

2009

Utah v. Martin : Brief of Appellee

Utah Court of Appeals

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Case No. 20090814-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

vs.

RUDD MARTIN,
Defendant/Appellant.

Brief of Appellee

Appeal from a conviction for possession of methamphetamine, a
third degree felony, in the Fourth Judicial District Court of Utah,
Utah County, the Honorable Steven L. Hansen presiding

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Case No. 20090814

IN THE
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STATE OF UTAH,
Plaintiff/ Appellee,

vs.

RUDD MARTIN,
Defendant/ Appellant.

Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals from a conviction for possession of methamphetamine, a third degree felony, in violation of Utah Code Ann. § 58-37-8(2)(a) (West Supp. 2007). This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West 2009). Defendant was also convicted of operating a vehicle without an ignition interlock system, but he does not challenge that conviction on appeal.

STATEMENT OF THE ISSUE

Was the evidence sufficient to support Defendant's jury conviction for possession of methamphetamine?

Standard of Review. "The standard of review for a sufficiency claim is highly deferential to the jury verdict." *State v. Workman*, 2005 UT 66, ¶ 29, 122

P.3d 639. The appellate court “begin[s] by reviewing ‘the evidence and all inferences which may be reasonably drawn from it in the light most favorable to the verdict.” *Id.* (citation omitted). The Court “will reverse a jury verdict only if [it] determine[s] that ‘reasonable minds could not have reached the verdict.’” *Id.* (citation omitted).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES¹

Utah Code Ann. § 58-37-2(1)(ii) (West Supp. 2010)

“Possession” or “use” means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of controlled substances and includes individual, joint, or group possession or use of controlled substances. For a person to be a possessor or user of a controlled substance, ... it is sufficient if it is shown that ... the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.

Utah Code Ann. § 58-37-8(2)(a)(i) (West Supp. 2010)

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person’s professional practice, or as otherwise authorized by this chapter;

¹ The State cites to the current versions of the relevant statutory provisions. Amendments to those provisions subsequent to the date of the offenses in this case were not substantive.

STATEMENT OF THE CASE

Defendant was charged by Information with (1) burglary, a second degree felony; (2) possession of methamphetamine, a third degree felony; (3) theft, a class B misdemeanor; (4) criminal mischief, a class B misdemeanor; (5) violating a "no alcohol" driver's license restriction, a class B misdemeanor; and (6) operating a vehicle without an ignition interlock system, a class B misdemeanor. R.2-1,165-64. A preliminary hearing was held and Defendant was bound over to district court to stand trial. R.25-24. On Defendant's motion, the trial court ordered that counts 2 (possession of methamphetamine), 5 (violation of driver's license alcohol restriction), and 6 (operating a vehicle without an ignition interlock device) "be severed from the remaining counts and tried jointly." R.199-95. The trial court, however, dismissed count 5 on the State's motion and Defendant was thereafter tried before a jury on counts 2 and 6. *See* R.248-47; R.294:113.

At the close of the State's case-in-chief, counsel for Defendant moved for a directed verdict on the possession of methamphetamine charge for insufficient evidence, but the motion was denied. *See* R.294:145-48. Defendant thereafter testified in his defense and the prosecution recalled the two responding officers in rebuttal. *See* R.294:149-63. The jury found Defendant guilty of both counts.

R.250-49. On August 11, 2009, the trial court entered judgment against Defendant, sentencing him to concurrent terms of zero-to-five years for possession of methamphetamine and 180 days for driving without an ignition interlock system. R.268-67. On September 14, 2009, Defendant filed a notice of appeal. R.273-71. Although the notice of appeal was filed more than 30 days after judgment, the same was timely under the trial court's order granting Defendant's motion for an extension pursuant to rule 4(e), Utah Rules of Appellate Procedure. *See* R.274,270-69.

STATEMENT OF FACTS

On November 20, 2007, Sergeant Edwin Christensen and Officer Kevin Turner were dispatched to a Saratoga Springs residence on a welfare check. R.294:66-67,91. On reaching the location, they made contact with Defendant, who was sitting in a truck parked nearby. R.294: 67-68,70,91. Defendant told the officers that the truck was a work vehicle and that he had driven it there from Eagle Mountain. R.294:69-70,92,156. While speaking with Defendant, the officers smelled "an odor of alcoholic beverage coming from his person." R.294:68,91. Officer Turner ran a computer check on Defendant and discovered that his driver's license was subject to an ignition interlock device restriction.

R.294:69,72,92. Peering into the truck, the officers saw that it did not have the required device and they thereafter arrested Defendant. R.294:70-73,75,93-95.

In making the arrest, Sergeant Christensen handcuffed Defendant with his hands behind his back and searched his person incident to arrest. R.294:74-75,77,94-95,118,160. He patted down Defendant's outer clothing and checked his waistband and pockets, but found no weapons or contraband. R.294:77-80,117. Sergeant Christensen later acknowledged that he has occasionally failed to discover contraband in a search incident to arrest that was later uncovered in a subsequent search. R.294:82,84-85.

After Sergeant Christensen's search of Defendant's person, Officer Turner placed Defendant in the backseat of his patrol car. R.294:75,95. While sitting in the driver's seat before leaving, Officer Turner felt the car "kind of moving." R.294:96,119,126-27,162-63. He looked back and saw Defendant "leaning forward and fidgeting around." R.294:96,152. Defendant's movements were so pronounced that Officer Turner believed he had "bumped his head on the ... cage that separates the front seats from the back seats." R.294:96. Officer Turner told Defendant to sit still, but Defendant continued. R.294:127. Suspecting that Defendant might be trying to remove his handcuffs or hide something, Officer Turner exited the driver's seat to verify what Defendant was doing. R.294:97.

When Officer Turner opened the backseat passenger door, he saw Defendant's handcuffed hands "reached back around" his waist, with his left hand "in his left front pants pocket," and change spilt onto the cushion and floor. R.294:97,120,128,157-58. Officer Turner asked Defendant what he was doing, but Defendant did not answer. R.294:98,163. Officer Turner then removed Defendant from the vehicle, collected the spilt change, and searched the backseat. R.294:98-99. He found a small plastic baggy of methamphetamine "tucked ... just barely under the backrest" of the seat where Defendant's hands had originally been. R.294:99,101,120,140-43. When he lifted the baggy up, Defendant protested that it was not his, that he had already been searched, and asked to be tested. R.294:122,124-25,154.

Pursuant to department policy, Officer Turner searches the backseat of his patrol car at the beginning of each shift and after transporting any prisoner to the jail. R.294:89-90. In doing so, he removes the bottom cushion and also runs his hand down the crack where the cushion meets the backrest. R.294:90. At the beginning of his shift on November 20, 2010, Officer Turner searched his patrol car as per policy and found nothing. *See* R.294:90,98. Defendant was the first person placed in the backseat of his patrol car that day. R.294:98,102.

SUMMARY OF ARGUMENT

When reviewing the sufficiency of the evidence from a jury verdict, this Court views the evidence and all reasonable inferences which may be drawn therefrom in a light most favorable to the verdict. The Court will not reverse unless the evidence, so viewed, is so inconclusive or so inherently improbable that no reasonable jury could find the defendant guilty. The evidence in this case was more than sufficient to support the jury's verdict that Defendant possessed methamphetamine. Officer Turner testified that he found the baggy of methamphetamine in the very location of Defendant's handcuffed hands when he was placed in the backseat. He further testified that he had searched the backseat of his police car at the beginning of the shift and that Defendant was the first person to be placed there that day. Moreover, after Defendant was seated in the car, he began moving and fidgeting around. When Officer Turner opened the backseat door to see what he was doing, Defendant's handcuffed hands were stretched around his waist, with his left hand in his front pocket. Finally, Defendant's trial explanation that he was trying to get comfortable was implausible given the contorted positioning of his hands.

ARGUMENT

THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE JURY'S VERDICT THAT DEFENDANT UNLAWFULLY POSSESSED METHAMPHETAMINE

After the State rested its case, Defendant moved for a directed verdict on the ground that the evidence was insufficient to support a conviction for possession of methamphetamine. R.294:145-48. The trial court denied the motion and the jury thereafter found Defendant guilty. R.250; R.294:148,217-18. On appeal, Defendant challenges the jury verdict, arguing that "the evidence introduced at trial was insufficient to establish the necessary nexus between him and the drugs to justify his conviction [for] possession of methamphetamine." Aplt. Brf. at 9. Contrary to Defendant's claim, the evidence was sufficient to support the jury's verdict and this Court should thus affirm.

* * *

When reviewing the sufficiency of the evidence from a jury verdict, this Court "accord[s] high deference to the fact-finder at trial." *State v. Hamilton*, 2003 UT 22, ¶ 38, 70 P.3d 111. The Court thus "review[s] the evidence and all reasonable inferences that may be drawn from it in a light most favorable to the verdict." *State v. Dunn*, 850 P.2d 1201, 1212 (Utah 1993). It "'do[es] not weigh conflicting evidence,' nor [does it] 'substitute [its] judgment for that of the fact-

finder.’” *Id.* at ¶ 38 (citations omitted). If there is conflicting evidence, the Court “must ‘accept that version of events’” which supports the verdict. *People v. Maury*, 68 P.3d 1, 30 (Cal. 2003) (citation omitted). This Court “will reverse a criminal conviction for insufficient evidence only when the evidence is so inconclusive or so inherently improbable that ‘reasonable minds must have entertained a reasonable doubt’ that the defendant committed the crime.” *State v. Goddard*, 871 P.2d 540, 543 (Utah 1994) (citation omitted).

In this case, Defendant was tried for “knowingly and intentionally ... possess[ing] ... a controlled substance,” in violation of Utah Code Ann. § 58-37-8(2)(a)(i) (West Supp. 2010). The State was thus required to establish that Defendant was either in “actual physical possession” or in “constructive possession” of the baggy of methamphetamine found in the backseat of the police car. *See State v. Fox*, 709 P.2d 316, 318-19 (Utah 1985). Defendant has assumed, as did the prosecutor below, *see* R.294:194, that because the officers did not find the methamphetamine on his person, the State’s case rested on a theory of constructive possession. *See* Aplt. Brf. at 10.

A person is said to be in “constructive possession” of an object when he or she does not have actual physical possession of the item, but nevertheless has “both the power and the intent to exercise dominion and control over [it].” *Fox*,

709 P.2d at 319. Typically, the doctrine of constructive possession is used to establish possession of drugs found in a location occupied by multiple people. *See, e.g. State v. Workman*, 2005 UT 66, 122 P.3d 639 (finding live-in girl friend to be in constructive possession of meth lab in apartment where she and her boyfriend lived). The doctrine is also used in cases where the defendant is absent or separated from the place where the drugs are found. *See, e.g. Fox*, 709 P.2d 316 (finding owner/occupant to be in constructive possession of marijuana growing at home even though he was no longer there).

Nevertheless, "actual possession and constructive possession ... often so shade into one another that it is difficult to say where one ends and the other begins." *Nat'l Safe Deposit Co. v. Stead*, 232 U.S. 58, 67 (1914). For example, the actual theory in this case was that Defendant had actual physical possession of the baggy of methamphetamine when he was arrested, but that he discarded it in the police car in an attempt to avoid drug charges at the jail. *See* R.294:54-59. In the end, however, the distinction between actual physical possession and constructive possession matters little. To establish either, the State must demonstrate that "the drugs were subject to the defendant's dominion and control and the defendant had the intent to exercise that control." *State v. Layman*, 1999 UT 79, ¶ 16, 985 P.2d 911.

When drugs are found on a defendant's person, the fact of physical possession is direct evidence of the defendant's "power and intent to exercise dominion and control over the drug." *Fox*, 709 P.2d at 319. But when the defendant is not present at the time drugs are found, or when drugs are found in close proximity to more than one person, the State must rely on other facts to establish "the necessary nexus" between the defendant and the contraband. *Spanish Fork City v. Bryan*, 1999 UT App 61, ¶ 10, 975 P.2d 501. The same is true when the State is establishing prior actual physical possession.

"Whether a sufficient nexus between the accused and the drug exists depends upon the facts and circumstances of each case." *Fox*, 709 P.2d at 319. Factors that may be relevant in determining possession "include[e] ownership and/or occupancy of the residence or vehicle where the drugs were found, presence of defendant at the time [the] drugs were found, defendant's proximity to the drugs, previous drug use, incriminating statements or behavior, [and] presence of drugs in a specific area where the defendant had control." *Workman*, 2005 UT 66, ¶ 32. These considerations, however, "are not 'universally pertinent,'" and the list is not exhaustive. *Id.* (quoting *Layman*, 1999 UT 79, ¶¶ 14-15). A review of the record in this case reveals that the jury had ample evidence to support a finding of possession.

Officer Turner testified that after removing Defendant from the police car, he found a baggy of methamphetamine "tucked ... just barely under the backrest," in the location "right where [Defendant's] hands were when they were handcuffed behind his back." R.294:99,101-02. Defendant's proximity to the drugs just prior to their discovery was the threshold fact in the State's case establishing a nexus between Defendant and the drugs. *See Workman*, 2005 UT 66, ¶ 29 (holding that "presence of drugs in a specific area where the defendant had control" is an important factor in establishing the necessary nexus).

Because countless others had undoubtedly ridden in the backseat of the police car, proximity alone was not enough to establish possession. *See State v. Salas*, 820 P.2d 1386, 1388 (Utah App. 1991) (recognizing that mere presence in automobile is generally not sufficient alone to establish possession where access or occupancy is not exclusive). 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. Moreover, he testified that Defendant was the first person to be placed in the backseat that day. R.294:99,101-02. This

testimony created a strong inference that Defendant, not a prior detainee, had placed the drugs in the backseat.

The foregoing testimony – establishing that the police car was searched at the beginning of the shift, that Defendant was the first person to be placed in the backseat, and that methamphetamine was discovered where he had been sitting after his removal from the car – was more than sufficient to support the jury's finding that Defendant possessed the drugs.

Under the State's theory, Sergeant Christensen missed finding the drugs on Defendant when he searched him incident to arrest, and Sergeant Christensen admitted at trial that he has on occasion missed finding drugs when conducting a search incident to arrest. *See* R.294:82,84-85. In contrast, the defense theorized that it was Officer Turner who missed finding the drugs when he searched the car at the beginning of his shift. To accept this version of events, however, the jury would have been required to not only find that the drugs were overlooked during Officer Turner's search of the car, but that they were also overlooked in the search of the car by the officer from the previous shift. The State, however, produced additional evidence that it was Defendant who had placed the drugs in the car.

Officer Turner further testified that while sitting in the front seat, he felt the car "kind of moving" and turned to see Defendant "leaning forward and fidgeting around." R.294:96,152. Defendant's movements were so pronounced that Officer Turner believed Defendant had "bumped his head on the ... cage that separates the front seats from the back seats." R.294:96. Officer Turner told Defendant to sit still, but his conduct persisted. R.294:96,127. Suspecting that he might be trying to remove his handcuffs or hide something, Officer Turner exited the car, opened the backseat door, and saw Defendant's handcuffed hands "reached back around" his waist, with his left hand "in his left front pants pocket," and change spilt onto the cushion and floor. R.294:97,120,128, 157-58. Such "suspicious or incriminating behavior" was yet another fact "linking or tending to link" Defendant to the methamphetamine, *Salas*, 820 P.2d at 1388.

Officer Turner additionally testified that when he opened the passenger door and saw Defendant's handcuffed hands "reached back around" his waist, Defendant did not answer. *See* R.294:97-98,120,128,154,157-58,163. But then at trial, Defendant claimed that he was simply trying to get comfortable because his wrists hurt. *See* R.294:152. Given the contorted positioning of Defendant's handcuffed hands when Officer Turner opened the door, the jury could

reasonably view Defendant's trial explanation as far-fetched and nothing more than a post hoc fabrication.

Additionally, although Defendant denied ownership when he saw Officer Turner hold up the baggy, R.294:122,124-25,154, the jury could reasonably treat that denial as incriminating because it was an indication of Defendant's awareness of the character of the drugs. See *State v. Gordon*, 2007 UT App 66U, *2 (finding that defendant made incriminating statements where he initially denied knowing what was in the tin and then later yelling that it was not his crack cocaine).


In sum, the State introduced evidence that Defendant had secreted the baggy of methamphetamine in the backseat of the patrol car—the car was searched at the beginning of the shift, Defendant was moving around after he was seated in the vehicle, his left hand was in his front pocket, and methamphetamine was then found where he had been sitting. This evidence was not “so weak that no reasonable jury could find the defendant guilty beyond a reasonable doubt.” *State v. Robbins*, 2009 UT 23, ¶ 18, 210 P.3d 288. Although Defendant presented a different theory of events, “[t]he jury chose to believe” the evidence in support of the State's case, and this Court “will not second guess its judgment.” *State v. Yanez*, 2002 UT App 50, ¶ 19, 42 P.3d 1248.

CONCLUSION

For the foregoing reasons, the Court should affirm Defendant's conviction for possession of methamphetamine.

Respectfully submitted November 19, 2010.

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CERTIFICATE OF SERVICE

I certify that on November 19, 2010, two copies of the foregoing brief were

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A digital copy of the brief was also included: ☒ Yes ☐ No

