

State v. Winegardner

Full Citation: State v. Winegardner, 413 P.3d 683 (Ariz. 2018).

Date Filed: March 26, 2018

Opinion's Author: Chief Justice Bales

Joined By: Vice Chief Justice Brutinel and Justices Pelander and Timmer. (Justices Lopez, Bolick, and Gould dissented).

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: Arizona indicted Darren Winegardner on one count of sexual conduct with a minor. At trial, when the prosecutor called the victim to testify, Winegardner told the superior court he wanted to impeach the victim with a 2015 misdemeanor shoplifting conviction.

Procedural History: The case is currently before the Arizona Supreme Court. The superior court refused to admit the shoplifting conviction because the court found that the value of the evidence did not substantially outweigh the danger of unfair prejudice. The jury found Winegardner guilty and the superior court sentenced Winegardner to three and a half years imprisonment.

On appeal, Winegardner noted that Arizona Rule of Evidence 609(a)(2) requires courts to admit evidence of convictions involving dishonest acts or false statements and that the superior court committed reversible error by precluding evidence of the shoplifting conviction.¹ The court of appeals affirmed the trial court by holding that shoplifting is not classified as a dishonest act or false statement as is required by Rule 609(a)(2).²

The Arizona Supreme Court granted review to determine the proper interpretation of Rule 609(a)(2).

Issue: Arizona Rule of Evidence 609(a)(2) states that "evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving--or the witness's admitting--a dishonest act or false statement."³ Does a shoplifting conviction require proof of a dishonest act?

Holding: A conviction for shoplifting, under A.R.S. section 13-1805(A), is not automatically admissible under Rule 609(a)(2) "because the crime does not necessarily require the prosecution to prove 'a dishonest act or false statement' within the meaning of the rule."⁴

Disposition: The court of appeals' opinion is vacated and Winegardner's conviction and sentence are affirmed.

¹ State v. Winegardner, 413 P.3d 683, 685 (Ariz. 2018)

² State v. Winegardner, 397 P.3d 363, 367-68 (Ariz. Ct. App. 2017).

³ ARIZ. R. EVID. 609(a)(2).

⁴ *Winegardner*, 413 P.3d at 685.

Rule: A shoplifting conviction is not per se admissible under Rule 609(a)(2) because multiple subsections in A.R.S. section 13-1805(A) do not implicate a dishonest act or false statement. Shoplifting convictions may be properly admitted if the crime’s factual basis warrants admission.

Reasoning:

- **“Dishonest act or false statement” should be construed narrowly.** The court began its discussion with an analysis of Rule 609(a)(2). The court noted that when an Arizona rule of evidence corresponds with a federal rule of evidence, the court looks to the federal rule for guidance.⁵ The court looked to the federal rule’s legislative history and to *State v. Malloy*’s⁶ construction of Rule 609(a)(2) and noted that, by describing dishonesty and false statement as involving deceit, untruthfulness and falsification, both authorities intended “dishonest act” and “false statement” to have a narrow meaning.⁷ Therefore, the court argued that although theft invokes a common connotation of dishonesty, theft primarily involving stealth or force, but not deceit, untruthfulness, or falsification, is not admissible under Rule 609(a)(2).⁸
- **Rule 609(a)(2) subsections.** Next, the court looked at each subsection of A.R.S. section 13-1805(A) to see if the statutory language required proof of a dishonest act or false statement. The court argued that purposefully leaving a store with an item without paying, as defined by subsection (1), does not meet Rule 609(a)(2)’s standard for untruthfulness.⁹ The court also argued that concealment, as defined by subsection (5), does not necessarily meet the standard of untruthfulness, but does indicate stealth.¹⁰ As for subsections (2), (3) and (4), the court noted that these subsections could establish a basis for Rule 609(a)(2) admissibility.¹¹ Consequently, the court concluded that a shoplifting conviction is not automatically admissible, but may be admissible under certain circumstances.¹²

Factual basis. As the “statutory language shows that under certain circumstances a shoplifting conviction may evidence a witness’s dishonest act or false statement,” the court argued that shoplifting convictions may be admitted if the facts indicate that a dishonest act or false statement occurred.¹³ The court cited to federal law as evidence of this practice.¹⁴ In addition, although facts may be considered, the court cautioned that Rule 609(a)(2) does not permit a “trial within a trial.”¹⁵

⁵ *Id.* at 686 (citing *Hernandez v. State*, 52 P.3d 765, 767 (Ariz. 2002)).

⁶ 639 P.2d 315, 127 (Ariz. 1981).

⁷ *Id.* at 686.

⁸ *Id.* at 686–87 (citing *State v. Malloy*, 639 P.2d 315, 317 (Ariz. 1981) (en banc); and then citing *United States v. Hayes*, 553 F.2d 824, 827–28 (2d Cir. 1977)).

⁹ *Id.* at 687 (citing *Malloy*, 639 P.2d at 318).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 688.

¹³ *Id.*

¹⁴ *Id.* (citing *United States v. Dorsey*, 591 F.2d 922, 935 (D.C. Cir. 1978)).

¹⁵ *Id.* at 689.

- **Conclusion.** The court found that the superior court did not abuse its discretion, although it mistakenly considered the conviction's prejudicial effect, because Winegardner did not provide any factual information showing that a dishonest act or false statement occurred.¹⁶

¹⁶ *Id.*