

2011

The State of Utah Utah v. Ismail Abdullahi Mohamed : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 :
 ISMAIL ABDULLAHI MOHAMED, : Case No. 20110066-CA
 : Appellant is incarcerated.
 Defendant/Appellant. :

BRIEF OF APPELLANT

Appeal from a conviction of Distribution of or Arranging to Distribute a Controlled Substance, a first degree felony, in violation of Utah Code Ann. § 58-37-8(1)(a)(ii) (2008); in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Deno Himonas, presiding.

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UTAH APPELLATE COURTS

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
ISMAIL ABDULLAHI MOHAMED, : Case No. 20110066-CA
Defendant/Appellant. : Appellant is incarcerated.

JURISDICTIONAL STATEMENT

Appellant Ismail Abdullahi Mohamed appeals from a Sentence, Judgment, Commitment for a conviction of Distribution of or Arranging to Distribute a Controlled Substance, a first degree felony, in violation of Utah Code Ann. § 58-37-8(1)(a)(ii) (2008); in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Deno Himonas, presiding. Jurisdiction is conferred upon this Court pursuant to Utah Code Ann. § 78A-4-103(2)(j) (2008). *See* Addendum A (Sentence, Judgment, Commitment)

ISSUE, STANDARD OF REVIEW, PRESERVATION

Issue I: Whether there was insufficient evidence presented by the State to support a conviction for Distribution of or Arranging to Distribute a Controlled Substance.

Standard of Review: When considering a sufficiency of evidence claim, this Court will “review the evidence and all inferences which may reasonably be drawn from it in

the light most favorable to the verdict of the jury.” *State v. Shumway*, 2002 UT 124, ¶ 15, 63 P.3d 94. It “will reverse a jury conviction for insufficient evidence only when the evidence is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted.” *Id.* (citing *State v. Petree*, 659 P.2d 443, 444 (Utah 1983)).

Notwithstanding the presumptions in favor of the jury’s decision this Court still has the right to review the sufficiency of the evidence to support the verdict. The fabric of evidence against the defendant must cover the gap between the presumption of innocence and the proof of guilt. In fulfillment of its duty to review the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict, the reviewing court will stretch the evidentiary fabric as far as it will go. But this does not mean that the court can take a speculative leap across a remaining gap in order to sustain a verdict.

Id. (quoting *Petree*, 659 P.2d at 444-45).

Preservation: Mr. Mohamed preserved this issue by making a motion for a directed verdict. R. 130: 119-20; *see State v. Holgate*, 2000 UT 74, ¶¶ 11, 14, 10 P.3d 346 (“As a general rule, to ensure that the trial court addresses the sufficiency of the evidence, a defendant must request that the court do so.”). Although Mr. Mohamed preserved this issue, if this Court finds preservation inadequate, it can be reviewed under the plain error doctrine. *See Holgate*, 2000 UT 74, ¶¶ 12-15.

STATUTORY PROVISION

The following statutory provision is determinative of the issue on appeal.

Utah Code Ann. § 58-37-8 (2008) – Distribution of or Arranging to Distribute a Controlled Substance:

(1) Prohibited acts A -- Penalties:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally: . . .

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

. . .

(4) Prohibited acts D -- Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed: . . .

(vii) in a shopping mall, sports facility, stadium, arena, theater, movie house, playhouse, or parking lot or structure adjacent thereto; . . .

(ix) within any area that is within 1,000 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii).¹

STATEMENT OF THE CASE

An Information was filed March 23, 2010, charging Mr. Mohamed with Distribution of or Arranging to Distribute a Controlled Substance, a first degree felony, in violation of Utah Code Ann. § 58-37-8(1)(a)(ii) (2008). R. 1-2. A preliminary hearing was held April 20, 2010 binding Mr. Mohamed over on the charged offense. R. 15.

A jury trial was held on September 29, 2010. R. 130. After the State presented its evidence, Mr. Mohamed made a motion for a directed verdict, which was denied. R. 130: 119-120. The jury returned a guilty verdict on the charged offense. R.44-45; 130: 173-175. Mr. Mohamed requested the trial court to give him credit for the nine months he served, and allow him to be admitted to inpatient treatment as part of his sentence. R.

¹ The jury found that the alleged transaction took place in or within 1000 feet of such an area described in the statute. R. 44. Mr. Mohamed does not contest the location of the alleged transaction.

131: 3-4. The trial court denied both of these requests and sentenced Mr. Mohamed to the indeterminate term of five years to life at the state prison. R. 131:4.

Mr. Mohamed filed a timely appeal. R. 122-23.

STATEMENT OF THE FACTS

On the evening of March 18, 2010, Detective Parisot and Detective Johnson were working undercover in the area of 200 South, between West Temple and 600 West, looking for individuals involved in drug dealing. R. 130: 57-58. The detectives saw Mr. Mohamed outside of the Salt Lake City homeless shelter on 200 South and approached him. R. 130: 60.

Mr. Mohamed is a Somali immigrant and English is not his first language. A certified Somali interpreter was used to allow Mr. Mohamed to understand what was said during the trial process. R. 130:14-15, 21. Detective Parisot testified that Mr. Mohamed conducted all of his communications with the detectives in English and when asked whether the Mr. Mohamed could understand what the detectives were saying to him, Detective Parisot stated “[w]e were able to carry on a conversation.” *Id.* at 85.

Detective Parisot said to Mr. Mohamed, “Hey, you got some work?” *Id.* at 61. Mr. Mohamed responded that he did not have any, but that he would help them find some. *Id.* Detective Parisot acknowledged that most people in the homeless shelter were unemployed and looking for work, however he maintained that Mr. Mohamed “was telling [the detectives that] he didn’t have any cocaine, but [that] he would help [them] locate some cocaine.” *Id.* at 61, 82. Detective Parisot did not use any other phrase to request the purchase of drugs, and he did not use the word cocaine or any common code

words such as “powder, rock, crack [or] white.” *Id.* at 81, 56. While the detective did not use any of these words with Mr. Mohamed, he testified that undercover agents generally use these words in “an effort to . . . fit in [and] act like [they] belong” when working undercover. *Id.* at 56.

Following this conversation, the three men set off together, walking east along 200 South, towards the post office, because Mr. Mohamed had said “that’s where a lot of the guys are” and they could probably “find some” there. *Id.* at 61-62, 83. Along the way, Mr. Mohamed approached several people and asked in English, “Hey, do you have some? Do you have some work?” *Id.* at 62. Not receiving an affirmative response, and finding no one at the post office, the three men set off again, this time heading west. *Id.* at 62-63.

Upon reaching the Jackson Apartments on the corner of 300 West and 200 South, the detectives noticed that they were being followed by a “passive” male individual. *Id.* at 63-64. He was Caucasian and spoke English. *Id.* at 84. This individual approached some men sitting outside the apartment building and solicited them for crack cocaine. *Id.* at 64, 84. He appeared to be soliciting on his own behalf. *Id.* at 84-85. Detective Parisot testified that after the stranger’s solicitation for crack, the men outside the apartment invited them all up to one of their apartments to buy crack. *Id.* at 64. The detectives refused, stating they were afraid of being robbed inside the apartment, to which Mr. Mohamed agreed that the men would likely rob them. *Id.* Mr. Mohamed and the detectives then continued walking west. *Id.*

The detectives and Mr. Mohamed then encountered a man, later identified as Mohamed Osmond, 20 to 30 feet north of the corner of 200 South and Rio Grande Street.

Id. at 64-65. Detective Parisot testified that Mr. Mohamed approached Mr. Osmond and the two spoke in a language that Detective Parisot couldn't understand. *Id.* at 65-66. Following this conversation, which lasted about 5 to 10 seconds, Mr. Osmond turned to Detective Parisot and asked him in English, "How much?" *Id.* at 66. The detective responded "20" and when he pulled out a \$20 bill, Mr. Osmond spit a bag out of his mouth and handed it to the detective. *Id.* at 66-67. This bag was later found to contain 0.15 grams of crack cocaine. *Id.* at 88. Although the detective did not see Mr. Mohamed's facial expressions at the time, Mr. Mohamed said nothing while the transaction took place. *Id.* at 68-69.

Following the transaction, Mr. Osmond quickly exited the area and the police were unable to arrest him until an hour later, when they found him again in the vicinity of the homeless shelter. *Id.* at 86, 70-71. However, Mr. Mohamed remained with the detectives as they left the corner of 200 South and Rio Grande Street and walked with them until the police responded to the "bust signal" and arrested him. *Id.* at 69-70, 86. Detective Parisot speculated that Mr. Mohamed stayed with the officers because he was expecting a "bump," or a broken-off piece of the crack cocaine in return for his helping the detectives obtain drugs. *Id.* at 86-87. The detective claimed that no special tools, such as a knife, are needed to break off a piece of the drug. *Id.* at 89-90. Detective Parisot did not record this suspicion that Mr. Mohamed followed him because he wanted a "bump" in his police report from that night. *Id.* at 90.

Detective Parisot further testified that a small amount of crack cocaine, such as the one purchased from Mr. Osmond, is usually smoked in a glass pipe. *Id.* at 91-92. Mr.

Mohamed did not indicate to the detective that he had such a pipe nor was he found to have possessed any drug paraphernalia of this kind. *Id.* at 94. Mr. Mohamed was therefore not charged with possession of drug paraphernalia. *Id.* at 94.

SUMMARY OF THE ARGUMENT

This Court should reverse Mr. Mohamed's conviction where the marshaled evidence establishes the State failed to meet its burden. The evidence presented failed to prove beyond a reasonable doubt that Mr. Mohamed knowingly and intentionally arranged to distribute crack cocaine. Furthermore, the insufficiency of the evidence constituted plain error, which should have been obvious to the trial court, the absence of which was reasonably likely to produce a more favorable outcome for Mr. Mohamed.

ARGUMENT

POINT I. THIS COURT SHOULD REVERSE WHERE THE MARSHALED EVIDENCE IS INSUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT MR. MOHAMED WAS GUILTY OF THE CHARGED OFFENSE.

This Court will "reverse the jury's verdict in a criminal case when" it concludes "as a matter of law that the evidence was insufficient to warrant conviction." *State v. Gonzales*, 2000 UT App 136, ¶ 10, 2 P.3d 954 (quotation omitted). It will "view the evidence in a light most favorable to the jury verdict," and "will reverse only if the evidence is so inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime." *Id.* (quotations omitted). Though the burden of establishing insufficiency of the evidence "is high, it is not impossible." *Id.* (citation omitted). This Court "will not make speculative leaps across

gaps in the evidence.” *Id.* (citation omitted). “Every element of the crime charged must be proven beyond a reasonable doubt.” *Id.* (citation omitted). In other words, “[t]o affirm the jury’s verdict,” this Court “must be sure the State has introduced evidence sufficient to support all elements of the charged crime.” *Id.* (citation omitted); *see also Holgate*, 2000 UT 74, ¶ 18; *State v. Leleae*, 1999 UT App 368, ¶ 17, 993 P.2d 232.

When making an insufficient evidence claim, the defendant “must marshal the evidence in support of the verdict and then demonstrate that the evidence is insufficient when viewed in the light most favorable to the verdict.” *State v. Boyd*, 2001 UT 30, ¶ 13, 25 P.3d 985 (citations omitted). Proper marshaling requires the appellant to present “in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which *supports* the very findings the appellant resists.” *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah Ct. App. 1991) (emphasis in original); *see also State v. Maese*, 2010 UT App 106, ¶¶ 16-17, 236 P.3d 155. “After constructing this magnificent array of supporting evidence, the challenger must ferret out a fatal flaw in the evidence.” *Majestic Inv. Co.*, 818 P.2d at 1315; *see also Kimball v. Kimball*, 2009 UT App 233, ¶ 20 n.5, 217 P.3d 733.

As it reviews the marshaled evidence, this Court will “not sit as a second trier of fact.” *Boyd*, 2001 UT 30, ¶ 16. Thus, “[s]o long as there is some evidence, including reasonable inferences, from which findings of all the requisite elements of the crime can reasonably be made, [this Court’s] inquiry stops.” *Id.* Instead, this Court will simply “assume that the jury believed the evidence supporting the verdict.” *Id.* (quotations and citation omitted); *see State v. Chaney*, 1999 UT App 309, ¶ 30, 989 P.2d 1091 (“We may

not weigh evidence or assess witness credibility, but instead ‘assume that the jury believed the evidence and inferences that support the verdict.’”) (citation omitted).

As demonstrated below, the marshaled evidence is insufficient to show Mr. Mohammed met the statutory requirements for the crime of distributing or arranging to distribute a controlled substance. Additionally, and in the alternative, this lack of evidence constitutes plain error.

A. The Marshaled Evidence Supporting the Verdict

Under Utah law distribution or arrangement to distribute a controlled substance is defined in part as follows:

(1) Prohibited acts A—Penalties:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally: . . .

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance.

Utah Code Ann. §58-37-8(1) (2008). “To make out a prima facie case under the statute, the State must show that an offer, agreement, consent, or arrangement to distribute controlled substances was made by the defendant and, whichever variation or variations it charges, that the behavior was ‘engaged in knowingly or with intent that such distribution would, or would be likely to, occur.’” *State v. Hester*, 2000 UT App 159, ¶ 9, 3 P.3d 725 (*abrogated on other grounds by State v. Morales-Torres*, 2001 UT App 246, 2001 WL 911418), citing *State v. Harrison*, 601 P.2d 922, 923 (Utah 1979); *see also State v. Gallegos*, 851 P.2d 1185, 1190 (Utah Ct. App. 1993). “[I]f he intends the distribution for sale of a controlled substance, any act in furtherance of an arrangement therefor

constitutes the criminal offense described by the statute.” *Harrison*, 601 P.2d at 924; *State v. Gray*, 717 P.2d 1313, 1320-21 (Utah 1986).

Here, the marshaled evidence was “so inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt” that Mr. Mohamed intended to arrange the distribution of a controlled substance. *Gonzales*, 2000 UT App 136, ¶ 10 (quotation omitted). Detective Parisot testified that he and another undercover officer approached Mr. Mohamed near a homeless shelter and asked “you got some work?” R. 130:60-61. Mr. Mohamed responded that he did not have any but that he would help the detectives find some. *Id.* at 61. The detective assumed this meant that Mr. Mohammed “didn’t have any cocaine, but [that] he would help [the detectives] locate some cocaine.” *Id.*

Mr. Mohamed walked with the detectives towards the post office because Mr. Mohamed said they could probably “find some” there since “that’s where a lot of the guys are.” *Id.* at 83, 62. On the way, Mr. Mohamed approached several individuals and asked them in English, “Do you have some? Do you have some work?” *Id.* at 62. After having no success, and seeing that there was no one at the post office, they turned around and headed west. *Id.* at 62-63. The three men then walked past the Jackson Apartments where an unknown individual solicited crack cocaine from some men standing outside the building. *Id.* at 63-64. These residents of the apartment invited the unknown individual and the three men up to purchase crack cocaine. *Id.* at 64. The detective turned down the offer, explaining that he was afraid of being robbed, and Mr. Mohamed agreed

with the detective stating, “[d]on’t go in there, I think they’re planning on robbing you.”

Id.

After walking further west, Mr. Mohamed approached Mr. Osmond off the corner of 200 South and Rio Grande Street and spoke to him in a foreign language. *Id.* at 64-65. The conversation lasted between 5 and 10 seconds, after which Mr. Osmond immediately turned to Detective Parisot and said “How much?” *Id.* at 66. The detective told him “20,” Mr. Osmond spit out a bag from his mouth into his hand and traded it for the detective’s \$20 bill. *Id.* The detective testified that Mr. Mohamed said nothing while the transaction took place. *Id.* at 68-69. The bag was later determined to contain 0.15 grams of crack cocaine. *Id.* at 88.

Mr. Mohamed remained “right with” the detectives as they left the scene of the transaction until he was arrested. *Id.* at 69. The officers speculated that this was because Mr. Mohamed wanted a piece of the cocaine as payment for helping them find a seller. *Id.* at 87.

B. The Evidence Presented Was Not Sufficient To Show That Mr. Mohamed Distributed or Arranged To Distribute A Controlled Substance.

In order for the State to sustain a conviction for a first degree felony it had to prove beyond a reasonable doubt that Mr. Mohamed knowingly or intentionally committed some “act in furtherance of an arrangement” to distribute a controlled substance. *Harrison*, 601 P.2d at 924. The marshaled evidence, however, was so “inconclusive or inherently improbable that reasonable minds must have entertained a

reasonable doubt” that Mr. Mohamed knowingly or intentionally arranged for the distribution of a controlled substance. *Gonzales*, 2000 UT App 136, ¶ 10.

The evidence is insufficient to prove that Mr. Mohamed had the requisite knowledge or intent because it requires a “speculative leap[] across [a] gap[] in the evidence,” *Gonzales*, 2000 UT App 136, ¶ 10, that is too great to constitute a mere “reasonable inference[],” *Boyd*, 2001 UT 30, ¶ 16. This is because there is no evidence that Mr. Mohamed ever actually understood the code word for cocaine. In fact, the evidence tends to show that Mr. Mohamed understood the word “work” to mean employment. Detective Parisot acknowledged that he approached Mr. Mohamed outside of the homeless shelter, a place likely to draw people looking for work. R. 130: 82. The detective also acknowledged that he had no basis for his belief that Mr. Mohamed understood the question “you got some work” to be a solicitation for cocaine instead of employment. *Id.* He merely stated that he relied on his training and experience in making that assumption. *Id.* The detective further testified that he never used any other phrase to ask Mr. Mohamed for cocaine. *Id.* at 81. Additionally, the detective never heard Mr. Mohamed use words other than “work” to describe the object of their search. *Id.* at 62. Mr. Mohamed spoke to Mr. Osmond before the transaction in a different language, and there is no evidence of what was said, let alone whether it involved cocaine. *Id.* at 65-66. Thus, there is no indication from the evidence that Mr. Mohamed understood the secret meaning of the word “work;” instead the State required the jury to make a “speculative leap[]” over that gap. *Gonzales*, 2000 UT App 136, ¶ 10.

Moreover, reasonable minds would have entertained a reasonable doubt about Mr. Mohamed's understanding of the code word "work." English is not Mr. Mohamed's first language. In fact, during his trial he required a translator, and the trial could not start until the translator arrived. R.130: 14-15, 21. Although Detective Parisot testified that he was "able to carry on a conversation" with Mr. Mohamed in English, an apparent conversational ability does not support the conclusion that Mr. Mohamed understood the covert meaning for an English code word. *Id.* at 85. In fact, Mr. Mohamed only parroted back the detective's words "you got some work" that night, and never used any word other than "work." *Id.* at 62, 83-84. Considering these facts, the assumption that Mr. Mohamed knew "work" meant cocaine is so inherently improbable that reasonable minds would have had reasonable doubts about its accuracy.

The evidence presented by the State supporting the arranging to distribute a controlled substance charge was so "inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that [Mr. Mohamed] committed the crime." *Gonzales*, 2000 UT App 136, ¶ 10 (quotation omitted). The State failed to prove all the elements of the statute beyond a reasonable doubt, because it failed to show that Mr. Mohamed understood "work" to mean cocaine, and therefore, that he formed the requisite knowledge or intent to arrange a drug transaction. *See Hester*, 2000 UT App 159, ¶ 9. Therefore, Mr. Mohamed's conviction for arranging to distribute a controlled substance should be reversed.

C. In the Alternative, Mr. Mohamed's Conviction Should Be Overturned for Plain Error.

It was plain error to allow Mr. Mohamed's conviction on obviously insufficient evidence. The plain error doctrine can serve as an alternative to an insufficiency of the evidence claim when the claim is not preserved at trial. *Holgate*, 2000 UT 74, ¶ 11. It “enables the appellate court to balance the need for procedural regularity with the demands of fairness” and “to avoid injustice.” *Id.* ¶ 13 (internal quotations and citations omitted).

To demonstrate plain error, a defendant must establish that (i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant, or phrased differently, our confidence in the verdict is undermined.

Id. (citation and quotation omitted).

First, Mr. Mohamed's conviction was based on insufficient evidence, as argued above, which constitutes error. *Id.* ¶ 17. Second, this error was “so obvious and fundamental that it was plain error to submit the case to the jury.” *Id.* ¶ 18. “To establish that the error should have been obvious to the trial court, [the defendant] must show that the law governing the error was clear at the time the alleged error was made.” *State v. Dean*, 2004 UT 63, ¶ 16, 95 P.3d 276. Here, the case law was well settled that the State can prove intent through circumstantial evidence, as long as there was “sufficient evidence, including . . . inferences that could be drawn therefrom,” that the defendant possessed the requisite intent. *Holgate*, 2000 UT 74, ¶¶ 21-22. Such inferences must “have a basis in logic and reasonable human experience.” *Id.* ¶ 21.

The State provided the following circumstantial evidence towards intent to arrange a drug transaction: Mr. Mohamed was approached by undercover detectives outside a homeless shelter and asked if he had some work. R. 130: 60-61. Mr. Mohamed replied that he did not but that he would help the detectives find some. *Id.* at 61. Mr. Mohamed requested “work” from others in the area, but with no success. *Id.* at 62. Mr. Mohamed approached Mr. Osmond and spoke to him in a foreign language, after which Mr. Osmond initiated a drug transaction with the detective. *Id.* at 66. This evidence, by itself, was insufficient to prove the requisite intent.

The State’s evidence required the inference that Mr. Mohamed understood the term “work” to mean cocaine, and, as a corollary, that he conveyed that understanding to Mr. Osmond in another language. Given the evidence, this inference is contrary to “logic and reasonable human experience.” *Holgate*, 2000 UT 74, ¶ 21. As explained above, nowhere did Mr. Mohamed’s words or behavior that night indicate that he knew the secret meaning of the word “work” was really cocaine. Furthermore, Mr. Mohamed’s first language is not English and he required a translator at trial, making his understanding of English code words even more suspect. In addition, the State did not present any translation of what Mr. Mohamed said to Mr. Osmond. The fact that Mr. Osmond proceeded to conduct a transaction for crack cocaine does not prove that Mr. Mohamed understood the term “work” to mean cocaine. Given Mr. Mohamed’s limited English skills and his prior behavior that night, logic and human experience would dictate that he continued referring to employment when he spoke with Mr. Osmond, and Mr. Osmond made the connection with cocaine on his own. For these reasons, it should have

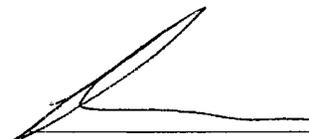
been obvious to the trial court that the inferences drawn by the State's insufficient evidence lacked a basis in logic and human experience necessary to prove Mr. Mohamed's intent.

Lastly, the error was harmful and "of such a magnitude that there is reasonable likelihood of a more favorable outcome for [Mr. Mohamed]." *State v. Evans*, 2001 UT 22, ¶ 16, 20 P.3d 888. An error is harmful if it is prejudicial, and the error is prejudicial if but for the trial court's allowance of insufficient evidence, the result of the proceeding would have been different. *See Dean*, 2004 UT 63, ¶ 22. Clearly, but for the trial court's allowance of insufficient evidence by the State, the result of the proceeding would have been very different for Mr. Mohamed. Had the trial court recognized this error, it would have "forthwith order[ed the defendant] discharged." *Holgate*, 2000 UT 74, ¶ 15. For these reasons, the court committed plain error with regard to the insufficiency of the evidence against Mr. Mohamed.

CONCLUSION

For the reasons set forth herein, Mr. Mohamed respectfully requests that this Court reverse his convictions for distributing or arranging to distribute a controlled substance.

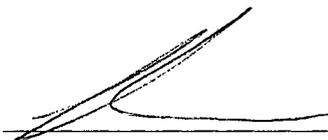
SUBMITTED this 20 day of Sept, 2011.



DEBRA M. NELSON
SALT LAKE LEGAL DEFENDER ASSOC.
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, Debra M. Nelson, hereby certify that I have caused to be hand-delivered an original and 7 copies of the foregoing to the Utah Court of Appeals, 450 South State Street, 5th Floor, Salt Lake City, Utah 84114; and 4 copies to the Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, Salt Lake City, Utah 84114, this 20 day of September, 2011.



DEBRA M. NELSON

DELIVERED to the Utah Attorney General's Office and the Utah Court of Appeals as indicated above this ___ day of September, 2011.





Tab A

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, : MINUTES
Plaintiff, : SENTENCE, JUDGMENT, COMMITMENT
 :
vs. : Case No: 101902145 FS
ISMAIL ABDULLAHI MOHAMED, : Judge: DENO HIMONAS
Defendant. : Date: December 10, 2010

PRESENT

Clerk: kristenl
Prosecutor: PLATT, CHAD L
Defendant
Defendant's Attorney(s): TAN, PATRICK S

DEFENDANT INFORMATION

Date of birth: January 1, 1974
Audio
Tape Number: S44 Tape Count: 11:08

CHARGES

1. DISTRIBUTE/OFFER/ARRANGE DISTRIBUTION OF CONTROLLED SUBSTANC -
1st Degree Felony
Plea: Not Guilty - Disposition: 09/29/2010 Guilty

SENTENCE PRISON

Based on the defendant's conviction of DISTRIBUTE/OFFER/ARRANGE
DISTRIBUTION OF CONTROLLED SUBSTANC a 1st Degree Felony, the
defendant is sentenced to an indeterminate term of not less than
five years and which may be life in the Utah State Prison.

To the SALT LAKE County Sheriff: The defendant is remanded to your
custody for transportation to the Utah State Prison where the
defendant will be confined.

Defendant transported from the Utah State Prison. Somali
interpreter is present.

Date: 12/10/10

A
DENO HIMONAS
District Court Judge

