

1989

State of Utah v. Brett A. Bowman : Brief of Respondent

Utah Court of Appeals

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Recommended Citation

Brief of Respondent, *Utah v. Bowman*, No. 890356 (Utah Court of Appeals, 1989).

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UTAH COURT OF APPEALS

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1990

BRIEF

IN THE UTAH COURT OF APPEALS

890356
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DOCKET NO.

STATE OF UTAH,

:

Plaintiff-Respondent,

:

Case No. 890356-CA

v.

:

BRETT A. BOWMAN,

:

Category No. 2

Defendant-Appellant.

:

BRIEF OF RESPONDENT

- - - - -

APPEAL FROM A CONVICTION OF CRIMINAL MISCHIEF, A THIRD DEGREE FELONY, IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, HONORABLE RICHARD H. MOFFAT, JUDGE, PRESIDING.

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COURT

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Respondent, : Case No. 890356-CA
v. :
BRETT A. BOWMAN, : Category No. 2
Defendant-Appellant. :

BRIEF OF RESPONDENT

- - - - -

APPEAL FROM A CONVICTION OF CRIMINAL
MISCHIEF, A THIRD DEGREE FELONY, IN THE THIRD
JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE
COUNTY, STATE OF UTAH, HONORABLE RICHARD H.
MOFFAT, JUDGE, PRESIDING.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Respondent, : Case No. 890356-CA
v. :
BRETT A. BOWMAN, : Category No. 2
Defendant-Appellant. :

BRIEF OF RESPONDENT

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of criminal mischief, a third degree felony, under Utah Code Ann. § 76-6-106 (1978).

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1989).

STATEMENT OF ISSUES PRESENTED ON APPEAL

The sole issue presented on appeal is whether there was sufficient evidence to support defendant's conviction.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following statutory provision is pertinent to the resolution of the issue presented on appeal:

Utah Code Ann. § 76-6-106(1)(c) (1978):

(1) A person commits criminal mischief if:

• • •
(c) He intentionally damages, defaces, or destroys the property of another.

STATEMENT OF THE CASE

Defendant, Brett A. Bowman, was charged with criminal mischief, a third degree felony, under Utah Code Ann. § 76-6-106

(1978) (R. 5-6). After a bench trial, the court found defendant guilty as charged (R. 24; T. 127). The court then sentenced defendant to a term not to exceed five years in the Utah State Prison and ordered that he pay a fine, but stayed the prison sentence and placed defendant on eighteen months' probation (R. 24).

STATEMENT OF FACTS

Conflicting evidence was presented by the parties at trial. The following relevant evidence presented by the State supported defendant's conviction. On April 7, 1987, Edward Denton's car, which was parked in front of a friend's house in West Valley City, was severely damaged by two men wielding baseball bats. Denton, who was inside his friend's house at the time of the incident and viewed the crime through a bedroom window, identified defendant as one of the men damaging the car (R. 88-94). Police officers were called to the scene, and they documented the damage to Denton's car (R. 41-53).

Defendant took the stand at trial and denied that he had damaged Denton's car (R. 107-114).¹

SUMMARY OF ARGUMENT

Under the applicable standards of review, there was sufficient evidence to support defendant's conviction of criminal mischief.

¹ The parties presented other, and in certain respects conflicting, evidence concerning the circumstances of the dispute between Denton and defendant, the amount of damage to the car, and certain peripheral events on the day of the incident; however, a summary of that evidence is not necessary to the resolution of this appeal.

ARGUMENT

POINT I

THERE WAS SUFFICIENT EVIDENCE PRESENTED AT TRIAL TO SUPPORT DEFENDANT'S CONVICTION OF CRIMINAL MISCHIEF.

Defendant correctly notes that State v. Walker, 743 P.2d 191 (Utah 1987), sets forth the standard of review for bench trials in criminal cases. That standard is a "clearly erroneous" standard based on Utah R. Civ. P. 52(a). In Walker, the Utah Supreme Court explained:

[T]he content of Rule 52(a)'s "clearly erroneous" standard, imported from the federal rule, requires that if the findings (or the trial court's verdict in a criminal case) are against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made, the findings (or verdict) will be set aside.

743 P.2d at 193. The Court cited with approval the following clarification of the Rule 52(a) standard offered by Wright & Miller, Federal Practice and Procedure (1971):

The appellate court ... does not consider and weigh the evidence do novo. The mere fact that on the same evidence the appellate court might have reached a different result does not justify it in setting the findings aside. It may regard a finding as clearly erroneous only if the finding is without adequate evidentiary support or induced by an erroneous view of the law.

Ibid.

Defendant claims that the trial court's verdict was against the clear weight of the evidence because, once the court had "discounted the testimony of Mr. Denton," it had insufficient evidence before it upon which to find defendant guilty. Br. of

App. at 10. This is the sole basis of his attack on the court's verdict. However, contrary to defendant's suggestion, the court did not completely discount Denton's testimony as incredible. As is obvious from the court's ruling (T. 126-127) (quoted in defendant's brief, Br. of App. at 9), it must have believed Denton's testimony regarding the assault on his car by two men with baseball bats and his identification of defendant as one of those men, even though it clearly did not believe Denton's story about a failed marijuana sale involving defendant as the reason for the incident with Denton's car. Clearly, the court was free to believe some of Denton's testimony and disbelieve other portions of it. Defendant's attack on the sufficiency of the evidence is little more than an attack on the trial court's credibility assessment--something this Court must give great weight to in reviewing the case. Walker, 743 P.2d at 193. Because the trial court's verdict has adequate evidentiary support (Denton's testimony alone being adequate), this Court would not be justified in setting the verdict aside, even if on the same evidence it might have reached a different result. Ibid.

CONCLUSION

Based on the foregoing argument, defendant's conviction should be affirmed.

RESPECTFULLY submitted this 16th day of October, 1989.

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CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Respondent was mailed, postage prepaid, to Elizabeth Holbrook, Salt Lake Legal Defender Assoc., 424 East 500 South, Suite 300, Salt Lake City, Utah 84102, this 16th day of October, 1989.

David B. Thompson