

2009

Utah v. Lamoreaux : Reply Brief

Utah Court of Appeals

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Utah Attorney Generals Office.

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Aug. 19, 2010
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IN THE UTAH COURT OF APPEALS

<p>STATE OF UTAH, Plaintiff, vs. TIMOTHY LAMOREAUX, Defendant.</p>	<p>Case No. 20090471-CA</p>
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REPLY BRIEF OF APPELLANT

APPEAL FROM THE FOURTH DISTRICT COURT, UTAH COUNTY,
FROM A CONVICTION OF, A FIRST DEGREE FELONY BEFORE THE
HONORABLE LYNN W. DAVIS

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Plaintiff,

vs.

TIMOTHY LAMOREAUX,

Defendant.

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STATEMENT OF THE CASE

A. Nature of the Case

Timothy Lamoreaux appeals from a jury trial conviction of distribution or arranging to distribute a controlled substance in a drug free zone in violation of § 58-37-8(1)(A)(ii).

B. Course of Proceedings and Disposition in the Trial Court

On January 6, 2009, Appellant was convicted of Distribution or arranging to distribute a controlled substance in a drug free zone. After completion of trial, appellant was sentenced on April 29, 2009. Subsequent to being sentenced, appellant filed a notice of appeal on May 26, 2009.

C. Statement of the Facts Relating To Reply Brief Argument

Testimony of Suzanne Ruesch:

Ms. Ruesch testified on behalf of the State. R192:103,107. In connection with the events on July 1, 2008: She was charged with distribution of methamphetamine, a first degree felony, and possession of paraphernalia, a class A misdemeanor, and possession of methamphetamine, a second degree felony. *Id* at 105-106. She plead guilty to distribution reduced to a second degree felony, possession of methamphetamine a third degree felony and further that the State would not recommend prison as a sentence, and that the State would agree to reduce the distribution to a class A Misdemeanor upon completion of probation. *Id* at 105-106.

ARGUMENT

I. THE TRIAL COURT'S ERR IN ALLOWING THE OFFICERS TESTIMONY TO REMAIN WAS NOT HARMLESS BECAUSE THE CO-DEFENDANT'S CREDIBILITY RELATING TO HER WILLINGLYNES TO TESTIFY WAS BASED UPON A PLEA ARRANGMENT HAD SHE NOT TESTIFIED

A. Relevant Law

The Utah Supreme Court has stated that “[h]armless error is an error that is sufficiently inconsequential that there is no reasonable likelihood that it affected the outcome of the proceedings. ... Put differently, an error is harmful if the likelihood of a different outcome is sufficiently high that it undermines our confidence in the verdict.” State v. Evans 20 P.3D 888 (UTAH).

B. Application of Law to Facts

In the present case, Officer Sorensen testified with a copy of the police report in his hands throughout the entirety of his testimony. At a critical point in his testimony the officer was unable to recall what, if any, “incriminating statements” were made by the defendant without referring to his report. Then when asked pointedly, “Does that report refresh your memory about what Mr. Lamoreaux said to you that night?” the officer stated, “To be honest, no, it doesn’t.” *Reporter’s Transcript of Proceedings*, January 5, 2009, at pg. 83.

The only other witness in the trial was Suzanne Ruesch. Her credibility was of the height of relevance in the case. Ms. Ruesch’s testimony was given with the explicit understanding that she benefitted in a large way from testifying in the trial. In the end it was determined that her testimony bought her misdemeanor’s and no prison.

Had the jury been provided with merely the testimony of Ms. Ruesch and no other as was requested by trial counsel, the jury would have had the duty to determine the

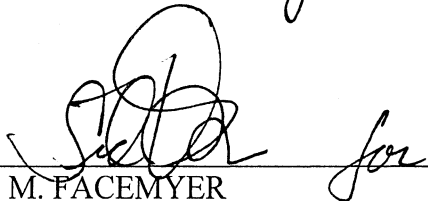
weight and credit to be given the testimony of Ms. Ruesch. The jury would have a right to use that knowledge and experience which they possess in common with people in general, in regard to the matter about which a witness had testified. The jury could take into account the ability and opportunity to observe and know the things about which such witness has testified, the memory, manner, and conduct of such witness while testifying, any interest the witness may have in the result of this trial, and the reasonableness of such testimony considered in the light of all the evidence in this case.

The obvious interest of a testifying witness is greater on point when recognized that the Officer's testimony should have been excluded from the ears of the jury.

CONCLUSION

In conclusion, the argument claimed by the State is that the affect of the testimony of Officer Sorenson is harmless because of the testimony of Ms. Ruesch. However, Ms. Ruesch's credibility is highly suspect and such the Defendant should be granted a new trial.

Respectfully submitted this 9th day of August, 2010

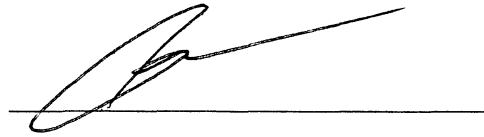


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MAILING CERTIFICATE

I hereby certify that I mailed two true and correct copies of the Appellant's Brief along with a Courtesy Brief on CD, this 9th day of Aug, ~~2009~~ 2010 to the following:

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