

1978

## State of Utah v. Denon Jones : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

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STATE OF UTAH, :  
Plaintiff-Respondent, :  
-vs- : Case No.  
DENON JONES, : 15705  
Defendant-Appellant. :  
----- : -----

BRIEF OF RESPONDENT

----- : -----  
APPEAL FROM THE JURY VERDICT OF THE  
SECOND JUDICIAL DISTRICT COURT, IN  
AND FOR WEBER COUNTY, STATE OF UTAH,  
THE HONORABLE CALVIN GOULD, JUDGE  
----- : -----

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IN THE SUPREME COURT OF THE  
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STATE OF UTAH, :  
Plaintiff-Respondent, : Case No.  
-vs- : 15705  
DENON JONES, :  
Defendant-Appellant. :  
----- : -----

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant was charged by information with having violated Utah Code Ann. § 58-37-8(1)(a)(ii), 1953, by distributing for value a controlled substance, heroin.

DISPOSITION IN THE LOWER COURT

The case was tried to a jury with the Honorable Calvin Gould presiding. The appellant was found guilty of the offense charged in the information, and was sentenced to the Utah State Prison for a term not to exceed fifteen (15) years.

RELIEF SOUGHT ON APPEAL

The respondent seeks an affirmation of the lower court's decision.

## STATEMENT OF FACTS

On October 17, 1977, the appellant was the object of a "controlled buy" conducted by the narcotics division of the Ogden Police Department. Annette Stubbs, a known prostitute and addict who had agreed to work with the police, was utilized as an undercover agent and was the principal witness for the state.

Appellant's name was selected that evening by the police officers involved from a list of dealers provided early by Miss Stubbs (T.13). Miss Stubbs was strip-searched by two female police officers and found to have no drugs or drug paraphernalia on her person (T.57). She was then instructed to telephone the appellant and "set up the buy." (T.14). Miss Stubbs then called the appellant on the telephone and told her she would "be down in about 15 minutes" and hung up. Nothing was said concerning a purchase of drugs over the phone (T.83). Miss Stubbs noted that appellant had requested that she never make such references over the phone (T.84). Officer Pitcock then gave Miss Stubbs two empty syringes and \$60.00 (T.14).

As police officers watched from four separate surveillance posts, Miss Stubbs was let off near appellant's home (T.16) they saw her walk to the home and go in (T.17) 15 minutes later, she was watched as she came out and walked several blocks and down an alley to a waiting police car (T.18).

Miss Stubbs gave Officer Pitcock back the two syringes. One syringe was empty, the other was half full of a reddish substance (T.20). Officer Pitcock was able to positively identify the syringes as those which had been given to Miss Stubbs earlier by observing small marks which he had made upon them without her knowledge (T.21,25). The reddish substance was positively identified by a police chemist, James Gaskill, as heroin and a small amount of blood (T.160,161). Miss Stubbs was again strip-searched by the two female officers and found, again, to have no contraband or money with her (T.59). Appellant was not arrested immediately, but, rather, a number of days later in order to protect Miss Stubbs' cover (T.32,33).

Annette Stubbs testified that appellant had sold her two balloons of heroin for \$60.00 (T.85). She said that he watched that night as she prepared the syringe and began to inject herself, but then left the room briefly (T.86). When he left, she switched the half full syringe for the empty one and acted as if she were cleaning it out (T.86). She then left and returned both syringes to Officer Pitcock.

At one point, the prosecuting attorney asked Miss Stubbs if she had ever carried out an act of prostitution in appellant's house (T.79). Over defense counsel's objection, she stated that in the past she had often taken "tricks" to his home and paid him \$5.00 for the use of a bedroom, after

which she would purchase heroin from him with the proceeds (T.80). Elsewhere, she described her relationship with the appellant as friendly and stated that she had often bought heroin from him (T.78).

Although the appellant denied having ever sold drugs to anybody (T.206), the jury found him guilty as charged of distributing a controlled substance for value.

#### ARGUMENT

#### POINT I

EVIDENCE OF ANNETTE STUBBS' RELATIONSHIP WITH THE DEFENDANT PRIOR TO OCTOBER 17, 1977, WAS PROPERLY ADMITTED AS IT DEMONSTRATED INTENT, PREPARATION, PLAN AND SCHEME OF OPERATIONS.

Although evidence of crimes committed by the defendant other than those covered in the immediate prosecution is generally inadmissible, Utah rules and precedent allow certain exceptions to the rule.

Utah Rules of Evidence, Rule 55 provides:

"Subject to Rule 47 evidence that a person committed a crime or civil wrong on a specified occasion, is inadmissible to prove his disposition to commit crime or civil wrong as the basis for an inference that he committed another crime or civil wrong on another specified occasion but, subject to Rule 45 and 48, such evidence is admissible when relevant to prove

some other material fact including absence of mistake or accident, motive, opportunity, intent, preparation, plan, knowledge or identity." (Emphasis added).

See also State v. Schieving, 535 P.2d 1232, (Utah 1975).

This general principle of evidence was explained by the court in State v. Lopez, 22 Utah 2d 257, 451 P.2d 772 (1969):

"Concededly, evidence of other crimes is not admissible if the purpose is to disgrace the defendant as a person of evil character with a propensity to commit crime and thus likely to have committed the crime charged. However, if the evidence has relevancy to explain the circumstances surrounding the instant crime, it is admissible for that purpose; and the fact that it may tend to connect the defendant with another crime will not render it incompetent." (Id. at 775.)

Appellant contends that evidence concerning Miss Stubbs' prior use of his home for Prostitution and connected purchases of heroin was presented solely to disgrace the appellant or to demonstrate his evil character and should, therefore, have been excluded. Had this been the motivation and purpose for the presentation of the evidence, it should have been excluded. However the appellant is incorrect in asserting that purpose as the motivation behind the introduction of the evidence. When questioned as to the purpose of presenting the evidence, Mr. Gladwell, the prosecuting attorney responded,

"The purpose, even though this type of evidence may have a tendency to inflame the jury, the purpose for admitting this kind of evidence is number one, to prove identity, to prove she knows who Denon Jones is, and she knows Denon Jones will sell her heroin.

Another purpose is to show knowledge and intent. Why did he invite her to come down that evening on the basis of a simple phone call? What was the intent. His intent on accepting her in the house that evening. Why had she gone in there. And you know, dozens of other occasions prior to that. What was the intent of him receiving her into the home. Preparation, plan, motive, a scheme of operation. All of these things, your Honor, we intend to prove by presenting evidence regarding the relationship between the defendant and Annette Stubbs." (T.66).

Mr. Gladwell also noted that the prosecution had no intention of putting the appellant's character in issue (T.67).

Although the circumstantial evidence surrounding the "controlled buy" was carefully prepared and demonstrated with virtual certainty that Miss Stubbs obtained heroin with appellant's home, certain important questions were left unanswered without the additional testimony regarding Miss Stubbs' prior relationship with appellant. How could Miss Stubbs afford to buy heroin by calling on the phone late at night and simply asking if she could come over, without any mention of a drug purchase? How did she know that she could get heroin from appellant? How did she know to take syringes with her--that she would not be allowed to carry the drug out of the house? How did she know how much money she would need?

Through the presentation of Miss Stubbs' testimony concerning prior dealings with the appellant, the state was able to demonstrate why she knew heroin was available for \$30.00.

quarter-teaspoon in the appellant's house (T.78). The state was able to show that an on-going business relationship involving use of and entry into appellant's home and the purchase of heroin existed between appellant and Annette Stubbs (T.79,80).

In State v. Tuggle, 28 Utah 2d 284, 501 P.2d 636 (1972), this Court pointed out that "ordinarily the admissibility of evidence is for the trial court, and in the absence of an abuse of discretion on the part of the court, the ruling will not be disturbed on appeal." (Id. at 637) This Court has further noted, in State v. Lopez, supra, that "such harm as there may be in receiving evidence concerning another crime is to be weighed against the necessity of full inquiry into the facts relating to the issues." (Id. at 775).

In the present case the trial judge exercised sound discretion in admitting the above-noted evidence. He was given ample opportunity to consider its portent before it was admitted and he allowed it in. Clearly, in his view, the importance of the evidence in explaining the situation and putting the entire matter before the jury out-weighed any prejudicial effect it may have had upon the jury. In the absence of any clear showing of an abuse of discretion, the trial judge's ruling on this matter should stand.

In view of the strength of evidence presented by the prosecution concerning the "buy" which demonstrated that Miss Stubbs entered appellant's home with \$60.00 and no heroin and came out without the money but with a quantity of heroin plus Miss Stubbs' testimony that she had, on that night, purchased heroin from the appellant, the state contends that appellant was not substantially prejudiced by the admission of evidence explaining the circumstances preceding the actual crime being prosecuted.

#### CONCLUSION

The evidence claimed by appellant to be erroneously admitted was not admitted for the purpose of demonstrating the accused's evil nature or character, but, rather, was for the permissible purpose of explaining the circumstances surrounding the crime in order to demonstrate intent, preparation, plan and scheme of operation. These are legitimate reasons for the introduction of the evidence and the fact that the evidence tends to show that the appellant had committed other crimes does not render the evidence incompetent.

For these reasons the state urges the court to uphold the verdict and judgment of the lower court.

Respectfully submitted,

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