



2000

Recent Developments: State v. Cain: Theft by Deception Is Complete When the Respondent Obtains Control of the Victims Property through the Agency of a Common Carrier in Maryland

Camela J. Chapman

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

Recommended Citation

Chapman, Camela J. (2000) "Recent Developments: State v. Cain: Theft by Deception Is Complete When the Respondent Obtains Control of the Victims Property through the Agency of a Common Carrier in Maryland," *University of Baltimore Law Forum*: Vol. 31 : No. 1 , Article 16.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol31/iss1/16>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

State v. Cain:

Theft By Deception is Complete When the Respondent Obtains Control of the Victims Property Through the Agency of a Common Carrier in Maryland

By Pamela Chapman

The Court of Appeals of Maryland held that a Maryland trial court has territorial jurisdiction over a prosecution for theft by deception in violation of Maryland Code, Art. 27, § 342, where a victim in Maryland was deceived by an accused located in Georgia, via the Internet, and thereby induced to mail a check to the accused in Georgia, in exchange for goods, which, proved not to be as the accused represented them. *State v. Cain*, 360 Md. 205, 757 A.2d 142 (2000). In so holding, the court has established that to exercise jurisdiction for the crime of theft by deception, the essential element of respondent obtaining control of a subject's property is complete upon the victim delivering the property to an agent of the accused, in the case at bar through the agency of the U.S. Postal Service.

Respondent Mary Jean Cain ("Cain"), a resident of Georgia, placed an advertisement on the Internet to sell a "mint" collection of ninety-five Barbie dolls in their original boxes, stating that the dolls and boxes were all in "collector's condition." Debbie Ann Amyot ("Amyot"), a resident of Maryland, saw the advertisement and responded to it via Internet e-mail and telephone calls to respondent's home in Georgia. Amyot agreed to buy the entire doll

collection for \$6,140. On August 28, 1998, Amyot mailed a check payable to Cain in that amount to Cain's home in Georgia. On September 9, 1998, Amyot received by mail thirty-six Barbie dolls in boxes, all of which were in poor condition, thereby having little collector value. Amyot contacted Cain and requested to return the dolls. Cain terminated contact with Amyot. Georgia police would not investigate because the investigation had been initiated in Maryland.

On January 21, 1999, Cain was charged under § 342 in the District Court of Maryland, with one count of theft by deception of property with a value of \$300 or more. Respondent moved to dismiss on the ground that Maryland lacked territorial jurisdiction. The district court granted the motion. The State appealed to the circuit court, which affirmed the judgment. The State petitioned the court of appeals for writ of certiorari.

The court began its analysis by pointing out that neither the Maryland Constitution nor the Annotated Code of Maryland addresses jurisdiction over the offense of theft by deception. *Id.* at 211, 757 A.2d at 145. Therefore, they turned to the common law. *Id.* at 212, 757 A.2d at 145. The court

stated that the general rule under the common law is that "a state may punish only those crimes committed within its territorial limits." *Id.* (citing *Pennington v. State*, 308 Md. 727, 730, 521 A.2d 1216, 1217 (1987)). Furthermore, the court noted that it was clear under common law that an accused's actual presence in the state at the time the crime was committed is not necessary. *Id.* at 212, 757 A.2d at 146. When a crime transcends state lines the court has to make a determination of whether an offense is committed within Maryland's jurisdiction. *Id.* at 213, 757 A.2d at 146. "If the various elements of a given offense do not all occur within the borders of a single state, it becomes necessary to decide in which state the offense has been 'committed.'" *Id.* at 213-214, 757 A.2d at 146. (citing *Pennington*, 308 Md. at 730, 521 A.2d at 1217).

The court noted that this question has been decided in various ways. *Id.* at 214, 757 A.2d at 147. Case law from other jurisdictions has asserted, for jurisdictional purposes, that a crime may have several essential elements, that where these occur in several states, each such state has jurisdiction. *Id.* After a review of Maryland law and case law from other states, the court stated that the

essential element of the crime of theft by deception, for jurisdictional purposes, is when the accused obtains control of the subject's property. *Id.* at 216, 757 A.2d at 147. Thus, "the offender may be tried where the property was obtained." *Id.* at 216, 757 A.2d at 148.

The court then reviewed case law from other jurisdictions that support the proposition that when one uses deception to gain control of another's property, and the subject delivers the property by mail, control is obtained when the property is put in the mail. *Id.* at 216-217, 757 A.2d at 149. The court pointed out that there was some case law to the contrary, saying that control is obtained when actually received, not when mailed, but the court rejected this view. *Id.* at 218-219, 757 A.2d at 149. The court stated that the better view of the element of gaining control of the property is accomplished by looking at when the victim surrenders their property to the control of the accused, whether personally or through the defrauding party's agent. *Id.* at 219, 757 A.2d at 149.

The court noted that "where one absent from a state commits a crime therein through an innocent agent the absentee is liable in the state in which the crime was committed to indictment, trial and conviction." *Id.* at 220, 757 A.2d at 150 (quoting *Urciolo v. State*, 272 Md. 607, 631, 325 A.2d 878, 892 (1974)). The court then went on to state that this principle has been applied in cases in which the innocent agent was a common carrier, and the

accused acts through the common carrier, by requesting the property be delivered to the carrier, to be shipped to the accused outside the jurisdiction. *Id.* at 220, 221, 757 A.2d at 151. Relying upon the principle that an accused obtains control when a victim, relying on the accused's representation, deposits the property to the United States Postal Service, an innocent agent or a common carrier. *Id.* The court noted that under Maryland statute, the check itself is considered property and it does not have to be cashed first to gain value. *Id.* at 222, 757 A.2d at 151.

Finally, the court briefly discussed the argument that the federal statutes on mail and wire fraud preempt state laws involving the mail or electronic communications. *Id.* at 223, 757 A.2d at 151. The court again turned to case law from other jurisdictions that have held there was no preemption, because there was "no support for the proposition that the federal interest in preventing fraud or deception through the use of the United States mails is so dominant as to preclude any state laws on the subject." *Id.* at 223, 757 A.2d at 152 (quoting *Conte & Co. v. Stephan*, 713 F. Supp. 1382, 1386 (D. Kan. 1989)). The court adopted this view and ruled that the federal statutes criminalizing fraud by mail and wire do not preempt § 342 as applied to crimes involving the use of the mail and/or telephone. *Id.* at 224, 757 A.2d at 152.

The holding in *State v. Cain* is an important step taken in Maryland in prosecuting residents from other

jurisdictions who deceive and/or defraud Maryland residents of their property via the Internet, telephone and/or electronic communications, when the property, is sent by mail or common carrier from Maryland to the accused out of state. This is especially important with the widespread use of the Internet. Maryland resident will have judicial recourse in Maryland, thus making it more convenient for them to prosecute, without having to travel out of state to retrieve or receive compensation for the stolen property.