

SAMPLE APPELLANT'S FACTUM

Jonnette Watson Hamilton

TITLE PAGE (reduced in size for illustration purposes only)

No. 9601-12345

THE COURT OF APPEAL OF NEW ALTA

Between:

Philp Holton Gilbert Brock and June Alice Brock

Appellants
(Respondents)

and

Corporation of District of West Vancouver

Respondent
(Respondent)

Factum of the Appellants

Student Name

Counsel to the Appellants

PART I - Statement of Facts

1. The issue on this appeal is whether the owner and occupier of a motor vehicle is entitled to possession of monies discovered in that motor vehicle.
2. On January 18, 1990, a West Vancouver police officer stopped Mr. Neal Brock for speeding. When Mr. Brock gave inconsistent information to the police officer regarding the ownership of the vehicle he was driving and his own identity, the officer suspected the vehicle might be stolen. When told of the officer's suspicions, Mr. Brock advised that the vehicle did in fact belong to him.
3. Mr. Brock consented to a search of the vehicle by the police officer. The police officer discovered a plastic bag containing what was later determined to be \$US285,000 beneath the driver's seat. While his vehicle was being searched, Mr. Brock walked away from the car and made a call on his cell telephone.
4. The West Vancouver police officer took Mr. Brock to the police station, suspecting that he was in possession of stolen property. Mr. Brock apologized to the police officer for giving him different names. It was subsequently proved that Mr. Brock was the owner of the vehicle he had been speeding in.
5. At the West Vancouver police station, Mr. Brock was questioned by a detective. Mr. Brock confirmed that the contents of the vehicle belonged to him. When asked to name the contents of the vehicle that belonged to him, Mr. Brock named five items, but not the money. When asked if he lent his vehicle to anyone, Mr. Brock replied that he lent it to a friend occasionally, the last time being a couple of days previously. When told that the police had located a sum of money in his vehicle, Mr. Brock denied that the money was his, said that he was not going to answer any more questions and asked to make a telephone call. Mr. Brock was released.
6. The next day, January 19th, Mr. Brock attended at the West Vancouver police station with his lawyer and claimed ownership of the money on behalf of offshore investors. Mr. Brock correctly identified the amount and denominations of money discovered in his vehicle and the way it was packaged. He explained that his denial of ownership the day before was a mistake, based on his concern that others might know he had the money in his vehicle in order to deliver it to the bank. Mr. Brock was denied the money as it was the basis of an RCMP investigation.
7. No one has claimed the money as its true owner.

8. On February 7, 1990, Mr. Brock died intestate. His parents, the administrators of his estate, are the Appellants.

9. No criminal charges were laid against Mr. Brock prior to his death. The RCMP terminated their investigation of the money without linking the money to any crime.

10. The British Columbia Supreme Court, on an interpleader action by the Attorney-General (Canada), awarded the money to the Appellants on the basis of Mr. Brock's prior possession of the money. The British Columbia Court of Appeal overturned that decision and awarded the money to the Respondents on the basis that the West Vancouver police were finders.

PART II - Grounds of Appeal

11. The Appellants' grounds of appeal are:

(a) The learned British Columbia Court of Appeal erred in determining that Mr. Brock did not have possession of the money by virtue of his ownership and occupation of the motor vehicle in which the money was discovered.

(i) The learned British Columbia Court of Appeal erred in concluding that Mr. Brock did not exercise exclusive control of his motor vehicle.

(ii) The learned British Columbia Court of Appeal erred in inferring from the facts that Mr. Brock did not manifest an intention to possess all chattels in his motor vehicle.

(b) The learned British Columbia Court of Appeal erred in determining that, even if Mr. Brock had possession of the money at the time it was discovered by the Respondent, he abandoned that possession and was not entitled to re-claim it the next day.

PART III - Points of Law

(a) The learned British Columbia Court of Appeal erred in determining that Mr. Brock did not have possession of the money by virtue of his ownership and occupation of the motor vehicle in which the money was discovered.

12. In order to prove possession of chattels, the occupier of premises in which chattels are found must prove control of the premises and an intent to exercise control over all chattels found on those premises. Depending upon the circumstances of each case, the amount of intent that must be manifested varies with

the amount of control exercised.

Parker v. British Airways Board, [1982] Q.B. 1004, [1982] All E.R. 834 (C.A.) per Everleigh L.J. (concurring).

(i) The learned British Columbia Court of Appeal erred in concluding that Mr. Brock did not exercise exclusive control of his motor vehicle.

13. The owner/occupier of a private vehicle, like the owner/occupier of a private home, normally exercises such a strong degree of control over such premises and access to them that no further intention to manifest control over all chattels within a private vehicle or private home is required to exclude the possibility of others possessing those chattels.

Parker v. British Airways Board, [1982] Q.B. 1004, [1982] All E.R. 834 (C.A.) per Donaldson J. (concurring).

14. The learned British Columbia Court of Appeal erred in determining that, because Mr. Brock had loaned his vehicle to a friend days before the Respondent's discovered the money in Mr. Brock's vehicle, his possession of his vehicle resembled the possession of a taxi cab, and Mr. Brock did not exercise sufficient control of the vehicle to entitle him to possession of its contents.

Reasons for judgment of Hinkson J.

Canada (Attorney General) v. Brock (1993), 82 B.C.L.R. (2d) 1 at 9.

15. It is submitted that Mr. Brock had regained exclusive possession of his motor vehicle for a sufficient period of time, after briefly loaning it to a friend, that he is entitled to the presumption that he exercised sufficient control over the vehicle so as to be in possession of all of its contents. The loan of the vehicle to a friend is an occasional act within the discretion of an owner. No one, including the friend to whom the vehicle was lent, has come forward to claim the money as true owner. Mr. Brock, when stopped by the Respondent, was the sole owner and sole occupier of the vehicle and the person in control of the keys allowing access to the vehicle.

16. It is therefore more reasonable to conclude that, when the Respondent discovered the money, Mr. Brock was in exclusive possession and control of the entire contents of his vehicle, as well as the vehicle itself.

(ii) The learned British Columbia Court of Appeal erred in inferring from the facts that Mr. Brock did not manifest an intention to possess all chattels in his motor vehicle.

17. The intention to possess the contents of premises, and to exclude others from their use, may be made manifest by the conduct of the occupier of those premises as well as by the degree of control asserted over the premises.

Grafstein v. Holmes and Freeman, [1958] O.R. 296 (C.A.) per Lebel J.

18. The learned British Columbia Court of Appeal erred in concluding that Mr. Brock's consent to the search of his vehicle, walking away from the vehicle while it was being searched, and denial of ownership of the money on the day that it was discovered by the respondent was evidence of a lack of intention to possess the money as contents of the vehicle and evidence of a lack of knowledge of the money.

Reasons for judgment of Hinkson J.

Canada (Attorney General) v. Brock (1993), 82 B.C.L.R. (2d) 1 at 10.

19. It is submitted that alternative inferences may be made from the facts relied upon by the learned British Columbia Court of Appeal. Mr. Brock's consent to the search of his vehicle and his walking away from the vehicle while it was being searched shows a trust in the integrity of the Respondent's agents, as Mr. Brock had a number of valuable items in his vehicle. It is also the behaviour of someone with nothing to hide from the police. Neither action shows an intention to allow possession and use of the contents of the vehicle by the Respondent.

20. Mr. Brock's denial of the ownership of the money must be read in context. He was at the police station, being questioned on suspicion of his possessing stolen property. His answer of "No", in response to a question asking if the money was his, was immediately followed by a refusal to answer further questions and a demand to make a telephone call. His denial, it is submitted, is consistent with the behaviour of a frightened individual becoming aware that he is involved in what the police consider serious and suspicious circumstances.

21. The day after the respondent discovered the money, Mr. Brock identified the money by describing the total amount, the denominations, and the packaging. His ability to do so demonstrates knowledge of the existence of the money in his vehicle.

22. It is submitted that, even if Mr. Brock did not have exclusive possession of his motor vehicle so as to entitle him to possession of its contents, he had a sufficient degree of possession of his vehicle and manifested a sufficient intent to control the contents of that vehicle, and knew what those contents were, so as to be in possession of the money at the time it was discovered by the Respondent.

(b) The learned British Columbia Court of Appeal erred in determining that, even if Mr. Brock had possession of the money at the time it was discovered by the Respondent, he abandoned that possession and was not entitled to re-claim it the next day.

23. In order for a finder to be entitled to possession of a chattel, the chattel must be lost or abandoned. Chattels which are, by their location, hidden, cannot be lost. Whether they are abandoned is a question of fact.

Bird v. Fort Frances, [1949] O.R. 292, [1949] D.L.R. 791 (H.C.)

24. The learned British Columbia Court of Appeal concluded that Mr. Brock had abandoned any possessory claim he may have had to the money when he denied ownership of the money and that his attempt to claim the money the day after his denial was too late.

Reasons for judgment of Hinkson J.

Canada (Attorney General) v. Brock (1993), 82 B.C.L.R. (2d) 1 at 12.

25. It is submitted that a denial of ownership, in the circumstances of this denial, is not a denial of a possessory claim. The denial of ownership took place after the discovery of the money. Additionally, Mr. Brock appeared at the police station, with a lawyer, to claim the money as soon as possible, namely, the very next day. During the intervening hours, the respondent had done nothing to entitle them to claim the money as finders of an abandoned chattel. They had merely turned it over to another police force for investigative purposes, purposes which are not inconsistent with Mr. Brock's possession of the money.

26. Therefore, if Mr. Brock was in possession of the money as one of the contents of the vehicle, his denial of ownership of that money, followed as it was by a claim of possession as soon as possible, did not constitute abandonment of the money so as to make the Respondent a finder of the money.

PART IV - Nature of the Relief Desired

20. The Appellants respectfully request:

- (a) that the appeal be allowed;
- (b) that the money in court be paid out to the Appellants;
- (c) that costs of the appeal be awarded to them; and
- (d) such further and other relief as this Honourable Court deems just.

All of which is respectfully submitted by

Student's Name
Counsel for the Appellant

TABLE OF AUTHORITIES

Parker v. British Airways Board, [1982] Q.B. 1004, [1982] All E.R. 834 (C.A.)

Grafstein v. Holmes and Freeman, [1958] O.R. 296 (C.A.)

Bird v. Fort Frances, [1949] O.R. 292, [1949] D.L.R. 791 (H.C.)