

1986

Layton City v. Billy E. Noon : Reply Brief

Utah Supreme Court

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Steven L. Garside; attorney for respondent.

J. Frankln Allred, Margo L. James; attorneys for appellant.

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IN THE SUPREME COURT OF THE STATE OF UTAH

860493

DOUGLASS LAYTON CITY,)	REPLY BRIEF OF APPELLANT
)	
Plaintiff-Respondent,)	
)	
-vs-)	Docket No. 860493
)	
BILLY E. NOON,)	
)	
Defendant-Appellant.)	Category No. 2

APPEAL FROM A JUDGMENT OF CONVICTION
SECOND JUDICIAL DISTRICT COURT IN AND FOR
DAVIS COUNTY

HONORABLE DOUGLAS CORNABY, JUDGE

Steven L Garside #4323
Layton City Prosecutor
437 North Wasatch Drive
Layton, UT 84041

Attorney for Respondent

J. Franklin Allred, #A0058
Margo L. James, #4463
321 South 600 East
Salt Lake City, UT 84102

Attorneys for Appellant

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J. Franklin Allred, #A0058
Margo L. James, #4463
321 South 600 East
Salt Lake City, UT 84102

Attorneys for Appellant

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SUMMARY OF ARGUMENT

Points III and IV of plaintiff-respondent's (hereinafter referred to as "Layton City") brief, concerning the proper function of the trier of fact in a trial and this Court's standard of review are inapplicable to the points raised in defendant-appellant's (hereinafter referred to as "defendant"), opening brief concerning lack of probable cause to make an arrest and ineffective assistance of counsel. The appropriate standards for review were set forth in defendant's principal brief and are discussed below again.

ARGUMENT

Defendant agrees with Layton City's statement that the trier of fact may make reasonable inferences based on the direct evidence [Respondent's Brief at 13, citing State v. Kazda, 15 Utah 2d 313, 392 P.2d 486 (1964) and State v. Maestas, 652 P.2d 903 (Utah 1982)], and that the appellate court must assume that the jury believed those aspects of the

evidence which support the verdict [Resp. Br. at 13, citing State v. Smathers, 602 P.2d 708, 709 (Utah 1979)]. However, these statements have no application where the issues raised on appeal are lack of probable cause for arrest and ineffective assistance of counsel.

With regard to Proposition IV, "Standard of Review" (Respondent's Brief at 13) defendant must point out that the cases cited by Layton City in support of the standard it proposes all deal with challenges to the sufficiency of the evidence to support the verdict, not to the challenges raised in defendant's opening brief: lack of probable cause for arrest and ineffective assistance of counsel. See State v. Kerekes, 622 P.2d 1161, 1168 (Utah 1980), State v. Daniels, 584 P.2d 880, 882-3 (Utah 1978), State v. Lairby, 699 P.2d 1187, 1207 (Utah 1984), State v. Haro, 703 P.2d 301, 303 (Utah 1985), State v. Howell, 649 P.2d 91, 97 (Utah 1982), State v. Brooks, 638 P.2d 537, 543 (Utah 1981).

In deciding the existence of probable cause for arrest, this Court has stated:

[t]he determination should be made on an objective standard: whether from the facts known to the officer, and the inferences which fairly might be drawn therefrom, a reasonable and prudent person in his position would be justified in believing that the suspect had committed the offense.

State v. Hatcher, 27 Utah 2d 318, 495 P.2d 1259, 1260 (1972) (fn. omitted) (emphasis added). Since the determination is made based on "facts known to the officer" at the time of the arrest [Hatcher, supra, 495 P.2d at 1260; People v. Severson,

561 P.2d 373, 375 (Colo. App. 1977)], facts later adduced by the officer or revealed at trial are irrelevant. In addition, whether probable cause existed is a question of law to be decided by the trial court, not the trier of fact, and the standard of review is whether the trial court erred in its determination. State v. Eastmond, 28 Utah 2d 129, 499 P.2d 276, 278 (1972). See Brief of Appellant at 5-7 for a discussion as to why probable cause for arrest did not exist.

Ineffective assistance of counsel is, of course, raised for the first time on appeal. In challenging a conviction on this basis,

it is the defendant's burden to show (1) that his counsel rendered a deficient performance in some demonstrable manner, and (2) that the outcome of the trial would probably have been different but for counsel's error.

State v. Geary, 707 P.2d 645, 646 (Utah 1985) (citations omitted). This statement thus sets forth both defendant's burden and the appropriate standard for review on appeal.

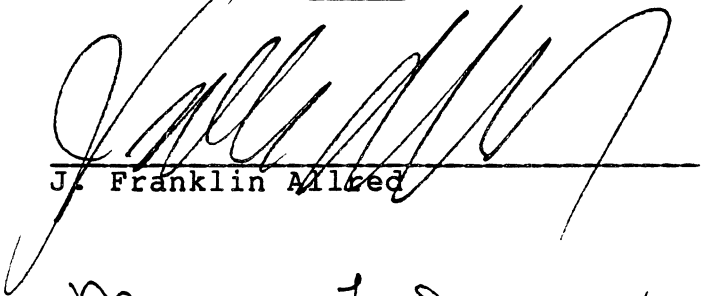
It is obvious that the jury in this case felt that it had been presented with sufficient evidence to find defendant guilty. However, the issue on appeal is whether the same verdict would have been reached but for counsel's errors. "[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support." Strickland v. Washington, 466 U.S. 668, 696, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). Defendant presented several instances of ineffective assistance of counsel in his opening

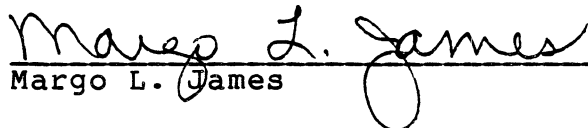
brief and discussed how he was prejudiced thereby. App. Br.
at 7-10.

CONCLUSION

Based upon the arguments in defendant's opening
brief and the above reply to respondent's brief, defendant
urges this Court to find that the errors complained of
require reversal of his conviction.

Respectfully submitted this 14th day of January,
1987.



J. Franklin Allred

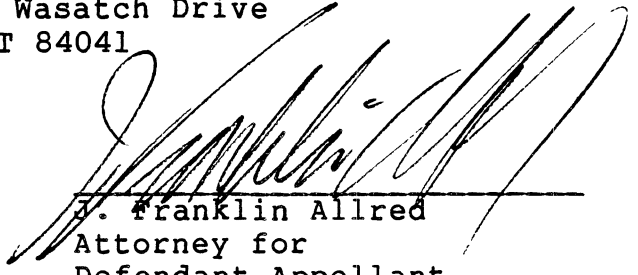
Margo L. James

Attorneys for Defendant-Appellant

Certificate of Service

I hereby certify that four true and correct copies
of the foregoing Reply Brief of Appellant were mailed,
postage prepaid, to the following on this 14th day of
January, 1987.

Steven L Garside
Layton City Prosecutor
437 North Wasatch Drive
Layton, UT 84041



J. Franklin Allred
Attorney for
Defendant-Appellant