

Missed The Belvedere

Sometimes You Never Can Say Goodbye

A recurrent theme in popular music is that of trying to get back the love you let slip through your fingers. Tunes like the Sinatran “The Gal That Got Away,” “Baby Come Back” (and its fraternal twin, “Baby Come Back To Me”), “Christmas (Baby Please Come Home),” and even perhaps “Return to Sender” (although the postage might be prohibitive and breakage a serious concern) wistfully (and wishfully) implore the missed one who took an early exit on the relationship highway to make a quick U-turn.

Although less often memorialized in song, such sentiments can be expressed toward tangible things as well. And sometimes a person just simply refuses to let go. All this brings us (and our hankies) to *People v. Fratello*, decided on February 19, 2002 by the Court of Appeals of Michigan.

According to the Court, Anthony Fratello owned a 1964 Plymouth Belvedere. Beyond that, the facts differ depending on whom you ask. If you asked the complainant Mr. Courtney or the prosecutor, they would say that Fratello signed title to the Belvedere over to Courtney as part of payment to buy Courtney’s house. Later that day when Courtney called the garage where he understood the Belvedere was being repaired, he was told that Fratello had picked it up earlier in the day. When Courtney took the certificate of title to the Secretary of State’s office to transfer title to his name, they refused, noting that Fratello had earlier filed an application for lost title. Courtney then reported the Belvedere to the police as stolen. When Courtney attempted to retrieve the Belvedere from Fratello at the latter’s house, Fratello jumped in the car and drove away. Fratello denied many of these allegations.

The trial court determined that Fratello no longer retained ownership of the vehicle and therefore convicted him of unlawfully driving away an automobile. Fratello appealed.

The Court of Appeals affirmed the ruling for Courtney.

“In reviewing the sufficiency of the evidence in a bench [judge only, no jury] trial, this Court views the evidence de novo [anew, all over again] and in the light most favorable to the prosecutor to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt.

“In establishing the unlawful driving away of a motor vehicle, the prosecution must prove beyond a reasonable doubt that (1) the vehicle belonged to someone else; (2) defendant took possession of the vehicle and drove it away; (3) these acts were done without the owner’s permission; and (4) defendant intended to take possession of the vehicle and drive it away.

“Specifically at issue in the present case is the element requiring the prosecution to prove that the subject automobile belonged to someone else. Defendant contends that because of defects in the transfer of title and because he never relinquished possession of the vehicle after the transfer of the title, he retained ownership of the automobile and therefore could not be convicted of unlawfully driving away an automobile. Conversely, the prosecution successfully asserted at trial that defendant validly assigned title to the complainant, Kenneth Courtney, and no longer possessed an ownership interest in the vehicle at the time of the charged offense.

“[O]ne can be the “owner” of a vehicle even if one does not possess all the normal incidents of ownership. The proper inquiry in the case at bar is whether Courtney was the owner of the vehicle, not whether defendant effectively transferred title.

“[W]e find no clear error in the trial court’s findings that defendant attempted to procure duplicate certificates of title after he transferred the title to Courtney, took the automobile from the repair shop, and wrote on the original certificate of title in a manner designed to prevent the valid transfer of title. Because defendant intentionally prevented delivery, he cannot successfully argue that due to a lack of delivery, a transfer of ownership did not take place. Such a ruling would, in effect, allow defendant to assign the title yet prevent the transfer of ownership by refusing to relinquish the automobile. Accordingly, defendant’s argument is without merit.

“The testimony clearly indicated the existence of an agreement between defendant and Courtney regarding the transfer of title to the automobile. Moreover, it is undisputed that defendant signed over the title of the automobile to Courtney on August 23, 1999. The trial court determined that defendant understood Courtney to be the owner of the Plymouth at the time of the charged offense. This finding was evidenced by actions on the part of defendant which, as noted above, included his various purposeful attempts to frustrate and prevent the valid transfer of title. The evidence, when viewed in the light most favorable to plaintiff, is sufficient to support the trial judge’s finding that Courtney owned the Plymouth at the time of the charged offense, and that defendant is guilty beyond a reasonable doubt of unlawfully driving it away.”



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