

1987

State of Utah v. Wesley Ray Richardson : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David L. Wilkinson; Utah Attorney General; Attorneys for Plaintiff- Respondent.

J. Bruce Savage, Jr.; Attorney for Defendant - Appellant.

Recommended Citation

Brief of Appellant, *Utah v. Richardson*, No. 870236 (Utah Court of Appeals, 1987).

https://digitalcommons.law.byu.edu/byu_ca1/472

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU

50 IN THE COURT OF APPEALS FOR

.A10
DOCKET NO. 870236 CA THE STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff-Respondent,	:	
	:	
vs.	:	Case No. 870236-CA
	:	
WESLEY RAY RICHARDSON,	:	
	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN THE FOURTH JUDICIAL DISTRICT
COURT IN AND FOR WASATCH COUNTY

PRIORITY SCHEDULE - No. 2

HONORABLE GEORGE BALLIF, JUDGE

J. BRUCE SAVAGE, JR.
Attorney for Defendant-Appellant
1160 Park Avenue
P. O. Box 2520
Park City, Utah 84060

DAVID L. WILKINSON
UTAH ATTORNEY GENERAL
Attorneys for Plaintiff-Respondent
236 State Capitol
Salt Lake City, Utah 84111

JUL 22 1938

IN THE COURT OF APPEALS FOR
THE STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff-Respondent,	:	
	:	
vs.	:	Case No. 870236-CA
	:	
WESLEY RAY RICHARDSON,	:	
	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN THE FOURTH JUDICIAL DISTRICT
COURT IN AND FOR WASATCH COUNTY

PRIORITY SCHEDULE - No. 2

HONORABLE GEORGE BALLIF, JUDGE

J. BRUCE SAVAGE, JR.
Attorney for Defendant-Appellant
1160 Park Avenue
P. O. Box 2520
Park City, Utah 84060

DAVID L. WILKINSON
UTAH ATTORNEY GENERAL
Attorneys for Plaintiff-Respondent
236 State Capitol
Salt Lake City, Utah 84111

TABLE OF CONTENTS

STATEMENT OF AUTHORITY AND JURISDICTION - - - - - 1

STATEMENT OF THE ISSUES - - - - - 1

STATEMENT OF THE NATURE OF THE CASE - - - - - 1

DISPOSITION IN THE LOWER COURT - - - - - 2

RELIEF SOUGHT IN APPEAL - - - - - 3

STATEMENT OF FACTS - - - - - 3

AUTHORITIES RELATING TO DEFENDANT'S GROUNDS FOR APPEAL - - 4

CONCLUSION - - - - - 5

Statutes Cited

Utah Code Annotated, 58-37-8 (2) (a) (i) and (b) (ii) - - - 1

Utah Code Annotated, 76-8-311 - - - - - 1

Utah Code Annotated, 78-2a-3 - - - - - 5

Utah Code Annotated, 77-35-30 - - - - - 5

Cases Cited

State v. Clayton, 639 P.2d 168 (Utah 1981) - - - - - 4

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 - - - -motion
18 L.Ed.2d 493 (1967) - - - - -motion

State v. Adams, 583 P.2d 89 - - - - - 4

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 - 4

Cordianna vs. Morris, 660 P.2d 1101 (1983) - - - - - 4

State of Utah v. Geary, 707 P.2d 645 (Utah 1985) - - - - 4

State of Utah v. Kaae, 513 P.2d 435, - - - - - 4

State of Utah v. Moore, 697 P.2d 233 - - - - - 4

State of Utah v Gabaldon, 735 P.2d 410 - - - - - motion

IN THE COURT OF APPEALS FOR
THE STATE OF UTAH

STATE OF UTAH, :
 :
 Plaintiff-Respondent, :
 :
 vs. : Case No. 870236-CA
 :
 WESLEY RAY RICHARDSON, :
 :
 Defendant-Appellant. :

BRIEF OF APPELLANT

STATEMENT OF AUTHORITY AND JURISDICTION

Jurisdiction is conferred upon this Court pursuant to U.C.A. 78-2A-3, 1953 as amended. This appeal has been taken directly from the Fourth Judicial District Court, in and for Wasatch County.

STATEMENT OF ISSUES

This issue to be determined for this appeal is whether a meritorious appeal exists in this matter.

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged by Information with the crimes of POSSESSION OF A CONTROLLED SUBSTANCE (second offense), a Class A misdemeanor U.C.A. 58-37-8(2) (a) (i) and (b) (ii), 1953 as amended and PROVIDING CONTRABAND TO A PERSON IN CUSTODY,

U.C.A. 76-8-311 (1953) as amended, in that while Appellant was incarcerated in the Wasatch County Jail, he did possess a controlled substance, to wit, marijuana and did provide marijuana to another inmate, his brother, also located in the Wasatch County Jail.

DISPOSITION IN THE LOWER COURT

Appellant was tried in the Fourth Judicial District Court in and for Wasatch County, with the Honorable George Ballif presiding, on the 22nd day of August, 1985 before a jury. Following that trial, the jury found defendant guilty on both counts in the information. Defendant was sentenced for the first time on September 17, 1985 before Judge Ballif in Utah County, by stipulation of the parties. Defendant was sentenced to an undeterminate sentence not to exceed five years in the Utah State Prison on Count II, to run concurrent with other previously rendered sentences previously being served by the defendant at the Utah State Prison and for a 1 year sentence on Count I to run concurrent with the sentences imposed in Count II of this matter and with the previously imposed sentences already imposed on defendant in other unrelated matters.

On May 28, 1987, defendant appeared once again before Judge Ballif, sitting in Wasatch County for the resentencing of defendant pursuant to a Petition for Writ of Habeas Corpus, filed pursuant to State v. Johnson. Defendant was resentenced to commence his appeal time to begin anew and a timely Notice of Appeal was filed by defendant's newly appoint counsel, on

June 10, 1987.

RELIEF SOUGHT ON APPEAL

Defendant respectfully requests that the Court reverse the verdict and judgment and remand the case to the District Court for a new trial.

STATEMENT OF THE FACTS

While incarcerated in the Wasatch County Jail, Wesley Ray Richardson requested of a Wasatch County jailer, that she deliver to his brother Walter Richardson who was housed in a another cell, a magazine for reading. Appellant folded the magazine and placed it under the jailer's arm, and that magazine was subsequently delivered to Walter Richardson. Approximately thirty minutes later when checking another prisoner into the cell of Walter Richardson, the officer detected the odor of burning marijuana. A strip search of Walter Richardson was conducted and a search of the cell in which Walter Richardson was housed was also conducted. A pipe containing burned residue, and marijuana was found in the Walter Richardson cell. Loose marijuana was further discovered in the magazine which appellant had requested be delivered to Walter Richardson.

A strip search and jail cell search of the cell in which appellant was housed was next conducted. Appellant originally denied any knowledge as it related to any controlled substances. Appellant's cellmate was questioned and requested an opportunity to speak with appellant. That conversation was overheard by a Wasatch County jailer. Following discussions between the two

prisoners in the appellant's cell and following one interrupted interrogation of appellant by a Wasatch County jailer, appellant then confessed to the possession of a controlled substance and the providing of that controlled substance to his brother Walter Richardson.

On the day of trial, defense counsel raised for the first time a motion to suppress in attempts to suppress the previously recorded confession of appellant. Following testimony from both the interrogating officers and the appellant, the Court denied the motion to suppress. At trial the prosecution presented testimony from those same investigating officers and a Wasatch County jailer. Defense presented the sole testimony of the appellant. He recanted his earlier confession. It might also be construed that appellant was contending at trial his confession was not voluntary and was the subject matter of coercion.

AUTHORITIES RELATING TO DEFENDANT'S GROUNDS FOR APPEAL

The defendant has asserted that his confession was not voluntary and was the subject matter of coercive actions. Counsel believes that the cases of State of Utah v. Adams, 583 P.2d 89, State of Utah v. Kaae, 513 P.2d 435, and State of Utah v. Moore, 697 P.2d 233 are controlling. As set forth in those matters, the test as to whether a confession is voluntary depends on the totality of the circumstances. In Moore, the Court went on to address the issue of anxiety that a defendant might be suffering as a result of his arrest and incarceration.

The appellant further asserts that grounds for appeal is the ineffective assistance of trial counsel. Appellant counsel believes the cases of Codianna vs. Morris, 660 P.2d 1101 (1983); Strickland vs. Washington, 466 U.S. 668, 104 S.Ct. 2052; and State of Utah vs. Geary, 707 P. 2d 645 (Utah 1985) are controlling. In Geary, the Court stated:

On appeal, defendant raises as single issue that he was denied his constitutional right to the effective assistance of counsel. In challenging a conviction on the ground of ineffective assistance of counsel, it is the defendant's burden to show: (1) that his counsel rendered a deficient performance in some demonstrable manner, and (2) that the outcome of the trial would probably have been different but for counsel's error. Failure to make the required showing of either deficient performance on the part of counsel or of sufficient prejudice as a result of counsel's error defeats the ineffectiveness claim.

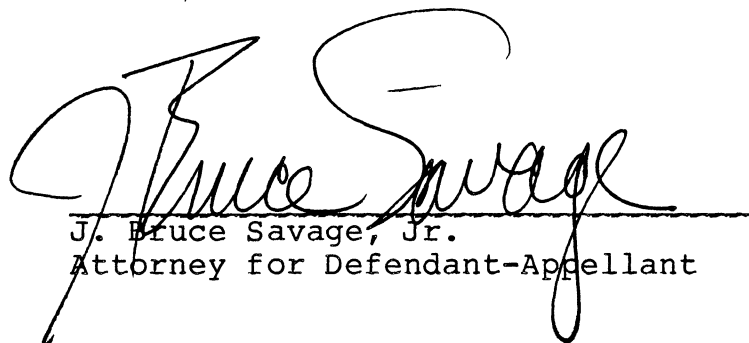
Appellant further raises his grounds for appeal the order prosecutorial misconduct in her closing argument to the jury. Appellant counsel believes that the matter State of Utah v. Tucker, 709 P.2d 313, (1985) is controlling on that issue. Appellant counsel also cites Rule 30 of the Utah Rules of Criminal; U.C.A. 1953 77-35-30 on this issue. Appellant counsel further cites 77-35-30, and Tucker in addressing the question of harmless error and believes that these two reference cites are controlling on that issue.

CONCLUSION

Defendant has asserted his contention that his conviction in the lower Court was in error and should be reversed. Counsel has examined the record and upon independent research and review

has concluded that the appeal is without merit. This Brief is submitted concurrently with a Motion for Leave to Withdraw as Counsel for Defendant.

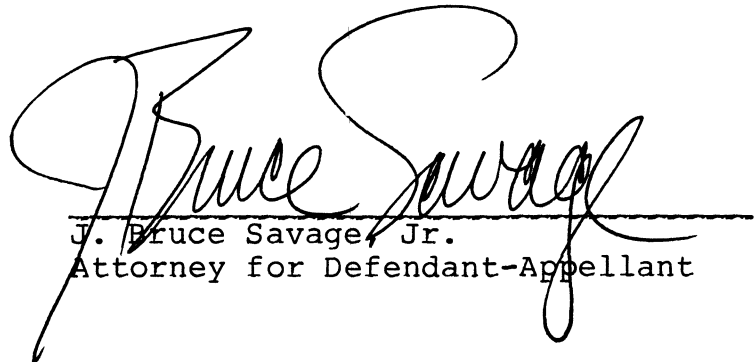
Respectfully submitted this 21 day of July, 1988.



J. Bruce Savage, Jr.
Attorney for Defendant-Appellant

DELIVERY CERTIFICATE

I hereby certify that I delivered two true and correct copies of the foregoing Brief of Appeal to Utah Attorney General, David L. Wilkinson, 236 State Capitol, Salt Lake City, Utah 84114 this 22nd day of July, 1988. I further certify that I am holding one additional copy on behalf of the Defendant-Appellant. I am unaware of any current address for Defendant-Appellant as he was paroled from the Utah State Prison in May of 1988.



J. Bruce Savage, Jr.
Attorney for Defendant-Appellant