

1996

State of Utah v. Glen Ray Bullock : Brief of Appellee

Utah Court of Appeals

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James H. Beadles; Assistant Attorney General; Jan Graham; Utah Attorney General; Allan K. Jeppesen; Attorneys for Appellee.

Wayne A. Freestone; David C. Cundick; Parker, Freestone, Angerhofer & Harding; Attorneys for Appellant.

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IN THE UTAH COURT OF APPEALS

DUCKET NO. 960119-0

STATE OF UTAH,

Plaintiff/Appellee,

v.

GLEN RAY BULLOCK,

Defendant/Appellant.

Priority No. 2

Case No. 960119-CA

BRIEF OF APPELLEE

**DEFENDANT APPEALS FROM A BENCH TRIAL
CONVICTION FOR ASSAULT BY A PRISONER, A THIRD-
DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. §
76-5-102.5 (1995), IN THE THIRD JUDICIAL DISTRICT
COURT FOR TOOELE COUNTY, STATE OF UTAH, THE
HONORABLE LEON A. DEVER, PRESIDING**

JAMES H. BEADLES (5250)
Assistant Attorney General
JAN GRAHAM (1231)
UTAH ATTORNEY GENERAL
160 South 300 East, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114-0854
Telephone: (801) 366-0180

WAYNE A. FREESTONE
DAVID C. CUNDICK
Parker, Freestone, Angerhofer &
Harding
50 West 300 South, Suite 900

ALLAN K. JEPPESEN
Deputy Tooele County Attorney
47 South Main
Tooele, Utah 84047

ATTORNEYS FOR APPELLANT

ATTORNEYS FOR APPELLEE

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Telephone: (801) 366-0180

WAYNE A. FREESTONE
DAVID C. CUNDICK
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Harding
50 West 300 South, Suite 900

ALLAN K. JEPPESEN
Deputy Tooele County Attorney
47 South Main
Tooele, Utah 84047

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
NATURE OF APPEAL AND JURISDICTIONAL BASIS	1
ISSUE ON APPEAL AND STANDARD OF REVIEW	1
RELEVANT PROVISIONS	2
STATEMENT OF THE CASE	2
Procedural History	2
Statement of Facts	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	3
BECAUSE THE TRIAL COURT DREW REASONABLE INFERENCES FROM THE EVIDENCE, ITS FINDING OF GUILT SHOULD BE AFFIRMED	3
CONCLUSION	7
NO ADDENDUM INCLUDED	

TABLE OF AUTHORITIES

STATE CASES

City of Orem v. Lee, 846 P.2d 450 (Utah App. 1993) 2

Smith v. State, 895 S.W.2d 449 (Tex.Ct.App. 1995) 4

State v. Blubaugh, 904 P.2d 688 (Utah App. 1995) 4, 5

State v. Higginbotham, 917 P.2d 545 (Utah 1996) 4

State v. Walker, 743 P.2d 191 (Utah 1987) 2, 4

State v. Workman, 852 P.2d 981 (Utah 1993) 5

STATE STATUTES AND RULE

Utah Code Ann. § 76-5-102.5 (1995) 1

Utah Code Ann. § 78-2a-3 (Supp. 1995) 1

Utah R. Civil. P.52 4

weight of the evidence.” *State v. Walker*, 743 P.2d 191, 193 (Utah 1987); *City of Orem v. Lee*, 846 P.2d 450, 452 (Utah App. 1993).

RELEVANT PROVISIONS

Any provisions relevant to this appeal are included in the text.

STATEMENT OF THE CASE

Procedural History

The trial court convicted defendant of assault by a prisoner, a third-degree felony (R. 164).

Statement of Facts

Defendant and Ron Neil Tischner were inmates at the Tooele County Jail (R. 108, 157). One night, after Mr. Tischner had confronted two other inmates about putting shaving cream on his neck, defendant came up and admitted doing it (R. 108,142). After heatedly discussing the incident, Mr. Tischner turned away from defendant and walked into his cell (R. 109). When he walked into his cell, someone hit him in the back of the neck, causing him to fall on his bunk and split open his eye (*id.*). When he looked around to see who had hit him, no one was there (*id.*). According to Kevin Reeder, defendant followed Tischner to the jail cell door: “he never quite went into the room, he reared back, he turned around, he--I quote, he says, ‘Don’t f--- with me” (R. 133).

Later that night, after collecting some statements from witnesses, Deputy Sheriff Joe Walker, shift supervisor at the jail, received a call over his intercom from an inmate, whose voice he recognized as defendant's (R. 121). Defendant told Deputy Walker that he wanted to give his side of the story, i.e., that he had "struck Mr. Tischner but it was in self-defense" (R. 121).¹

SUMMARY OF THE ARGUMENT

The evidence supports the trial court's verdict that defendant hit the victim. The trial court based its verdict on defendant's admission that he and the victim argued seconds before the hit and that defendant later admitted the crime to a jailer. Defendant's appellate challenge to sufficiency only re-interprets the evidence before the Court. It fails to show that the evidence or reasonable inferences from the evidence were unreasonable.

ARGUMENT

BECAUSE THE TRIAL COURT DREW REASONABLE INFERENCES FROM THE EVIDENCE, ITS FINDING OF GUILT SHOULD BE AFFIRMED.

Defendant claims that the verdict is against the clear weight of the evidence. To support this assertion, defendant draws competing inferences from

¹ At trial, defendant denied making this statement to Deputy Walker (R. 147).

the evidence before the trial court and challenges the credibility of the State's witness, Deputy Walker. Brief of Defendant at 6-8.

Because this Court respects the trial court's ability to draw its own inferences and judge credibility of witnesses before it, however, defendant's challenge must fail. *Cf. State v. Blubaugh*, 904 P.2d 688, 693 (Utah App. 1995) (jury verdict may be based on evidence as well as "reasonable inferences fairly to be deduced therefrom"); *see Smith v. State*, 895 S.W.2d 449, 452 (Tex.Ct.App. 1995) ("In a bench trial, the judge ... may draw reasonable inferences and make reasonable deductions from the evidence.").²

Defendant takes the three pieces of evidence offered at trial, draws different inferences from them than the trial court, and then subjects each inference to a sufficiency review. Brief of Defendant at 6-8. First, he alleges that Mr. Tischner's testimony "must create reasonable doubt" because he did not see the defendant strike the blow. *Id.* at 6. Second, he asserts that Deputy

² In *State v. Walker*, 743 P.2d 191, 193 (Utah 1987), the Utah Supreme Court stated that the standard of review for a bench trial differs from that for a jury trial. A bench trial verdict is a finding of fact under rule 52(a), Utah Rules of Civil Procedure, and is subject to the clearly erroneous review standard. Nevertheless, this type of review does not limit the trial court's ability to draw reasonable inferences from the evidence. This power comes from the clearly erroneous standard itself, which requires that a party challenging a finding "demonstrate that the evidence, including **all reasonable inferences drawn therefrom**, is insufficient." *State v. Higginbotham*, 917 P.2d 545, 548 (Utah 1996) (emphasis added).

Walker's statement that defendant admitted the crime was incredible because the deputy could not recall in which cell defendant was housed. *Id.* at 7. Finally, he interprets Kevin Reeder's testimony that he saw defendant "rear back" at the door of defendant's cell as evidence that defendant was trying to avoid being struck. *Id.* at 9.

Though these inferences may be logical, defendant's argument misapprehends that this Court does not give equal footing to competing inferences. Rather, unless a defendant shows that the trial court's inferences lacked evidentiary support or reason, this Court accepts them. *Blubaugh*, 904 P.2d at 693. Appellate courts give similar deference to factfinder decisions about witness credibility. *State v. Workman*, 852 P.2d 981, 984 (Utah 1993) (credibility can be reweighed only in unusual circumstances).

Defendant does not establish that the trial court's inferences are unreasonable or that unusual circumstances mandate a reweighing of credibility. Based on the guilty verdict, the trial court evidently believed the State's interpretation of defendant's "rearing back," i.e., that it described a movement much like a baseball pitcher's windup (R. 158). Similarly, the trial court evidently discounted Deputy Walker's confusion about the cell numbers, and reasonably found it did not undermine his testimony. The trial court specifically

stated that it was the deputy's recollection of defendant's voice over the intercom that was the critical factor (R. 163).

Defendant also misinterprets the sufficiency review process. He separately analyzes each piece of evidence to see whether that evidence, standing alone, established guilt. This method ignores the important axiom that sometimes the whole equals more than the sum of its parts. A trial court, as well as a jury, views the evidence in its totality. Tischner's testimony alone might not establish defendant's guilt beyond a reasonable doubt.³ However, the trial court did not just look at Tischner's testimony; it evaluated Tischner's testimony in light of Reeder's and Walker's.⁴ Looked at cumulatively, the evidence provided sufficient basis for the court's inference that defendant hit Tischner and, therefore, committed the crime.

³ This is not to say, however, that Tischner's testimony, in defendant's words, "create[d] reasonable doubt." Brief of Defendant at 6.

⁴ The trial court's perception of defendant, and his answers on the stand, might also have played a role in the multifactorial analysis of guilt or innocence.

CERTIFICATE OF MAILING

On 15 November 1996, I mailed, by U.S. Mail, postage prepaid, two

(2) copies of this ***BRIEF OF APPELLEE*** to:

DAVID C. CUNDICK
Parker, Freestone, Angerhofer & Harding
50 West 300 South, Suite 900
Salt Lake City, Utah 84101

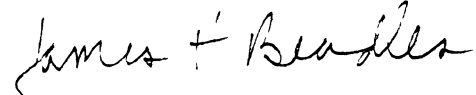
James H. Kessler

CONCLUSION

Defendant's conviction should be affirmed.

RESPECTFULLY SUBMITTED THIS 15th day of November 1996.

JAN GRAHAM
UTAH ATTORNEY GENERAL

A handwritten signature in cursive script that reads "James H. Beadles".

JAMES H. BEADLES
Assistant Attorney General