

2011

Utah v. Fernando Gonzalez-Camargo : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Joan C. Watt; Andrea Garland; Salt Lake Legal Defender Assoc.; Attorneys for Defendant/
Appellant.

Jeffrey S. Gray; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Attorneys for
Plaintiff/Appellee.

Recommended Citation

Reply Brief, *Utah v. Fernando Gonzalez-Camargo*, No. 20110027 (Utah Court of Appeals, 2011).
https://digitalcommons.law.byu.edu/byu_ca3/2718

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
FERNANDO GONZALEZ-CAMARGO, : Case No. 20110027-CA
Defendant/Appellant. :

APPELLANT'S REPLY BRIEF

Reply in appeal from conviction for possession of a controlled substance, a third degree felony, and theft by receiving stolen property, a class B misdemeanor, in the Third Judicial District Court, Salt Lake County, Utah, the Honorable Royal Hansen, judge, presiding.

JOAN C. WATT (3967)
ANDREA GARLAND (7205)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Attorneys for Defendant/Appellant

JEFFREY S. GRAY (5852)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
UTAH ATTORNEY GENERAL
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114-0854
Attorneys for Plaintiff/Appellee

FILED
UTAH APPELLATE COURTS

FEB 07 2012

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
FERNANDO GONZALEZ-CAMARGO, : Case No. 20110027-CA
Defendant/Appellant. :

APPELLANT'S REPLY BRIEF

Reply in appeal from conviction for possession of a controlled substance, a third degree felony, and theft by receiving stolen property, a class B misdemeanor, in the Third Judicial District Court, Salt Lake County, Utah, the Honorable Royal Hansen, judge, presiding.

JOAN C. WATT (3967)
ANDREA GARLAND (7205)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Attorneys for Defendant/Appellant

JEFFREY S. GRAY (5852)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
UTAH ATTORNEY GENERAL
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114-0854
Attorneys for Plaintiff/Appellee

TABLE OF CONTENTS

| | |
|--|-----|
| TABLE OF AUTHORITIES | iii |
| INTRODUCTION | 1 |
| ARGUMENT | 2 |
| POINT. THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO ESTABLISH THAT GONZALEZ-CAMARGO CONSTRUCTIVELY POSSESSED METHAMPHETAMINE FOUND IN A METAL BOX IN A ROOM APPELLANT DID NOT SOLELY OCCUPY. | 2 |
| CONCLUSION | 8 |

TABLE OF AUTHORITIES

Cases

| | |
|---|---------|
| <i>State v. Fox</i> , 709 P.2d 316 (Utah 1985)..... | 2, 4 |
| <i>State v. Hansen</i> , 732 P.2d 127 (Utah 1987)..... | 2, 4 |
| <i>State v. Layman</i> , 1999 UT 79, 985 P.2d 911 | 2, 4 |
| <i>State v. Robbins</i> , 2009 UT 23, 210 P.3d 288 | 3 |
| <i>State v. Salas</i> , 820 P.2d 1386 (Utah Ct. App. 1991)..... | 2 |
| <i>State v. Workman</i> , 2005 UT 66, 122 P.3d 639 | 4, 5, 6 |

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
FERNANDO GONZALEZ-CAMARGO, : Case No. 20110027-CA
Defendant/Appellant. :

INTRODUCTION

The State agrees that the conviction for receiving stolen property should be reversed because the trial court committed reversible error in admitting hearsay evidence. State's brief (S.B.):15–17. As Appellant Fernando Gonzalez-Camargo pointed out in his opening brief (A.B.):31–43, the trial court committed error in admitting hearsay evidence that the laptop was stolen, and the error was prejudicial. Gonzalez-Camargo respectfully requests that his conviction for receiving stolen property be reversed.

The only remaining consideration for this Court is whether the State proved beyond a reasonable doubt that Gonzalez-Camargo constructively possessed the methamphetamine in a metal box located in the northwest bedroom. The State fails to analyze the evidence presented in this case in light of controlling constructive possession case law, and disregards the factors Utah appellate courts have relied on in assessing whether there is sufficient evidence to establish that a defendant constructively possessed

contraband. Because the State failed to introduce evidence proving a sufficient nexus between Gonzalez-Camargo and the drugs in the northwest bedroom, the conviction for possession of a controlled substance should also be reversed and the charge dismissed.

ARGUMENT

POINT. THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO ESTABLISH THAT GONZALEZ-CAMARGO CONSTRUCTIVELY POSSESSED METHAMPHETAMINE FOUND IN A METAL BOX IN A ROOM APPELLANT DID NOT SOLELY OCCUPY.

As outlined in A.B.:15-30, the State must do more than establish “mere occupancy of a portion of the premises where the drug is found,” in order to prove constructive possession. *State v. Hansen*, 732 P.2d 127, 132 (Utah 1987). In addition to showing ownership or occupancy, the State must prove beyond a reasonable doubt that there is a sufficient nexus between the defendant and the contraband showing “that the accused had both the power and the intent to exercise dominion and control over the drug.” *State v. Layman*, 1999 UT 79, ¶16, 985 P.2d 911 (citing *State v. Fox*, 709 P.2d 316, 318 (Utah 1985)). The State has failed to establish a sufficient nexus or the power and intent to exercise dominion and control over the methamphetamine found in a metal box located in a bedroom which was not solely occupied by Gonzalez-Camargo.

Rather than analyzing how the facts in this case compare with those in *Fox*, *Layman*, *State v. Salas*, 820 P.2d 1386 (Utah Ct. App. 1991) and other Utah cases, the State dispenses with those opinions and the considerations for determining constructive possession outlined in those cases. S.B.:12–13. Instead, the State makes only a superficial argument for constructive possession, trying to show proof of the requisite nexus, and

power and intent to exercise dominion and control by arguing that Gonzalez-Camargo lived in the northwest bedroom with his girlfriend, he “was in the apartment when officers entered to conduct the search,” his possessions dominated the bedroom, and the box was initially found on the floor near computers that belonged to him. S.B.:13-14. Even if all of this were proven below, it would not be enough to prove beyond a reasonable doubt that Gonzalez-Camargo constructively possessed the methamphetamine. But a review of the evidence shows that even this meager argument offered by the State is not supported by the evidence, and the evidence as a whole “is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt” that Gonzalez-Camargo constructively possessed the methamphetamine. *State v. Robbins*, 2009 UT 23, ¶14, 210 P.3d 288 (citation omitted).

First, the evidence relied on by the State is not sufficient to establish constructive possession, even if it were proven below. Even if it were true that Gonzalez-Camargo’s belongings dominated the room, there were also women’s belongings and under the evidence cited by the State, it is just as likely that the box belonged to the woman occupant as it was that it belonged to Gonzalez-Camargo. The fact that Gonzalez-Camargo was in the apartment when officers arrived outside also did not prove that the box was his; his girlfriend was also in the apartment, as were twelve or so additional people, all of whom were allowed to move through the apartment and exit on their own without police observation, and any of whom could have placed the box in the bedroom as they exited. In fact, it was evident that people inside the apartment were trying to hide evidence since officers found a social security card in the toilet. Ex. 6. If occupancy alone

is not enough to prove constructive possession beyond a reasonable doubt, then even if the State established that Gonzalez-Camargo was an occupant of the bedroom, the location of drugs in the bedroom near some of the belongings arguably attributed to him was not sufficient to establish possession. In fact, it was just as likely that the girlfriend or someone else possessed the methamphetamine.

This is not a case where the drugs were found in a drawer or on a shelf with some of Gonzalez-Camargo's possessions or where Gonzalez-Camargo had the key to the box, or there were receipts, paraphernalia, or other indicia that the drugs were his. *See, e.g., State v. Workman*, 2005 UT 66, ¶¶3, 34, 122 P.3d 639; *Hansen*, 732 P.2d at 132. Instead, the State arguably does not have sufficient evidence to establish Gonzalez-Camargo occupied the room, let alone additional evidence proving that he had "the power and intent to exercise dominion and control over the [methamphetamine]." *Fox*, 709 P.2d at 319; *Layman*, 1999 UT 79, ¶16; *see* A.B.:23-30.

Additionally, the State stretches the evidence beyond what was introduced below and makes unreasonable inferences to support its argument. While the State is correct that Gonzalez-Camargo was in the apartment when officers arrived outside, he along with twelve or thirteen other people exited well before any officer entered. The officers did not see Gonzalez-Camargo in the room that contained the drugs and anyone could have shoved the box in the room as they were leaving the apartment, or officers or the canine unit could have moved the box, as is evident from the fact that the metal box was in different locations. In any event, the fact that Gonzalez-Camargo was in the apartment when officers arrived outside, and was later returned to the apartment under officer

control, does nothing to prove that he possessed the metal box with methamphetamine inside.

Nor was the northwest bedroom “dominated by [Gonzalez-Camargo’s] possessions and effects, [and] not his girlfriend’s” as claimed by the State. S.B.:13. The State bases this claim on an incorrect and very dated stereotype—that the room was filled with computers, electronic equipment, tools, “and other items typically associated with men,” thereby drawing the unreasonable inference that Gonzalez-Camargo’s possessions dominated the room. S.B.:13. Gonzalez-Camargo acknowledged that the stack of computers an officer was carrying was his and that he repaired computers, but that does not mean that computers that were set up or being used in the room all belonged to him or that other electronic equipment and tools were his. In any event, the girlfriend’s purse with identification was in the bedroom – not with her. There was also a pink pack, makeup, women’s jewelry, women’s clothing, and pink containers in the room. Ex. 6. The State disregards the evidence shown in the DVD and testified to by the officers and makes improper inferences when it argues that male belongings dominated the room. And, even if Gonzalez-Camargo’s belongings dominated the room, the State would still be required to prove beyond a reasonable doubt that the box of methamphetamine was his, which it has not.

Further, while the State claims that the box was on the floor with two computers, there is no evidence the computers and box were intermingled the way the items were intermingled with the drugs in *Workman*, 2005 UT 66, ¶¶3, 34. There, the equipment being used to produce methamphetamine was intermingled on a shelf with items clearly

belonging to Workman whereas here, the metal box was reported to have been on the floor near the mattress at some point, with no mention of the computers or any other items. R345:191. The floor is a shared space that is much larger than a shelf or drawer; a couple of computers that may or may not have belonged to Gonzalez-Camargo nearby in this common area fails to make the State's case even if it could establish that the metal box was initially found in that location.

Additionally, even if the State had shown that the methamphetamine was intermingled with computers, which it has not, the Court was clear in *Workman* that the conclusion there that the State had proven a sufficient nexus was based on a number of factors, including the location of the clandestine lab in a bedroom Workman shared, Workman's statements suggesting guilt, her admission that she had bought some of the glassware used in the clandestine lab, her fingerprint on a container, and her own drug use, along with the fact that "[h]er personal items were intermingled with the equipment being used to produce meth." *Id.* And, the Court indicated that the intermingling alone would not have proven constructive possession, stating, "[t]aken alone, it is not likely that any one, or even a small group, of these factors would be enough to establish a sufficient nexus between Workman and the clandestine lab." *Id.* Hence, even if the metal box were found on the floor along with a couple of computers, the State did not establish the requisite nexus between Gonzalez-Camargo and the drugs.

The State's depiction of the evidence is further flawed. It claims Agent Metcalf was the first to enter the apartment and "testified that the lock box containing the methamphetamine was found on the floor next to the mattress." S.B.:14. Actually, Agent

Metcalf testified that he was “not certain [he] was the first one in the door or not” and that he thought Agent Spann entered the apartment before him. R345:171. Agent Spann filmed the room with the box on the bed. Ex.6. In any event, regardless of who entered the *apartment* first, there is no evidence as to which of the agents entered the *bedroom* first, and it is simply unknown whether the box was initially located on the floor or on the bed or elsewhere or whether the canine unit or SWAT team moved it. As set forth in the opening brief, the SWAT team was in the house for over an hour before the agents entered and at least one if not two canine units went through the house, presumably searching for drugs. A.B.:23-24. The cushions on the sofa were “tossed” suggesting that some sort of search had taken place prior to the filming of the DVD. Ex. 6. Regardless of whether an officer believed that SWAT teams ordinarily do not conduct a full search, no member of the SWAT team testified that they did not conduct a search in this case. Further, the fact that many SWAT team members and at least one canine unit went through the house for over an hour before the agents entered and the pillows on the sofas were “tossed” shows that items inside the apartment were disturbed before the agents entered. Because no one testified that s/he was the person who initially found the metal box and no one testified regarding its initial location, the State did not establish exactly where it was found. Under these circumstances, the State’s reliance on the location where the metal box was found as the primary fact supporting constructive possession underscores the weakness of the State’s case.

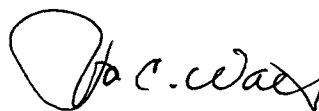
As set forth in A.B.:15-30, the State failed to prove beyond a reasonable doubt that Gonzalez-Camargo constructively possessed the methamphetamine found in the metal

box. The evidence presented by the State was inconclusive, requiring that the conviction be reversed.

CONCLUSION

Appellant/Defendant Fernando Gonzalez-Camargo respectfully requests that his conviction for receiving stolen property be overturned based on his arguments in the opening brief and the concession of the State. He further requests that his conviction for possession of a controlled substance be reversed and the matter dismissed based on the State's failure to prove that he constructively possessed the controlled substance.

SUBMITTED this 7 day of February, 2012.



JOAN C. WATT
ANDREA GARLAND
Attorneys for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, JOAN C. WATT, hereby certify that I have caused to be hand-delivered the original and seven copies of the foregoing to the Utah Court of Appeals, 450 South State, 5th Floor, P.O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to Jeffrey S. Gray, Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 7 day of February, 2012.



JOAN C. WATT

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this 7 day of February, 2012.

