

2000

State of Utah v. Clyde L. Medlock : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

14372A

IN THE SUPREME COURT, STATE OF UTAH

STATE OF UTAH
Plaintiff-Respondent

-vs-

CLYDE L. MEDLOCK
Defendant-Appellant

:
:
: Case No. 14372

BRIEF OF APPELLANT

APPEAL FROM A JURY VERDICT OF GUILTY IN THE
THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE
GORDON HALL PRESIDING.

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IN THE SUPREME COURT, STATE OF UTAH

STATE OF UTAH :
Plaintiff-Respondent :

-vs- :

Case No. 14372

CLYDE L. MEDLOCK :
Defendant-Appellant :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, CLYDE L. MEDLOCK, appeals from a jury verdict of guilty of distribution for value of a controlled substance, to wit, heroin, in the Third Judicial District Court, Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

The appellant was tried by jury in the Third District Court on November 19, 1975, found guilty of selling narcotics and sentenced to the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction. Counsel on appeal requests permission to withdraw from the appeal and submits the brief in compliance with Anders v. California, 386 U.S. 738 (1967).

STATEMENT OF FACTS

Denise Giersz, the State's chief witness, testified that she was a heroin addict of five years (R-30). She also testified that at approximately 10:00 A.M. on the morning of July 31, 1975, she had purchased a \$15.00 balloon of heroin from the defendant, Clyde L. Medlock (R-34) but still owed \$5.00 of the purchase price, having only paid him \$10.00 (R-36). Denise used that heroin for her personal consumption (R-33).

At approximately 12:00 noon that same day she met with officers James R. Lewis and Michael D. Roberts of the Salt Lake City Police Department (R-29). The purpose of that meeting was to discuss the possibility of Denise going to work for the police narcotics squad as an undercover agent (R-10). Denise agreed to make narcotic buys for the police (R-58) and, at about 3:15 P.M., she was subjected to a body and clothing search (R-7) prior to being taken by Officer Roberts to a location on West Second South, Salt Lake City (R-34). The search showed that Denise did not have any money or heroin concealed in or on her person or clothing (R-8).

When Denise and Officer Roberts reached the West Second South area Roberts gave Denise a \$20.00 bill and she left his vehicle (R-60). She turned the corner and left his sight walking west bound on Second South (R-60). Denise testified that after she left Officer Roberts' sight and walked west she met Clyde Medlock (R-35) just east of the West Side Hotel (R-12). This meeting was witnessed by Officer Lewis (R-12). Clyde asked Denise where his \$5.00 was and she said she had it and would like to buy another \$15.00

balloon of heroin (R-36). The two walked into the West Side Hotel and disappeared from the view of any officer on surveillance (R-17). Officer Lewis did not witness anything that looked to him like a narcotics sale (R-17). Inside the West Side Hotel Denise testified that Clyde left her sight and went upstairs; that when he returned he brought a balloon of heroin with him and gave it to her (R-36). Clyde Medlock testified that he did not sell any heroin to Denise (R-79) but that she gave him a \$20.00 bill to repay a \$5.00 loan and that he changed it for her, keeping the \$5.00 she owed and returning \$15.00 (R-77).

When Denise and Clyde left the West Side Hotel and again came into the view of Officer Lewis, Denise walked east until she rejoined Officer Roberts (R-37). This was approximately five or six minutes after she had left him (R-60). After Denise got in Roberts' vehicle she gave him a balloon (R-61) that contained heroin (R-74). Denise was then taken and, at about 4:00 P.M. that same afternoon, was given another body and clothing search (R-8). The result of that search showed that she did not have any heroin or money concealed in or on her person or clothing (R-8).

Denise Giersz testified that she approached the defendant, Clyde L. Medlock, and asked him if he could get her some heroin (R-52). Clyde did not come up to her and offer it (R-53).

Clyde Medlock testified that he had been a heroin addict, having acquired the habit in Korea during the war (R-80), but that at the time he was accused of selling heroin to Denise Giersz he did not have a habit whatsoever (R-83). Clyde testified that he has never sold heroin (R-83 and has never been instrumental in introducing anyone to heroin (R-83).

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN SUBMITTING THE CASE TO THE JURY BECAUSE THERE WAS INSUFFICIENT EVIDENCE FOR REASONABLE MEN TO FIND THE APPELLANT GUILTY.

To allow the question of guilt in a criminal case to go to the jury, the prosecution must introduce substantial evidence of the guilt of the defendant. In this case, the appellant contends that the evidence was not sufficient and that, because reasonable jurors could not have found guilt, it was error to submit the case to the jury. Wigmore sets the standard as follows:

The proposition cannot be, is there evidence?... The proposition seems to me to be this: Are there facts in evidence which if unanswered would justify men of ordinary reason and fairness in affirming the question which the plaintiff is bound to maintain?
9 Wigmore 3rd ed. Section 2494.

In State v. Garcia, 11 Utah 2d 167, 355 P.2d, 57 (1960), this Court affirmed a conviction for first degree murder. Communications between the Court and a juror were the focus of appeal, but this Court also set the standard by which we measure the sufficiency of the evidence:

There is no jury question without substantial evidence indicating defendant's guilt beyond a reasonable doubt. This requires evidence from which the jury could reasonably find the defendant guilty of all material issues of fact beyond a reasonable doubt. at 59.

In appellant's case, Mr. Medlock maintains that there was insufficient evidence to meet this standard. Mr. Medlock maintains that the questionable

record and character of the undercover agent; her interest in securing conviction; and her questionable veracity all combine to negate the probative value of her testimony. Without that testimony, the appellant could not have been convicted.

CONCLUSION

The appellant seeks reversal of his conviction on the grounds of sufficiency of the evidence.

REQUEST FOR WITHDRAWAL OF COUNSEL

The foregoing brief discusses the only issue presentable on appeal and counsel for appellant believing that it will not prevail, requests permission to withdraw.

Pursuant to Anders v. California, supra, appellant should be allowed to pursue this point and any additional points pro-se, and then this Court can proceed to a discussion on the merits.

Respectfully submitted,

BRIAN A. WHITE
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

I certify that in compliance with Anders v. California, supra, I have caused to be mailed a copy of the foregoing brief to the appellant, Clyde L. Medlock, Utah State Prison, P.O. Box 250, Draper, Utah, this _____ day of _____, 1976.
