

1987

State of Utah v. George Bustos : 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

DOCKET NO. 870559-CA
STATE OF UTAH,

Plaintiff/Respondent

vs.

GEORGE BUSTOS

Defendant/Appellant

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Case No. 870559-CA

Priority No. 2

BRIEF OF APPELLANT

This is an appeal of a jury conviction on a charge of Burglary, a third degree felony, before the Honorable Judge John F. Wahlquist in the Second Judicial District Court of Weber County, State of Utah.

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FILED

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COURT OF APPEALS

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Plaintiff/Respondent	:	
	:	
vs.	:	Case No. 870559-CA
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TABLE OF CONTENTS

JURISDICTION.....1
STATEMENT OF THE CASE.....1
STATEMENT OF THE ISSUE PRESENTED ON APPEAL.....1
STATEMENT OF THE FACTS.....2
SUMMARY OF THE ARGUMENT.....4
ARGUMENT.....4

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

CONCLUSION.....6
ADDENDUM.....6

TABLE OF AUTHORITIES
CASES CITED

Jackson v. Virginia, 443 U.S. 307 (1979).....5
State v. Booker, 709 P.2d 342, (Utah 1985).....4
State v Howell, 649 P.2d 91 (Utah 1982).....4
State v. Kerekes, 622 P.2d 1161 (Utah 1980).....4
State v. Linden, 657 P.2d 1367 (Utah 1983).....4
State v. McCardell, 652 P.2d 942, (Utah 1982).....4
State v. Petree, 659 P.2d 443, (Utah 1983).....4
In re Winship, 397 U.S. 358, (1970).....5

STATUTORY AUTHORITY

Utah Code Annotated, Section 77-35-26(2)(a).....1
Utah Code Annotated, Section 76-2-202(1).....5

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Defendant/Appellant	:	

JURISDICTION

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

STATEMENT OF THE CASE

This is an appeal of a jury conviction on a charge of Burglary, a third degree felony, before the Honorable Judge John F. Wahlquist. The Defendant was found guilty of Burglary, a third degree felony, on October 29, 1987. Defendant was sentenced to serve a term of 0-5 years in the Utah State Prison on October 29, 1987. The Notice of Appeal was filed on November 25, 1987.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

The Defendant is appealing his conviction for Burglary, a third degree felony, upon the grounds that the evidence as presented at trial was insufficient to support a finding of guilt.

STATEMENT OF THE FACTS

On or about the sixth day of September 1987, at approximately 3:20 a.m. defendant was a passenger in a 1973 Buick Century that was stopped by officers of the Ogden Police Department for investigation into a burglary that had occurred minutes before.

The burglary was committed at a Mini-Mart at the corner of 12th Street and Canyon Road in Ogden, Utah. At approximately 3:22 a.m. Brenda Udy reported a burglary in progress and the report was broadcast over the police dispatch (Transcript at 27).

Officer George Kruitbosch, of the Ogden Police Department was the first to respond to the scene of the crime.

Officer Kruitbosch radioed dispatch of the direction the suspect car was traveling and that there were at least three males of unknown description. Based upon officer Kruitbosch's description, officer Rick Stuart of the Ogden Police Department proceeded toward Monroe Boulevard via 24th Street. As the patrol car in which officer Stuart was driving turned North on Monroe Boulevard, he observed the 1973 Buick Century moving at a slow rate of speed heading South on Monroe Boulevard. As the cars passed each other the officers observed that the rear license plate of the Buick was not illuminated, and they made a U-turn and pulled the Buick over in the 900 Block of 24th Street.

When the officers pulled the suspect car over and questioned the occupants, they observed beer in the back seat, the brand of which was Budweiser. After talking with officer Kruitbosch over

the radio it was determined that Budweiser beer had been stolen during the burglary of the Mini-Mart. The defendant was observed in the back seat with a case of Budweiser beer between his legs. Defendant was asked to exit the vehicle and upon exiting the vehicle the officers observed glass fragments in his hair and on his clothing. The officers also determined that he was wearing a gray sweatshirt. The officers then matched the lot numbers of the beer in the car with the lot numbers on some cans of beer that had been left at the scene of the crime.

Defendant was arrested for burglary and booked into the Weber County Jail. He plead not guilty at his arraignment in District Court and trial was set for October 27, 1987. Following a two day trial, the Defendant was found guilty of burglary. The Defendant requested that the trial court sentence him immediately. The Defendant was sentenced to serve a term in the Utah State Prison of from zero to five years at the Utah State Prison.

Officer Kruitbosch testified at trial that he arrived at the scene at approximately 3:27 a.m. and upon arrival he contacted Ms. Udy who indicated that she had heard yelling and glass breaking, and had observed two individuals by the Mini-Mart. The only description that Ms. Udy could give was that one of the individuals was wearing a gray sweatshirt. She also told officer Kruitbosch that the individuals got into the car and proceeded along Canyon Road toward Monroe Boulevard.

SUMMARY OF THE ARGUMENT

The Defendant contends that the State failed to prove, beyond a reasonable doubt, that the defendant committed Burglary, a third degree felony.

ARGUMENT

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

Appellant contends that the evidence presented by the State at trial was insufficient to sustain the jury's verdict of guilty in this case. The Utah Supreme Court, in the recent past has recognized the duty of a reviewing court to review a case on the sufficiency of the evidence where the issue is properly presented. Most recently, the Supreme Court of Utah in State v. Booker, 709 P.2d 342, 345 (Utah 1985) stated:

We 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 of which he was convicted.

Citing State v. Petree, 659 P.2d 443, 444 (Utah 1983); accord State v. McCardell, 652 P.2d 942, 945 (Utah 1982). See also, State v. Linden, 657 P.2d 1367 (Utah 1983); State v Howell, 649 P.2d 91 (Utah 1982); State v. Kerekes, 622 P.2d 1161 (Utah

1980).

This standard restates the Due Process requirements which prohibit a criminal conviction in all cases except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which a defendant is charged. Jackson v. Virginia, 443 U.S. 307 (1979); In re Winship, 397 U.S. 358, 364 (1970).

Section 76-6-202 Utah Code Annotated 1973, places a burden of proof upon the State to prove beyond a reasonable Doubt that "A person...enters or remains unlawfully in a building or any portion of a building with intent to commit a felony or theft or commit an assault on any person....," and in the absence of such proof, the defendant must be acquitted.

In applying the above standard of review to the present case, it is clear that the jury's verdict was against the clear weight of the evidence. There was no evidence given at the trial that would establish conclusively that the Defendant was the man in the grey sweat shirt that Ms. Udy identified, or that the beer in the possession of the Defendant came from the Mini-Mart in question. Beer from the same case lot went to other stores too.

The testimony of the driver of the suspect car indicated that Mr. Bustos had only recently entered the car, and that he was picked up several miles from the scene of the crime (Transcript at 167). It would have been impossible for the Defendant to travel that distance in the amount of time involved.

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 June, 1988.

TED K. GODFREY

Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that I mailed four (4) true and correct copies of the foregoing Brief of Appellant, postage prepaid, on this _____ day of June, 1988, to the following:

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