2004

State of Utah v. Kayla Butler : Reply Brief

Utah Court of Appeals

Karen Klucznik; Attorney General\'s Office.
James K. Slavens; Attorney for the Defendant.

UTAH COURT OF APPEALS

STATE OF UTAH	)	
	)	
Plaintiff,	)	
vs.	)	
	)	Case No.: 20040317-CA
KAYLA BUTLER	)	
	)	
Defendant.	)	
	)	

REPLY BRIEF OF THE APPELLANT

ORAL ARGUMENT IS REQUESTED

PRIORITY NUMBER 1

ON APPEAL FROM THE FOURTH JUDICIAL DISTRICT
JUAB COUNTY, STATE OF UTAH

Karen Klucznik
Attorney General's Office
160 East 300 South, Sixth Floor
Salt Lake City, UT 84114-080

James K. Slavens
Attorney for the Defendant
P.O. Box 752
Fillmore, UT 84631

UTAH COURT OF APPEALS

STATE OF UTAH	)	
	)	
Plaintiff,	)	
vs.	)	
	)	Case No.: 20040317-CA
KAYLA BUTLER	)	
	)	
Defendant.	)	
	)	

REPLY BRIEF OF THE APPELLANT

ORAL ARGUMENT IS REQUESTED

PRIORITY NUMBER 1

ON APPEAL FROM THE FOURTH JUDICIAL DISTRICT
JUAB COUNTY, STATE OF UTAH

Karen Klucznik
Attorney General's Office
160 East 300 South, Sixth Floor
Salt Lake City, UT 84114-080

James K. Slavens
Attorney for the Defendant
P.O. Box 752
Fillmore, UT 84631

TABLE OF CONTENTS

TABLE OF AUTHORITIES Page

1. Utah Rules of Criminal Procedure 11 (e)(2)
2. *Alverez v. Galetka*, 933 P.2d 987, 989 (Utah 1997)
3. *State v. Trujillo-Martinez*, 814 P.2d 596 (1991)

ARGUMENT

In State case number 031600086 (R. 29), the Appellant pled guilty to Distribution of a Controlled Substance, a Second Degree Felony; and in State case number 031600093 (R. 61), the Appellant pled guilty to Possession of a controlled Substance, a Third Degree Felony. The Appellant proffered the following testimony at the hearing regarding her Motion to Withdraw her guilty plea. After the confidential informant testified at the preliminary hearing and unbeknownst to the Appellant and her attorney, the Trial Judge ordered that his probation officer check him for drug use. Tr. p. 5, ll. 18-20. The subsequent search and testing found that the confidential informant was under the influence of a controlled substance when he testified and that he had a controlled substance on his person at the time he testified. Tr. p. 4, ll. 16-20; p. 5, ll. 3-15. All of this was unknown to the Appellant and her attorney. Tr. p. 3, ll. 18-25. The State, sometime after the preliminary two hearing, offered the Appellant a plea bargain. The plea bargain was a take it or leave it offer. Tr. p. 6, ll. 1-2. The Appellant accepted the State's plea bargain which effected several different cases without knowing this information about the confidential informant. Tr. p. 4, ll. 16-20. After the entry of the guilty plea but before she was

sentenced, the Appellant was informed of this information regarding the confidential informant as indicated above. Tr. p. 3, ll. 18-25. The Appellant would not have entered this plea bargain if she had known of this fact prior to the entry of the plea.

The State has countered the Appellant's argument with the position that the Appeals Court should reject the Appellant's appeal for two reasons: One, because the record is inadequate to reach the issues; and two, because the claim was inadequately briefed.

First, as to the issue of whether or not the record is adequate to determine whether or not the Appellant's plea was voluntarily and knowingly entered, any deficiency in the record was due to the Court's failure to conduct an evidentiary hearing. There is no question that in this matter the Appellant filed a Motion to Withdraw her Guilty Plea with supporting Memorandum. R. 32. There is no question in this matter that the Court scheduled a hearing for the purpose of addressing the Appellant's Motion to Withdraw. R. 40 and 44. That at the hearing, the Court did not request any sworn testimony, but instead ruled as follows:

> Even if the court took it for true that Mr. Greg was under the influence of drugs at the time he testified, I don't think that should make any difference whether or not she voluntarily and knowingly entered a plea to the charges she plead to. It only effects one case to begin with and there are four cases. So the court's going to deny the motion.

Minutes Continuance, p. 4., ll. 16-22.

In other words, the Court ruled that even if the proffered testimony was true, the Court was denying the Motion to Withdraw the Guilty Plea. It is important to note that the Prosecutor in this matter did not object to any proffered testimony. It is the Appellant's position that the Court erred when it so ruled.

First, this Court must determine whether or not the proffered testimony would support the Appellant's position that her guilty plea was not knowingly and voluntarily entered. The Appellant is of the opinion that the proffered testimony clearly supports her position that the plea

was not voluntarily and knowingly given. This position is clear from the record.

Second, this Court must determine whether or not the Trial Court should have accepted the proffered testimony that was presented at the hearing. Taking into account the fact that the Prosecutor in the matter made no objection to the proffered testimony and the fact that he did not counter with contrary proffer, this Court should accept the proffered testimony. Utah R. Evid. 103(a)(1) provides that the failure to raise an objection below would preclude the Appellate Court's consideration of argument on appeal. Failure of the State to timely raise objections at the trial constitutes a waiver of the objection. *Stagmeyer v. Leatham*, 439 P.2d 279 (1968): "In order to complain of the admission of evidence, there must be a clear and definite objection stating the grounds therefor." This is certainly true of the Defendant, and the State should be held to the same flame. *State v. Wach*, 24 P.3d 948 (2001) and Utah R. Crim. P. 12(e).

Finally, this Court should determine whether or not the case should be remanded for the purpose of providing an adequate findings of fact. Any inadequacy of the record is due to the fact that the Court did not conduct an evidentiary hearing to determine whether or not the proffered testimony could be supported under oath. Although appellate courts generally grant substantial deference to the trial court's findings of fact, they do so only when the findings "disclose the steps by which the ultimate Conclusion on each ***factual*** issue was reached." *State v. Marshall*, 791 P.2d 880, 882 n.1 (Utah App.) (quoting *Rucker v. Dalton*, 598 P.2d 1336, 1338 (Utah 1979)), cert. denied, 800 P.2d 1105 (Utah 1990). In addition, Utah Rule of Criminal Procedure 12(c) requires the trial court to specify its findings on the record when resolution of ***factual*** issues is necessary to the Disposition of a motion. The appellate courts have also consistently held that the trial court's conclusions of law must also be sufficient to allow for adequate appellate review. *State v. Pharris*, 846 P.2d 454, 465 (Utah App.) (requiring trial courts

to record sufficient Conclusions of law on all ***evidence*** relevant to its decision in order to facilitate appellate review), cert. denied, 857 P.2d 948 (Utah 1993); see also *State v. Arroyo*, 796 P.2d 684, 687 (Utah 1990) (holding that case must be reversed and remanded when trial court's findings and Conclusions are insufficient to support trial court's findings or court of appeals's Conclusions as to consent); *Marshall*, 791 P.2d at 889-90 (reversing and remanding for a further hearing on the issue of consent); *State v. Sierra*, 754 P.2d 972, 981 (Utah App. 1988) (reversing and remanding "for the trial court to make sufficient findings of fact and Conclusions on the issue of consent"). At the very least, this Court should remand this case to the trial court for the purpose of conducting an evidentiary hearing.

As to the issue that the matter was inadequately briefed. The undersigned is unaware of any rule or law that states exactly how many lines or pages required and how many citations must be made before an issue is adequately briefed. The issue in this matter is very simple: whether or not the Appellant's plea was voluntarily and knowingly entered pursuant to Utah law. The appellate courts have consistently held that it is an abuse of discretion for the trial court to deny an Appellant's motion to withdraw his plea if the Appellant did not enter a guilty plea which was not made in strict compliance with Rule 11. *State v. Gibbons*, 740 P.2d 1309, 1312-14 (Utah 1987). Utah Rules of Criminal Procedure 11 (e) provides: "a guilty plea cannot be entered unless it is knowingly and voluntarily entered"; and *State v. Trujillo-Martinez*, 814 P.2d 596 (1991): "Thus, rule 11(e) and *State v. Gibbons* require the vacating of defendant's guilty plea on the ground that it was not knowingly and voluntarily made."

Perhaps with this added language and citation the State can feel comfortable that there is sufficient briefing for the Court.

CONCLUSION

It is the Appellant's position that her plea was not knowingly and voluntarily entered; as a result, the Court should have allowed her to withdraw the plea.

Dated this December 15, 2004.

James K. Slavens

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Utah, resident of and with my office in Fillmore, UT; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof on this 15 day of December, 2004.

DOCUMENT SERVED: APPELLANT'S REPLY BRIEF

PERSONS SERVED:

Karen A. Klucznik
Attorney General's Office
160 East 300 South, Sixth Floor
Salt Lake City, Ut 84114-080

James K. Slavens, Esq.

\\Default\jims files\JKS\kayla butler\appellantbrief.wpd:jkp