

1992

Utah v. Cecala : Brief of Appellee

Utah Court of Appeals

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Jan Graham; Attorney General; Marian Decker; Assistant Attorney General; Attorney for Appellee.
Ronald S. Fujino; Attorney for Appellant.

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920592

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

:

Plaintiff/Appellee,

:

Case No. 920592-CA

v.

:

BENJAMIN CECALA,

:

Priority No. 2

Defendant/Appellant.

:

BRIEF OF APPELLEE

- - - - -

THIS IS AN APPEAL FROM CONVICTIONS FOR
BURGLARY, A SECOND DEGREE FELONY, IN
VIOLATION OF UTAH CODE ANN. § 76-6-202
(1990), AND THEFT, A CLASS B MISDEMEANOR, IN
VIOLATION OF UTAH CODE ANN. § 76-6-404
(1990), IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH,
THE HONORABLE LESLIE A. LEWIS, PRESIDING.

JAN GRAHAM (1231)
Attorney General
MARIAN DECKER (5688)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1022

Attorneys for Appellee

RONALD S. FUJINO
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant

FILED

Utah Court of Appeals

JUL 26 1993

Mark T. Noonan
Mark T. Noonan

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	Case No. 920592-CA
v.	:	
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JAN GRAHAM (1231)
Attorney General
MARIAN DECKER (5688)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1022

Attorneys for Appellee

RONALD S. FUJINO
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.	ii
JURISDICTION AND NATURE OF PROCEEDINGS.	1
STATEMENT OF ISSUES PRESENTED AND STANDARDS OF REVIEW . .	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES	3
STATEMENT OF THE CASE	3
STATEMENT OF THE FACTS.	3
SUMMARY OF THE ARGUMENT	7
ARGUMENT	
DEFENDANT HAS NOT PRESERVED FOR REVIEW HIS RELEVANCY CHALLENGE TO THE TRIAL COURT'S EVIDENTIARY RULING, NOR HAS HE DEMONSTRATED THE RULING WAS OTHERWISE UNFAIRLY PREJUDICIAL; ADDITIONALLY, DEFENDANT HAS NOT DEMONSTRATED THE EVIDENCE IS INSUFFICIENT TO SUPPORT THE JURY VERDICT.	8
A. Waiver Standard	8
B. Failure to Demonstrate Unfair Prejudice	11
C. Failure to Demonstrate Insufficiency of the Evidence.	14
CONCLUSION.	15
ADDENDUM	17

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>Callis v. People</u> , 692 P.2d 1045 (Colo. 1984)	13
<u>State v. Allen</u> , 787 P.2d 566 (Wash. App. 1990)	13
<u>State v. Archambeau</u> , 820 P.2d 920 (Utah App. 1991)	8, 11
<u>State v. Bolsinger</u> , 699 P.2d 1214 (Utah 1985)	12
<u>State v. Booker</u> , 709 P.2d 342 (Utah 1985)	2
<u>State v. Brown</u> , 212 Utah Adv. Rep. 38, 40 (Utah App. 1993).	9
<u>State v. Davis</u> , 689 P.2d 5 (Utah 1984)	2, 8, 10, 12
<u>State v. Eldredge</u> , 773 P.2d 29 (Utah), <u>cert.</u> <u>denied</u> , 493 U.S. 814 (1989)	2, 8, 10, 11, 12
<u>State v. Garcia</u> , 663 P.2d 60 (Utah 1983)	13
<u>State v. Hamilton</u> , 827 P.2d 232 (Utah 1992)	2, 11
<u>State v. Johnson</u> , 774 P.2d 1141 (Utah 1989)	3
<u>State v. Larsen</u> , 828 P.2d 487 (Utah App.), <u>cert.</u> <u>denied</u> , 836 P.2d 1383 (Utah 1992)	10
<u>State v. Lemons</u> , 844 P.2d 378 (Utah App. 1992)	2, 3, 14
<u>State v. Moore</u> , 802 P.2d 732 (Utah App. 1990)	14
<u>State v. O'Neil</u> , 848 P.2d 694 (Utah App. 1993)	2, 11
<u>State v. Price</u> , 827 P.2d 247 (Utah App. 1992)	10
<u>State v. Ramirez</u> , 817 P.2d 774 (Utah 1991)	2, 11
<u>State v. Taylor</u> , 818 P.2d 561 (Utah App. 1991)	12
<u>State v. Van Matre</u> , 777 P.2d 459 (Utah 1989)	2, 8, 10, 12

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 76-6-202 (1990)	1, 2, 3
Utah Code Ann. § 76-6-404 (1990)	2, 3

Utah Code Ann. § 78-2a-3 (Supp. 1993)	2
Utah R. Evid. 103	2, 8
Utah R. Evid. 403	6

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
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BENJAMIN CECALA,	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from convictions for burglary, a second degree felony, in violation of Utah Code Ann. § 76-6-202 (1990), and theft, a class B misdemeanor, in violation of Utah Code Ann. § 76-6-404 (1990).

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1993).

STATEMENT OF ISSUES PRESENTED AND STANDARDS OF REVIEW

A. Did defendant preserve for appeal his claim that evidence he gave a false name to the arresting officer was irrelevant and thus erroneously admitted?

"Utah Rule of Evidence 103(a) requires 'a clear and definite objection' at trial to preserve an evidentiary error for appeal." State v. Eldredge, 773 P.2d 29, 34-35 (Utah), cert. denied, 493 U.S. 814 (1989). To preserve a particular objection to evidence for appeal, a defendant must have specifically stated to the trial court the same grounds for objection presented on

appeal. State v. Van Matre, 777 P.2d 459, 462 (Utah 1989); State v. Davis, 689 P.2d 5, 14 (Utah 1984).

B. Does defendant demonstrate that the court abused its discretion in admitting that evidence over his rule 403, Utah Rules of Evidence, objection?

A trial court has broad discretion to decide whether relevant evidence should be excluded under rule 403. See State v. Hamilton, 827 P.2d 232, 239-40 (Utah 1992); State v. Ramirez, 817 P.2d 774, 781-82 n.3 (Utah 1991). A trial court does not commit reversible error in a 403 ruling unless it abuses its discretion; that is, "as a matter of law, the trial court's decision that 'the unfairly prejudicial potential of the evidence outweighs [or does not outweigh] its probativeness' was beyond the limits of reasonability." Hamilton, 827 P.2d at 239-40 (alteration in original) (citation omitted). See also State v. O'Neil, 848 P.2d 694, 699 n.5 (Utah App. 1993).

C. Does defendant demonstrate the evidence was insufficient to support the jury verdict?

In reviewing a claim of insufficiency of evidence, Utah appellate courts view the evidence and all inferences that may reasonably be drawn from it in the light most favorable to the jury verdict. State v. Booker, 709 P.2d 342, 345 (Utah 1985); State v. Lemons, 844 P.2d 378, 381 (Utah App. 1992). A jury verdict will only be reversed where reasonable minds must have entertained a reasonable doubt that defendant committed the crime

of which he was convicted. State v. Johnson, 774 P.2d 1141, 1147 (Utah 1989); Lemons, 844 P.2d at 381.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional provisions, statutes and rules pertinent to the resolution of the issues presented on appeal is contained in the body of this brief.

STATEMENT OF THE CASE

Defendant was charged with burglary, a second degree felony, in violation of Utah Code Ann. § 76-6-202 (1990) and theft, a class B misdemeanor, in violation of Utah Code Ann. § 76-6-404 (1990) (R. 7-9).

Following a two-day jury trial, defendant was convicted as charged (R. 90-91).

The trial court sentenced defendant to a term of one to fifteen years in the Utah State Prison and to a concurrent term of one to six months in the Salt Lake County Jail (R. 100-01).

STATEMENT OF THE FACTS

On the afternoon of August 26, 1991, Rick Clausing looked out a front window of his home and observed some unusual activity across the street at the White residence, located at 614 North 1400 West, Salt Lake City, Utah (R. 287). Specifically, Clausing saw four young Hispanic men looking at a Bronco that was advertised for sale and parked in front of the White home (R. 289-92). Clausing noted that defendant was taller than the other three young men and was dressed all in black (R. 290). Clausing observed "all four of [the young men] walk[] up to the house and

knock[] on the door" (R. 292-93). When no one answered, Clausing watched the foursome "walk[] back to the sidewalk" (R. 293).

Clausing then observed defendant "split" from the other three and approach a retaining wall dividing the White home from some nearby apartments, where defendant stood facing east, towards the Clausing home (R. 293). The other three individuals jumped a fence to gain access to the back of the White home (R. 293, 297, 308). Clausing became "suspicious" of this activity, believing that defendant was acting as a "watch" for the other three, and asked his wife to call the police while he continued to observe (R. 296). Clausing noted that defendant kept looking back at one of the young men who had jumped the fence, but who had not disappeared behind the White residence with the other two individuals (R. 296-99). Clausing believed that defendant was "communicating back and forth" with this young man (R. 296, 310).

What I saw was [defendant] standing at the retaining wall. The other three went around, [sic] jumped the fence. As they were there, the [defendant] kept going like this (indicating) back. . . . [Defendant was] turning his head back toward the other three[.]

. . . .

Other than [defendant] turning and talking to the youth on the other side of the fence, that's all I could see.

(R. 296-97, 299).

Clausing continued to observe defendant for approximately ten minutes until the police arrived (R. 300). Clausing noted that when defendant saw the police "he immediately

was on the move" and headed for the apartments next door to the White home (R. 303, 307). Defendant "pretended like he lived there. He went to each individual [apartment] and tried to get in. And then he slowly, normally, like nothing happened, walked up, up [sic] 1400 West towards the park" (R. 300, 302).

Officers Hallock and Bankhead from the Salt Lake City Police Department investigated the Clausings' report of a possible residential burglary at 615 North 1400 West, involving four Hispanic male juveniles (R. 311, 327). Upon approaching the White residence, the officers noted that defendant was dressed in black and "peeking in and out of the corner" of the nearby apartments (R. 314-15, 330). Officer Bankhead observed that defendant appeared to be "scanning back and forth from the north to the south, looking for something" (R. 330). He further observed that upon spotting the officers, "[defendant went] back from the corner so [they] couldn't [sic] have visual" (R. 331). Officer Hallock similarly noted that "as we pulled up, [defendant] walked out around the corner and started walking through, [sic] between the two apartment complexes there" (R. 315).

As the officers got closer, Officer Bankhead heard a "[a] howl or a coo, an owl sound," coming from the same corner of the apartment and noted that defendant was "periodically kind of going back and looking back, or going back behind the building and peeking out again" (R. 331). The next thing Officer Bankhead saw was three male Hispanic juveniles "com[ing] out from a row of

bushes that [separated] the apartments and the house" (R. 332). Officer Hallock said, "Police, stop," and pursued the fleeing suspects (R. 316). Officer Bankhead stayed behind to secure the scene (R. 317, 334).

Upon returning to the White residence, Officer Bankhead observed defendant "knocking" on the apartment doors (R. 335, 342). While talking with Rick Clausing, Officer Bankhead watched as defendant "started to walk northbound on Fourteenth West" (R. 336). Officer Bankhead called for backup and pursued defendant into nearby Riverside Park (R. 336, 354). Defendant was subsequently arrested in the park by Officer Evans, who had responded to Officer Bankhead's request for backup (R. 354). At the time of his arrest, defendant falsely gave his name as Salvador Sanchez (R. 356). He also denied knowing the others involved in the burglary and theft (R. 358). Instead, defendant claimed he was in the park "looking to talk to girls" (R. 358).

At trial, defendant moved to exclude evidence that he gave a false name to the arresting officer on the ground that it was unfairly prejudicial under rule 403, Utah Rules of Evidence (R. 345). The trial court denied defendant's motion, finding that the probative value of the evidence outweighed its prejudicial effect (R. 348). Additionally, the court found the evidence relevant to defendant's credibility (R. 349) (the parties arguments and the trial court's ruling are reproduced in the Addendum).

Johnny Torres, who pled guilty to burglarizing the White residence, was the sole witness called to testify on defendant's behalf (R. 363). According to Torres, he approached the front door of the White residence alone, while the others hung back (R. 365, 378). Torres asserted defendant was genuinely interested in purchasing the Bronco and remained at the sidewalk "looking at the price and writing down the phone number" (R. 378). Torres further claimed the burglary and theft were his idea and that defendant declined to participate, stating that he wanted "no part of it" (R. 365). Finally, Torres denied that defendant acted as a "lookout" during the burglary and theft (R. 380-82).

SUMMARY OF THE ARGUMENT

Defendant did not preserve for appeal his relevancy challenge to the trial court's admission of evidence that defendant gave the arresting officer a false name. Furthermore, he fails to show that the court abused its discretion in refusing to exclude that evidence under rule 403, Utah Rules of Evidence.

As for defendant's apparent challenge to the sufficiency of the evidence, the Court should not even consider it because defendant has not properly marshaled the evidence supporting the jury's verdict. Even if the Court were to consider the merits of defendant's claim, there was ample evidence before the jury to sustain defendant's conviction.

ARGUMENT

DEFENDANT HAS NOT PRESERVED FOR REVIEW HIS RELEVANCY CHALLENGE TO THE TRIAL COURT'S EVIDENTIARY RULING, NOR HAS HE DEMONSTRATED THE RULING WAS OTHERWISE UNFAIRLY PREJUDICIAL; ADDITIONALLY, DEFENDANT HAS NOT DEMONSTRATED THE EVIDENCE IS INSUFFICIENT TO SUPPORT THE JURY VERDICT

Defendant claims the trial court erroneously admitted evidence that he gave the arresting officer a false name. Defendant claims the evidence was "irrelevant to determining [his intention] at the time of the [offense]" (Br. of App. at 11). Thus, defendant broadly concludes the evidence was unfairly prejudicial under rule 403, Utah Rules of Evidence, and should have been excluded (Br. of App. at 12). Insofar as it has been preserved for review, defendant's challenge to the trial court's evidentiary ruling lacks merit.

A. Waiver Standard

"Utah Rule of Evidence 103(a) requires 'a clear and definite objection' at trial to preserve an evidentiary error for appeal." State v. Eldredge, 773 P.2d 29, 34-35 (Utah), cert. denied, 493 U.S. 814 (1989). To preserve a particular objection to evidence for appeal, a defendant must have specifically stated to the trial court the same grounds for objection presented on appeal. State v. Van Matre, 777 P.2d 459, 462 (Utah 1989); State v. Davis, 689 P.2d 5, 14 (Utah 1984). Cf. State v. Archambeau, 820 P.2d 920, 922 (Utah App. 1991) ("Generally, a defendant who fails to bring an issue before the trial court is barred from

asserting it initially on appeal."). As recently observed by this Court, the

specificity requirement arises out of the trial court's need to assess allegations by isolating relevant facts and considering them in the context of the specific legal doctrine placed at issue. For this reason, a general objection may be insufficient to preserve a specific substantive issue for appeal.

State v. Brown, 212 Utah Adv. Rep. 38, 40 (Utah App. 1993).

1. Proceedings Below

In moving to exclude evidence that he gave the arresting officer a false name, defendant's only articulated argument below was his general assertion that the evidence was unfairly prejudicial under rule 403:

. . . [J]ust so the record's [sic] clear, I think the prejudice we have is the fact that a person charged with a crime[,] and is on trial[,] is shown to have lied to the police officers. And [sic] I think that is prejudicial. I mean[,] the court may not think it's overwhelming[ly] prejudicial, but I do think some prejudice results from the jury hearing that he lied to a police officer.

(R. 349) (see Addendum). Defendant raised no challenge to the State's responsive argument that the evidence was admissible to show defendant's intent, participation in, and knowledge¹ of the charged offenses (R. 346-47) (see Addendum).

The trial court admitted the evidence, finding that its probative value outweighed the danger of any unfair prejudice,

¹ See Rule 404(b), Utah Rules of Evidence, which provides for the admission of "other crimes, wrongs, or acts" to show "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

and that it was "highly relevant" to defendant's credibility (R. 348-49) (see Addendum).

2. Failure to Preserve Relevancy Argument

For the first time on appeal, defendant appears to assert that evidence of his lie was erroneously admitted below because it is irrelevant to the intent element of the offenses charged (Br. of App. at 11-12). However, because defendant limited his argument below to the potential for rule 403 prejudice and did not make a relevancy² objection to the evidence below, the issue has not been properly preserved for review. See State v. Larsen, 828 P.2d 487, 495 (Utah App.) (general allegation of prejudice below held insufficient to preserve appellate argument that evidence should have been excluded as impermissible character evidence under rule 404, Utah Rules of Evidence), cert. denied, 836 P.2d 1383 (Utah 1992). See also Eldredge, 773 P.2d at 34-35; Van Matre, 777 P.2d at 462; Davis, 689 P.2d at 14. The record does not indicate any reason for defendant's failure to so challenge the evidence in the trial court. Cf. State v. Price, 827 P.2d 247, 248 n.2 (Utah App. 1992) (absent special justification for failing to present all available grounds in support of a suppression motion, this Court will not rule on those grounds not addressed in the trial court).

² See Rule 401, Utah Rules of Evidence, which defines "[r]elevant evidence" as that "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Moreover, defendant has not argued that there are "exceptional circumstances" justifying his waiver of the issue, or that this Court should consider his argument under the plain error doctrine. Eldredge, 773 P.2d at 35; Archambeau, 820 P.2d at 925. Accordingly, the Court should deem defendant's objection to the relevancy of the evidence waived.

B. Failure to Demonstrate Unfair Prejudice

Further, defendant fails to show that the trial court abused its discretion in admitting the evidence over his rule 403 objection. A trial court has broad discretion to decide whether relevant evidence should be excluded under rule 403. See State v. Hamilton, 827 P.2d 232, 239-40 (Utah 1992); State v. Ramirez, 817 P.2d 774, 781-82 n.3 (Utah 1991). A trial court does not commit reversible error in a 403 ruling unless it abuses its discretion; that is, "as a matter of law, the trial court's decision that 'the unfairly prejudicial potential of the evidence outweighs [or does not outweigh] its probativeness' was beyond the limits of reasonability." Hamilton, 827 P.2d at 239-40 (alteration in original) (citation omitted). See also State v. O'Neil, 848 P.2d 694, 699 n.5 (Utah App. 1993).

Defendant's only allegation of unfair prejudice on appeal rests on his assumption that the evidence was not properly admissible to demonstrate his intent, participation and/or knowledge. See Br. of App. at 12. However, as noted previously, defendant failed to challenge the State's argument on these precise grounds below. For the same reasons defendant cannot

raise a relevancy argument for the first time on appeal, he cannot extrapolate from the unpreserved argument to support his allegation of rule 403 prejudice. Eldredge, 773 P.2d at 34-35; Van Matre, 777 P.2d at 462; Davis, 689 P.2d at 14. Moreover, as further noted, rule 404(b) expressly provides for the admission of "other crimes, wrongs, or acts" to demonstrate "intent" and "knowledge," two of the precise grounds articulated by the State to support admission of the evidence below. See State v. Taylor, 818 P.2d 561, 571 (Utah App. 1991) (where prejudicial evidence is at least equally probative of a critical fact, it is properly admissible under rules 404 and 403).

Finally, defendant's reliance on State v. Bolsinger, 699 P.2d 1214 (Utah 1985), is misplaced. In Bolsinger, the Utah Supreme Court determined the evidence was insufficient to "support a finding of depravity in the conduct of [Bolsinger] that caused the death of [the victim]." 699 P.2d at 1220-21. In so ruling, the court noted that in erroneously finding depravity, "[t]he jury may well have been swayed" by Bolsinger's "reprehensible conduct" following the homicide. Id. at 1221. Accordingly, the court clarified that at the moment of the victim's death, "the conduct which subjected [Bolsinger] to a charge of criminal homicide came to an end." Id. Thus, Bolsinger deals with what evidence may properly be considered part of the actus reus for depraved murder. It says nothing, however, about the potential relevancy, admissibility or

prejudicial effect of post-offense conduct under the rules of evidence.

Rather, State v. Garcia, 663 P.2d 60 (Utah 1983), is controlling on this point. In Garcia, the Utah Supreme Court upheld the admission of Garcia's threat to kill a passerby at the time of his arrest for murder. Applying the predecessor to rule 403 (former rule 45, Utah Rules of Evidence), the court determined the probative value of the evidence outweighed any "potential for prejudice" on the ground the threat "'constitut[ed] circumstantial evidence of consciousness of guilt.'" 663 P.2d at 65 (quoting *McCormick's Handbook of the Law of Evidence* § 271 (2d ed. 1972)). Accord State v. Allen, 787 P.2d 566, 571 (Wash. App. 1990) (giving a false name and identification to arresting officer suggests guilty knowledge, inconsistent with defendant's denial of wrongdoing; thus, evidence was relevant and not unfairly prejudicial); Callis v. People, 692 P.2d 1045, 1050 (Colo. 1984) (an accused's use of a false name to an arresting officer is probative of an intent to avoid detection or apprehension and is thus admissible as evidence of guilty knowledge or as probative of some issue relating to identification). There is no distinguishing Garcia from the instant facts. Defendant's lie bore directly on his guilty knowledge of the charged offenses; thus, the evidence was relevant and not unfairly prejudicial.

Based on the foregoing, defendant's cursory analysis on appeal simply fails to demonstrate that the trial court acted

unreasonably in admitting the evidence over his rule 403 objection.

C. Failure to Demonstrate Insufficiency of the Evidence

Finally, insofar as defendant appears to challenge the sufficiency of the evidence to support the jury verdict (Br. of App. at 12-14), his argument should be rejected for failure to comply with the marshaling requirements of State v. Moore, 802 P.2d 732, 783 (Utah App. 1990).

The power of this Court to review a jury verdict challenged on sufficiency of evidence is "quite limited." Id. As this Court has recognized, "[i]n challenging the sufficiency of the evidence, the burden on the defendant is heavy. Defendant must 'marshal all evidence supporting the jury's verdict and must then show how this marshaled evidence is insufficient to support the verdict even when viewed in the light most favorable to the verdict.'" State v. Lemons, 844 P.2d 378, 381 (Utah App. 1992) (citations omitted).

Defendant has failed to meet this purposefully heavy burden. Rather than marshaling all the evidence supporting the jury's verdict and then demonstrating how the marshaled evidence is insufficient, defendant has blended the evidence supporting the verdict with that which he believes conflicts with the verdict. In essence, defendant merely reargues the relative merits of the testimony presented to the jury. However, this Court does not sit as a jury, and defendant's attempt to reargue the evidence presented at trial is therefore not a proper method

for challenging the sufficiency of the evidence. Accordingly, the Court should refuse to consider defendant's insufficiency of evidence claim based on defendant's failure to properly marshal the evidence supporting the jury's verdict.

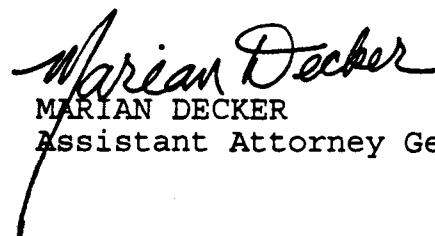
Even if this Court were to consider defendant's apparent sufficiency challenge, there was ample evidence to support defendant's conviction. Rather than recount the evidence supporting defendant's conviction, the State refers the Court to the Statement of the Facts at pp. 2-6, supra. Viewed in its proper light on appeal, the evidence presented at trial provides substantial support for the jury's verdict. This Court should therefore reject defendant's sufficiency challenge.

CONCLUSION

Based on the foregoing argument, defendant's convictions for burglary and theft should be affirmed.

RESPECTFULLY SUBMITTED this 26th day of July, 1993.

JAN GRAHAM
Attorney General


MARIAN DECKER
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to RONALD S. FUJINO, SALT LAKE LEGAL DEFENDER ASSOCIATION, attorney for appellant, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, this 26th day of July, 1993.

Marian Decker

ADDENDUM

1 (Side bar conference out of the hearing of the
2 jury.)

3 THE COURT: All right, ladies and gentlemen,
4 we're going to take a very brief afternoon recess to allow
5 you to get something to drink, use the restrooms, make
6 phone calls, or stretch your legs. We'll be in recess for
7 ten minutes, and I'll ask you to come back to the jury
8 room, to try to stay on this floor if you can. Let the
9 bailiff know where you're going to be if you're going to be
10 off the floor.

11 Do not discuss the case, do not allow anyone to
12 discuss it with you or in your presence, do not form an
13 opinion, continue to keep an open mind. If anyone attempts
14 to discuss the case with you, report it to the bailiff or
15 to me directly. And with that in mind, we'll be in recess
16 for ten minutes. Thank you.

17 (The jury left the courtroom.)

18 THE COURT: All right, let the record reflect
19 that counsel and the defendant are present, and the jury
20 has been excused.

21 Mr. McCaughey, there was a side bar conference
22 prior to my excusing the jury, and it's my understanding
23 that in response to the indication I gave you at a side bar
24 conference you indicated that while you were pleased with
25 the victory you've achieved, or the semi-victory, you

1 wanted to put this on the record, and certainly you have
2 the opportunity to do so.

3 MR. McCAUGHEY: Your Honor, my understanding is
4 the prosecution is going to call a witness who would
5 testify that Mr. Cecala, when apprehended, gave a false
6 name, a name that was not his.

7 I have previously mentioned to the court before
8 we started this trial that I had a motion in limine which I
9 wanted the court to hear. The basis of that motion in
10 limine, to exclude any reference to a false name given by
11 Mr. Cecala, and the basis of that was that it's, any
12 probative value that that evidence had, or has, is far
13 outweighed by the prejudiciality that would be shown to the
14 defendant.

15 My understanding is that the court is going to
16 deny that motion, at least as far as the initial false name
17 that Mr. Cecala gave, but is going to sustain the motion as
18 to any other false names. My position is that the court
19 should keep everything out, because I think it's under Rule
20 403, the prejudiciality.

21 THE COURT: Everything, or everything concerned
22 the alleged giving of the false name?

23 MR. McCAUGHEY: Everything under the giving of
24 the false name under Rule 403.

25 THE COURT: Let me clarify before Mr. Jones is

COMPUTERIZED TRANSCRIPT

1 given an opportunity to respond. You brought this to my
2 attention this morning in chambers. Mr. Jones was present
3 as well. You did not ask for a formal hearing at that
4 time.

5 MR. McCAUGHEY: Right.

6 THE COURT: I indicated I would allow you an
7 opportunity for a full-blown hearing if you wanted it, or
8 at least to put the matter on the record and I would
9 consider the same in the interim; is that fair?

10 MR. McCAUGHEY: That is correct.

11 THE COURT: Mr. Jones, your response?

12 MR. JONES: Well, Judge, I just think that the
13 evidence concerning the defendant giving a false name is
14 certainly consistent with the element of guilt by the
15 defendant. You have a situation where the officers are
16 called, some of them take off and run, the defendant
17 doesn't run away, but he appears to be peeking around the
18 corner. He walks away from the officers.

19 I just think his lying to the officer about who
20 he is and his identity is certainly something that the jury
21 should be able to consider in the case in trying to
22 determine his role, if any, in this particular crime.

23 THE COURT: So you're saying it goes to an
24 assessment of his intent?

25 MR. JONES: Yes, I think so.

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1 THE COURT: And his participation?

2 MR. JONES: And knowledge of the crime.

3 THE COURT: Mr. Jones, it's my understanding from
4 the side bar conference that you had alluded to three false
5 names that were given to law enforcement by the defendant;
6 is that correct?

7 MR. JONES: Well, I'm not sure all three are
8 false, but originally he gives the name of Salvador
9 Sanchez, and then the officers discover that's not his
10 name, and when they confront him with that he then gives
11 them the name of Bennie Medina, and they come back and say,
12 "That's not your name," and he finally gives them the name
13 of Benjamin Cecala. So I guess there are three changes in
14 his name.

15 THE COURT: There doesn't appear to be much
16 question that the first name is not the defendant's correct
17 name; is that right, Mr. McCaughey?

18 MR. McCAUGHEY: That's right. He goes by the
19 second, too, because I think Medina, he uses both Medina
20 and Cecala. Because his father's name is Medina but his
21 mother's name is now Cecala.

22 THE COURT: That appears consistent with what I
23 would have ruled in any event, and now it becomes even
24 clearer, and that is, Mr. Jones, I am going to allow you to
25 go into the giving of a false name, to wit, the first name

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1 that was given.

2 I am going to ask you to direct your witnesses
3 not to allude to the other names having been given by the
4 defendant, or referring to him in any way as aliases or
5 anything else. I don't think that that is probative. I
6 think the single giving of a name that is contrary to the
7 accurate name is probative.

8 I think that whatever prejudicial effect it has,
9 if any, is far outweighed by the probative value of the
10 same. I can't see any prejudicial effect, I can see a
11 clear probative value to this, and particularly I think
12 we're not looking at a prejudicial effect, if it's limited
13 in the manner I indicated.

14 Mr. Jones, I'll ask you to clearly discuss that
15 over the break with your witnesses.

16 MR. JONES: All right, I will.

17 THE COURT: Is there anything further, Mr.
18 McCaughey?

19 MR. McCAUGHEY: My only argument, just so the
20 record's clear, I think the prejudice we have is the fact
21 that a person charged with a crime and is on trial is shown
22 to have lied to the police officers. And I think that is
23 prejudicial. I mean the court may not think it's
24 overwhelming prejudicial, but I do think some prejudice
25 results from the jury hearing that he lied to a police

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1 officer.

2 THE COURT: I think your point is well taken.
3 What I'm saying is the prejudicial effect, if any, is
4 outweighed by the probative value. And to the extent that
5 this gets to the defendant's credibility, I think it
6 becomes highly relevant and probative. So you've
7 articulated yet another basis for my ruling.

8 But as to the other alleged aliases, they are not
9 to come in. And you know, it's kind of like the old
10 Groucho Marx "You Bet Your Life" show where the little
11 birdie comes down. I don't want to hear it. If I see the
12 bird coming down with the witness referring to this, I'm
13 going to be mad.

14 So talk to your witnesses and make it very clear
15 to them just what they can say and just what they cannot
16 say. Tell them if there's any doubt in their mind about
17 what's appropriate and what is not, they're to stop and ask
18 for an opportunity to confer with you, Mr. Jones. I don't
19 want to run the risk of a mistrial at this juncture.

20 MR. JONES: I might indicate, I think we only
21 have one more witness.

22 MR. McCAUGHEY: Is that a police officer?

23 MR. JONES: Uh-huh.

24 THE COURT: Who is the next witness?

25 MR. JONES: Dean Evans. I don't anticipate he'll

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