

1987

Utah v. Duran : Brief of Appellant

Utah Court of Appeals

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BRIEF

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

870054

STATE OF UTAH,

Plaintiff/Respondent

vs.

MICHAEL LUPE DURAN

Defendant/Appellant

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Case No. 870054-CA

Priority #2

BRIEF OF APPELLANT

An appeal from a jury conviction for the offense of theft, a second degree felony, in the Second Judicial District Court, County of Weber, State of Utah, The Honorable Ronald O. Hyde presiding.

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent	:	
	:	
vs.	:	Case No. 870054-CA
	:	
MICHAEL LUPE DURAN	:	Priority #2
	:	
Defendant/Appellant	:	

BRIEF OF APPELLANT

An appeal from a jury conviction for the offense of theft, a second degree felony, in the Second Judicial District Court, County of Weber, State of Utah, The Honorable Ronald O. Hyde presiding.

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TABLE OF CONTENTS

STATEMENT OF THE ISSUES PRESENTED ON APPEAL.....	1
NATURE OF THE PROCEEDINGS.....	1
STATEMENT OF THE FACTS.....	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT.....	3

THE EVIDENCE, AS PRESENTED AT TRIAL, IS INSUFFICIENT
TO PROVE THE DEFENDANT GUILTY BEYOND REASONABLE DOUBT
OF A SECOND DEGREE THEFT.

CONCLUSION.....	4
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TABLE OF AUTHORITIES
CASES CITED

<u>State v. Newbold</u> , 581 P.2d 991 (Utah 1972).....	3
<u>State v. Carlson</u> , 635 P.2d 72 (Utah 1981).....	4
<u>State v. Martinez</u> , 709 P.2d 355 (Utah 1985).....	4

STATUTORY AUTHORITY

Utah Code Annotated, Section 76-6-404.....	1
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IN THE COURT OF APPEALS OF THE STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent	:	
	:	
vs.	:	Case No. 870054-CA
	:	
MICHAEL LUPE DURAN	:	Priority #2
	:	
Defendant/Appellant	:	

BRIEF OF APPELLANT

JURISDICTION

Jurisdiction to hear the above entitled appeal is conferred upon the Court of Appeals of the State of Utah pursuant to Utah Code Annotated 1953 (as amended) §77-35-26(2)(a).

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

The Defendant is appealing a conviction for Second Degree Theft upon the grounds that the evidence as presented at trial was insufficient to support a finding of guilt.

NATURE OF THE PROCEEDINGS

This is an appeal from a guilty verdict rendered by a jury for the crime of theft, a second degree felony. Trial for the aforementioned offense was held in The Second Judicial District Court, County of Weber, State of Utah, the Honorable Ronald O. Hyde presiding. On January 8, 1987, Judge Hyde sentenced the Defendant to serve a term in the Utah State Prison of not less than ~~one~~, nor more than fifteen years.

STATEMENT OF THE FACTS

On October 30, 1986, at approximately 10:10 p.m., Defendant Michael L. Duran, and co-defendant David C. Stewart were arrested by undercover agents for allegedly attempting to sell two stolen rifles. Defendant Michael Duran was the passenger, and co-defendant Stewart was the driver of a car in which the rifles were found. Defendant alleges that the guns were put into his car by a Mr. Kenny Nevarez, a friend of David Stewart. Defendant Duran stated at trial that while riding in David Stewart's automobile as a passenger, he and Stewart drove past the home of Stewart's friend, Kenny Nevarez. Nevarez waived at Stewart to stop. Stewart pulled to the curb and Nevarez asked him to put two rifles into the trunk of his car and take them to Mountain Oil Co., at 10:00 o'clock that evening, where Mr. Nevarez had arranged to sell the rifles to Mr. Rod Bennett, the manager of Mountain Oil, who was known as a person who often purchased, and traded guns and rifles. Mr. Nevarez would then be able to pay Mr. Stewart a \$50.00 debt.

Both Defendants Duran and Stewart stated at trial that they did not know the rifles were stolen, but that they expected to meet Kenny Nevarez at Mountain Oil, where he would sell the rifles to Mr. Bennett, and pay Defendant Stewart the \$50.00 debt.

Defendant Duran has maintained from the outset of this action that he was merely a passenger of the vehicle in which Nevarez placed the two stolen rifles and had nothing to do with the alleged sale or theft of the firearms.

SUMMARY OF THE ARGUMENT

The Defendant Contends that the State failed to prove, beyond a reasonable doubt that the Defendant committed a theft.

ARGUMENT

THE EVIDENCE, AS PRESENTED AT TRIAL, IS INSUFFICIENT TO PROVE THE DEFENDANT GUILTY BEYOND REASONABLE DOUBT OF A SECOND DEGREE FELONY THEFT.

Section 76-6-404 Utah Code Annotated, 1953 (as amended) places a burden of proof upon the State to prove beyond a reasonable Doubt that a defendant obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof, and in the absence of such proof, the defendant must 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 the Utah Supreme 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); State v. Martinez, 709 P.2d 355 (Utah 1985).

In applying this standard of review to the present case, it is clear that the evidence was not conclusive or satisfactory to the extent necessary to sustain a verdict of guilty. There was no evidence given at the trial that would establish conclusively that the Defendant was the one who broke into the

residence of Marty Taylor at 2894 S. 2700 W. and stole various items including the two rifles found in the trunk of David Stewart's car. It is feasible that someone else could have broken into the Taylor home and taken the rifles and given them to Mr. Nevarez, and thus to Stewart, as both Duran and Stewart testified was the case.

Even if the Defendants knew that the rifles were stolen at the time they obtained them from Nevarez, they cannot be held liable for the theft of the rifles, but would have more properly been charged with attempting to sell stolen property.

Under the circumstances of this case, the actions of the Defendant were not inconsistent with someone merely trying to sell some rifles to an interested party in order to receive payment of a debt.

CONCLUSION

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

ADDENDUM

There are no rulings of the lower court, rules or other documents necessary for one reading this brief.

RESPECTFULLY SUBMITTED this ____ day of September, 1987.

Deirdre A. Gorman

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 of September, 1987.

Deirdre A. Gorman

Attorney for Appellant