

1979

State of Utah v. William Earl Harrison : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

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STATE OF UTAH, :

Plaintiff-Respondent, :

-vs- :

Case No.
16425

WILLIAM EARL HARRISON, :

Defendant-Appellant. :

----- : -----
BRIEF OF RESPONDENT

APPEAL FROM A JUDGMENT OF THE FOURTH
JUDICIAL DISTRICT COURT, IN AND FOR UTAH
COUNTY, STATE OF UTAH, THE HONORABLE
ALLEN B. SORENSON, JUDGE, PRESIDING

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FILED

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IN THE SUPREME COURT OF THE
STATE OF UTAH

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STATE OF UTAH, :
Plaintiff-Respondent, :
-vs- : Case No. 16425
WILLIAM EARL HARRISON, :
Defendant-Appellant. :

- - - - -

BRIEF OF RESPONDENT

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STATEMENT OF THE NATURE OF THE CASE

Appellant was charged by complaint and information with arranging for the distribution for value of a controlled substance, marijuana, in violation of Utah Code Ann., § 58-37-8(1)(a)(iv), (1953) as amended.

DISPOSITION IN THE LOWER COURT

Appellant was tried without a jury before the Honorable Allan B. Sorenson on March 21, 1979, and was found guilty as charged. Following a pre-sentence report, he was sentenced to a term not to exceed five years in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Respondent urges the Court to affirm the conviction and sentence of the lower court.

STATEMENT OF THE FACTS

At 7:30 p.m. on November 26, 1978, a police informant named Jim Schnorrenberg (hereinafter "Jim"), met with officers at the Vernal City Police station (T. 12, 37). The police skin-searched Jim. They also examined his car by looking under the dash and front seat and under everything which was not secured down (T. 13, 27, 32, 37). The police then gave Jim \$25.00. They noted the serial numbers of the money and had him sign an agreement which indicated that he would only use the money for the purchase of controlled substances in connection with police activities (T. 13).

The police then followed Jim as he drove his own car to the house of appellant (T. 14, 28, 38). He entered appellant's home and asked appellant and appellant's girlfriend if he could buy cocaine or "bags" (T. 39, 66, 81). Appellant indicated that he didn't have any, but that he knew a girl named "Suzy" who might be able to provide some marijuana (T. 39, 67, 81). Jim went back to the police station and was researched (T. 15).

At 8:45 p.m. the same evening, Jim returned to appellant's house, again followed and observed by police officers (T. 15, 29, 39). Appellant and Jim entered the latter's car and drove to an apartment where Suzy was supposed to be staying (T. 15, 29, 40, 68, 82). Although it is unclear, appellant's girlfriend may also have accompanied them (T. 68, 82, 83). The group then obtained gasoline and proceeded to a J.B.'s restaurant where they had been told Suzy would be found (T. 16, 40, 69, 83).

Jim and appellant entered the restaurant where they found Suzy with her friend Nick. Appellant introduced Jim to Suzy and took a seat in her booth across the table. Jim sat in the booth behind (T. 41, 84-85). Appellant told Suzy that Jim wished to buy some marijuana and asked Nick if he would move so Jim could sit next to Suzy to see the product (T. 41, 42). Jim moved and was shown marijuana. He purchased three bags for \$25.00 (T. 42).

Jim and appellant returned to appellant's house where some marijuana was shared with or given to appellant and the three bags of marijuana were combined into one larger bag (T. 43, 72 and 87). Jim testified that appellant asked if he would give him a "joint" or two for setting up the buy (T. 43). Appellant and his girlfriend both indicated that Jim and appellant shared a "joint" at Jim's suggestion (T. 72, 87).

Jim returned to the Vernal Police Department where he gave them a bag of marijuana. His car and person were again searched (T. 17, 44). The bag of marijuana taken from Jim was introduced at trial and was stipulated to be marijuana (T. 60), although appellant objected to its introduction on the basis that the searches of the car were not thorough enough to guarantee that the marijuana was the same substance purchased from Suzy (T. 61).

The court found appellant guilty of the crime charged and sentenced him to a term of not more than five years in the Utah State Prison (R. 17).

ARGUMENT

POINT I.

UTAH CODE ANN., § 58-37-8(1)(a)
(iv), (1953), AS AMENDED IS NOT
VAGUE OR UNCLEAR.

Utah Code Ann., § 58-37-8 (1953), as amended,
provides:

(1)(a) Except as authorized by
this act, it shall be unlawful for any
person knowingly and intentionally: . . .
(iv) To agree, consent, offer, or arrange
to distribute or dispense a controlled
substance for value or to negotiate to
have a controlled substance distributed
or dispensed for value . . .

The crime charged in the instant matter succinctly requires
that the actor must knowingly or intentionally arrange to
have a controlled substance distributed for value. The

"buy", that is, introducing a potential customer to a dealer of illicit substances, constitutes knowingly or intentionally arranging for the distribution for value of the illicit substance. If such is clearly the case, then appellant has no standing to challenge the statute as vague even if the statute might be unclear in its application to other conduct. This Court noted in State v. Phillips, 540 P.2d 936 (Utah, 1975):

Also important to be considered . . . is the principle that no one should be entitled to challenge a statute and have it declared void because it may unjustly affect someone else, but could properly do so only if his own rights are adversely affected.

Id. at 940. See also Parker v. Levy, 417 U.S. 733. 756 (1974).

In Greaves v. State, 528 P.2d 805 (Utah, 1974), this Court enunciated several more general rules applicable to a determination of the constitutionality of statutes:

Because the duty rests upon the courts to determine the scope of the government, they have a special responsibility to exercise a high degree of caution and restraint to keep themselves within the limitations of the judicial power in order not to infringe upon the prerogatives of the executive or the legislative branches. In harmony with that policy it is the well-established rule that legislative enactments are endowed with a strong presumption of validity; and that they would not be declared unconstitutional if there is any reasonable basis upon which they can

be found to come within the constitutional framework; and that a statute will not be stricken down as being unconstitutional unless it appears to be so beyond a reasonable doubt.

Id. at 806-807. See also Utah Code Ann., § 68-3-2 (1953, as amended).

This Court has also stated:

Concerning the question of uncertainty or vagueness of statutes, the authorities seem to be in accord that the test a statute must meet to be valid is: It must be sufficiently definite (a) to inform persons of ordinary intelligence, who would be law abiding, what their conduct must be to conform to its requirements; (b) to advise a defendant accused of violating it just what constitutes the offense with which he is charged, and (c) to be susceptible of uniform interpretation and application by those charged with responsibility of applying and enforcing it.

State v. Packard, 122 Utah 369, 250 P.2d 561, 564 (1952). See also Salt Lake City v. Savage, 541 P.2d 1035, 1037 (Utah, 1975); Connally v. General Construction Co., 269 U.S. 385, 391 (1926); Smith v. Goguen, 415 U.S. 574, 572-573 (1974), and Jellum v. Cupp, 475 F.2d 829, 831 (9th Cir., 1973).

In the instant matter, most of the terms in the statute under which appellant was charged are specifically defined. Stated again, appellant was charged with having knowingly or intentionally arranging for the distribution for value of a controlled substance (see Utah Code Ann.,

Section 58-37-8(a)(a)(iv), supra). "Knowingly and intentionally" are defined in Utah Code Ann., § 76-2-103 (1953), as amended, as:

. . . when it is his (the actor's) conscious objective or desire to engage in the conduct or cause the result (intentionally) . . . or,

. . . when he is aware this his conduct is reasonably certain to cause the result, (knowingly . . .

"Distribution for value" is defined in Utah Code Ann., Section 58-37-2(8), (1953), as amended, as:

. . . to deliver a controlled substance in exchange for compensation, consideration, or item of value, or promise therefor . . .

Finally, "controlled substance" is defined in Utah Code Ann., § 58-37-2(5) (1953), as amended:

The words "controlled substance" mean a drug, substance, or immediate precursor in schedules I, II, III, IV, or V of section 58-37-4. The words do not include distilled spirits, wine, or malt beverages, as those terms are defined or used in Title 32, tobacco or food.

The only term within the crime charged in the instant matter which is not specifically defined within the Utah Code is the word "arrange." Although appellant would argue otherwise, (Appellant's Brief, pp. 3-4), the word "arrange" is commonly used and well understood. An arrangement is defined in Webster's New International Dictionary, 2nd Ed.

(3) An agreement or settlement of details made in anticipation; as, arrangements for receiving company.

Stated differently, to arrange is to prepare or provide for the occurrence of some expected event. As applied to this statute, an actor must knowingly and intentionally arrange for a sale to take place. In other words, the actor must perform an act or series of acts in anticipation of or in preparation for a sale of controlled substances which he either wants to take place or is reasonably certain will take place.

The Packard test is clearly satisfied by this statute. (State v. Packard, supra). A person wishing to abide by the law is put on notice that he must have nothing to do with a sale of illicit substances, whether for profit or not. A person charged with the crime knows that he is charged with helping to set up an illegal sale of controlled substances. Finally, the statute is "susceptible of uniform interpretation and application by those charged with responsibility of applying and enforcing it." (State v. Packard, supra). Just as selling a crowbar in a hardware store might aid a burglar in his work but not constitute the crime of aiding and abetting in burglary, so an action which made possible an illegal drug purchase but which was

not done knowingly or intentionally for that purpose does not fit within the proscription of the statute. Nevertheless, those who purposefully act to assist in or "arrange" for the sale of drugs are clearly doing so in violation of the law. Courts and law enforcement officials are not left to guess at the meaning of the statute, its meaning is clear. It follows that the statute is not void for vagueness and should be upheld.

POINT II.

THE EVIDENCE SUPPORTS THE CONCLUSION OF THE TRIER OF FACT THAT APPELLANT KNEW OR INTENDED THAT THERE WOULD BE A DISTRIBUTION FOR VALUE OF A CONTROLLED SUBSTANCE AS A RESULT OF HIS ACTIONS.

Appellant argues that the state failed to establish the proof necessary for a conviction under the crime charged in that it failed to either, (1) show that appellant received value or consideration for his part in the transaction, or, (2) show that appellant knew or intended that a distribution for value would take place between the police informant and Suzy (Appellant's Brief, Point II at pp. 6-8).

Initially, it must be noted that there was evidence to the effect that appellant asked for and received some of the marijuana purchased for his part in setting up the deal (T. 43). Although this testimony was contradicted

by both appellant and his girlfriend (T. 72, 87), the credibility of the various witnesses and determination of controverted issues is the province of the trier of fact. See State v. Logan, 563 P.2d 811 (Utah, 1977); State v. Romero, 554 P.2d 216 (Utah, 1976); and State v. Wilson, 565 P.2d 66 (Utah, 1977).

Nevertheless, even if it is assumed that appellant received no compensation for his part, the elements of the crime charged do not require proof that the defendant received value, only that a distribution for value took place and that the defendant intended or was reasonably certain that a distribution for value would take place as a result of his actions (see Utah Code Ann., § 58-37-8, supra). Whether or not the State of Utah is or should be concerned with one who sets up a sale of drugs but receives no compensation is a judgment already made by the legislature. It would be improper for this Court to re-examine such a policy decision. See Greaves v. State, supra.

Finally, appellant's claim that he did not know or intend that a distribution for value would take place as a result of his actions is not supported by the evidence. Appellant told the seller, Suzy, that the informant wanted to "buy" some of the product (T. 41). The informant testified that the appellant told him that he had no cocaine

but that "he had a girl in from Salt Lake, a girlfriend, Suzy; that she might could fix me up if she hadn't sold out." (T. 52). He also asked Nick to move so the informant could bargain with Suzy (T. 42). All of this, plus the generally known fact that marijuana is not given away but is usually sold, make the inference that appellant knew or intended that a sale of marijuana for value would result from his actions that night reasonable and proper.

POINT III.

THERE WAS NO ERROR IN THE ADMISSION
OF THE MARIJUANA ALLEGEDLY PURCHASED
AS A RESULT OF APPELLANT'S ARRANGEMENTS.

Admissibility of a physical object of evidence is a discretionary matter for the trial court. The ruling of the trial court in such a matter should not be overturned unless there is an abuse of discretion shown. See State v. Madsen, 28 Utah 2d 108, 498 P.2d 670, 672 (1972). There was no abuse of discretion shown in the instant matter. The bag of marijuana complained of was identified by the police informant as the bag he put the marijuana into on the night in question (T. 43-44). Appellant's counsel objected to the admission of the bag, claiming that there was a lack of evidence supporting an inference that the bag was the same bag into which the informant had put the marijuana purchased

from Suzy. Although he denied that his objection went to the weight to be given the evidence rather than to its admissibility, he was unable to cite, then or now, any rule of law to justify his position (T. 61, Appellant's Brief, pp. 8-9).

The marijuana was certainly relevant evidence within the scope of Rule 1 of the Rules of Evidence:

(1) "Evidence," as used in these rules, includes the means, oral, documentary, or physical, used as proof on issues of fact.

(2) "Relevant evidence" means evidence having any tendency in reason to prove or disprove the existence of any material fact.

Whether or not the evidence was what it was claimed to be is a matter for the trier of fact to determine, and does not pertain to the admissibility in this instance.

Furthermore, even if it is assumed that the evidence was improperly admitted, Rule 4 of the Rules of Evidence provides that the erroneous admission of evidence is not grounds for reversal unless the evidence can be said to have had a substantial influence upon the verdict. In this matter, there was substantial evidence beyond the marijuana itself which indicated that a sale of marijuana took place. Appellant's girlfriend testified that the bag looked like the one the informant put the marijuana into (T. 71). Although appellant denies having been aware at

the time that a sale of marijuana was taking place, the evidence that a sale did take place was uncontradicted. Moreover, the evidence clearly indicated that appellant intended that a sale would take place (see Point II, supra). Even if the marijuana itself had not been introduced, there was sufficient evidence for the trier of fact to find that appellant intentionally arranged for the sale of a controlled substance. Consequently, there was no prejudicial error in the trial court's admission of the bag of marijuana as evidence.

CONCLUSION

The crime of arranging for the distribution of a controlled substance for value is clear and well defined. Those seeking to conform their actions to the law are clearly advised of what conduct is prohibited. Those charged are apprised of what is claimed as guilty conduct. Finally, those entrusted with enforcing the law are given clear standards to guide their actions. The law is not overly vague and should be upheld as a constitutional act of the legislature.

Although the evidence was contradicted by appellant, there was testimony to the effect that appellant sought and received some of the marijuana purchased in

return for setting up the sale. Moreover, it is clear that appellant knew or intended that a sale of marijuana would take place as a result of his action in introducing the police informant to Suzy.

Finally, there was no error in the admission of the marijuana as evidence. Appellant's objections go to the weight to be accorded the evidence, not its admissibility. The marijuana was relevant evidence within the scope of the Utah Rules of Evidence.

Respondent urges this Court to affirm the conviction and sentence of the lower court in this matter.

Respectfully submitted,

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