1981

The State of Utah v. Billy Jo Moyes : Brief of Respondent

Utah Supreme Court

G. L. FLETCHER; Attorney for Appellant;ROBERT B. HANSEN; Attorney for Respondents

IN THE SUPREME COURT OF THE

STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

BILLY JO MOYES,

Defendant-Appellant.

Case No. 16845

BRIEF OF RESPONDENT

APPEAL FROM A CONVICTION OF AGGRAVATED ROBBERY IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE JAMES S. SAWAYA, JUDGE, PRESIDING.

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BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with two counts of aggravated robbery, a felony of the first degree, in violation of Utah Code Ann. § 76-6-302 (1953), as amended.

DISPOSITION IN THE LOWER COURT

Appellant was tried before a jury on August 29 and 30, 1979, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable James S. Sawaya, presiding, and was found guilty of two counts of aggravated robbery. On September 12, 1979, appellant was committed to the custody of the Division of Corrections at the Utah State

Prison for evaluation for a period not exceeding ninety days. On December 14, 1979, appellant was sentenced on Count I of the information to be imprisoned at the Utah State Prison for the indeterminate term of not less than five years to life; appellant was also sentenced on Count II of the information to be imprisoned at the Utah State Prison for the indeterminate term of not less than five years to life. The sentences were to run concurrently.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the verdict and judgment of the lower court.

STATEMENT OF THE FACTS

In the early morning hours of April 1, 1979, two armed robberies occurred at two separate 7-Eleven Stores in Salt Lake County, located at 4130 South Redwood Road, where Janette Nye was the clerk on duty, and at 4150 West 3500 South, where Dwight D. Camp was the clerk on duty (Tr.10). Appellant was charged with and convicted of both armed robberies (R.9,125,126).

Janette Nye testified at trial that at approximately 2:05 a.m. on April 1, 1979, while she was in the back storage room of the store on Redwood Road, a man entered the store,

walked back to the storage room, and stood by the door (Tr.19). She initially observed that he was tall, had dark hair, a full beard, and a moustache, and was wearing a green Army fatigue jacket. The man apparently said something to Ms. Nye, and she, thinking him to be a customer, walked out of the storeroom and behind the counter. The man also walked up to the counter where he faced Ms. Nye at a distance of about four feet (Tr. 20). He told Ms. Nye to "Give me all the money." She thought he was joking, but when he repeated the command, Ms. Nye looked to see whether he had a weapon, and observed that he had a pair of scissors in his hand with about five inches of the blade pointed out towards her (Tr.21,22). Ms. Nye was worried that she might get hurt because the man was armed and was larger than she was. She opened the cash register and put the currency from the till, approximately fifty dollars, into a small paper sack which she gave to him. The man then said "Now, the safe." Ms. Nye went to the safe and tried to open it but was unsuccessful in doing so. She told the man that the safe would not open. The man then ordered her to go into the store's cooler. She went in, shut the door behind her, and watched through the cooler's glass door as the man walked out of the store. After the man left the store, Ms. Nye walked out of the cooler and called the Sheriff's

Office (Tr,23-25). While making the call she looked at the clock and noted that it was 2:05 a.m. She estimated that from the time the man entered the store to the time he left with the money about three minutes had elapsed. Officers from the Salt Lake County Sheriffs Office arrived within five minutes after the call. Ms. Nye gave them a description of the suspect, even describing the gap in his two front teeth (Tr.26,32).

At approximately 2:35 a.m. on April 1, 1979, Dwight D. Camp was standing at the back counter of the store at 4150 West 3500 South at the adding machine, preparing a packet of currency to be dropped into the store's safe. Camp's attention was drawn to a man who had just entered the store and yelled "Hey, fella" to Camp. Camp turned around and looked at the man, observing him from a distance of six or seven feet (Tr.56,58,64). Camp observed that the man was about six foot five, was well-built, had dark eyes and dark hair which was a little longer than shoulder-lenghth, had on a green Army field jacket, and was wearing a red bandana over the bridge of his nose to hide his face. Camp could also see that the man had a full beard under the bandana, and was wielding a pair of scissors in his hand (Tr.59,71).

Camp looked at the man for a few seconds, whereupon the man said "Give me all the money or I'll stick you." The man also instructed Camp to "be cool," and to let him know if anyone came into the store, in which case Camp was to wait on the man as though he were a regular customer. Camp testified that he handed over the money because the man was armed, and was bigger than he (Camp) was. After Camp handed over the money, which he had placed in a paper sack, a car entered the parking lot and the man, who was standing no more than twenty inches away from Camp, pulled down the red bandana and stood for about fifteen to twenty seconds, staring at Camp. Camp at that time noticed the gap in the man's two front teeth. The man then walked out the door of the store, turned west, and disappeared around the corner of the building (Tr.60-63).

The money which Camp gave to the man included some loose one dollar bills and a five dollar bill out of the till along with the packet of twenty-five one dollar bills which Camp was holding when the man entered the store. Camp testified that it was the policy of store employees, in preparing packets of currency to drop into the store's safe, to attach a piece of adding machine tape to each packet and to write on the piece of tape the number of the drop, the name of the clerk making the drop, and the date of the drop.

In preparing the packet which was taken in the robbery, Camp had attached to the packet a piece of adding machine tape which was too long and stuck out over the edge of the bills, so Camp tore off the end of the tape and left the end piece on the back counter where he had been working. He had not marked the piece of adding machine tape on the packet at the time of the robbery (Tr.60,61,67,69).

After the man walked out the store's door, Camp called the Sheriff's Office and gave the dispatcher a description of the suspect. Camp also told the dispatcher that the suspect should have a red bandana in his possession, and that a strip of white paper from the store's adding machine was attached to the packet of money which the suspect had (Tr.63). A deputy sheriff arrived at the store shortly after Camp's call to the dispatcher.

Deputy Don Garner of the Salt Lake County Sheriff's Office was on routine patrol at approximately 2:30 a.m. on April 1, 1979, in a marked patrol car, in the vicinity of 3100 South and 4400 West, Salt Lake County, when he received over his radio a three beep alarm, indicating that an armed robbery had just occurred at the 7-Eleven Store at 4150 West 3500 South. Deputy Garner made a U-turn and proceeded eastbound toward 4100 West, intending to stay in the area behind the store to check on suspicious activity coming from

that direction (Tr.110-112,134,135). At the intersection of 4000 West and 3100 South Deputy Garner observed a vehicle turning from 4000 West, heading eastbound on 3100 South. The car ran the stop sign at the intersection and sped away from the intersection at a good rate of speed. At this time, about a minute-and-a-half had passed since Deputy Garner had heard the three beep alarm (Tr.113). Garner turned on his red lights, spotlight, and siren and followed the vehicle. The vehicle initially would not pull over and instead increased its speed to between forty-five and fifty miles per hour (Tr.114,139).

Deputy Garner followed the vehicle to 3600 West and approximately 3300 South, where the vehicle pulled over. Garner pulled in behind and to the left of the vehicle (Tr.115). At that time, information was coming over Deputy Garner's radio describing the suspect in the armed robbery of the 7-Eleven Store at 4150 West 3500 South. At the same time, the driver of the car which Garner had pulled over put his head and arm out of the window and waved his driver's license in his hand. Deputy Garner noticed that the description of the robbery suspect matched the appearance of the individual sticking his head and arm out of the car; Garner saw that the individual was a very big man, had a heavy beard, and was wearing a green Army

field jacket. Deputy Garner told the dispatcher that he "had a suspect that fit the description of the [suspect involved in] the armed robbery" (Tr.116,143). Another deputy arrived at the scene, and both deputies asked the driver of the vehicle and his passenger, whom Garner had not seen because of the vehicle's snow-covered back window, to get out of the car. After some time both men, appellant and his roommate, Rebel Bronstadt, got out of the vehicle (Tr.117). Deputy Garner identified appellant at trial as the individual who had been driving the vehicle, and stated that at the time of the pullover, appellant was wearing blue Levi coveralls and an Army field jacket. Appellant and Bronstadt were searched for weapons after alighting from the vehicle, and a subsequent search was made of the vehicle by Deputies Garner and Kennedy (Tr.118,119).

Deputy Kennedy searched under the front passenger seat of the vehicle while Deputy Garner searched under the driver's seat (Tr.131,132). Garner saw Deputy Kennedy retrieve certain items from under the passenger's seat, including a pair of scissors and a brown paper bag. Deputy Garner looked inside the brown paper bag and noticed that it contained money and a white piece of paper "that looked like a register receipt with nothing on it" (Tr.120).

Appellant was arrested shortly after Deputy Kennedy found these items under his seat (Tr.143,144). Garner subsequently took custody of the items and placed them in the evidence locker himself. At trial, Deputy Garner positively identified State's exhibits 2-S and 5-S as being the scissors and the paper sack containing money and the white slip of paper, which had been removed from appellant's vehicle by Deputy Kennedy (Tr.119,120). Additionally, Garner identified State's exhibit 3-S as being the clothing appellant was wearing when he got out of his vehicle at the pullover scene, which clothing was removed from appellant when he was booked into jail (Tr.121). Deputy Kennedy also identified at trial State's exhibits 2-S and 5-S as being the same scissors and the same paper sack, with the same contents, that he removed from appellant's vehicle at the pullover scene (Tr.154).

After appellant was arrested, his vehicle was impounded. Pursuant to a search warrant, Deputy Garner, on April 6, 1979, searched appellant's impounded vehicle for the red bandana used in the robbery. Garner found the bandana stuffed behind the seatbelts on the passenger's side of the vehicle, between the bottom seat and the top seat. At trial, Deputy Garner positively identified State's exhibit 7-S as

the bandana he found in appellant's vehicle (R.60-62,Tr.121, 122,127). Additionally, Dwight Camp also identified State's exhibit 7-S as being similar to the bandana worn by the suspect in the robbery (Tr.71).

Shortly after appellant had been pulled over by Deputy Garner in the early morning hours of April 1, 1979, Janette Nye was taken by Deputy Fountaine to the pullover scene. By this time several deputy sheriffs and patrol cars were at the scene. Ms. Nye was asked whether she recognized the man who was sitting in the passenger's seat of one of the patrol cars and who was illuminated by a spotlight. She positively identified the individual as appellant, after looking at him for a couple of minutes (Tr.48-50). At trial, Ms. Nye again positively identified appellant as the man who had robbed her and as the man who was sitting in the patrol car at the pullover scene, in the following colloquy with the prosecuting attorney:

> Q. . . . When you went to this area with Deputy Fountaine, what did you observe by way of other cars and persons?
> A. Other police cars. There was Deputy Sheriffs around. There was a lot of people there.
> Q. And was there another person there at this location?
> A. Yes.
> Q. And who was there? Speak it up.
> A. The defendant.

Q. Mr. Moyes?
A. Yes.
Q. Where was Mr. Moyes when you saw him?
A. He was sitting in the Deputy's car.
Q. Is that the same person that held you up?
A. Yes.
Q. Is that the same person you have now identified in this Courtroom?
A. Yes.
Q. Is Mr. Moyes in this Courtroom right now the same person that held you up in the 7-Eleven on April 1st?
A. Yes.

(Tr.27).

About ten or fifteen minutes after the robbery at the 7-Eleven store at 4150 West 3500 South, Dwight Camp was asked by Deputy Robert Casias if Camp would go with Casias to the pullover scene to make a positive identification of the suspect detained by Deputy Garner (Tr.64,97). At the ssene, Camp was asked to look inside a patrol car to see if he could recognize the person seated in the front seat of the vehicle on the passenger's side. The area was well-lighted by the headlights of the patrol cars, and the interior light of the car in which the suspect was seated was on. Camp walked over to the passenger side of the car, looked in several times during the course of several minutes, and identified the individual in the patrol car, appellant, as the same individual who had committed the robbery (Tr.65,66). Again at trial Camp positively identified appellant as the

perpetrator of the robbery of the 7-Eleven store at 4150 West 3500 South, in responding to questions asked him by the prosecuting attorney:

> Q. How long were you looking at this person inside the car?
> A. A couple minutes.
> Q. Did you recognize that person?
> A. Yes, sir.
> Q. And who did you recognize him to be?
> A. As the person that had been in the store that robbed me.
> Q. And that same--is that same person in the Courtroom today?
> A. Yes, sir.
> Q. Now, let me ask you to identify the person that was in the store. You recognize the person that was in that store when you were robbed?
> A. Yes, sir.
> Q. And who was that?
> A. The defendant.
> Q. Mr. Moyes?
> A. Mr. Moyes.

(Tr.65,66).

At the pullover scene, Camp was shown by deputies several items seized from appellant's vehicle, including a number four brown paper sack, some money, and a sheet of paper (Tr.66). At trial, Camp identified as contents of the paper sack, State's exhibit 5-S, the currency as being that taken in the robbery, and the sheet of paper as being the piece of adding machine tape which he placed on the packet of currency which he was preparing to drop in the store's safe when appellant entered the store (Tr.67).

When Camp and Deputy Casias arrived back at the 7-Eleven store at 4150 West 3500 South from the pullover scene, they found the torn end piece of adding machine tape still on the back counter. Nothing had been disturbed in the store during Camp's absence, because another sheriff's officer was on duty at the store to ensure that nobody entered the store. At the store, Camp gave Deputy Casias the torn end piece of paper which would match the piece of paper attached to the packet of money taken in the robbery (Tr.67-69,98).

Deputy Casias obtained the torn end piece of paper from Camp, marked it with his name and the date, had Camp mark it with his (Camp's) name and the date, placed the piece of paper in an envelope, marked the envelope, and retained the envelope in his custody until trial. At trial, Deputy Casias identified State's exhibit 6-S as the same small end piece of paper he obtained at the 7-Eleven from Camp (Tr.98). Camp also positively identified State's exhibit 6-S as being the same piece of paper he had ripped from the end of the piece of adding machine tape he had attached to the packet of currency. At trial, Camp matched the pieces of paper (the unmarked piece of adding machine tape from State's exhibit 5-S, and the torn end piece of adding machine

tape from State's exhibit 6-S) and held them in their matched position (Tr.69,70).

Appellant testified in his own defense at trial and specifically denied committing either of the armed robberies with which he was charged (Tr.236-238). His testimony, essentially, is that he had been at a party with Rebel Bronstadt late in the evening of March 31 and early in the morning of April 1, 1979, where he had been drinking beer and tequila, which rendered him "tipsy." He left the party and went to another 7-Eleven store, this one located at 1157 West 1300 South, to buy beer. Though it was illegal to sell beer after 1:00 a.m., appellant successfully convinced the clerk to sell him beer after hours. Appellant saw a puppy in the parking lot of the store which he took home for his daughter. On arriving home, he conversed with his wife for some twenty minutes, during which time she suggested that he go to a 24-hour Harmon's store to buy dog food. Appellant went with Bronstadt to the store, where he purchased dog food and other items. The shopping trip lasted about one half hour (Tr.222-227).

Appellant testified further that after leaving Harmon's he proceeded down 4000 West to 3100 South where he turned right. Appellant explained his failure to stop at

the stop sign as due to wet and snowy road conditions and his failure to pull over for Deputy Garner as due to appellant's failure to see Garner's patrol car (Tr.229). Appellant stated that the paper sack found during the search of his vehicle had been in the vehicle for a period of four or five months, and that the money had been in the sack for four or five days. Appellant further testified that the money was part of a check which he had cashed, and that he was keeping the cash to buy his wife a birthday present (Tr.225).

ARGUMENT

POINT I

THERE WAS SUFFICIENT EVIDENCE PRESENTED BY THE STATE OF UTAH AT TRIAL FROM WHICH APPELLANT COULD BE CONVICTED OF THE CRIME OF AGGRAVATED ROBBERY.

This Court, in State v. Lamm, Utah, 606 P.2d 229, 231 (1980), recently restated the standard of review it would apply to claims of insufficiency of the evidence:

> It is the exclusive function of the jury to weigh the evidence and to determine the credibility of the witnesses, and it is not within the prerogative of this Court to substitute its judgment for that of the fact-finder. This Court should only interfere when the evidence is so lacking and insubstantial that reasonable men could not possibly have reached a verdict beyond a reasonable doubt.

In addition, this Court in State v. Wilson, Utah, 565 P.2d 66, 68 (1977) determined that "we are obliged to assume that the jury believed those aspects of the evidence, and drew those inferences that reasonably could be drawn therefrom, in the light favorable to the verdict." See also State v. Helm, Utah, 563 P.2d 794 (1977); State v. Jones, Utah, 554 P.2d 1321 (1976). And in State v. Reddish, Utah, 550 P.2d 728 (1976), this Court held that where the defendant's version of the story differs from the State's, the court must assume that the jury believed that version which supports their verdict.

Appellant, in Point I of his brief, correctly cites State v. Meacham, 23 Utah 2d 18, 456 P.2d 156 (1969), and State v. Wilson, supra, for the proposition that a defendant should be acquitted if the evidence of his being elsewhere than at the scene of the crime is sufficient to raise a reasonable doubt as to his guilt. But he fails to mention (1) that the jury has the exclusive prerogative of judging the credibility of the witnesses and the weight of the evidence, (2) that this Court is obligated to assume that the jury believed those aspects of the evidence and drew those inferences that could reasonably be drawn from the evidence in the light favorable to the verdict, and (3) that

this Court may substitute its judgment for that of the jury only when the evidence is so inherently insubstantial that reasonable minds must necessarily have found a reasonable doubt as to appellant's guilt.

Appellant does not claim that the State's evidence adduced at trial was so improbable that reasonable minds must necessarily have entertained a reasonable doubt that he committed the crime for which he was convicted. Rather, he essentially contends that since he testified at trial that he was elsewhere when the crimes were committed, and since a possible inference could have been drawn from other testimony of defense witnesses that he was elsewhere when the crimes were committed, his conviction was not supported by sufficient evidence.

Appellant testified at trial and specifically denied involvement in the armed robberies. He testified that he went to a party, left the party, and the went to a 7-Eleven store to buy beer. The clerk at that store gave corroborative testimony at trial that appellant had been in the store shortly after 1:00 a.m. on April 1, 1979. Appellant further testified that he found a puppy in the parking lot and took it home where he and his wife had a twenty minute discussion during which appellant decided to go to the store to buy dog food.

Appellant's wife testified that this discussion did indeed take place. Appellant testified that he was on his way home from the store when he ran a stop sign as he was making a turn to avoid sliding out of control on the snowy, wet road, and that he was subsequently stopped by Deputy Garner.

Respondent submits that simply because possible inferences could have been drawn by the jury from defense testimony at trial that appellant was elsewhere when the crimes were committed, appellant may not succeed in having his conviction reversed by this Court on the grounds of insufficient evidence where the State's evidence is not so lacking and insubstantial that the jury must necessarily have entertained a reasonable doubt that appellant committed the crimes. Therefore, appellant has failed to meet his burden on this point.

The jurors were not obligated to accept appellant's explanation of his involvement in the crime, as was decided in State v. Schoenfeld, 545 P.2d 193, 195 (1976):

> In regard to defendant's contention that the evidence is not sufficient to justify his conviction, these observations are pertinent: The jury were not obligated to accept as true defendant's own version of the evidence nor his self-exculpating statements as to his intentions and his

> conduct. They were entitled to use their own judgment as to what evidence they would believe and to draw any reasonable inferences therefrom.

Nor were the jurors obligated to infer from the testimony of appellant's wife that appellant was elsewhere at the time of the commission of the armed robberies. She testified only that appellant came home with the puppy at about 1:30 a.m. on April 1, 1979, that she and appellant talked for about twenty minutes, and that appellant decided to go to Harmon's store to purchase dog food. Her testimony in no way indicated that after appellant left the house he actually did go to Harmon's. The testimony of George Farnsworth, clerk of the 7-Eleven store at 1157 West 1300 South, also does not compel an inference that appellant was elsewhere at the time of the commission of the robberies. Farnsworth testified only that appellant came into the store about 1:10 a.m., argued with Farnsworth about whether Farnsworth would sell beer to appellant, and left the store at most twenty minutes later, long before the robberies were committed.

Appellant alleges that the physical evidence introduced by the State at trial is also insufficient to support his conviction because his wife testified that the

scissors found by Officer Kennedy under the seat of his car belonged to her and were placed under the seat by her to be out of reach of her daughter and because appellant testified that the money found in the bag was an amount he was saving for his wife's birthday present. This contention also must fail, particularly where substantial, credible evidence was introduced by the State at trial that the scissors found in appellant's car were the same scissors used in the commission of the armed robberies, and that the paper sack contained both money taken from the store at 4150 West 3500 South and a piece of adding machine tape which matched perfectly with another piece of the same tape found at the store after the robbery. Appellant has made no showing that the jury must have believed his explanation of the scissors and the money found in the paper bag.

In Point II of his brief, appellant attacks the sufficiency of the eyewitness identification of himself as perpetrator of both of the armed robberies, which identificatio was provided by the clerks on duty at each store, Janette Nye and Dwight Camp. He alleges that this eyewitness identification was not established beyond a reasonable doubt, because two defense witnesses, Iwana Wall and Jeryl

Johnson, had mistaken another man for appellant on several occasions, and because another defense witness, James Curtis, testified that he had been mistaken for appellant.

Respondent submits that the jury, not appellant, is the exclusive judge of whether the eyewitness testimony identifying appellant as perpetrator of the armed robberies was sufficient. In the instant case, Janette Nye and Dwight Camp both had ample opportunities to observe appellant's physical characteristics at the time they were victims of armed robbery perpetrated by him. They were further provided with other opportunities to identify appellant <u>again</u> as the perpetrator of the robberies within forty-five minutes after the commission of the crimes, while their recollection was still fresh. They <u>again</u> identified appellant at trial as the individual responsible for the robbery at each of the stores in which they were working on April 1, 1979. At no time did Ms. Nye or Camp hesitate in identifying appellant as the guilty party. Therefore, appellant has failed to meet his heavy burden of showing that the eyewitness identification of himself as perpetrator of the armed robberies was insufficient to support his conviction. He has not shown that the eyewitness identification is so inherently improbable and insubstantial that reasonable

minds could not possibly have reached a verdict beyond a reasonable doubt based on such identification. He has shown, at most, that another man has been mistaken for appellant, which does not require a conclusion that the eyewitness testimony was insufficient to support his conviction.

In addition, a complete and careful review of the entire record reveals that the identification evidence was merely one piece of the State's total evidentiary "picture," and that the jury had additional incriminating evidence upon which to convict appellant, as noted in the Statement of Facts, above. Not only was appellant identified by Camp and Ms. Nye as the perpetrator of the robberies, but also physical evidence, which was used to commit the robberies and was taken by appellant as a result of the robberies, was discovered in appellant's car. The piece of adding machine tape which was left at the 7-Eleven store at 4150 West 3500 South perfectly matched the piece of adding machine tape from which it was torn, which second piece was found in appellant's car along with the stolen money. The scissors, currency, paper sack, and red bandana were all found in appellant's car and were positively identified as physical evidence involved in the robberies.

In drawing fair and reasonable inferences from the evidence in the light most favorable to the verdict, the only logical result is that appellant was guilty of the armed robberies. When the total evidentiary picture is viewed, the jury was properly within its authority in finding appellant guilty. The language of State v. Christean, Utah, 533 P.2d 872, 876 (1975) is appropriate:

> . . . it may well be that certain facts of the evidence, considered separately, could be regarded as not inculpatory, and thus be vulnerable to the accused's claim that it does not connect him with the crime. However, the law does not require that the separate bits of evidence be viewed in isolation for it is proper to take whatever fragments of proof that can be found and piece them together with the reasonable inferences to be drawn therefrom in order to fill in the whole mosaic of the crime.

The jury, having considered all the evidence and having made all "the reasonable inferences to be drawn therefrom" was able to deliberate with all the circumstances in mind, and determined that appellant was guilty beyond a reasonable doubt. Respondent submits that in viewing the evidence in its entirety, as the jury did, it is not "so inconclusive or so inherently improbable that reasonable minds" could not convict appellant. On the contrary, the evidence was sufficient and substantial and therefore, the

jury verdict should be upheld.

CONCLUSION

Claims on appeal of insufficiency of the evidence must be reviewed in light of the total evidentiary picture. A conviction will not be reversed on appeal on the grounds of insufficiency of the evidence unless the evidence is so lacking and insubstantial that reasonable minds could not possibly have reached a verdict beyond a reasonable doubt. Viewing the testimony as a whole in the light most favorable to the State, appellant has made no showing that his conviction should be reversed because of insufficiency of the evidence.

On the basis of the above authority and the evidence against appellant presented at trial, respondent prays that the verdict and judgment be affirmed.

Respectfully submitted,

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CERTIFICATE OF MAILING

Mailed two copies of the foregoing Brief of Respondent to Ginger L. Fletcher, Attorney for Appellant, Salt Lake Legal Defender Assoc., 333 South Second East, Salt Lake City, Utah 84111, this 12 day of August, 1981.

Craig J. Barlow-bk

ATTORNEY FOR RESPONDENT