

1988

Salt Lake City v. Barney G. Powell : Brief of Respondent

Utah Court of Appeals

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Charles F. Loyd, Jr.; Salt Lake Legal Defender Association; Attorney for Apellant.

Roger F. Cutler; Sale Lake City Attorney; Cecelia M. Espenoza; Assistant City Prosecutor; Attorneys for Respondent.

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COURT OF APPEALS
BRIEF

UTAH
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FILE

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

880298 CA

SALT LAKE CITY, a)	
Municipal Corporation,)	Case No. 880298-CA
)	
Plaintiff/Respondent,)	Appeal Priority 2
)	
vs.)	
)	
BARNEY G. POWELL,)	
)	
Defendant/Appellant.)	

BRIEF OF RESPONDENT SALT LAKE CITY

Appeal from a conviction and judgment in the Third Judicial Circuit before the Honorable Philip K. Palmer, of Count I Obedience to a Semaphore, an Infraction; Count II, No Insurance, a Class B Misdemeanor and; Count III, No Valid Utah Drivers License, a Class B Misdemeanor.

ROGER F. CUTLER,
Salt Lake City Attorney
CECELIA M. ESPENOZA,
Assistant City Prosecutor,
451 South 200 East, Suite 125
Salt Lake City, Utah 84111
Telephone: (801) 535-7767

Attorneys for Respondent

CHARLES F. LOYD, JR.,
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300,
Salt Lake City, Utah 84111
Telephone: 532-5444

Attorney for Appellant

FILED

FEB 17 1990

Mary T. N.
Clerk of the
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

SALT LAKE CITY, a)	
Municipal Corporation,)	Case No. 880298-CA
)	
Plaintiff/Respondent,)	Appeal Priority 2
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vs.)	
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BARNEY G. POWELL,)	
)	
Defendant/Appellant.)	

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ROGER F. CUTLER,
Salt Lake City Attorney
CECELIA M. ESPENOZA,
Assistant City Prosecutor,
451 South 200 East, Suite 125
Salt Lake City, Utah 84111
Telephone: (801) 535-7767

Attorneys for Respondent

CHARLES F. LOYD, JR.,
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300,
Salt Lake City, Utah 84111
Telephone: 532-5444

Attorney for Appellant

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STATEMENT OF ISSUES

1. Was the admission of evidence from the defendant's alleged insurance company a clear abuse of discretion?
2. Was the evidence sufficient to support the verdict?

JURISDICTIONAL STATEMENT

Respondent Accepts Defendant's Statement of Jurisdiction

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

SALT LAKE CITY, a)	
Municipal Corporation,)	BRIEF OF RESPONDENT
)	SALT LAKE CITY
Plaintiff/Respondent,)	
)	Case No. 880298-CA
vs.)	
)	Appeal Priority 2
BARNEY G. POWELL)	
)	
Defendant/Appellant.)	
)	
)	
)	

STATEMENT OF THE CASE

Respondent, Salt Lake City, accepts defendant Powell's Statement of the case.

STATEMENT OF FACTS

Respondent, Salt Lake City, accepts Defendant's Statement of Facts except to note that the victims total damages was not \$738.00. That sum represents her loss after her insurance company paid the value of the car to her loan holder. Her vehicle was totaled as a result of the accident. The \$738.00 was the balance on the loan after payment of blue book from her insurance to the loan holder. (Tr. 25-26).

Respondent also notes that the Plaintiff/Respondent is Salt Lake City and not the "State" as referred to in Defendant's Statement of Facts.

ARGUMENT

POINT I

INSURANCE EVIDENCE WAS PROPERLY ADMITTED
PURSUANT TO A HEARSAY EXCEPTION.

Defendant-Powell alleges that evidence demonstrating that he had no insurance was improperly admitted hearsay and that all other evidence was insufficient to sustain the verdict. Defendant-Powell's contentions agree without merit. Defendant-Powell has failed to meet his burden showing that the evidence, taken in a light most favorable to the verdict, fails to support the verdict as is required on appeal. State v. Booker, 709 P.2d 342 (Utah 1985) and State v. Gabaldon, 735 P.2d 410 (Ut. App. 1987) clearly state that the standard of review on appeal requires that the evidence be viewed in the light most favorable to the verdict. Applying that standard to the facts of this case it is clear that the evidence supports the findings of guilt.

In regards to defendant-Powell's allegation regarding the admission of exhibit marked State's Exhibit P-1 (Record 19), plaintiff Salt Lake City, submits that it was properly admitted.

The defendant-Powell, may have failed to specify grounds for his objection but he did make the objection. The court specifically asked "Do you object to the exhibit being admitted?", and the defendant-Powell, responded "Yes". (Transcript 6). The court then evaluated the letter and after deliberation admitted it as a business record exception to the hearsay rules. (Transcript 6). An appellate court will not

overturn a trial court admission of evidence in the absence of a showing of abuse of discretion. State ex rel. Marquez, 560 P.2d 342 (Utah 1977).

Utah Rules of Evidence 802 (6) and (7) allow hearsay when

(6) Records of regularly conducted activity.

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of ever kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6).

Evidence that a matter is not included in the memoranda, reports, records, or data compilation, in any form, kept in accordance with the provisions of paragraph (6), to prove the non-occurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

The letter submitted as States Exhibit #1, (Record 19) was the original letter sent to the witness, pursuant to a regular business inquiry and practice made in the regular course of business. It was prepared by the Hartford Insurance Company to address business matters which were within the knowledge of its preparor. It was presented by the custodian, receipt Ms. Williams and was properly admitted by the court under Rule 802(6).

Furthermore, the letter was the original sent to the witness and therefore, the "best evidence rule" referred to in Powell's brief would not apply. The best evidence rule states:

To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in these rules or by other rules adopted by the Supreme Court of this State or by Statute.

Utah Rules of Evidence 1002.

Examination of the exhibit proves that it was an original for purposes of the section and therefore admissible.

There was no abuse of the courts discretion, to require evidentiary exclusion. State v. Schereuder, 726 P.2d 1215 (Utah 1986). Therefore, the evidence was properly admitted and the verdict should not be overturned on appeal.

However, even if this court should find that the exhibit should not have been admitted its admission was merely cumulative of testimony given by Ms. Williams and therefore its admission constituted harmless error. The evidence which supports the conviction was:

CE: Miss Williams, after you had obtained that information and had gone to the hospital, did you take any further action in regard to this accident?

A: Yeah, I called his insurance that was listed on the accident for that day.

CE: Do you recall what insurance that was?

A: Hartford.

CE: Miss Powell [sic Williams], based on your conversation, did you obtain any personal knowledge in regards to the insurance?

A: At that date, they told us they would have to review the policy and then a week later, my husband kept calling them, and they said they were still researching it.

CE: What I need to know is what you, personally, learned about the insurance.

A: That he did not have any.
(Transcript 5 emphasis added).

This evidence was not contradicted by the defendant Powell and was sufficient to support his conviction of no insurance. Therefore the verdict should be affirmed.

POINT II

CREDIBILITY OF WITNESSES IS LEFT TO THE TRIER OF FACT AND THE EVIDENCE IN THIS CASE SUPPORTS DEFENDANT POWELL'S CONVICTION.

Defendant-Powell's second contention is that the evidence was insufficient to find him guilty of running a red light. The credibility of the witnesses is left to the trier of fact and is also viewed in the light most favorable to the verdict. State v. Gabaldon, supra, State v. Petree, 659 P.2d 443 (Utah 1983).

In this case two witnesses testified that the light was red when the defendant attempted to go through the intersection and collided with Ms. Williams car. Ms. Williams (Transcript 4) and Mr. Greg Engeman. (Transcript 10,11).

The judge specifically found in evaluating the evidence:

"that you [defendant] did violate the red light semaphore. I believe the testimony of Mr. Engeman is persuasive on that matter. He saw you run the light. I'm going to believe him because he has no particular interest in this case...He is a credible witness"
(Transcript 24)

The evidence supports the conviction and therefore it should be affirmed.

CONCLUSION

The court below properly evaluated the evidence before it and found the defendant guilty of Failing to Obey a Semaphore; No Insurance and No Valid Utah Driver's License. The convictions should be affirmed.

Respectfully submitted this _____ day of _____, 1989.

CECELIA M. ESPENOZA,
Attorney for Plaintiff/Respondent

MAILING CERTIFICATE

I hereby certify that I MAILED/DELIVERED ⁴ a true and correct copy of the above Brief of Respondent, to Charles F. Loyd, Jr., Salt Lake Legal Defender Association, Attorney for Defendant/Appellant, 424 East 500 South, Salt Lake City, Utah 84111 this _____ day of _____, 19 _____.
