

1997

State of Utah v. Raymond Rick Lyman : Appellant's Reply Brief

Utah Court of Appeals

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Rodney G. Snow; Neil A. Kaplan; Clyde, Snow & Swenson; Attorneys for Appellant.

Barnard Madsen; assistant Attorney General; Jan Graham; Attorney General; David R. Brickey; Deputy Iron County Attorney; Attorneys for the Appellee.

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ARGUMENT

I

DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE STATE'S CASE SHOULD HAVE BEEN GRANTED BECAUSE THE SOLELY CIRCUMSTANTIAL EVIDENCE WAS SO INCONCLUSIVE AS TO REQUIRE IMPERMISSIBLE SPECULATION, AND DID NOT EXCLUDE ALL REASONABLE ALTERNATIVE HYPOTHESES

The State argues generally that the jury made reasonable inferences from the evidence in this case, and did not impermissibly speculate. However, the State then constructs a theoretical chain of possible inferences which unwittingly demonstrates the very type of speculation the jury must necessarily have indulged in to return a conviction against Dr. Lyman. There are numerous assumptions, reliance on "facts" not in evidence, and inferential leaps across evidentiary gaps. For example, the State infers that Dr. Lyman removed the missing equipment from the Fitness Center in a duffel bag. (State's Brief at 20.) In fact, there is not a shred of evidence that any witness ever saw Dr. Lyman remove anything from the Fitness Center, nor even saw him in possession of any kind of duffel bag on April 6, 1996. (Record, pp. 1201.) Rather, the 'removal-in-a-duffel-bag' scenario is no more than rank speculation from testimony that Dr. Lyman had typically used a "workout bag" a year and a half earlier. (Record, pp. 1177, 1201.)

The only evidence at the time of Dr. Lyman's motion for judgment of acquittal--all circumstantial--was that Dr. Lyman had been at the Fitness Center, had entered the unlocked utility closet briefly while talking with Chris Delahunty about carpet repairs

(but had not closed the door behind him), and had asked to borrow a putty knife from Chris Delahunty while holding a bucket of joint compound.¹ As argued in Defendant's opening brief, and as stated by the trial court, these actions are as consistent with lawful conduct as with criminal conduct.

The State claims that Defendant has not provided a reasonable alternative hypothesis to the allegations of theft . (State's brief at 23.) Of course, the burden was not on the Defendant to prove his innocence. Rather, the burden remained on the State to exclude beyond a reasonable doubt all reasonable hypotheses of innocence. Moreover, Dr. Lyman did provide a reasonable alternative hypothesis, and it is simple—he was doing maintenance work at the Fitness Center, just as he routinely did every weekend. (Record, pp.1306.)

It is significant, and indicative of the glaring deficiencies in the evidentiary trial record, that this and other reasonable hypotheses were not excluded by the circumstantial evidence presented by the State. As this Court recently reaffirmed in State v. Layman, 953 P.2d 782 (Utah App. 1998):

[W]here the only evidence presented against the defendant is circumstantial, the evidence supporting a conviction must preclude every reasonable hypothesis of innocence. This is because the existence of a reasonable hypothesis of

¹ The State's brief also reviews the testimony of Colleen Lyman as part of the evidentiary record. However, Defendant seeks review of the trial court's denial of his motion for judgment of acquittal at the close of the State's case, so her testimony is not relevant to this appeal.

innocence necessarily raises a reasonable doubt as to the defendant's guilt.

Id. at 786 (citations omitted). Thus, on appeal, “[even] considering the evidence and all reasonable inferences therefrom in a light most favorable to the [verdict]”, the role of the appellate court is to “review the evidence to determine whether it excludes all reasonable hypotheses of [the defendant’s] innocence”. Id. at 787.

In Layman, the defendant’s convictions for possession of a controlled substance with intent to distribute and possession of paraphernalia were reversed. The controlled substance and paraphernalia were on the person of a passenger in defendant’s vehicle. The basis for defendant’s convictions was his presence, his allegedly incriminating conduct (shaking his head) at the time of the traffic stop, and his drug use as evidenced by drugs in his system at the time. The Court found this circumstantial evidence insufficient: “. . . [N]either possibilities nor probabilities can substitute for certainty beyond a reasonable doubt... ‘Criminal convictions may not be based upon conjectures or probabilities and before we can uphold a conviction it must be supported by a quantum of evidence concerning each element of the crime as charged from which the jury may base its conclusion of guilt beyond a reasonable doubt.’ . . . ‘Strong suspicions or mere probabilities are not sufficient.’” Id. at 792 (citations omitted) (emphasis added).

As in Layman, the State’s case was constructed with nothing but “an inference upon an inference that could lead but to conjecture not justifying a conclusion that [guilt

had been proven] beyond a reasonable doubt and to the exclusion of any [other] reasonable hypothesis.” Id. at 787 (citations omitted). In this case, there was not a quantum of evidence that Dr. Lyman either repaired the slit in question or stole the surveillance equipment. Even if the jury made the speculative leap from Dr. Lyman’s possession of a spackling knife to the conjecture that he may have spackled the slit in the maintenance closet, this would be insufficient to sustain the verdict. As the trial court itself correctly noted:

The fact that the Defendant may have covered the hole does not mean he engaged in criminal conduct. Repairing such a hole in one’s own business is at least as consistent with lawful conduct as with criminal conduct.

(Record, p. 338) (emphasis added). The trial court should thus have granted Defendant’s motion for acquittal at the conclusion of the State’s case in order to prevent the jury from making impermissible, speculative leaps across gaps in the evidence in order to convict Dr. Lyman.

II

DEFENDANT’S FELONY CONVICTION MUST BE REDUCED TO A MISDEMEANOR BECAUSE THE STATE PRESENTED NO EVIDENCE OF THE FAIR MARKET VALUE OF THE PROPERTY ON THE DATE OF THE THEFT

As set forth in Dr. Lyman’s opening brief, evidence beyond a reasonable doubt that the fair market value of the surveillance equipment on the date of the theft exceeded \$1000 was required in order to sustain his felony conviction. This is particularly so where that element is the demarcation between a third degree felony

and a Class A misdemeanor. It is dispositive that there was no evidence whatsoever in this case that the fair market value of the stolen equipment exceeded \$1,000 on April 6, 1996.

The State concedes that there was ‘no direct evidence as to fair market value,’ (State’s brief at 28), but argues that the jury could infer value as of April 6, 1996. This is flatly against the weight of legal authority. The cases cited by the State are not contextually persuasive, and none even remotely involve a case where the value is as close to the dividing line as in the case at bar. For example, in Bailey County Appraisal District v. Smallwood, 848 S.W.2d 822 (Tex. App. 1993), the issue was valuation of real property for taxation purposes, which is entirely irrelevant to the standard of proof in a criminal case. In Dawson v. State, 360 So.2d 57 (Fla. Dist. Ct. App. 1978), the issue was whether the value exceeded \$100, and the victim testified that the fair market value of the items stolen was \$235. In Marini v. State, 351 A.2d 463 (Md. 1976), the issue was also whether the value exceeded \$100, and the victim testified that the purchase price of the car was \$2,800 and that he had recently purchased tires for the vehicle costing \$120.

The case of People v. Paris, 511 P.2d 893 (Colo. 1973), cited by the State, actually supports Dr. Lyman’s position. The Court therein held that where the goods were three years old, the “purchase price could not reasonably be equated with the fair market value at the time of taking. In addition, the owner specifically stated on cross-examination that he did not know the fair market value at the time of the commission of

the crime. Without any competent evidence of fair market value, the jury would have had to base its determination of the value of the goods in question at the critical time on pure speculation. The judge properly removed the case from the jury's consideration." Id. at 894-95.

To sustain a felony conviction, the State was required to present evidence of fair market value in excess of \$1,000 on the date of the theft. In accordance with the cases cited in Defendant's opening brief, evidence of an aggregate purchase price alone in this case was not enough, nor was it permissible to allow the jury to speculate on value. The State's own brief demonstrates the legal flaw in its position. The State hypothesizes that "[e]ven if the jury found that the seven year-old VCR was worth only \$100 on the day of the theft, that would still leave \$157.72 of depreciation (or nearly 13%) for the other nine items which were less than five months old." (State's Brief at 31.) The problem, of course, is that the State just picked these numbers out of thin air. There was no evidence that the VCR was worth \$100 or that the other items had depreciated less than 13%. Had the State provided such evidence, it may or may not have been reasonable for the jury to base a felony verdict on that evidence. Without any evidence of fair market value on the date of the theft, however, it was "not proper to leave a jury to the individual ideas of the jurors to determine value." Cannon v. State, 578 S.W.2d 20, 22 (Ark. 1979).

There is no dispute that the total purchase price of all the equipment was \$1,257.73—barely over the critical \$1,000 dividing line between a misdemeanor offense

and a felony offense. There is further no dispute that the VCR was nearly eight years old, and that the other items of significant value--the pinhole camera, variable focus lens and small monitor--were 8 months old.² Most significantly, it is uncontroverted that the State's witness, Roy Houchen, testified that used equipment would have had a lesser value and that he did not know what the fair market value of the surveillance equipment was on the date of the theft. The State accordingly did not meet its burden of proof beyond a reasonable doubt on the element of fair market value of property in excess of \$1,000.

CONCLUSION

For the reasons set forth herein and in Defendant's opening brief, Dr. Lyman's conviction should be reversed, or, in the alternative, reduced to a misdemeanor.

Dated this 20th day of July, 1998.

CLYDE, SNOW & SWENSON



RODNEY G. SNOW

NEIL A. KAPLAN

ANNELI R. SMITH

Attorneys for Defendant/Appellant

² The State argues, with reference for the first time on appeal to Utah's Uniform Commercial Code, that the date of purchase should be the date of payment. However, Roy Houchen clearly testified that the date of purchase for the pinhole camera, variable focus lens and small monitor was August 10, 1995. (Record, p. 1090.) The date of payment was irrelevant to the jury's determination. Thus, the State's "within five months argument" applies only to items with a de minimus initial value.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Appellant's Reply Brief to be mailed, postage prepaid, to the following this 20th day of July, 1998:

Barnard Madsen
Assistant Attorney General
Jan Graham
Attorney General
Heber Wells Building
160 East 300 South, Sixth Floor
Salt Lake City, Utah 84114-0854

David R. Brickey
Deputy Iron County Attorney
97 North Main, Suite 1
P.O. Box 428
Cedar City, Utah 84720


