

2009

# State of Utah v. Patrick Robert Ramirez : State's Reply Brief

Utah Court of Appeals

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Ryan D. Stout; Douglas D. Terry & Assoc.; Counsel for Appellee.

Laura B. Dupaix; Assistant Attorney General; Mark L. Shurtleff; Attorney General; Eric R. Gentry; Counsel for Appellant.

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Case No. 20090912-CA

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IN THE  
UTAH COURT OF APPEALS

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State of Utah,  
Plaintiff/ Appellant,

vs.

Patrick Robert Ramirez,  
Defendant/ Appellee.

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State's Reply Brief

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LAURA B. DUPAIX (5195)  
Assistant Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
160 East 300 South, 6<sup>th</sup> Floor  
P.O. Box 140854  
Salt Lake City, UT 84114-0854  
Telephone: (801) 366-0180

RYAN D. STOUT  
Douglas D. Terry & Assoc., PC  
150 North 200 East, Suite 202  
St. George, UT 84770

ERIC GENTRY  
Washington County Attorney

Counsel for Appellee

Counsel for Appellant

---

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RYAN D. STOUT  
Douglas D. Terry & Assoc., PC  
150 North 200 East, Suite 202  
St. George, UT 84770

Counsel for Appellee

LAURA B. DUPAIX (5195)  
Assistant Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
160 East 300 South, 6<sup>th</sup> Floor  
P.O. Box 140854  
Salt Lake City, UT 84114-0854  
Telephone: (801) 366-0180

ERIC GENTRY  
Washington County Attorney

Counsel for Appellant

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The State responds as follows to the arguments raised in Defendant's brief.

*Reply to Point I.A*

**DEFENDANT MISSTATES THE STANDARD OF REVIEW AND  
BINDER STANDARD**

Defendant asserts that a magistrate's probable cause determination at preliminary hearing, while reviewed for correctness, is afforded "great discretion." Br. Aple. 2 (quoting *State v. Norris*, 2001 UT 104, ¶ 14, 48 P.3d 872). Defendant is mistaken regarding the discretion to be afforded a magistrate's binder decision. As the Utah Supreme Court has expressly held, a magistrate's discretion in making a binder determination is not great, but "limited." *State v. Virgin*, 2006 UT 29, ¶¶ 23-24, 31-34, 137 P.3d 787. A magistrate's "discretion is limited . . . because in the binder context a magistrate's authority to make credibility determinations is limited." *Id.* at ¶ 34.

Defendant's mistake comes from his reliance on *Norris*. While *Norris* dealt with a magistrate's probable cause determination, it did so not in the context of a preliminary hearing, but in the context of a search warrant. See *Norris*, 2001 UT 104, ¶ 14. In the search warrant or suppression context, unlike the bindover context, a magistrate's authority to make credibility determinations is not limited. See *State v. Hurt*, 2010 UT App 33, ¶ 15, 227 P.3d 271 (in suppression context, because "'a district court is in a unique position to assess the credibility of witnesses and weigh the evidence, the court of appeals may not substitute its judgment as to a factual question unless the district court's finding is clearly erroneous'" (citation omitted)). Thus, a magistrate's probable cause determination for a search warrant is necessarily afforded more discretion than in the bindover context. See *Virgin*, 2006 UT 29, ¶ 34.

Defendant also erroneously states that "the magistrate was free to draw his own inferences from [the facts], and not necessarily in a light most favorable to the prosecution." Br. Aple. 4 n.3. But, as explained in the State's opening brief, it is well-settled that a magistrate "must view *all* evidence in the light most favorable to the prosecution and must draw *all* reasonable inferences in favor of the prosecution." *State v. Clark*, 2001 UT 9, ¶ 10, 20 P.3d 300 (emphasis added). Moreover, when there are competing reasonable inferences, the magistrate is

obligated to choose those inferences that support the prosecution's case. *See id.* at ¶ 20. Thus, contrary to Defendant's claim, the magistrate was "necessarily" required not only to view all the evidence in the light most favorable to the prosecution, but also to draw all reasonable inferences in favor of the prosecution.

Defendant also suggests that a magistrate is "within his or her discretion to make credibility determinations in regard to the evidence, and may discount or disregard evidence that does not support a reasonable belief as to an element of the charges." Br. Aple. 6 (citing *State v. Ingram*, 2006 UT App 237, ¶ 19, 139 P.3d 286). Defendant overstates the discretion afforded magistrates to make credibility determinations at a preliminary hearing. As the Utah Supreme Court has explained, a magistrate's "evaluation of credibility at a preliminary hearing is limited to determining that 'evidence is wholly lacking and incapable of reasonable inference to prove some issue which supports the [prosecution's] claim.'" *Virgin*, 2006 UT 29, ¶ 24 (quoting *State v. Talbot*, 972 P.2d 435, 438 (Utah 1998)) (alteration in original). "It is inappropriate for a magistrate to weigh credible but conflicting evidence at preliminary hearing as a preliminary hearing 'is not a trial on the merits' but 'a gateway to the finder of fact.'" *Id.* (quoting *Talbot*, 972 P.2d at 438). Rather, "magistrates must leave all the weighing of credible but conflicting evidence to the trier of fact and must 'view the evidence in a light most favorable to the

prosecution[,] resolv[ing] all inferences in favor of the prosecution.” *Id.* (citation omitted) (alterations in *Virgin*).

*Reply to Point I.B.*

**THE EVIDENCE, VIEWED IN THE LIGHT MOST FAVORABLE TO THE PROSECUTION AND DRAWING ALL REASONABLE INFERENCES IN FAVOR OF THE PROSECUTION, SUPPORTS A REASONABLE BELIEF THAT DEFENDANT POSSESSED THE CONTRABAND**

Defendant essentially argues that the preliminary hearing evidence did not support a reasonable inference that he “constructively possessed” the contraband, because it did not show that he had “exclusive control” of his motel room. Br. Aple. 8. Defendant’s argument, however, like the magistrate’s ruling below, fails to view all the evidence in the light most favorable to the prosecution and to draw all reasonable inferences in favor of the prosecution.

Defendant asserts that the State’s only evidence supporting a nexus between him and the contraband was that Defendant “had rented that motel room at some point,” but that there was no evidence “of when he rented that room, how long he rented it for, who he rented it with, etc.” Br. Aple. 9. Defendant further asserts that an officer on cross-examination “conceded” that the room was not under the “exclusive control of” Defendant. *Id.* at 8. Defendant reasons that since Defendant

“was *not* the only person with access to the motel room,” the State did not show that the contraband belonged to him. *Id.* at 8-9.

Defendant’s argument ignores much of the State’s evidence and the reasonable inferences that can be drawn therefrom. First, contrary to Defendant’s claim, the only evidence regarding occupancy of the room was that Defendant lived there alone. Defendant told officers he lived at the motel and gave them his room number. *See* R41:12-13. Defendant invited the officers to search his room. R41:12-13, 15. By so doing, Defendant showed that he himself believed that the room was his and that he continued to exercise authority and control over it. His conduct also shows that he believed that the officers would find his room as he left it—with the clean pipe in his bed, under some covers. R41:13. Officers also found paperwork and a prescription bottle bearing Defendant’s name. R41:20, 23. Officers found nothing in the room identified as belonging to someone else. R41:23. Taken together, this evidence leads to the reasonable inference that Defendant alone occupied the room.

Defendant nevertheless asserts that “numerous people, including individuals not associated with the motel, had ready access to the motel room.” Br. Aple. 9. The record does not bear out this claim. An officer did concede that the manager, who had let police into the room, would have had prior access to the room; and the

officer “imagined” that the housekeeping staff also would have had access to the room. R41:22-23. But no evidence suggested that “numerous” people or that anyone not associated with the motel had access to the room without Defendant’s knowledge or permission. Indeed, the record citation Defendant relies on to make this claim merely states that before talking to police, Defendant had asked a friend of his to go to the room to find the pipe. Br. Aple. 9 (citing R41:6).

But the fact that others might have had access to Defendant’s room does not undercut the reasonable inference from the totality of the evidence that Defendant was the person with the strongest factual nexus to the contraband: he lived alone in the room where it was found, R41:12-13, 20-23; he continued to exercise authority and control over the room by inviting police to search it, R41:12-13, 15; he admitted to having a drug problem, R41:16; he admitted to possessing other paraphernalia—a clean pipe and a syringe—commonly used for ingesting illegal drugs, R41:16; police found the pipe, undisturbed in Defendant’s bed, where Defendant said it would be, R41:13; and the contraband was found discarded in a garbage sack, R41:14, 16-20.

Indeed, Defendant’s and the magistrate’s speculation that someone else might have accessed the room and planted the contraband in Defendant’s garbage sack is unreasonable under the totality of the evidence. As explained in the State’s opening brief, nothing in the evidence suggests a reason why someone other than Defendant

would have taken the trouble to place the contraband in a garbage sack in a room occupied solely by Defendant. And, presumably, if housekeeping had accessed the room, the garbage sack would have been removed.

Defendant asserts that because he told police that he “injected drugs and did not smoke them,” his admissions cannot support “an inference that [he] possessed drugs and paraphernalia designed to be smoked, even when viewed in a light most favorable to the prosecution.” Br. Aple. 9-10. Defendant’s charges, however, were based on methamphetamine residue in the baggie and on the tube straw, not on the clean pipe. R36-37; R41:38-39. Thus, nothing in the evidence suggests that the methamphetamine was designed to be smoked as opposed to being injected. But, more importantly, the evidence must be viewed in the light most favorable to the prosecution in its entirety. As explained in the State’s opening brief, in a constructive possession case, the required nexus may be established by means of several different factors, including, where appropriate “previous drug use.” *State v. Workman*, 2005 UT 66, ¶ 32, 122 P.3d 639. Thus, Defendant’s incriminating admissions—including his drug abuse—together with the discovery of the contraband in a garbage sack in his living quarters, give rise to a reasonable belief that the contraband belonged to Defendant.

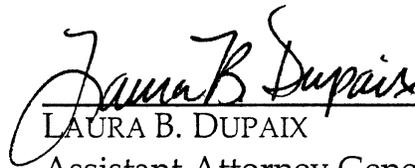
In short, even assuming that Defendant's and the magistrate's competing inferences were reasonable, the magistrate was obligated to accept the inferences that supported the prosecution's case and allow the case to go to a jury. *See Clark*, 2001 UT 9, ¶ 20.

### CONCLUSION

The Court should reverse the dismissal of the charges and remand for the magistrate to bind Defendant over to stand trial on the two charges.

Respectfully submitted August 26<sup>th</sup> 2010.

MARK L. SHURTLEFF  
Utah Attorney General



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LAURA B. DUPAIX  
Assistant Attorney General  
Counsel for Appellee

CERTIFICATE OF SERVICE

I certify that on August 26, 2010, two copies of the foregoing brief were

mailed  hand-delivered to:

Ryan D. Stout  
Douglas D. Terry & Associates, PC  
150 North 200 East, Suite 202  
St. George, UT 84770

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

See Nakamura