

1993

Utah v. Joey Trujillo : Brief of Appellant

Utah Court of Appeals

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William J. Albright; Attorney for defendant/appellant.

Jan Graham; Utah Attorney General; Attorney for plaintiff/appellee.

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IN THE UTAH COURT OF APPEALS

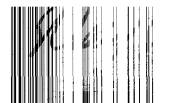
STATE OF UTAH,	:
PLAINTIFF/APPELLEE	:
V.	: [REDACTED] 930089-CA
JOEY TUJILLO,	: [REDACTED] NO. 2
DEFENDANT/APPELLANT	:

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF CONVICTION OF ONE COUNT OF
POSSESSION OF A CONTROLLED SUBSTANCE A THIRD DEGREE FELONY, UTAH
CODE ANN. 58-37-8(2)(a)(i), IN THE SECOND JUDICIAL DISTRICT COURT,
DAVIS COUNTY, THE HONORABLE JON M. MEMMOTT PRESIDING.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
PLAINTIFF/APPELLEE :
V. : CASE NO. 930089-CA
JOEY TUJILLO, : PRIORITY NO. 2
DEFENDANT/APPELLANT :

BRIEF OF APPELLANT

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
PLAINTIFF/APPELLEE, :

V. : CASE NO. 930089-CA

JOEY TRUJILLO, : PRIORITY NO. 2
DEFENDANT/APPELLANT. :

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is taken pursuant to the provisions of Utah Code Ann. Section 78-2a-(2)(f), 1953 (as amended), in which Appellant appeals from a judgment of conviction of one count of possession of a controlled substance a third degree felony, Utah Code Ann. 58-37-8(2)(a)(i), in the Second Judicial District Court, Davis County, State of Utah, the Honorable Jon M. Memmott presiding.

STATEMENT OF ISSUES

The issue presented in this appeal is:

1. WHETHER THERE WAS SUFFICIENT EVIDENCE PRESENTED AT TRIAL TO SUPPORT THE GUILTY VERDICT.

The standard for determining sufficiency of the evidence is that "the evidence is inconclusive or so inherently improbable that reasonable minds could not reasonably believe defendant had committed a crime....In determining whether evidence is sufficient, the court will review the evidence and all inferences which may reasonably be drawn from it in light most favorable to the jury

verdict....the 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 (citations omitted). State v. Gabaldon, 735 P.2d 410 (Utah App. 1987).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. Title 58-37-8(2)(a)(i), 1953 (as amended)

STATEMENT OF THE CASE

Defendant was charged on November 6, 1992, with one count of possession of a controlled substance a third degree felony, in violation of Utah Code Ann. 58-37-8(2)(a)(i) and two misdemeanor charges. (Record at 1-3 [hereinafter R.]).

On December 14, 1992, Defendant was found guilty of one count of possession of a controlled substance, a third degree felony (R. at 23). On the 12th of January, 1993, Defendant was sentenced to the Utah State Prison for an indeterminate term of 0 to 5 years. (R. at 28). Defendant's attorney filed a Notice of Appeal on the 9th day of February, 1993 (R. at 36).

STATEMENT OF FACTS

On November 1, 1992, Officer Whitaker stopped a vehicle for erratic driving. After speaking with the driver and finding he had no driver's license he spoke with the passenger who identified himself as Pedro Morales. The passenger was not able to produce identification and gave different dates of birth. Upon stepping out of the vehicle the officer noticed two containers of alcohol

directly under the passengers feet and the passenger was placed under arrest for open container violations. (Transcript at 55 [hereinafter T.])).

Upon searching the passenger the officer found a rolled up \$20 bill with a white powder substance on it and several bindles of white powder in the passengers pockets. (T. at 56 and 57).

The passenger was later identified as Joey Trujillo. At trial Mr. Trujillo stated that it was not his jacket that he was wearing the night of the arrest (T. at 23 and 25). He had been at a party and the party ran out of beer. The driver getting the beer asked him if he wanted to come along to get the beer (T. at 69) and he (Mr. Trujillo) no knowledge that cocaine was in the jackets pocket (T. at 23).

SUMMARY OF ARGUMENT

Even viewing the evidence and all inferences which may reasonably be drawn from it in a light most favorable to the verdict, the Court can find the evidence was so lacking and insubstantial that reasonable men could not have reached a verdict beyond a reasonable doubt.

ARGUMENT

POINT I

DEFENDANT'S EXPLANATION OF THE EVENTS IS A REASONABLE EXPLANATION OF WHAT HAPPENED AND SHOULD HAVE BEEN BELIEVED BY THE COURT.

The Appellant has asked his appeal counsel to argue that his explanation of what happened is reasonable and the trial court erred in not believing him.

It is important to note that at no time was Mr. Trujillo asked by the arresting officer who owned the jacket that Mr. Trujillo was wearing. Further, MR. Trujillo did tell the officer that it was not his stuff in the jacket and "they didn't tell me". (T. at 72). Mr. Trujillo's explanation of having money in the pockets is reasonable in light of his stating he was going to get beer and a collection was taken from the people at he party and the money collected was given to him to get the beer. (T. at 23-25).

CONCLUSION

Based on the above discussion, the Appellant respectfully asks this Court to overturn the verdict.

Counsel submits this brief pursuant to State v. Clayton, 639 P.2d 168 (Utah 1981) and Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L.Ed. 2d 493 (1967).

Respectfully submitted this 18th day of June, 1993.

William J. Albright
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that I have thoroughly reviewed the file and have read the transcripts, researched applicable areas of law and that I have raised the points/issues requested by the Appellant in this brief and that on the 18th day of June, 1993, I mailed, postage prepaid, a true and correct copy of the above brief and a copy of the transcript to Inmate Joey Trujillo, P.O Box 250, Draper, Utah 84020.

ADDENDUM

(c) (i) No controlled substance may be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.

(ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d).

(iii) In emergency situations, as defined by department rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the department and filed by the pharmacy.

(iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d).

(d) Except for emergency situations designated by the department, no person may issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed in ink or indelible pencil by the prescriber and contains the following information:

(i) the name, address, and registry number of the prescriber;

(ii) the name, address, and age of the person to whom or for whom the prescription is issued;

(iii) the date of issuance of the prescription; and

(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) No prescription may be written, issued, filled, or dispensed for a Schedule I controlled substance.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the following restrictions:

(i) A prescription for a Schedule II substance may be refilled only upon the written prescription of an authorized practitioner, and no prescription for a Schedule II controlled substance may be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

(ii) A Schedule III or IV controlled substance may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(iii) All other controlled substances in Schedule V may be refilled as the prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.

(iv) Any prescription for a Schedule II, III, and IV substance that is not presented to a pharmacist for dispensing by a pharmacist, or, if an oral prescription, that is not obtained within ten days of the date the prescription was written or authorized, may not be filled or dispensed.

(g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of Subsection (7) if the or-

(i) authorized by the physician treating the patient and designates the quantity ordered;

(ii) entered upon the record of the patient, the record is signed by the prescriber affirming his authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

(iii) filled and dispensed by a pharmacist practicing his profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.

(8) No information communicated to any licensed practitioner in an attempt to unlawfully procure, or to procure the administration of, a controlled substance is considered to be a privileged communication. 1991

58-37-7. Labeling and packaging controlled substance.

(1) No person licensed pursuant to this act shall distribute a controlled substance unless it is packaged and labeled in compliance with the requirements of § 305 of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(2) No person except a pharmacist for the purpose of filling a prescription shall alter, deface, or remove any label affixed by the manufacturer.

(3) Whenever a pharmacist sells or dispenses any controlled substance on a prescription issued by a practitioner, he shall affix to the container in which the substance is sold or dispensed a label showing his own name, address, and registry number, or the name, address, and registry number of the pharmacist or pharmacy owner for whom he is lawfully acting; the prescription number, the name of the patient, or if the patient is an animal, the name of the owner of the animal and the species of the animal; the name of the practitioner by whom the prescription was written; any directions stated on the prescription and any directions required by rules and regulations promulgated by the department.

No person shall alter the face or remove any label so long as any of the original contents remain.

(4) An individual to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner and the owner of any animal for which any substance has been prescribed, sold, or dispensed by a veterinarian may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing it. 1996

58-37-8. Prohibited acts — Penalties.

(1) Prohibited acts A — Penalties:

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

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

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

(iii) possess a controlled substance in the course of his business as a sales representa-

stances listed in Schedule II, III, or IV, except that he may possess such substances when they are in the possession of a licensed practitioner;

(iv) possess a controlled substance with intent to distribute it.

(b) Any person convicted under Subsection (1)(a) with respect to:

(i) a substance classified in Schedule II is guilty of a second class felony; or

(ii) a substance classified in Schedule III, IV, or V, or marijuana, is guilty of a second class felony; and upon conviction is punishable as if he were guilty of a second class felony.

(iii) a substance classified in Schedule I is guilty of a class A misdemeanor or subsequent offense under this subsection is guilty of a second class felony.

(2) Prohibited acts B — Penalties:

(a) It is unlawful:

(i) for any person to knowingly or intentionally possess a controlled substance, unless it was prescribed or administered by a practitioner while acting in the course of his professional practice, or by this subsection;

(ii) for any owner, lessee, or person in control of any premises, vehicle, boat, or aircraft, knowingly and intentionally to be occupied by, used, or stored, controlled substances in any of the following circumstances:

(iii) for any person to knowingly or intentionally be present in any premises, vehicle, boat, or aircraft, if the use of this chapter is open, obvious, apparent, or known to those present; or

(iv) for any person to knowingly or intentionally possess a controlled substance without a prescription or written order from a practitioner;

(v) for a practitioner to knowingly or intentionally prescribe, administer, or dispense a controlled substance to a juvenile without the consent required by the rules and regulations of the department, or a guardian ad litem, or a juvenile means as defined in Section 78-3a-2, and the physical condition of the juvenile requires relief of a controlled substance; or

(vi) for a practitioner to knowingly or intentionally

authorized by the physician treating patient and designates the quantity or

entered upon the record of the patient, and is signed by the prescriber affirming authorization of the order within 48 hours after filling or administering the order. The patient's record reflects the substance actually administered; and the substance is filled and dispensed by a pharmacist practicing his profession within the physical premises of the hospital, or the order is filled from a supply lawfully maintained in the hospital and the amount taken from the supply is administered directly to the patient or to the patient's representative to receive it.

Information communicated to any licensed person in an attempt to unlawfully procure, or administer, or attempt to administer, a controlled substance shall be a privileged communication.

1991

Labeling and packaging controlled substances.

A controlled substance pursuant to this act shall be packaged in compliance with the requirements of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

Except a pharmacist for the purpose of refilling a prescription shall alter, deface, or remove the label by the manufacturer.

A pharmacist sells or dispenses any controlled substance on a prescription issued by a physician and affixes to the container in which the substance is sold or dispensed a label showing his name, address, and registry number, or the name and registry number of the pharmacist, the name of the owner for whom he is lawfully acting, the name of the patient, if the patient is an animal, the name of the owner of the animal, the name of the species of the animal; the name of the veterinarian by whom the prescription was issued; and the directions stated on the prescription and required by rules and regulations promulgated by the department.

A pharmacist shall not alter the face or remove any label from the original contents remain.

A controlled substance shall be sold or dispensed to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a veterinarian and the owner of any animal to whom a controlled substance has been prescribed, sold, or dispensed by a veterinarian may lawfully possess it in the premises in which it was delivered to him for the purpose of using or dispensing it.

1986

Prohibited acts — Penalties.

Prohibited acts A — Penalties:

As authorized by this chapter, it is unlawful for any person to knowingly and inten-

duce, manufacture, or dispense, or attempt to produce, manufacture, or dispense, a controlled or counterfeit substance;

Contribute a controlled or counterfeit substance, or to agree, consent, offer, or attempt to contribute a controlled or counterfeit substance;

Possess a controlled substance in the course of this business as a sales representative, manufacturer or distributor of sub-

stances listed in Schedules II through V except that he may possess such controlled substances when they are prescribed to him by a licensed practitioner; or

(iv) possess a controlled or counterfeit substance with intent to distribute.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

(i) a substance classified in Schedule I or II is guilty of a second degree felony and upon a second or subsequent conviction of Subsection (1)(a) is guilty of a first degree felony;

(ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree felony, and upon a second or subsequent conviction punishable under this subsection is guilty of a second degree felony; or

(iii) a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction punishable under this subsection is guilty of a third degree felony.

(2) Prohibited acts B — Penalties:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of his professional practice, or as otherwise authorized by this subsection;

(ii) for any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations;

(iii) for any person knowingly and intentionally to be present where controlled substances are being used or possessed in violation of this chapter and the use or possession is open, obvious, apparent, and not concealed from those present; however, a person may not be convicted under this subsection if the evidence shows that he did not use the substance himself or advise, encourage, or assist anyone else to do so; any incidence of prior unlawful use of controlled substances by the defendant may be admitted to rebut this defense;

(iv) for any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance;

(v) for a practitioner licensed under this chapter knowingly and intentionally to prescribe, administer, or dispense a controlled substance to a juvenile, without first obtaining the consent required in Section 78-14-5 of a parent, guardian, or person standing in loco parentis of the juvenile except in cases of an emergency; for purposes of this subsection, a juvenile means a "child" as defined in Section 78-3a-2, and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering;

(vi) for a practitioner licensed under this chapter knowingly and intentionally to prescribe or administer dosages of a controlled

substance in excess of medically recognize quantities necessary to treat the ailment, malady, or condition of the ultimate user; or

(vii) for any person to prescribe, administer, or dispense any controlled substance to another person knowing that the other person is using a false name, address, or other personal information for the purpose of securing the same.

(b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

(ii) a substance classified in Schedule I or II, or marijuana, if the amount is more than 16 ounces, but less than 100 pounds, is guilty of a third degree felony; or

(iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A misdemeanor.

(c) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b).

(d) Upon a second or subsequent conviction of possession of any controlled substance by a person previously convicted under Subsection (2)(b), that person shall be sentenced to a one degree greater penalty than provided in this subsection.

(e) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of marijuana, is guilty of a class B misdemeanor. Upon a second conviction for possession of a controlled substance as provided in this subsection, the person is guilty of a class A misdemeanor, and upon a third or subsequent conviction he is guilty of a third degree felony.

(f) Any person convicted of violating Subsections (2)(a)(ii) through (2)(a)(vii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

(ii) on a second conviction, guilty of a class A misdemeanor; and

(iii) on a third or subsequent conviction, guilty of a third degree felony.

(3) Prohibited acts C — Penalties:

(a) It is unlawful for any person:

(i) who is subject to this chapter to distribute or dispense a controlled substance in violation of this chapter;

(ii) who is a licensee to manufacture, distribute, or dispense a controlled substance to another licensee or other authorized person not authorized by his license;

(iii) to omit, remove, alter, or obliterate a symbol required by this chapter or by a rule issued under this chapter;

(iv) to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter; or

(v) to refuse entry into any premises for inspection as authorized by this chapter.

(b) Any person convicted of violating Subsection (3)(a) shall be punished by a civil penalty of

IN THE DISTRICT COURT OF DAVIS COUNTY, STATE OF UTAH

FILED IN CLERK'S OFFICE

JAN 22 8 34 AM '93

STATE OF UTAH,

Plaintiff,

vs.

Joey Trujillo,

Defendant.

CLERK, DISTRICT COURT

BY DEPUTY CLERK

Criminal No. 921700463

Charge No. 1 Possession of a controlled Sub. (felony), (degree 3rd) (misdemeanor), (class).

1/12/93

(Prison) Sentence: The Defendant is sentenced to the Utah State Prison for an indeterminate term of 0-5 years, fined \$, plus a surcharge of \$, ordered to pay restitution in the amount of \$ to , a drug assessment fee of \$, and a public defender fee of \$.

(Jail) Sentence: The Defendant is sentenced to the Davis County Jail for a term of (days) (months) (year), fined \$, plus a surcharge of \$, ordered to pay restitution in the amount of \$ to , a drug assessment fee of \$ and a public defender fee of \$.

The following special conditions are ordered:

- a. The (prison)(jail) term is stayed on satisfactory completion of probation. (years)(months)
- b. The defendant is ordered to spend (days)(months)(year) in the Davis County Jail.
- c. All but \$ of the fine is suspended on satisfactory completion of probation.
- d. The defendant is ordered to spend (days)(months) (as long as required) in halfway house or drug treatment house.

Charge No. 2 , (felony), (degree) (misdemeanor), (class).

(Prison) Sentence: The Defendant is sentenced to the Utah State Prison for an indeterminate term of years, fined \$, plus a surcharge of \$, ordered to pay restitution in the amount of \$ to , a drug assessment fee of \$, and a public defender fee of \$.

00171095

____ (Jail) Sentence: The Defendant is sentenced to the Davis County Jail for a term of _____ (days) (months) (year), fined \$_____, plus a surcharge of \$_____, ordered to pay restitution in the amount of \$_____ to _____, a drug assessment fee of \$_____ and a public defender fee of \$_____.

____ The following special conditions are ordered:

- ____ a. The (prison)(jail) term is stayed on satisfactory completion of probation. _____ (years)(months)
- ____ b. The defendant is ordered to spend _____ (days)(months)(year) in the Davis County Jail.
- ____ c. All but \$_____ of the fine is suspended on satisfactory completion of probation.
- ____ d. The defendant is ordered to spend _____ (days)(months) (as long as required) in _____ halfway house or drug treatment house.

____ Defendant placed on probation on the following terms and conditions:

- ____ a. Fine is to be paid through the Clerk of the Court.
- ____ b. Restitution is to be paid through the Clerk of the Court.
- ____ c. No violations of law.
- ____ d. No consumption of alcohol/alcoholic beverages.
- ____ e. No use or possession of controlled substances.
- ____ f. Submit to search of person, premises or vehicles and seizure of any evidence without a search warrant at the request of a probation officer or police officer.
- ____ g. Submit to body fluids testing upon request.
- ____ h. No association with known drug users.
- ____ i. No association with (co-defendants)(victims).
- ____ j. Enter and complete mental health counseling.
- ____ k. Drug and/or alcohol evaluation and followup.
- ____ l. Enter and complete alcohol and drug treatment program.
- ____ m. Maintain full time employment.
- ____ n. Become involved in an educational/vocational training program.
- ____ o. (Other) _____

____ The Defendant is ordered to pay \$_____ to the Clerk of the Court on or before the first Tuesday of each month beginning in the month of _____ 1992, or appear in court on the first Tuesday of any month at 9:00 A. M. when a payment is due and not paid.

____ Tom M. Memmott
JUDGE

00171096

CERTIFICATE OF MAILING

I, William Albright, hereby certify that I mailed two true and correct copies of the foregoing brief of Appellant, Joey Trujillo, to the following: Criminal Appeals Division, Utah Attorney General, 236 State Capitol, Salt Lake City, Utah 84145.

Dated this 18th day of June, 1993.
