1986

State of Utah v. Mark Renfro : Brief of Appellant

Utah Supreme Court

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Gregory M. Warner; Aldrich, Nelson, Weight and Esplin; Attorney for Respondent.

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff-Appellant, : Case No. 860101

-v- :

MARK RENFRO, : Category No. 2

Defendant-Respondent. :

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DOCKET NO. 860101

BRIEF OF APPELLANT

APPEAL FROM AN ORDER OF DISMISSAL IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH, THE HONORABLE CULLEN Y. CHRISTENSEN, JUDGE, PRESIDING.

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-v-	:	
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BRIEF OF APPELLANT

STATEMENT OF ISSUES PRESENTED ON APPEAL

The sole issue in this appeal is whether the trial court erroneously dismissed the charge of arranging to distribute a controlled substance for value against defendant.

STATEMENT OF THE CASE

Defendant, Mark Renfro, was charged with arranging to distribute a controlled substance for value under UTAH CODE ANN. § 58-37-8(1)(a)(iv) (Supp. 1983) (amended 1985) (R. 14). After a bench trial, the trial court granted defendant's motion to dismiss (R. 43-45). The State appeals from the order of dismissal.

STATEMENT OF FACTS

On March 28, 1985, two undercover officers from the Provo City Police Department went to defendant's residence in Orem, Utah. There, they talked to defendant about purchasing some marijuana. Defendant went into another room of the house and returned shortly with a small shaving kit that contained marijuana. He then agreed to sell marijuana to the officers,

exchanging four half-ounce bags of the substance for a total of two hundred dollars in cash. After the transaction was completed, the officers left (R. 60-62).

At trial, the court received the evidence summarized above. After hearing argument, the court took the matter under advisement. It subsequently issued a memorandum decision dismissing the charge against defendant on the ground that he should have been charged with distribution for value of a controlled substance under UTAH CODE ANN. § 58-37-8(1)(a)(ii) (Supp. 1983) (amended 1985) rather than with arranging to distribute for value a controlled substance under UTAH CODE ANN. § 58-37-8(1)(a)(iv) (Supp. 1983) (amended 1985) (R. 43-45, 66-80) (a copy of the court's decision is contained in the Addenedum).

SUMMARY OF ARGUMENT

Because the evidence clearly established a violation of § 58-37-8(1)(a)(iv), the trial court erroneously dismissed the charge filed against defendant. That the evidence may also have established a violation of § 58-37-8(1)(a)(ii) is of no consequence.

INTRODUCTION TO ARGUMENT

This brief should be read in conjunction with the State's briefs filed in two other cases having related issues -- State v. Fixel, Case No. 860151, and State v. Fixel, Case No. 860173.

ARGUMENT

POINT I

THE TRIAL COURT ERRONEOUSLY DISMISSED THE CHARGE FILED AGAINST DEFENDANT.

The State charged defendant under § 58-37-8(1)(a)(iv), alleging that he "did knowingly and intentionally agree, offer, consent, arrange to negotitate [sic] to distribute for value Marijuana, a Schedule I controlled substance" (R. 14). There is no doubt that the evidence established a violation of § 58-37-8(1)(a)(iv) as it was charged in the information. Clearly, defendant agreed, consented, offered or arranged to sell the officers marijuana prior to distributing it to them. The trial court's memorandum decision does not dispute this, instead holding that defendant should have been charged under § 58-37-8(1)(a)(ii) because the evidence clearly established a violation of that section.

Obviously concerned with this Court's decision in State v. Ontiveros, 674 P.2d 103 (Utah 1983) (which the State asks the Court to overrule in the Fixel cases cited above), the prosecutor in defendant's case, in response to the trial court's inquiry regarding the way the case was charged, explained the decision as follows:

> This case could be charged either way, your Honor. And since they are both the same offense he's got no right to claim one specifically under the other. The drawback charging distribution for value is the fact that it automatically becomes a defense if the person goes in the other room and gets it. Because then he can say: well, I got it from another person in the other room, or: I gave the money to somebody else; or: I didn't make any profit. And by charging "arranging" we are eliminating those types of concessions, your Honor. We are saying: it doesn't matter, you took the money and got the marijuana from someone, you are the one who made the arrangements for marijuana; in which case he is the one who made the arrangements for distribution. That is the state's contention in this case.

(R. 70-71). The prosecutor correctly pointed out the problem created by Ontiveros and was fully justified in charging defendant as he did. The elements of the offense defined in § 58-37-8(1)(a)(iv) were proved beyond a reasonable doubt at trial. That a distribution for value also occurred is of no consequence. For the same reasons that completion of an offense does not preclude the charging and conviction of an attempt to commit the offense, see, e.g., State v. Gallegos, 193 Neb. 651, 228 N.W.2d 615 (1975); Lightfoot v. State, 278 Md. 231, 360 A.2d 426 (1976); Perkins and Boyce, Criminal Law 612 (3d ed. 1982), the State was not precluded from charging defendant under the "arranging" provision rather than the distribution for value provision. Therefore, the trial court erroneously granted defendant's motion to dismiss.

CONCLUSION

Based upon the foregoing argument, the trial court's order of dismissal should be reversed.

RESPECTFULLY submitted this 22nd day of August, 1986.

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Attorney General

David B. Thompson

DAVID B. THOMPSON
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and exact copies of the foregoing Brief were mailed, postage prepaid, to Gregory M.

Warner, Aldrich, Nelson, Weight & Esplin, Attorney for Respondent, P.O. Box "L", Provo, Utah 84603, this 22nd day of August, 1986.

David B. Thompson

ADDENDUM

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR UTAH COUNTY
STATE OF UTAH

STATE OF UTAH,	:	REVISED MEMORANDUM DECISION AND ORDER
Plaintiff,	:	GRANTING DEFENDANT'S REQUEST FOR DISMISSAL
vs.	:	
MARK RENFRO,	:	Case No. 9831
Defendant.	:	

This matter came regularly before the Court for trial on December 30, 1985. The defendant had waived his right to trial by jury; the trial was held before the bench. The State of Utah was represented by Deputy County Attorney Kent M. Barry, and the defendant was present and represented by counsel Gregory M. Warner. The Court heard the evidence presented by the State, the defendant offering no evidence and took the matter under advisement. The Court having reviewed the evidence and arguments of counsel, its previous memorandum decision, and having further reconsidered the motions and arguments of counsel, the Court hereby enters the following findings and makes the following order.

FINDINGS

1. The Court finds from the evidence shown that the State's witness, Jim Guynn, and another individual went to the defendant's house in Orem, Utah County , Utah, on March 28, 1985, for the purpose of purchasing marijuana

2. That while there, discussions were held, the results of which were that the officer gave two fifty dollar bills to the defendant in exchange for two small bags of marijuana, which the defendant retrieved from his bedroom inside the residence.

3. The defendant was charged with the offense of Arranging to Distribute a Controlled Substance for Value, and trial was held on that charge. After the parties had both rested their respective cases, the defendant moved to dismiss the charge because of the State's failure to charge Distribution of a Controlled Substance for Value, which he contended was the specific charge governing such conduct, and the State made no effort to amend the Information to that charge.

4. The Court is persuaded that the evidence establishes conduct which is clearly in violation of the statutes of the State of Utah governing the Distribution for Value of Controlled Substances (Section 58-37-8(1)(a)(ii)), as defendant contends, and that the defendant should have been charged under that offense rather than with Arranging to Distribute a Controlled Substance for Value (Section 58-37-8(1)(a)(iv).

ORDER

Because of the State's failure to properly charge the defendant with the offense of Distribution for Value rather than Arranging, the Court grants the defendant's motion to dismiss and hereby orders that the charge against the defendant in this case, Arranging to Distribute a Controlled Substance for Value, be dismissed against this defendant and that he be discharged.

DATED this 29 day of January, 1986.

BY THE COURT:

Cullen Y. Christensen

CULLEN Y. CHRISTENSEN
DISTRICT COURT JUDGE