

1995

West Valley City v. Curtis Lynn Dennies : Reply Brief

Utah Court of Appeals

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950427

IN THE UTAH COURT OF APPEALS

West Valley City,

Plaintiff and appellee,

vs.

Curtis Lynn Dennies,

Defendant and appellant

Appeal No. 950427
(trial case no. 951001684)

REPLY BRIEF OF APPELLANT

Priority 2

An appeal from the Third Circuit Court, West Valley Department, the

Honorable Judge Nehring, presiding.

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TABLE OF AUTHORITIES

No legal authorities are cited in this reply.

DETAIL OF THE ARGUMENT

I. NO COMPETENT EVIDENCE THAT SPOON USED WITH DRUGS

Appellee West Valley City (the City) fails to refute that an ordinary spoon is not drug paraphernalia.¹

II. UNREFUTED EVIDENCE SHOWS THE KNIFE WAS NOT CONCEALED

The City concedes that to sustain the result below, “the evidence must support a conclusion that the dangerous weapon was ‘concealed’” [Brief of Appellee, page 8.]

Seeking support for the trial court’s finding of concealment, the City claims that, “Despite this relatively close contact [of Officer Hudson] with the vehicle and Dennies [when Officer Hudson approached the driver’s side of the vehicle], Officer Hudson was not aware of the presence of the knife until it was later discovered during the inventory search conducted by Officer Gray.” [Brief of Appellee, page 9.]

¹Again, defendant invites this court to visually examine the spoon, since visual observation was the sole basis on which the officers concluded that the spoon holds residue of illicit drugs.

The record is contrary. First, it is undisputed that the handle of the knife was clearly visible to Officer Gray even from outside of the vehicle.² No where does the record state that Officer Gray failed to see the knife, which was plainly visible, until after he entered the vehicle.

Second, the City's assertion implies that Officer Hudson directed his vision toward the contents of the vehicle. But this is not a reasonable inference. In fact, despite the handle being in plain view, even outside of the vehicle, Officer Hudson did not see the knife until Officer Gray handed it to him.³

Claiming support for the trial court's finding of concealment, the City also

²The Reporter's transcript 17: 4-6 (record at page 44) provides as follows:

Q And was that knife plainly visible from outside the car?

A The handle was.

³The Reporter's transcript 7:25-8:6 (record at page 35) provides as follows:

Q Okay. And what about the knife? Do you recall where that was located?

A The knife was retrieved by Officer Gray. All I can say is where he told me it was located.

The Reporter' transcript 11:22-24 (record at page 38) provides as follow:

Q Okay. You didn't have anything to do with locating a knife or a spoon; correct?

A Correct.

The Reporter's transcript 12:12-13 (record at page 39) provides:

Q Did you see the knife being found?

A No. I did not.

maintains that “Officer Gray testified that he was kneeling inside of the vehicle, on the passenger side, when he first noticed the handle of the knife.” [Brief of Appellee, page 9 (emphasis added).] The record is contrary: Officer Gray expressly acknowledged that the handle of the knife was clearly visible from outside of the vehicle.⁴

Further, it is unrefuted that when Officer Gray observed the handle, he was relatively sure that the object was a knife.⁵

⁴The Reporter’s transcript 17: 4-6 (record page 44) provides as follow:

Q And was that knife plainly visible from outside the car?

A The handle was.

⁵The reporter’s transcript, 18:18-19:10 (record at pages 45-46) provides as follows:

Q When you saw the handle, could you tell it was a knife?

A No. I could not.

Q What did you think it might be?

A I--I thought it was a knife just noticing the handle, did not know what it was, but just observed that it might be a knife.

Q You--you thought that it might be a knife, but you weren’t certain?

A I wasn’t a hundred percent certain what the object was; however, I did think it was a knife judging by its handle.

Q You thought it was probably a knife?

A Yes.

Q You weren’t certain that it was a knife, but you were relatively certain--you were relatively sure that

CONCLUSION

It is undisputed in the record that the knife handle was plainly visible from outside of the vehicle. When the officer spotted the handle of the knife, he was reasonably sure that the object was a knife. The knife was not concealed. The conviction should be reversed.

STATEMENT REGARDING ADDENDUM

No addendum is necessary.

Dated this 10th day of January 1996.



Mark J. Gregersen
Counsel for Defendant and Appellant
Curtis Dennies


CERTIFICATE OF MAILING

I hereby certify that on this 10th day of January 1996, I mailed two true and correct copies, postage prepaid, of the foregoing REPLY BRIEF OF THE APPELLANT to J. Richard Catten, Esq., Office of the West Valley City Prosecutor,

it was a knife; is that fair to say?

A Yes.

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Mark J. Gregersen

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