

1990

State of Utah v. Carol S. Candelaria : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

DOCKET NO.

STATE OF UTAH, :

Plaintiff-Appellee, : Case No. 900341-CA

v. :

CAROL S. CANDELARIA, : Category No. 2

Defendant-Appellant. :

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A CONVICTION OF FRAUDULENTLY
OBTAINING WELFARE ASSISTANCE, A SECOND DEGREE
FELONY, IN VIOLATION OF UTAH CODE ANN. § 55-
15a-13(1) (1986) (REPEALED 1988), IN THE
THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE RICHARD H. MOFFAT, JUDGE,
PRESIDING.

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
JURISDICTION AND NATURE OF PROCEEDINGS.....	1
STATEMENT OF ISSUES PRESENTED ON APPEAL AND STANDARDS OF APPELLATE REVIEW.....	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	2
SUMMARY OF ARGUMENT.....	3
ARGUMENT	
POINT I THE JURY INSTRUCTIONS MISSTATED THE ELEMENTS OF THE CRIME DEFINED IN UTAH CODE ANN. § 55-15a-31(1) (1986) (REPEALED 1988); THEREFORE, THIS COURT SHOULD REVERSE DEFENDANT'S CONVICTION AND REMAND THE CASE FOR A NEW TRIAL.....	3
POINT II UTAH CODE ANN. §§ 55-15a-31(1) AND -30(1) (1986) (REPEALED 1988) DO NOT PROSCRIBE THE SAME CONDUCT SUCH THAT DEFENDANT COULD BE SENTENCED FOR ONLY A CLASS B MISDEMEANOR UNDER SECTION 55-15a-30(1).....	6
CONCLUSION.....	8

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>City of Monticello v. Christensen</u> , 788 P.2d 513 (Utah) <u>cert. denied</u> , 111 S. Ct. 120 (1990).....	1-2
<u>Provo City Corporation v. Willden</u> , 768 P.2d 455 (Utah 1989).....	1-2
<u>State, ex. rel. Cannon v. Leary</u> , 646 P.2d 727 (Utah 1982).....	5
<u>State v. Bryan</u> , 709 P.2d 257 (Utah 1985).....	6-7
<u>State v. Fulton</u> , 742 P.2d 1208 (Utah 1987), <u>cert.</u> <u>denied</u> , 484 U.S. 1044 (1988).....	5
<u>State v. Garcia</u> , 744 P.2d 1029 (Utah Ct. App. 1987)....	5
<u>State v. Harmon</u> , 712 P.2d 291 (Utah 1986).....	5
<u>State v. Jones</u> , 734 P.2d 473 (Utah 1987).....	5-6
<u>State v. Laine</u> , 618 P.2d 33 (Utah 1980).....	4
<u>State v. Medina</u> , 738 P.2d 1021 (Utah 1987).....	5
<u>State v. Shondel</u> , 22 Utah 2d 343, 453 P.2d 146 (1969)..	3, 6-7
<u>State v. Verde</u> , 770 P.2d 116 (Utah 1989).....	5

CONSTITUTIONS, STATUTES AND RULES

Utah Code Ann. § 55-15a-30 (1986) (repealed 1988).....	2-3, 6-8
Utah Code Ann. § 55-15a-31 (1986) (repealed 1988).....	1-7
Utah Code Ann. § 62A-9-128 (1989).....	3
Utah Code Ann. § 62A-9-130 (1989).....	3
Utah Code Ann. § 78-2a-3 (Supp. 1990).....	1

Utah R. Crim. P. 12(b)(1)..... 5
Utah R. Crim. P. 12(d)..... 5
Utah R. Crim. P. 19(c)..... 5
Utah R. Evid. 103(d)..... 5

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STATE OF UTAH, :
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BRIEF OF APPELLEE

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of fraudulently obtaining welfare assistance, a second degree felony, under Utah Code Ann. § 55-15a-31(1) (1986) (repealed 1988).

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1990).

STATEMENT OF ISSUES PRESENTED ON APPEAL

AND STANDARDS OF APPELLATE REVIEW

The following issues are presented on appeal:

1. Did the jury instructions misstate the elements of the crime defined in Utah Code Ann. § 55-15a-31(1) (1986) (repealed 1988)?

Because this presents a question of law, a "correction of error" standard of review applies. City of Monticello v. Christensen, 788 P.2d 513, 516 (Utah), cert. denied, 111 S. Ct. 120 (1990); Provo City Corporation v. Willden, 768 P.2d 455, 456 (Utah 1989).

2. Do Utah Code Ann. §§ 55-15a-31(1) and 55-15a-30(1) (1986) (repealed 1988) proscribe the same conduct such that defendant could be convicted of only a class B misdemeanor under section 55-15a-30(1)?

Because this also presents a question of law, the "correction of error" standard of review applies. Christensen, 788 P.2d at 516; Willden, 768 P.2d at 456.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional, statutory, or rule provisions pertinent to the resolution of the issues presented on appeal is contained in the body of this brief.

STATEMENT OF THE CASE

Defendant, Carol S. Candelaria, was charged with fraudulently obtaining welfare assistance, a second degree felony, under Utah Code Ann. § 55-15a-31(1) (1986) (repealed 1986) (R. 10-11).

After a jury trial, defendant was found guilty as charged (R. 126). The trial court sentenced her to a term of one to fifteen years in the Utah State Prison and fined her \$10,000 plus a 25% surcharge, but stayed the execution of the prison term and placed her on probation (R. 132).

STATEMENT OF FACTS

In light of the issues raised by defendant on appeal and the concessions made by the State, a statement of facts beyond those set forth above in the Statement of the Case is unnecessary.

SUMMARY OF ARGUMENT

Because the elements instruction given to the jury misstated the elements of the crime defined in Utah Code Ann. § 55-15a-31(1) (1986) (repealed 1988), this Court should reverse defendant's conviction and remand the case for a new trial.

Because section 55-15a-31(1) and Utah Code Ann. § 55-15a-30(1) (1986) (repealed 1988) do not contain the same elements, a conviction of and sentence for a felony offense under section 55-15a-31(1) is not prohibited by State v. Shondel, 22 Utah 2d 343, 453 P.2d 146 (1969).

ARGUMENT

POINT I

THE JURY INSTRUCTIONS MISSTATED THE ELEMENTS OF THE CRIME DEFINED IN UTAH CODE ANN. § 55-15a-31(1) (1986) (REPEALED 1988); THEREFORE, THIS COURT SHOULD REVERSE DEFENDANT'S CONVICTION AND REMAND THE CASE FOR A NEW TRIAL.

Defendant argues that the jury instructions misstated the elements of the crime defined in Utah Code Ann. § 55-15a-31(1) (1986) (repealed 1988)¹. The State agrees.

Section 55-15a-31 provided:

No person shall fail to disclose any change in circumstances, as provided in § 55-15a-30, for the purpose of obtaining, or continuing to receive, funds or other benefits to which that person is not entitled, or in an amount larger than that to which he is entitled.

¹ Sections 55-15a-31(1) and -30(1), when repealed in 1988, were recodified in substantially the same form in Utah Code Ann. §§ 62A-9-130(1) and -128(1) (1989).

The elements instruction given to the jury read:

In order to find the defendant guilty of fraudulently obtaining welfare assistance as charged in the Information, each of the following elements must be proved beyond a reasonable doubt:

1. That Carol Candelaria, in Salt Lake County, State of Utah;

2. On or about the dates alleged in the Information;

3. Knowingly, by false statement, misrepresentation, or other fraudulent means stole and converted to her own use public assistance funds by failing to disclose her income and the correct amount of funds held in savings and checking accounts; and

4. Received [sic] funds or benefits in excess of \$1000.00.

. . . .

(Instruction No. 11; R. 104) (emphasis added).

As defendant points out, the elements instruction incorrectly stated the elements of the crime defined in section 55-15a-31(1). That section does not contain the "steal and convert to own use"² language that appears in the instruction. Furthermore, the instruction does not contain the mental element set forth in that section: "for the purpose of obtaining, or continuing to receive, funds or other benefits"

It is settled law that "[a]n accurate instruction upon the basic elements of the offense charged is essential, and the failure to so instruct constitutes reversible error." State v. Laine, 618 P.2d 33, 35 (Utah 1980). As in Laine, the inaccurate

² No instruction defined the phrase "steal and convert to her own use" as used in Instruction No. 11.

elements instruction given in defendant's case requires reversal of her conviction. See also State v. Jones, 734 P.2d 473, 475-76 (Utah 1987); State v. Harmon, 712 P.2d 291 (Utah 1986) (per curiam).³

Accordingly, based on the instructional error, this Court should reverse defendant's conviction and remand the case for a new trial. Laine, 618 P.2d at 35.⁴

³ Although defendant did not object to the elements instruction at trial, a fact which would normally preclude review on appeal, State v. Medina, 738 P.2d 1021, 1023 (Utah 1987); Utah R. Crim. P. 19(c), the State agrees with defendant that the instructional error should be reviewed under the plain error rule. See State v. Verde, 770 P.2d 116, 121-22 (Utah 1989) ("manifest injustice" exception to the waiver rule contained in rule 19(c), Utah Rules of Criminal Procedure, is applied in the same manner as the plain error rule under rule 103(d), Utah Rules of Evidence); State v. Lesley, 672 P.2d 79, 81 (Utah 1983) (notwithstanding defendant's failure to object to jury instruction on criminal trespass, court would review the instruction to prevent manifest injustice where instruction misstated the law of criminal trespass and was entirely inconsistent with the statutory definition of that offense).

⁴ Defendant also alleges that the information filed against her was defective for the same reason that the jury instruction was. However, defendant's failure to make any objection to the information in the trial court precludes review of the alleged defect in the information. State v. Fulton, 742 P.2d 1208, 1215 (Utah 1987), cert. denied, 484 U.S. 1044 (1988); Utah R. Crim. P. 12(b)(1) & (d). Moreover, this is not a case where the information failed to charge a crime. Cf. State v. Garcia, 744 P.2d 1029, 1031 (Utah Ct. App. 1987). The information specifically charged a violation of section 55-15a-31(1), and, although the language used to describe the charged offense was perhaps poorly chosen, the information nevertheless served its primary purpose of giving defendant notice of the crime with which she had been charged. See State, ex. rel. Cannon v. Leary, 646 P.2d 727, 731 (Utah 1982).

POINT II

UTAH CODE ANN. §§ 55-15a-31(1) AND -30(1)
(1986) (REPEALED 1988) DO NOT PROSCRIBE THE
SAME CONDUCT SUCH THAT DEFENDANT COULD BE
SENTENCED FOR ONLY A CLASS B MISDEMEANOR
UNDER SECTION 55-15a-30(1).

Defendant argues that Utah Code Ann. §§ 55-15a-31(1) and -30(1) (1986) (repealed 1988) proscribed the same conduct such that she could be convicted of only a class B misdemeanor under section 55-15a-30(1). Because this issue will arise again on remand, the Court should address it even though the instructional error requires reversal. See State v. Jones, 734 P.2d 473, 475 (Utah 1987) ("Although our holding disposes of the case, we discuss briefly defendant's remaining assignments of error in order to prevent a repetition of error and to afford guidance to the trial court on remand.").

Defendant cites State v. Bryan, 709 P.2d 257 (Utah 1985), in support of her argument. There, the Utah Supreme Court, in holding that the defendant was entitled to be sentenced for a misdemeanor rather than a felony based upon manslaughter convictions arising out of his causing the deaths of two persons while driving in an intoxicated state, concluded that the elements of a motor vehicle code provision and the manslaughter statute were the same. 709 P.2d at 263. It noted that in State v. Shondel, 22 Utah 2d 343, 453 P.2d 146 (1969), the court had held that "if two statutes are wholly duplicative as to the elements of the crime, the law does not permit a prosecutor to exercise the wholly unfettered authority to decide whether the crime should be charged as a misdemeanor or a felony." Ibid.

However, the relationship between the motor vehicle statute and the manslaughter statute at issue in Bryan simply does not exist in the instant case.

Section 55-15a-30(1) made unlawful a person's fraudulent failure to disclose any material fact or change in circumstances "used in the making, or which would affect, the determination of that person's eligibility to receive aid or benefits" ⁵ On the other hand, section 55-15a-31(1), under which defendant was charged and convicted, made unlawful a person's failure to disclose any change in circumstances as proscribed in section 55-15a-30(1) with the additional element of "the purpose of obtaining, or continuing to receive, funds or other benefits" Section 55-15a-31(1) contained a mens rea element not included in section 55-15a-30(1): the purpose of obtaining or continuing to receive funds or other benefits. Thus, unlike the situation in Bryan and Shondel, the two statutes do not have the same elements. Accordingly, the Shondel principle would not operate to prohibit defendant's conviction of and sentencing for the felony offense defined in section 55-15a-

⁵ In its entirety, section 55-15a-30(1) provided:

No person shall knowingly, by false statement, misrepresentation, impersonation or other fraudulent means, fail to disclose any reduction in household composition, employment changes, changes in marital status, receipt of other monetary assistance, receipt of in-kind gifts or any other material fact or change in circumstances used in making, or which would affect, the determination of that person's eligibility to receive aid or benefits under any state or federally funded assistance program.

31(1) and (7). In short, she would not be entitled to the misdemeanor sentence under section 55-15a-30(3).

CONCLUSION

Based upon the foregoing arguments, this Court should reverse defendant's conviction and remand the case for a new trial.

RESPECTFULLY submitted this 12th day of March, 1991.

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CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to Joseph C. Fratto, Jr., Attorney for Appellant, 431 South 300 East #101, Salt Lake City, Utah 84111, this 12th day of March, 1991.

David B. Thompson