

People v. Simmons
Cal.App. 4 Dist., 2003.

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Court of Appeal, Fourth District, Division 2,
California.

The PEOPLE, Plaintiff,
v.

Scott Wayne SIMMONS, Defendant,
Glenn VERDULT, Claimant and Appellant,
ANGEL ARCHER ESTATE JEWELERS, Claimant
and Respondent.

No. E031618.
(Super.Ct.No. INF 039915).

June 11, 2003.

OPINION

[GAUT, J.](#)

1. Introduction

*1 Two defrauded victims, the original seller, Angel Archer Estate Jewelers (Archer), and the ultimate purchaser, Glenn Verdult (dba Winston's Newport Jewelers) (Verdult), sought to regain possession of a 15-carat, heart-shaped diamond. The court awarded the diamond to Archer. Verdult claims that the trial court erred because he innocently purchased the diamond from the man who swindled the diamond from Archer.

Because the swindler, Scott Wayne Simmons, acquired the diamond from Archer through a transaction of purchase, Simmons had voidable, as opposed to void, title to the diamond. Because a person with voidable title may transfer good title to a good faith purchaser for value, Verdult could be the rightful owner of the diamond. For this reason, we reverse and remand for the court to make factual findings necessary to determine the diamond's actual owner.

2. Factual and Procedural History

Scott Wayne Simmons used a fraudulent check in the amount of \$70,000 to purchase a 15.05-carat, heart-shaped diamond from Archer. Simmons took the

diamond and its accompanying EGL (European Gemological Laboratory) certificate and sold it to Verdult for \$40,000.

Simmons was arrested, charged, and convicted, pursuant to a plea agreement, for passing a fictitious check. The Riverside County Sheriff's Department seized the diamond.

A detective from the sheriff's department filed a motion for release of the property seized on behalf of both Archer and Verdult. Under [Penal Code section 1407](#) et seq., the trial court awarded the diamond to Archer.

3. Discussion

Verdult claims that the trial court erred in awarding the heart-shaped diamond to Archer because Archer negligently handed over the diamond and its EGL certificate to Simmons, thereby, enabling him to defraud Verdult. Verdult also claims that he should have possession of the diamond because Simmons held voidable title and he was a good faith purchaser.

Archer responds that the disposal of property seized by search warrant is governed by [Penal Code section 1407](#) et seq. Archer also argues that a thief has only void title in property obtained by fraudulent means and, therefore, cannot convey valid title to any subsequent purchaser.

The facts are essentially undisputed and the case involves only a question of law. In such circumstances, the appellate court reviews the court's ruling de novo, decides what law applies, and then applies that law to the undisputed facts.^{FN1}

[FN1.](#) See [Saakyan v. Modern Auto, Inc. \(2002\) 103 Cal.App.4th 383, 390, 126 Cal.Rptr.2d 674.](#)

Under [Penal Code section 1410](#), the court must return the stolen or embezzled property to its rightful owner.^{FN2} The question, however, is who is the rightful owner? Specifically, in this context, what interest, if any, does Verdult have in the diamond? Verdult's claim to the diamond is tied to the nature of Simmons's interest in the diamond during his possession.

[FN2.](#) See also [Pena v. Toney \(1979\) 98](#)

[Cal.App.3d 534, 540-541, 160 Cal.Rptr. 4.](#)

[585.](#)

[Commercial Code section 2403, subdivision \(1\)](#) ^{FN3} provides:

^{FN3}. All further statutory references will be to the Commercial Code unless otherwise stated.

“A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

*2 “(a) The transferor was deceived as to the identity of the purchaser, or

“(b) The delivery was in exchange for a check which is later dishonored, or

“(c) It was agreed that the transaction was to be a ‘cash sale,’ or

“(d) The delivery was procured through fraud punishable as larcenous under the criminal law.”

In applying this provision, we must determine whether Simmons has void or voidable title. This question depends largely on whether original delivery occurred under a “transaction of purchase.” ^{FN4}

^{FN4}. [Section 2403, subdivision \(1\).](#)

Generally, a thief cannot convey valid title to property. ^{FN5} A thief possesses only void title and, therefore, can transfer only that which he has. ^{FN6} Consequently, any subsequent purchaser has no valid interest in the property.

^{FN5}. [Naftzger v. American Numismatic Society](#) (1996) 42 Cal.App.4th 421, 428, 49 Cal.Rptr.2d 784.

^{FN6}. [Suburban Motors, Inc. v. State Farm Mut. Auto. Ins. Co.](#) (hereafter *Suburban Motors*) (1990) 218 Cal.App.3d 1354, 1361, 268 Cal.Rptr. 16; see also [Moore Equipment Co. v. Halferty](#) (1998) 980 S.W.2d 578, 584-

Not so where the thief acquires the property by a transaction of purchase. ^{FN7} “ ‘Purchase’ is defined by the code as a ‘taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in the property.’ [Citation.] Thus, only voluntary transactions can constitute transactions of purchase. [¶] ... Based on the code definition of a purchase as a voluntary transaction, [case law from other states] reason that a thief who wrongfully takes the goods against the will of the owner is not a purchaser. [Citations.] On the other hand, a swindler who fraudulently induces the victim to deliver the goods voluntarily is a purchaser under the code.” ^{FN8} Thus, if the original seller voluntarily assents to the transaction and delivers the property, then the thief obtains voidable title. ^{FN9} A person with voidable title may transfer good title in an ordinary transaction for value to a good faith purchaser. ^{FN10}

^{FN7}. See [Suburban Motors, supra](#), 218 Cal.App.3d at page 1360 and footnote 2, 268 Cal.Rptr. 16 (distinguishing transaction of purchase).

^{FN8}. [Kotis v. Nowlin Jewelry, Inc.](#) (1992) 844 S.W.2d 920, 922; see also section 1201, subdivision (31).

^{FN9}. See [Underhill Coal Min. Co. v. Hixon](#) (1994) 438 Pa.Super. 219, 225, 652 A.2d 343; see also [Alamo Rent-A-Car, Inc. v. Mendenhall](#) (1997) 113 Nev. 445, 452, footnote 1, 937 P.2d 69.

^{FN10}. [Section 2403, subdivision \(1\).](#)

Two California cases illustrate these principles. In *Suburban Motors*, Richard Kirschner owned a Mercedes Benz that was stolen. State Farm Mutual Automobile Insurance Company (State Farm), who insured the car, paid Kirschner \$41,000 for the lost Mercedes. In return, Kirschner transferred title to State Farm. Later, Steven Taglianetti, a licensed wholesale automobile dealer, sold the vehicle, which eventually was purchased by Suburban Motors, Inc. While the vehicle was being leased, the California Highway Patrol discovered that it was stolen and returned it to State Farm.

The court in *Suburban Motors* reasoned as follows: “Although [section 2403](#) may enlarge the

circumstances in which, at common law, a good faith purchaser for value can take good title, there is no authority for Suburban Motors's contention that [section 2403](#) validates a second chain of title to an automobile spuriously created after it has been stolen. Indeed, the language of [section 2403](#) itself, the decisions in jurisdictions construing cognate statutes, and authoritative comment on the Uniform Commercial Code belie the notion that by a process of 'laundering' a thief or his successors can generate a second chain of valid title to a stolen vehicle no matter how facially credible the product of these efforts." ^{FN11}

[FN11. Suburban Motors, supra, 218 Cal.App.3d at pages 1359-1360, 268 Cal.Rptr. 16.](#)

*3 Distinguishing cases involving voluntary transactions, the court in Suburban Motors, explained: "Although there may be no moral distinction between larceny and theft by false pretenses [citation], the larcenist here obviously did not obtain the vehicle through a 'transaction of purchase' and therefore acquired no title which could be transferred to his successors in the chain of possession." ^{FN12} The court held that, because the original owner did not voluntarily deliver the Mercedes to the thief, the thief and every subsequent purchaser had no legitimate interest in the car. ^{FN13}

[FN12. Suburban Motors, supra, 218 Cal.App.3d at page 1360, 268 Cal.Rptr. 16.](#)

[FN13. Suburban Motors, supra, 218 Cal.App.3d at page 1361, 268 Cal.Rptr. 16.](#)

In another case, *English v. Ralph Williams Ford*, ^{FN14} the original seller, Ralph Williams Ford, voluntarily sold a new Ford Station Wagon to a used car dealer, Intercontinental Auto Imports, Inc. (hereafter Intercontinental), who in turn sold the car to Paul and Betty English. Intercontinental acquired the car from Ralph Williams Ford by issuing a draft and providing the name of a false lender. Upon discovering that the draft was worthless, Ralph Williams Ford repossessed the station wagon and resold it to third parties.

[FN14. English v. Ralph Williams Ford \(hereafter English \) \(1971\) 17 Cal.App.3d 1038, 95 Cal.Rptr. 501.](#)

In determining ownership, the court explained that: "In this case, ... Ralph Williams Ford did not retain or reserve any title in the station wagon upon its delivery to the buyer thereof from Ralph Williams Ford, namely, Intercontinental; instead it took from Intercontinental a receipt stating that it had not been paid. It therefore had only the rights of an unpaid seller in the vehicle and these rights did not constitute a security interest in the vehicle. Furthermore its right to reclaim the car under [Uniform Commercial Code section 2702, subdivision \(2\)](#) as an unpaid seller was subject to the rights of the Englishes as either good faith purchasers or buyers in ordinary course of business from Intercontinental. [[Section 2702, subdivision \(3\)](#)]." ^{FN15} The court held that Ralph Williams Ford was not the legal owner of the station wagon, and, accordingly, had no right to repossess the vehicle. ^{FN16}

[FN15. English, supra, 17 Cal.App.3d at page 1047, 95 Cal.Rptr. 501.](#)

[FN16. English, supra, 17 Cal.App.3d at page 1048, 95 Cal.Rptr. 501.](#)

[1] Here, Archer voluntarily delivered the diamond to Simmons. The original transfer was a transaction of purchase. Although tainted with obvious fraud or thievery (false pretenses, not larceny), Archer's employee freely exchanged the diamond for a personal check in the amount of \$70,000. Only afterward did Archer discover that the bank would not honor Simmons's check. He then stood in the position of an unpaid seller. But he voluntarily relinquished title to Simmons.

Through this transaction, Simmons acquired voidable title. Simmons, therefore, had power to transfer good title to a good faith purchaser for value. ^{FN17}

[FN17. Section 2402, subdivision \(1\).](#)

[2] A good faith purchaser "... is a person who, among other things, takes delivery of the goods pursuant to a preexisting contract for purchase and is honest in fact in the transaction." ^{FN18} Whether a person qualifies as a good faith purchaser is determined by applying the reasonable person standard. For instance, if the goods are offered at an unusually low price, a reasonable person would suspect that the goods are stolen and, thus, be put on notice that he may be entering an illegitimate

transaction. ^{FN19} Usually, whether a person qualifies as a good faith purchaser involves a credibility determination to be made by the trier of fact. ^{FN20}

FN18. *English, supra*, 17 Cal.App.3d at page 1047, footnote 6, 95 Cal.Rptr. 501; see also section 1201, subdivisions (19), (32), and (43).

FN19. *Kelley Kar Co. v. Maryland Cas. Co.* (1956) 142 Cal.App.2d 263, 266, 298 P.2d 590; *Kotis v. Nowlin Jewelry, supra*, 844 S.W.2d at pages 923-924.

FN20. *Kotis v. Nowlin Jewelry, supra*, 844 S.W.2d at page 924.

*4 In this case, Verdult stated that Simmons entered his jewelry store and pawnshop with the 15.05-carat, heart-shaped diamond. Simmons also provided Verdult with the EGL certificate for the diamond. Simmons purchased the diamond with a cashier's check in the amount of \$40,000. The trial court did not determine, under these circumstances, whether Verdult was a good faith purchaser.

Although Verdult alternatively argues that even if he obtained void title, he may still find protection under the doctrine of estoppel based on Archer's negligence. ^{FN21} Again, his interest in the diamond is tied directly to Simmons's interest. Because Simmons had voidable title, either Verdult has good title as a good faith purchaser for value or, by acting in bad faith, he has nothing at all. ^{FN22}

FN21. See *McKee v. Peterson* (1963) 214 Cal.App.2d 515, 520, 29 Cal.Rptr. 742; *Keegan v. Kaufman Bros.* (1945) 68 Cal.App.2d 197, 203, 156 P.2d 261; *Phelps v. American Mortgage Co.* (1940) 40 Cal.App.2d 361, 366, 104 P.2d 880.

FN22. See *Kelley Kar Co. v. Maryland Cas. Co., supra*, 142 Cal.App.2d at page 265, 298 P.2d 590.

The record indicates that the court awarded the diamond to Archer after rejecting Verdult's argument that Simmons transferred voidable title. The court's ruling, however, was based on the erroneous assumptions that Archer was the rightful owner and, thus, Simmons and Verdult had no interest in the diamond. As discussed above, Simmons had voidable

title and Verdult may have had good title. Therefore remand is necessary to give the court an opportunity to decide whether Verdult was a good faith purchaser, as stated above, thereby entitling him to ownership of the diamond.

4. Disposition

We reverse and remand this case for the trial court to determine whether Verdult was a good faith purchaser and, based upon this determination, to reinstate the judgment or otherwise enter judgment consistent with the court's factual finding. Verdult shall recover his costs on appeal.

We concur: RAMIREZ, P.J., and WARD, J.
Cal.App. 4 Dist., 2003.

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Not Reported in Cal.Rptr.2d, 2003 WL 21350737
(Cal.App. 4 Dist.)

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