

1997

State of Utah v. Clinton Ferrier : Brief of Appellant

Utah Court of Appeals

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**UTAH COURT OF APPEALS
BRIEF**

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CKET NO. 97 0117 CA

IN THE UTAH COURT OF APPEALS

The State of Utah,
Appellee,

vs.

Clinton Ferrier,
Defendant.

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Case No 97 0117 CA

Argument Priority 2

BRIEF OF APPELLANT

Appeal from the Findings,
Judgment and Commitment of the
Seventh Judicial District Court of
San Juan County, State of Utah
THE HONORABLE LYLE R. ANDERSON
DISTRICT COURT JUDGE

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AUG 15 1997

COURT

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STANDARD OF APPELLATE REVIEW

[W]e review the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict of the Jury. We reverse a jury conviction for insufficient evidence only when the evidence, so reviewed, is insufficiently inconclusive or inherently impossible that reasonable minds must have entertained a reasonable doubt that the Defendant committed the crime of which he was convicted. State v. Miller, 70a p.2d 350, 354-55 (Utah 1985).

DETERMINATIVE CONSTITUTIONAL PROVISIONS STATUTES AND RULES

None. This appeal is based solely on the basis that the verdict is internally inconsistent and not supported by the evidence.

STATEMENT OF THE CASE

A. Nature of the Case.

Defendant was charged in a four count Information with Possession of a Controlled Substance with Intent to Distribute on March 28, 1996; Possession of a Controlled Substance on March 28, 1996; Possession of Stolen Property and Possession of Paraphernalia. Originally there were two Defendants. One committed Suicide in the San Juan County jail. The other, Charles Lane, Testified against Appellant. (Tr-18-9)

B. Course of Proceeding.

Defendant was tried before a jury in the Seventh District Court in and for San Juan County, Utah, on December 9th and 10th, 1996.

C. Disposition in Trial Court.

The State dismissed Count III, Possession of Stolen Property. The Jury returned a Verdict of Guilty, with Count I, Possession with Intent to Distribute (TR-122) and Not Guilty of

Counts II and IV, Possession of a Controlled Substance (TR-123) and Possession of Paraphernalia (TR-124).

On February 6, 1997, the Honorable Lyle Anderson, Judge committed Defendant to the Utah State Prison for a term of One to Fifteen Years (TR-161-2)

D. Statement of Facts.

On March 28, 1996, Officer Jim Emerging of the Monticello, Utah Police Department stopped a red Ford pickup for no licence plates (Tr-228a). Two people, Charles Lane and Michelle Boyce were in the vehicle (TR-229). Defendant Clinton Ferrier was not. The officer did an Search and found what he suspected to be a set of drug scales (TR-230). The officer decided to investigate with Officer Kent Rowley, the motel where the occupants of the vehicle were staying (Tr-233).

Officer Rowley went to the motel first. He knocked on the door of Room 209 and was admitted by Clinton Ferrier. (Tr-247). Mr. Ferrier denied any connection with the room and said it was okay for him to search it. Michelle Boyce evidently gave permission to search the room (Tr-248). Officer Rowley discovered paraphernalia, money, notes, firearms and methamphetamine (Tr. 249-65).

Charles Lane verified that he came from New Mexico with the methamphetamine and Mr. Ferrier to sell the drugs for more money than could be had in New Mexico (Tr-282-3) Mr. Lane Testified that Mr. Ferrier both used drugs in Monticello (Tr-287) and helped weigh out drugs (Tr 284-5) and distribute them (Tr-289-91). He testified about the notes (Tr-292).

MARSHALLING THE EVIDENCE

In order to challenge a trial court's finding a party must marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings

are so lacking in support as to be “against the clear weight of the evidence” thus making them “clearly erroneous.””(Emphasis in original.) Mountain States Broadcasting v. Neal, 776 P.d 643,646 (Utah App 1989), (quoting State v. Walker, 743 P.2d 191, 193 (Utah 1987). See also American Rural Cellular v. Systems Communications 318 UAR 3 (Utah App 1997).

1. Mr. Lane testified

Mr. Ferrier came to Monticello, Utah with an Acquaintance to sell drugs.

Q. Mr. Lane, do you know Clinton Ferrier?

A. Yes. (Indicating affirmative).

How do you know Mr. Ferrier?

A. I met him in Farmington.

Q. how — how long ago did you meet him?

A. Probably a year and a half ago.

Q. And have you had dealings off and on since that time?

A. Yeah, somewhat.

Q. Did you have an occasion on or about the 28th day of March of 1966 to be with Mr. Ferrier in Monticello, Utah?

A. Yeah.

Q. What — under what circumstances were you with him? What was the purpose of you being in Monticello, Utah?

A. We came up here to get rid of some drugs. (Tr-282, lines 3-16).

2. Mr. Lane testified that Mr. Ferrier weighed out and helped package methamphetamine.

A. We came here, I got a motel room we got here. We weighed the stuff up

in the motel room. I gave Clinton what portion of it he was gonna go get rid of, and he went to do that.

Q. Okay. When you say we weighed it, how did you do that?

A. With a scale.

MR. HALLS: (Inaudible) Exhibit Number Four, Your Honor.

Q. [by Mr. Halls] Have you ever seen this before?

A. Yes.

Q. Well, open it up and take a look at it.

A. Yes.

Q. Okay, what is that?

A. It's a scale.

Q. What do you use it for?

A. Weighing drugs.

Q. What did — did — have you ever used that scale for weighing drugs?

A. Yes, sir.

Q. When.

A. In the motel room.

Q. And when in relationship to the time that you were picked up by the police?

A. The morning that we arrived here. Earlier that day.

Q. Okay, and tell me what you did with that scale, and who was present?

A. Me and Clinton and Michelle were all present, and we weighed the methamphetamine into groups. (Tr-284-5 lines 1-1).

3. Mr. Lane testified Mr. Ferrier injected some of the methamphetamine.

Q. How he use it?

A. He smoked it. (Tr-287-11-12).

Q. And how does that work, I mean, what it starts — it starts smoking, and then you inhale the smoke?

A. Yeah.

Q. Did you see Mr. Ferrier use that at any time while you were with him?

A. The foil no, the glass yes.

Q. And when did he use the glass?

A. In the motel room

Q. And how did he use it?

A. He smoked it.

(Tr-287-88 21-4)

4. Mr. Lane testified about two notes, Exhibits 2 and 3, explaining that he wrote them and that they referred Mr. Ferrier.

Q. Mr. Lane, I'm gonna show you what's been marked as Exhibits Two and Three. Some notes. Would you tell me if you recognize what those are?

A. Yes, I wrote them.

Q. And number two I think is on top.

A. Yes.

Q. What does that note mean?

A. It means that I was gonna get the money that was owed to me, that we were going to pick up money. (Tr-291-2; 22-4)

Exhibit 2 States:

- A. It says, “Michelle, went with Clinton for awhile” it has dollar signs, then it says, “Things will look good, or things look good be back soon”. (Tr-292; 17-8). (Tr-262; 22-4).

Exhibit 3 States:

Q. All right, and this number three was found where?

A. Just laying inside of the drawer. Number three has Kevin — \$200.00 Tammy — \$100.00, Dave — \$200.00. A total of \$500.00 down here. At this time I had found these other items, I was assuming that that was the sale of drugs, I say assuming. It also it has some figures up here and a total of 845 down here.

Q. We’d move for the admission of Exhibits Two and Three.

MR. SCHULTZ: No objection.

THE COURT: He wants to see them. **Exhibits Two and Three are received.** (Tr-263; 6-13).

5. Mr. Lane testified Mr. Ferrier sold drugs in Monticello.

Q. So, you went with him, and what happened when you went with him, what happened?

A. That — when we left that morning, we went over to I believe it was his step sister’s house. I’m not sure. And he purchased a gun for — traded a gram of dope for the gun.

Q. Now, do you know what gun that is?

A. It’s a .357 Smith and Wesson.

Q. Your Honor, could you show the .357 to the witness? That's been marked as what?

THE COURT: This is Exhibit A.

A. That's it.

Q. Okay now, when did you see that gun?

A. When he brought it out of the — out of the house.

Q. And he showed it to you?

A. Uh-huh. (Indicating affirmative)

Q. Did he say anything?

A. Yeah, he asked me if we'd trade some drugs for it. It told him I didn't care if he traded drugs for it or not.

Q. Okay, and did he say anything else about the gun?

A. That it was a stolen gun. It had no numbers on it.

Q. He said that?

A. Yeah, he said it had no numbers on it.

Q. And so — and — and he knew it to be stolen?

A. Yes.

Q. And it was his purpose to trade that gun for some drugs that he had just taken in?

A. Yes.

Q. Were there any other times when — were you with him when he made any other deliveries?

A. We went to one other place and sold some drugs.

Q. Okay and do you — did you go in with him?

A. Yes.

Q. And who — can you describe the person for me, or do you have a name or —

A. The same place that — that we got the gun. It was later that afternoon.

Q. All right, and — and were you present the money changed hands?

A. Yes. Yes.

Q. And were you — do you know the name of the person?

A. No, I don't. I believe it was his step sister, that's all I know.

Q. Was it a male — male, female?

A. Female.

Q. And it was you understanding that maybe a step sister of Mr. Ferrier what did Mr. Ferrier do?

A. Sold her some drugs.

Q. All right, describe that for me.

A. He sold her a gram of methamphetamine, I believe for \$80.00.

Q. And you — did you watch her hand him the money?

A. Yes.

(Tr-289-91; 23-21)

6. Mr. Ferrier was in Mr. Lane's room with Michelle Bryce when Officer Rowley arrived at the room.

A. Okay, I went to the clerk and asked them what room Clint — not Clinton, but Charles Lane who was the driver of the vehicle was staying in, they

told me room 209, I believe it was. I went up and knocked on the door.

At that time, Clinton Ferrier opened the door. I asked him if I could come

in, he said I could and I went in — (Tr-247-8; 22-1)

SUMMARY OF ARGUMENT

It is inherently improbable that reasonable minds could convict Defendant of Possession of a Controlled Substance with Intent to Distribute yet acquit him of Possession of a Controlled Substance and paraphernalia.

ARGUMENT

POINT I

GIVEN THE CONTRADICTING VERDICTS BY THE JURY

THERE IS A REASONABLE DOUBT AS TO DEFENDANT'S GUILT.

Even before Defendant testified at his trial, evidence was presented to the jury that he was not involved with whatever transaction Mr. Lane and possible Ms. Boyce were involved in. (“He made the statement that — that he wasn’t involved, or --” (Tr-241-15); “Q. What was his comment with regard to the contents? A. At the whole time, Mr. Ferrier claimed that he didn’t know anything about any of it.” (Tr-265; 1-3). During his testimony, Defendant denied ever purchasing drugs from Lane, coming to Utah for the purpose of selling, drugs, packaging drugs, using drugs or selling drugs. (Tr 325-28).

He explained that he was from and raised in Monticello, had family and friends there, and visited regularly (Tr-321-2). He provided an innocent explanation for his travel to Monticello with Land and Bryce. (Tr-323-4).

There is a clear and consistent contradiction between the testimony of Boyce and Ferrier. Indeed, one is hard pressed to find any material point on which they agree. Defendant

concedes that mere inconsistency in the testimony does not warrant disturbing the Jury's verdict. State v. Howell, 649 P.2d 91, 97 (Utah 1982). However, in this case the Jury's inconsistent verdicts establishes that there is insufficient evidence to support the conviction.

Defendant's argument is quite simple. Either the Jury believed Lane or they believed him. There is No rational basis upon which to conclude that Lane was truthful in the matter of drug sales but untruthful about use or paraphenalia. There is not basis upon which to believe Lane had some motive to implicate Defendant for sale of drugs but not for the possession. Likewise the verdict is unfathomable when considering Defendant was convicted for supposed sales, the only nexus to which is the testimony of Lane, and acquitted of possession of drugs and paraphenalia found in the room with him.

The Utah Supreme Court has established standards for when a jury verdict will be set aside for insufficient evidence. It is hard to imagine a result more inherently improbable than the verdicts reached by the jury in this matter.

“[W]e review the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict of the jury. We reverse a jury conviction for insufficient evidence only when the evidence, so viewed, is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime os which he was convicted. State v. Miller, 709 P.2d 350, 354-55 (Utah 1985); State v. Petree, 659 P.2d 443, 444, (Utah 1983) (citations omitted).”

An additional basis for reversal is this internal inconsistency in the Jury's verdicts. Defendant can not be guilty of Possession with Intent to Distribute while being innocent of Possession.

CONCLUSION

Defendant's conviction should be reversed. The evidence is insufficient to sustain the same.

Respectfully submitted this 15th day of August, 1997.

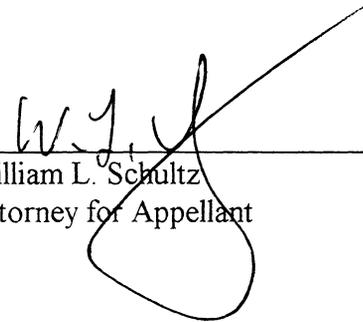


William L. Schultz
Attorney for Appellant

CERTIFICATE OF MAILING

I certify that I mailed two true and correct copies of the foregoing document to the following individuals at the address shown, via first-class mail, postage prepaid on this 15 day of August, 1997.

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William L. Schultz
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ADDENDUM

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SEVENTH DISTRICT COURT
San Juan County

FILED APR 16 1996

CLERK OF THE COURT
BY _____
DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR SAN JUAN COUNTY, STATE OF UTAH

STATE OF UTAH	*	
		AMENDED
Plaintiff,	*	INFORMATION
vs.		
CLINTON FERRIER		
AKA: BENJAMINE	*	Criminal No. 9617-43
DOB: 12-6-72		
4203 Terrace Drive		
Farmington, NM 87401		
Defendant.	*	

*Officer: KENT ROWLEY - -JIM EBERLING

The undersigned Complainant, CRAIG C. HALLS, under oath states on information and belief that the Defendant(s) committed in the above named County, the Crime(s) of:

COUNT No. 1:

POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE: A FELONY OF THE 2nd DEGREE in violation of Section 58-37-8(1)(a)(i)(ii) and (iv), Utah Code Annotated, 1953 as amended, in the manner as follows: That the said defendant on or about the 28TH day of MARCH 1996, did knowingly and intentionally produce, manufacture, or dispense a controlled substance, to wit: Methamphetamine, or did distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance, or did possess a controlled or counterfeit substance with intent it distribute.

COUNT No. 2:

POSSESSION OF A CONTROLLED SUBSTANCE: A Felony of the 3rd degree, in violation of Section 58-37-8(2)(a)(i), Utah Code Annotated, 1953 as amended, in the manner as follows: That the said defendant on or about the 28TH day of MARCH, 1996, did knowingly and intentionally have in his possession controlled substances, to wit: Methamphetamine.

COUNT No. 3:

POSSESSION OF STOLEN PROPERTY: A Felony of the 2nd degree, in violation of Section 76-6-408, Utah Code Annotated, 1953 as amended, in the manner as follows: That on or about the 28TH day of MARCH, 1996, said defendant did have in his possession stolen property, to wit: a 357 firearm.

COUNT No. 4:

POSSESSION OF PARAPHERNALIA: A Class B Misdemeanor, in violation of Section 58-37a-5, Utah Code Annotated, 1953 as amended in the manner as follows: That the said defendant on or about the 28TH day of MARCH, 1996, did have in his possession paraphernalia used to plant, propagate, cultivate, grow, manufacture, produce, process, prepare, store, inhale, ingest, or otherwise introduce a controlled substance into the human body.

Contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State of Utah.



Craig C. Halls
San Juan County Attorney

DATED: April 1, 1996