

1989

State of Utah v. Richard Gunn : Brief of Appellee

Utah Court of Appeals

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Richard Gunn; pro se.

R. Paul Van Dam; attorney general; Dan R. Larsen; assistant attorney general; attorneys for respondent.

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BRIEF

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DOCKET NO. 89 0259
IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :

Plaintiff/Respondent, : Case No. 890259-CA

v. :

RICHARD GUNN, : Category No. 2

Defendant/Appellant. :

BRIEF OF RESPONDENT

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APPEAL FROM A CONVICTION OF AGGRAVATED
BURGLARY, A FIRST DEGREE FELONY, IN VIOLATION
OF UTAH CODE ANN. § 76-6-203 (1978), IN THE
SECOND JURIDIAL DISTRICT COURT, IN AND FOR
WEBER COUNTY, STATE OF UTAH, THE HONORABLE
DAVID E. ROTH, JUDGE, PRESIDING.

R. PAUL VAN DAM (3312)
Attorney General
DAN R. LARSEN (4865)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

RICHARD GUNN
P.O. Box 250
Draper, Utah 84020
Attorney Pro Se

NOV 9 1989

Mary T. Noonan
Clerk of the Court
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

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R. PAUL VAN DAM (3312)
Attorney General
DAN R. LARSEN (4865)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

RICHARD GUNN
P.O. Box 250
Draper, Utah 84020
Attorney Pro Se

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BRIEF OF RESPONDENT
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JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a conviction of Aggravated Burglary, a first degree felony, in the Second Judicial District Court, in and for Weber County, State of Utah. This court has jurisdiction to hear the appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j) (Supp. 1989).

STATEMENT OF THE ISSUE PRESENTED ON APPEAL

1. Whether this Court must presume regularity in the proceedings below in the absence of the trial transcripts?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

R. Utah Ct. App. 11(e)(2):

Transcript Required of All Evidence Regarding Challenged Finding or Conclusion.
If the appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.

STATEMENT OF THE CASE

Defendant, Richard Gunn, was charged with the offense of Aggravated Burglary, a first degree felony, in violation of Utah Code Ann. § 76-6-203 (1978) (R. 1). Defendant was convicted as charged after a bench trial on May 13-17, 1988, in the Second Judicial District Court, in and for Weber County, State of Utah, the Honorable David E. Roth, presiding (R. 68-70, 83). Defendant was sentenced by Judge Roth on November 9, 1988, to a term of not less than five (5) years and which may be for life in the Utah State Prison (R. 83). Restitution was ordered in the amount of \$2,176.53. Id.

STATEMENT OF FACTS

Because the trial transcripts are not part of the record on appeal, there is no record on which to base a statement of facts.

SUMMARY OF ARGUMENT

In the absence of record support for defendant's claims of error on appeal, this Court must presume regularity in the proceedings below and affirm the conviction.

ARGUMENT

IN THE ABSENCE OF RECORD SUPPORT, THIS COURT SHOULD NOT CONSIDER DEFENDANT'S CLAIMS OF ERROR ON APPEAL.

On appeal, defendant raises four claims of error: (1) that the trial court lacked subject matter jurisdiction, (2) that he was convicted by the knowing use of false testimony, (3) that the evidence was insufficient to support a conviction of aggravated burglary, and (4) that he was convicted without

medical testimony that a "deadly weapon" was used in the commission of the offense. Defendant's claims should not be considered.

Rule 11(e)(2) of the Rules of the Utah Court of Appeals requires that an appellant provide a transcript of the evidence as follows:

(2) Transcript required of all evidence regarding challenged finding or conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

In sum, Rule 11 requires an appellant to provide this court with all evidence relevant to the issues raised on appeal.

In Sampson v. Richins, 770 P.2d 998, 1002 (Utah Ct. App. 1988), this Court reiterated the well-established principle that where the appellate record is incomplete, the Court is "unable to review the evidence as a whole and must presume that the verdict was supported by admissible and competent evidence." Id. quoting Smith v. Vuicich, 699 P.2d 763, 765 (Utah 1985); accord Bevan v. J.H. Constr. Co., 669 P.2d 442, 443 (Utah 1983) (in absence of a transcript, we presume that trial proceedings were proper and judgment was supported by the evidence); State v. Robbins, 709 P.2d 771, 773 (Utah 1985); State v. Theison, 707 P.2d 307, 309 (Utah 1985); State v. Jones, 657 P.2d 1263, 1267 (Utah 1982); State v. Hamilton, 18 Utah 2d 234, 419 P.2d 770, 773 (1966).

In the instant case, defendant has failed to provide this Court with the transcripts of his trial and conviction.

Because the issues raised on appeal are dependant upon factual support, the record is insufficient to permit a full review of defendant's claims. Accordingly, this Court should presume that defendant's conviction is supported by the evidence and that the trial proceedings were proper.

CONCLUSION

Based upon the foregoing, the State requests that defendant's conviction be affirmed.

DATED this 9th day of November, 1989.

R. PAUL VAN DAM
Attorney General



DAN R. LARSEN
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Respondent, was mailed, postage prepaid, to Richard Gunn, pro se, P.O. Box 250, Draper, Utah 84020, this 9th day of November, 1989.

