1986

The State of Utah v. James Samuel Bingham : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

860292

THE STATE OF UTAH, :

Plaintiff-Respondent, : Case No. 860292

-v- :

JAMES SAMUEL BINGHAM, : Priority No. 2

Defendant-Appellant. :

BRIEF OF RESPONDENT

APPEAL FROM A CONVICTION OF POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE FOR VALUE IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY, THE HONORABLE RAY M. HARDING, DISTRICT JUDGE, PRESIDING.

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STATEMENT OF THE ISSUE

1. Was the evidence sufficient to support defendant's conviction of possession of a controlled substance with intent to distribute for value?

IN THE SUPREME COURT OF THE STATE OF UTAH

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JAMES SAMUEL BINGHAM,	:	Priority No. 2
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BRIEF OF RESPONDENT

STATEMENT OF THE CASE

Defendant, James Samuel Bingham was charged with possession of a controlled substance with intent to distribute for value, third degree felonies in violation of Utah Code Ann. § 58-37-8(1)(a)(ii) (1986 Rep. Vol.).

Defendant was convicted of possession of a controlled substance with intent to distribute for value, in a jury trial held on April 21, 1986, in the Fourth Judicial District Court, in and for Utah County, State of Utah, the Honorable Ray M. Harding, Judge, presiding. Defendant was sentenced by Judge Harding on May 16, 1986 to the Utah State Prison for not more than five years. Execution of the sentence was suspended and defendant was placed on probation for a period of eighteen months.

STATEMENT OF THE FACTS

On August 19, 1984, defendant, James Samuel Bingham began work at Aspen Nursery & Mower (R. 194). After a few days on the job, defendant's boss, Steve Ellis introduced defendant to Ellis' brother, Paul Naase (R. 233). Prior to this initial meeting defendant and Naase had never met (R. 223, 177). A week

or so after the initial encounter, defendant agreed to purchase Naase's 1973 Monte Carlo for five hundred dollars (R. 171). Sometime prior to August 24, 1984 Naase signed the title transferring ownership of the car to defendant. Naase's second signature on the title was later notarized August 24, 1984 (R. 207, 208), the only document recording defendant's five hundred dollar payment to Naase (R. 219).

Six days following the notarizing of the transfer of the title from Naase to defendant, defendant visited his friends Joe and Odessa Smith to show them the car (R. 218). While engaged in a high speed demonstration for his friends defendant caught the attention of Provo Police Officer Webber. Webber pulled over the vehicle and flagged down fellow Police Officer Long (R. 155). Because of defendant's intoxicated state (R. 227), and the smell of alcohol coming from the car (R. 140), Long began a routine search for an open container within the vehicle (R. 150). Believing such a container may have been placed within the glove compartment, Long opened the compartment (R. 156). Inside the glove-box Long found a baggie containing one ounce of marijuana (R. 142, 157), a bundle of empty baggies he believed once contained marijuana (R. 158), and a set of scales (R. 158) used by drug dealers to break larger quantities of marijuana into smaller, more readily sellable fractions (R. 186). These scales functioned to measure quantities less than five-sixteenths (5/16) of an ounce (R. 168), quantities normally sold on the street (R. 188).

After Officer Webb read defendant his rights, defendant consented to Officer Long's request to look inside the trunk (R. 142, 159). Among the numerous items found therein, partially hidden beneath the spare tire, inside a pair of green saddle bags (R. 144, 145, 159) the police found sixteen additional sandwich bags containing marijuana (R. 145). Each of the sixteen bags contained roughly one ounce of the controlled substance (R. 185).

Testimony submitted by Provo Police Narcotics Officer Stan Egan indicated the 1984 street value of the marijuana ranged between fifty and seventy-five dollars per baggie (R. 185). The street value of the entire quantity of marijuana was at least between eight hundred fifty and one thousand two hundred seventy-five dollars, or roughly between one and one half to two and one half times the amount of money for which Naase sold defendant the vehicle.

Following defendant's arrest, defendant again exercised dominion over the vehicle by paying to recover it from impoundment (R. 225).

SUMMARY OF ARGUMENT

The evidence in this case sufficiently established a nexus between defendant and the marijuana found in defendant's vehicle to support the conviction of possession of a controlled substance with intent to distribute for value. The jury was not required to believe defendant's claim that the car in which the marijuana was found was not his but was free to believe that he had purchased it a few days prior to his arrest.

ARGUMENT

POINT I

SUFFICIENT EVIDENCE WAS PRODUCED AT TRIAL TO SUSTAIN THE JURY VERDICT OF FINDING DEFENDANT GUILTY OF POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE FOR VALUE.

Defendant's appeal arises out of his conviction of possession of marijuana with the intent to distribute for value. Utah Code Ann. § 58-37-8(1)(a) (1986 Rep. Vol.) provides:

> Except as authorized by this Act, it shall be unlawful for any person knowingly and intentionally . . . (ii) to distribute for value or possess with intent to distribute for value a controlled . . . substance.[1]

This Court stated that: "A conviction for possession of a controlled substance with intent to distribute requires proof of two elements: (1) that defendant knowingly and intentionally possessed a controlled substance, and (2) that defendant intended to distribute the controlled substance to another." State v. Fox, 709 P.2d 316 (Utah 1985). The jury, as trier of fact, found the evidence was sufficient to establish these elements beyond a reasonable doubt.

Defendant contends that the State failed to establish the element of knowing and intentional possession. He claims the State did not show that he knew of or intentionally possessed the controlled substance because of the non exclusive occupancy of the vehicle where the controlled substance was found and the fact that defendant denies owning the vehicle he was driving in spite of evidence to the contrary.

[1] Defendant's brief mistakenly cites the statute upon which defendant was charged and convicted as 58-37-8(1)(a)(2)(:).

Defendant does not challenge the sufficiency of the evidence regarding the nature of the substance found in the vehicle. He concedes that marijuana was, in fact, located both within the glove compartment as well as the trunk of the car he was driving. Nor does he challenge the fact that sufficient quantities of the controlled substance were discovered along with other evidence, such as drug paraphernalia, to indicate that the person possessing the controlled substance indeed had an intent to distribute them for value?[2]

As a general principle, to successfully challenge the sufficiency of the evidence sustaining his conviction, the defendant must show "the evidence is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that defendant committed the crime of which he was convicted." State v. Roberts, 711 P.2d 235 (Utah 1985), citing State v. Petree, 659 P.2d 443, 444 (Utah 1983).

In State v. Anderton, 668 P.2d 1258 (Utah 1983) the court said:

> It lies within the prerogative of the trial court to weigh the evidence and determine

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[2] A sale or transaction is not necessary to show an intent to sell. State v. Jung, 506 P.2d 648 (Ariz. Ct. App. 1973). Evidence of the quantity of the controlled substance alone is sufficient to infer an intent to sell for value. See State v. Carlson, 635 P.2d 72 (Utah 1981); State v. Simpson, 541 P.2d 1114 (Utah 1975) (800 pounds of marijuana); and State v. Bankhead, 30 Utah 2d 135, 514 P.2d 800 (1973) (380 balloons of heroin). The amount of marijuana seized in the instant case includes 17 one ounce baggies. Expert testimony was offered by Officer Egan that the amount of marijuana found was too much for the defendant to personally use (R. 186-188). Further the State presented evidence that any drug-related paraphernalia which could be used for the packaging and sale of marijuana was also found.

> the credibility of the witnesses, and this court should not substitute its judgment for that of the trial court on issues of fact that are supported by substantial, credible and admissible evidence.

Id at 1263. A conviction of possession of a controlled substance may be based on constructive possession. This court stated that:

> Unlawful possession does not necessarily mean that the substance be found on the person of the accused or that he have sole and exclusive possession thereof. All that is necessary is that the accused have constructive possession where the contraband is subject to his dominion and control.

State v. Carlson, 635 P.2d 72, 74 (Utah 1981). "In every case, the determination that someone has constructive possession of drugs is a factual determination which turns on the particular circumstances in each case." State v. Fox, 709 P.2d 316, 319 (Utah 1985).

In the case at hand, the former owner of the vehicle signed over the title to defendant and had it notarized some six days prior to defendant's arrest. None of the defendant's or the State's witnesses corroborated defendant's testimony that defendant was still "test driving" the car after the title was signed by Naase and notarized. Both at the time of the arrest and afterwards, defendant exercised dominion and control over the vehicle. At the time of the arrest defendant was driving the vehicle (R. 140). After the arrest defendant paid for and removed the car from the place where the police had impounded it (R. 225). The notarized title and defendant's exercise of dominion and control over the vehicle both before and after the arrest indicate that the State achieved a sufficient nexus

between the defendant and the vehicle to establish defendant's constructive possession of the drugs.

In State v. Fox this court established the burden of proof in proving constructive possession of narcotics.

> To find that a defendant had constructive possession of a drug or other contraband, it is necessary to prove that there was a sufficient nexus between the accused and the drug to permit an inference that the accused had both the power and the intent to exercise dominion and control over the drug. (emphasis added)

Id at 319; citing United States v. Cardena, 748 F.2d 1019-20 (5th Cir. 1984); United States v. Ruckley, 742 F.2d 1266, 1272 (11th Cir. 1984); United States v. Davis, 562 F.2d 681, 694 (1977) (Bazelon, C.J., dissenting in part, concurring in part).

Perhaps most compelling to the jury in establishing a nexus between the defendant and the drug centered on the value of the controlled substance in relation to the vehicle. The jury apparently refused to believe the former owner of the vehicle would carelessly or intentionally leave in the glove compartment and trunk a quantity of marijuana worth several times the value of the care he just sold. The fact that the former owner and the defendant had only known each other for a few weeks and only in relation to the sale of the vehicle makes such an event even more unlikely. Such a situation is even less likely if, as defendant claims, Naase was simply allowing defendant to test drive the car.

The evidence of defendant's ownership of the vehicle and defendant's exercise of dominion and control over the vehicle before and after the discovery of the marijuana, coupled with the

unlikelihood that the former owner left such a large and valuable quantity of marijuana within the vehicle, together provide sufficient evidence of the jury to reasonably conclude that the defendant constructively possessed the controlled substance notwithstanding his nonexclusive occupancy of the vehicle.

CONCLUSION

Based upon the foregoing, the State requests this Court to affirm defendant's conviction.

DATED this 14th day of November, 1986.

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CERTIFICATE OF MAILING

I hereby certify that I caused four true and accurate copies of the foregoing brief to be mailed by first class mail, postage prepaid, to Gary H. Weight, attorney for appellant, 43 East 200 North, P.O. Box "L", Provo, Utah 84603, this 14th day of November, 1986.

Sandra L. Sjogren by DBT