not so employed.

At trial, Davies offered instruction "F," which would have required the jury, in order to find Davies guilty of grand larceny by false pretense, to find that the owner of the property parted with both "possession of and title to" the property. Over the objection of defense counsel, the trial court deleted the words "and

title to" and granted the instruction as amended.

Proof that the accused obtained money by false pretense will sustain an indictment for larceny under Franklin Criminal Code § 94. In order to convict one of larceny by false pretense under § 98, however, the State must also prove four elements of the offense charged; (1) an intent to defraud; (2) an actual fraud; (3) use of false pretense for the purpose of perpetrating the fraud; and (4) accomplishment of the fraud by means of the false pretense used for the purpose; that is, the false pretense to some degree must have induced the owner to part with his property. Moreover, the false pretense must be a representation as to an existing fact or a past event. The gravamen of the offense, as pertinent to these facts, is the obtainment of ownership of property by false representations or pretense.

It is elementary that a jury must be informed as to the essential elements of the offense; a correct statement of the law is one of the essentials of a fair trial. An essential element of larceny by false pretense is that both title to and possession of property must pass from the victim to the defendant. The requirement that the defendant obtain ownership of the property, rather than mere possession, distinguishes the offense of larceny by false pretense from the offense of larceny.

Therefore, the trial court's refusal to instruct the jury regarding the essential elements of the offense was error.

However, we find that the error in failing to instruct the jury regarding the passage of title was harmless. The crux of the harmless error analysis is whether the defendant received a fair trial on the merits and substantial justice has been achieved.

The evidence produced at trial showed that Davies obtained possession of the electronic equipment from Circuit City on the basis of the fraudulent information provided in the credit application. The property was delivered to Davies, who took possession of the property and left the store with the property. This is unlike a situation involving a motor vehicle, which requires a document to transfer title. Here the evidence produced at trial showed that Davies obtained ownership, or "title," of the property by false pretense upon the seller's delivery and Davies's simultaneous receipt of the goods. Consequently, because the undisputed evidence established as a matter of law that ownership (albeit voidable because of his fraud) of the goods passed to Davies, the erroneous instruction did not affect the verdict. We hold, therefore, that the trial court's refusal to instruct the jury that "title" to the property must pass was harmless error. Affirmed.