

1986

# State of Utah v. Michael F. Moncada : Brief of Appellant

Utah Court of Appeals

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH, :  
Plaintiff/Respondant, : Case No. 860471  
vs :  
MICHAEL F. MONCADA :  
Defendant/Appellant, :

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BRIEF OF APPELLANT

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An appeal from a jury conviction of Appellant, in the Second Judicial District Court, County of Weber, State of Utah, the Honorable John F. Wahlquist presiding.

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**UTAH COURT OF APPEALS  
BRIEF**

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BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES PRESENTED ON APPEAL

The evidence is insufficient to sustain a conviction against the Defendant of Possession of Deadly Weapon with Intent to Assault, a Class A Misdemeanor, nor Possession of a Dangerous Weapon by a Parolee, a Second Degree Felony.

STATEMENT OF THE CASE

This is a criminal action in which the Defendant was charged, pursuant to Section 76-10-507 and 76-10-503 of the Utah Code Annotated, 1953 (as amended), with Possession of a Deadly Weapon with Intent to Assault and Possession of a Dangerous Weapon by a Parolee. The matter came on for trial before the Honorable John F. Wahlquist, sitting with jury, on the 18th day of August, 1986. The jury convicted Defendant of Possession of a Deadly Weapon with Intent to Assault and Possession of a Dangerous Weapon by a Parolee, and the Defendant was sentenced on the 3rd day of September, 1986 to serve a term in the Utah State Prison of not less than one nor more than fifteen years. Such sentence to run concurrently with jail sentence of 360 days in the Weber County Jail. Court ordered a five year enhancement for use of a firearm. The Defendant appealed that conviction to this court on the 25th day of September 1986.

On May 7th, 1986, the Defendant, Michael Moncada, was riding with his brother, James Moncada in Jame's car in the vicinity of 30th and Pingree in Ogden, Utah. (rec. pg. 116) They saw Danny Archuleta's car and followed it until it parked on Pingree (rec. pg. 88).

James got out of his car to talk with Danny Archuleta about an incident that had occurred previously between the two of them. (rec. pg. 116). The Defendant also got out of the car and talked to Timmy Hill who was in Archuleta's car (rec. pg. 101, 102, 105, 117, 118), asking him to allow James and Archuleta to resolve their dispute (rec. pg. 117)

Though at trial one, and only one witness, Danny Archuleta testified with no corroboration that the Defendant pointed a gun at him (rec. pg. 87-89), two witnesses, the Defendant and James Moncada testified that not only did the Defendant not point a gun at Mr. Archuleta, he didn't even have or own a gun (rec. pg. 102, 103, 104, 118, 119, 120). Further, no gun was offered as evidence. Therefore the testimony offered in regards to the event in question was extremely contradictory as to whether or not the Defendant committed the crime as alleged.

The jury found the Defendant guilty of Possession of a Deadly Weapon with Intent to Assault and of Possession of a Dangerous Weapon by a Parolee.

From those convictions, the Defendant appeals.

#### SUMMARY OF THE ARGUMENT

The Defendant contends that the State failed to prove, beyond a reasonable doubt that the Defendant possessed a deadly and/or dangerous weapon.

THE EVIDENCE, AS PRESENTED AT TRIAL, IS INSUFFICIENT TO PROVE THE DEFENDANT GUILTY BEYOND REASONABLE DOUBT OF POSSESSION OF DEADLY WEAPON AND POSSESSION OF A DANGEROUS WEAPON BY A PAROLEE.

Section 76-10-501 Utah Code Annotated, 1953 (as amended) places a burden of proof upon the State of beyond a reasonable doubt and in the absence of such proof, requires the Defendant be acquitted.

Counsel is mindful of the Court's rather strict standards of review when, in fact, the Court is asked to review the records to determine the sufficiency of a verdict. This view is expressed in State v. Newbold, 581 P. 2d 991 (Utah 1972) where this Court held

"to set aside a jury verdict, evidence must appear so inconclusive and unsatisfactory that reasonable minds acting fairly upon it must have entertained reasonable doubt that the Defendant committed the crime." (Id. at 972)

See also, State v Carlson, 635 P. 2d 72 (Utah 1981) and State v. Martinez, 709 P. 2d 355 (Utah 1985).

In applying this standard of review to the present case, the jury was faced with a situation in which one witness, Daniel Archuleta, testified that the Defendant assaulted him with a gun, and if true, the Defendant is admittedly guilty of the crimes he's charged with. There was however no corroborating evidence offered to support Archuleta's testimony.

There was testimony presented by the Defendant and another witness, James Moncada, that not only was there no assault as alleged by Archuleta, but that the Defendant did not possess nor own a gun on the date in question. Testimony was also presented which indicated that Archuleta had a motive for testifying untruthfully against the Defendant, ie: family dispute and desire to send the Defendant to prison (rec. pgs.

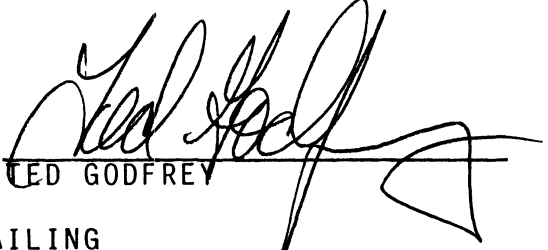
119 - 120). If the Defendant did not own a gun, have a gun nor assault Archuleta, he cannot possibly be guilty of the alleged crimes.

The evidence is less conclusive that the Defendant, Michael Moncada is guilty of possession of a Deadly and/or Dangerous Weapon than it is that he isn't. Particularly without corroborative evidence and with a motive for testifying falsely by Archuleta. Therefore a reasonable mind would be forced to have a reasonable doubt as to the Defendant's guilt.

CONCLUSION

Based upon the foregoing arguments and a thorough review of the evidence, the Defendant respectfully requests this court to reverse his conviction.

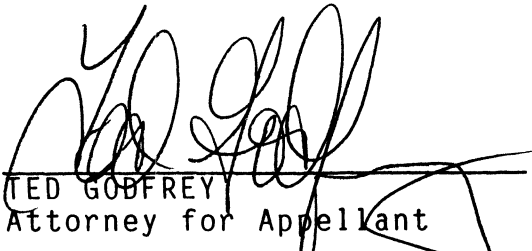
RESPECTFULLY SUBMITTED this 4th day of February 1987.

  
TED GODFREY

CERTIFICATE OF MAILING

I hereby certify that I mailed 4 copies of the foregoing Brief of Appellant to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Utah 84114.

DONE this day 4th of February 1987.

  
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Attorney for Appellant