

2009

State of Utah v. Rudd Martin : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff / Appellee

vs.

Case No. 20090814-CA

RUDD MARTIN,

Defendant / Appellant

REPLY BRIEF OF APPELLANT

APPEAL FROM THE FOURTH DISTRICT COURT, UTAH COUNTY, STATE OF UTAH,
FROM A CONVICTION OF POSSESSION OR USE OF METHAMPHETAMINE,
A THIRD DEGREE FELONY, BEFORE THE HONORABLE STEVEN L. HANSEN

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ARGUMENT

I. THERE WAS A REASONABLE DOUBT AS TO A THEORY OF “PRIOR ACTUAL PHYSICAL POSSESSION”

In its brief, the State argues that its theory of the case is one of “prior actual physical possession,” rather than constructive possession. Brief of Appellee, pp. 10-11. While the State ultimately concludes that “the distinction between actual physical possession and constructive possession matters little,” the State’s attempt to draw a distinction is noteworthy because the State’s witnesses presented positive evidence which rebuts a theory of actual prior possession.

Specifically, Officer Christensen testified that he thoroughly searched Martin before Martin was confined to the back seat of Officer Turner’s car, and did not find drugs. (R. 294:74, 77-80.) Furthermore, the State’s crime lab technician testified that Martin’s fingerprints were not found on the baggie containing the drugs. (R. 294:135-137.) These facts create a reasonable doubt that Martin actually physically possessed the drugs which were found in the baggie tucked into the back seat of Officer Turner’s car.

The State attempts to overcome this reasonable doubt primarily by pointing out that Officer Turner searched the back seat of his vehicle just prior to Martin’s arrest. The State quotes Officer Turner’s testimony on this point in the following passage from its brief:

Accordingly, the State’s evidence also established that Officer Turner searched the backseat of his patrol car at the beginning of his shift on November 20, 2007: he

“r[a]n [his] hand across...the crack of the backrest” of the backseat and “tug[ged] up on the bottom cushion,...pop[ping] it right out,” allowing him to “see...the metal floor of the vehicle all underneath the cushion.” R.294:90.

Brief of Appellee, p. 12. “Popping” the seat cushion out implies an entire removal of the seat cushion, which would allow anything tucked behind the seat cushion to fall onto the metal floor. However, this must not be the case, because Officer Turner specifically testified that his search included running his hand across “the crack of the backrest,” which would have been unnecessary if the seat cushion had been entirely removed. (R. 294:90.) Since the drugs were discovered in the crack of the backrest, the relevant portion of Officer Turner’s search was limited to running his hand across the crack of the backrest, which Officer Turner testified that he did at the end of each shift, and after each prisoner. (R. 294:90, 99.)

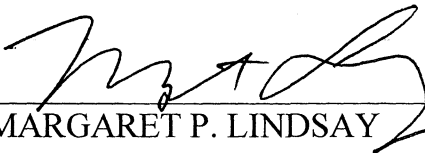
The fact of this simple, perfunctory search could not overcome the reasonable doubt created by Officer Christensen’s thorough search of Martin and the failure of the State crime lab to find Martin’s fingerprints. This is true even when Officer Turner’s vehicle search is coupled with Martin’s suspicious prior to discovery of the drugs.

When weighing Officer Turner’s vehicle search and Martin’s suspicious behavior against the fact that Martin was searched for drugs, and the search came up negative, reasonable minds must have entertained a reasonable doubt that Martin committed the crime of which he was convicted. *See State v. Salas*, 820 P.2d 1386, 1387 (Utah App. 1991). Accordingly, this Court should reverse Martin’s conviction because the evidence was insufficient.

CONCLUSION

For the reasons set forth above, and in Appellant's Brief, Martin asks that this Court reverse his conviction.

DATED this 24th day of January, 2011.


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CERTIFICATE OF MAILING

I hereby certify that I delivered two (2) true and correct copies of the foregoing Brief of Appellant to the Appeals Division, Utah Attorney General, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this 24th day of January, 2011.

