

1996

State of Utah v. Glen Ray Bullock : Reply Brief

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 960119-CA

STATE OF UTAH,)	
)	
Plaintiff/Appellee,)	Priority No. 2
)	
vs.)	
)	
GLEN RAY BULLOCK,)	Case No. 960119-CA
)	
Defendant/Appellant)	

REPLY BRIEF OF APPELLANT

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.

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COURT OF APPEALS

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INTRODUCTION

Appellant Glen Ray Bullock's ("Bullock") files this Reply Brief in response to the Brief of the Appellee, State of Utah ("State"), dated November 15, 1996.

ARGUMENT

EVEN THOUGH THE TRIAL COURT MAY HAVE DRAWN REASONABLE INFERENCES FROM THE EVIDENCE PRESENTED AT TRIAL, UNDER THE CLEARLY ERRONEOUS STANDARD OF REVIEW ACCORDED TO BENCH TRIALS, THE EVIDENCE DOES NOT SUPPORT BULLOCK'S CONVICTION.

Bullock was convicted at a bench trial of attacking prison inmate Tischler. Bench trial verdicts are reviewed under the clearly erroneous standard as specified in Utah R. Civil P. 52(a).¹ This standard is further clarified by State v. Goodman, 91 Utah Adv. Rep. 3; 763 P.2d 786 (Utah 1988) which states:

When reviewing a bench trial for sufficiency of the evidence, we must sustain the trial court's judgment unless it is "against the clear weight of the evidence or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made."

(quoting State v. Walker, 64 Utah Adv. Rep. 10; 743 P.2d 191, 193 (Utah 1987)). This is a less deferential review standard than that used for jury trials. Under this less deferential standard, there is a greater likelihood that a defendant's conviction in a bench trial will be reversed. Even if the clear weight of the evidence

¹The bench trial standard of review differs from the jury trial standard in that the court will overturn a verdict "only when the evidence is so lacking and insubstantial that a reasonable person could not have reached that verdict beyond a reasonable doubt." State v. Isaacson, 704 P.2d 555, 557 (Utah 1985).

supports the trial court's verdict, the appellate court may reverse if it finds that a mistake has been made upon review of the record, not including the demeanor and credibility of the witnesses is contrary to the verdict. 786 P.2d at 787. A finding is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. 743 P.2d at 193 (citation omitted).

It is apparent that the State would like this Court to review the trial court's findings under the more stringent jury trial standard of review because the State supports its contentions regarding the evidence presented with Utah cases and even a Texas case which involve the jury trial standard of review. This standard of review requires the evidence to be so insubstantial that a reasonable person could not have possibly reached a particular verdict. However, the instant case was a bench trial and should be reviewed under the less deferential bench trial standard which looks to the weight of the evidence on the record, not including the credibility and demeanor of the witnesses.

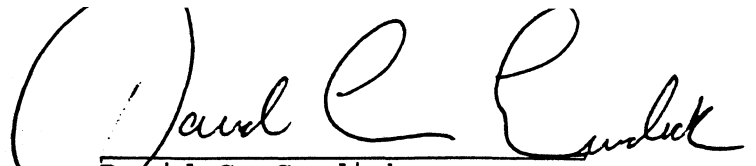
Furthermore, the State believes that the trial court drew reasonable inferences from the evidence that Bullock attacked Tischler. Indeed, the inferences drawn by the trial court do show that Tischler was attacked. But in examining the total weight of the evidence on the record under the clearly erroneous standard, the inferences do not conclusively point to Bullock as the attacker. For example, even though Walker testified that it was

Bullock's voice on the intercom, in light of Walker's confusion about what cell Bullock was confined in and what intercom light was on, it is possible that Walker was mistaken in identifying Bullock's voice, particularly since there is no other evidence to corroborate his testimony. Additionally, the testimony of Tischler does not actually point to Bullock as being the attacker because Tischler did not see who attacked him. Finally, the testimony of Reeder also creates doubt that Bullock was the attacker because Reeder testified that Bullock never entered Tischler's cell where the attack occurred but remained standing on the outside. Thus, while inferences drawn from testimony show that Tischler was attacked, under the clearly erroneous standard the inference that Bullock was the attacker lacks evidentiary support for conviction and the trial court made a mistake in drawing this conclusion.

CONCLUSION

Bullock agrees that the trial court's inferences drawn from the evidence presented supports that Tischner was indeed attacked. However, it is a stretch of the imagination to say that the evidence conclusively points to Bullock as the attacker. By using the less deferential standard accorded a bench trial, this Court should find that it was clearly erroneous to convict Bullock and reverse the trial court's decision.

Respectfully submitted this 29th day of December, 1996.

A handwritten signature in black ink, reading "David C. Cundick". The signature is written in a cursive style with a large, sweeping initial "D".

David C. Cundick
Attorney for
Glen Ray Bullock,
Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that on this 29th day of December, 1996, I mailed two true and correct copies of the Reply Brief of Appellant, postage prepaid, to the following:

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