

1979

## State of Utah v. Charles E. Kent : Brief of Appellant

Utah Supreme Court

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John T. Cayne; Attorney for Appellants;

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH :

Plaintiff-Respondent, :

-v- :

CHARLES E. KENT, :

Defendant-Appellant :

BRIEF OF APPELLANT

Case No. 2000-0000

BRIEF OF APPELLANT

Appeal from a verdict of guilty in the Second District

District Court, in and for Davis County, the Honorable Judge

K. Swan, presiding.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,

Plaintiff-Respondent,

-v-

Charles E. Kent

Defendant-Appellant.

Case No. 16041

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Charles E. Kent, appeals from a conviction of possession of a controlled substance with intent to distribute for value in the Second Judicial District Court, Davis County, State of Utah.

DISPOSITION IN THE LOWER COURT

The appellant, Charles E. Kent, was found guilty, by the Honorable Thornley K. Swan sitting with a jury, of the crime of possession with intent to distribute for value on May 15th, 1978, and was thereafter sentenced to be committed to the Utah State Prison for the indeterminate term as prescribed by law.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction and a new trial. Counsel on appeal requests permission to

withdraw from the appeal and submits this brief in compliance with Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 93 (1967).

#### STATEMENT OF FACTS

The appellant and co-defendant Steven Ritz Porter, were driving a 1973 Lincoln automobile in the vicinity of State Road 193 and Fairfield Road in Davis County, Utah. The vehicle was stopped by Utah Highway Patrol officers on the basis of information received that the automobile had been stolen. Upon stopping the vehicle, the officers found the appellant and Mr. Porter occupying the vehicle. Appellant explained to the officers that he was lawfully in possession of the vehicle, that he had repossessed the vehicle on behalf of a Mr. Terragrossa, in Texas, and could not understand why the car had been reported stolen. The officers asked appellant if a search of the car could be made and the appellant replied "Yes, we have nothing to hide." (T-P.18)

During the course of the search, the officers found a paper sack located on the front seat in between where the driver and the passenger would be seated. They also discovered bottles rolled up in a white paper sack located in the jockey box. It was later determined that these packages contained a large quantity of the illegal narcotic known as PCP and a cutting agent for PCP. Additionally during a search of Mr. Porter's person, the officers also found some \$600.00 in cash. Both the appellant and Porter testified that the car had been repossessed by Mr. Kent from another individual, at the direction of Mr. Terragrossa and that subsequent to the repossession the car had been idle for a period of time approximately one month, and had

not been driven, so that in effect, Mr. Kent merely had temporary custody of the vehicle during a period of time while he was awaiting instructions from Terragrossa in Texas on how to deliver the vehicle back to Texas. Both the appellant and Porter testified that they did not know about the sack which was located in the seat of the vehicle, as it had rolled from underneath the seat when they had brought the vehicle to a stop after being pursued by the officers, and that they had placed the sack on the seat. They, further, did not know there was any substance in the bottles in the jockey box.

The officers acknowledged that after Mr. Terragrossa was notified, it was determined that the car should not have been reported as stolen. That in fact, the appellant's story about how he acquired the car was true.

In rebuttal to the defense, the prosecution offered evidence that a check book, which apparently belonged to appellant and had also been utilized, was also located in the jockey box.

Both the appellant and Mr. Porter, related the same facts on the witness stand as they had related to the police officers at the time of the arrest.

The jury found both appellant and his co-defendant guilty of possession of a controlled substance with the intent to distribute; a felony.

## ARGUMENT

### POINT I

#### APPEALLANT IS ENTITLED TO A NEW TRIAL BECAUSE THE VERDICT WAS NOT SUPPORTED BY THE EVIDENCE.

This court has on several occasions stated the rules concerning the granting of a new trial on the basis that the verdict was not supported by the evidence. In State v. Cooper, 114 Ut. 531, 201 P. 2d 764, 770 (1949), this court stated:

The question of granting or denying a motion for a new trial is a matter largely within the discretion of the trial court. This court cannot substitute its discretion for that of the trial court. We do not ordinarily interfere with the rulings of the trial court in either granting or denying a new trial, and unless abuse of, or failure to exercise, discretion on the part of the trial judge is quite clearly shown, the ruling of the trial court will be sustained.

While in appellant's case there was no motion for a new trial, the above language would seem to indicate under what circumstances this court will grant a new trial even in the absence of a motion for a new trial. The court also stated:

The state's evidence is so inherently improbable as to be unworthy of belief so that upon objective analysis it appears that reasonable minds could not believe beyond a reasonable doubt that the defendant was guilty, the jury's verdict cannot stand. Conversely, if the state's evidence was such that reasonable minds could believe beyond a reasonable doubt the defendant was guilty, the verdict

must be sustained. State V. Mills, 122 Ut.  
306, 249 P. 2d 211 (1952).

It is apparent from these various statements of the law that this court does have the power to order a new trial in appropriate cases. This court has said that:

We are not unmindful of the settled rule that it is the province of the jury to weigh the testimony and determine the facts. Nevertheless, we cannot escape the responsibility of judgment upon whether under the evidence, a jury could, and reason, conclude the defendant's guilt was proved beyond a reasonable doubt. State v. Williams, 111 Ut. 379, 180 P. 2d 551, 555, (1947).

Clearly each case must turn upon its own facts and circumstances to whether or not a new trial is warranted because the verdict was not supported by the evidence. Appellant contends that in each case before the court the verdict was not supported by the evidence and therefore he should be granted a new trial.

#### CONCLUSION

Counsel for appellant respectfully requests permission to withdraw, believing the appeal is without meritorious grounds. The foregoing brief discusses the law applicable to the only point that could arguably be presented on appeal.

Respectfully submitted,




JOHN T. CAINE  
Weber County Public Defender Assoc.  
2568 Washington Blvd.

Counsel for Appellant



CERIFICATE OF MAILING

I hereby certify that I mailed Ten copies of the foregoing Appellants Brief on Appeal to the Clerk of the Supreme Court, Room 236, State Capitol Building, Salt Lake City, Utah 84114, and Two copies to the office of the Attorney General, State Capitol Building, Salt Lake City, Utah 84114, this 30th day of October, 1979, by depositing same in the United States Post Office, postage prepaid, at Ogden, Utah.

  
Secretary

# THE ATTORNEY GENERAL



## STATE OF UTAH

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ATTORNEY GENERAL

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DEPUTY ATTORNEY GENERAL

November 1, 1979

Honorable J. Allan Crockett  
Chief Justice  
Utah Supreme Court  
State Capitol  
Salt Lake City, Utah 84114

Re: State of Utah v. Charles E.  
Kent, Case No. 16041

Dear Chief Justice Crockett:

The appellant's attorney in the above entitled case, in harmony with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1296, 18 L.Ed.2d 493 (1967), stated that it is his opinion that the issues raised on appeal are not sound and has requested that he be allowed to withdraw.

This office feels that it would be futile to respond to a brief of this nature when likely the only assistance we could lend the Court would be to repeat the statements of the appellant's attorney and perhaps give some light as to the broad area of law surrounding the issues raised in the case.

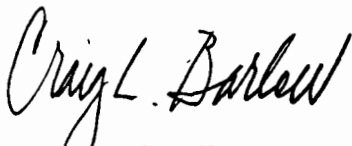
We feel that this would lend no beneficial impact to the Court, but we are willing to respond to any particular issues or do additional research at the Court's direction if requested.

We would appreciate it if you would accept this letter as a formal response in lieu of filing a brief and

Honorable J. Allan Crockett  
November 1, 1979  
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either proceed to dismiss the appeal on its merits or in harmony with Anders v. California. If the Court is desirous of having additional input from our office in any particular, we would be happy to comply upon direction.

Very truly yours,

A handwritten signature in black ink, reading "Craig L. Barlow". The signature is written in a cursive, flowing style.

CRAIG L. BARLOW  
Assistant Attorney General

CLB/sh

cc: Mr. John T. Caine  
Public Defenders Association  
2568 Washington Boulevard  
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