

1993

The State of Utah v. Timothy Gene Garcia : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT

DOCKET NO. 930104 IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff-Appellee,	:	Case No. 930104-CA
vi.	:	
TIMOTHY GENE GARCIA,	:	Category No. 2
Defendant-Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM A CONVICTION OF UNLAWFUL
DISTRIBUTION OF OR OFFERING, AGREEING,
CONSENTING OR ARRANGING TO DISTRIBUTE A
CONTROLLED SUBSTANCE, A SECOND DEGREE FELONY,
IN THE THIRD JUDICIAL DISTRICT COURT, IN AND
FOR SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE TIMOTHY R. HANSEN, PRESIDING

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of unlawful distribution of or offering, agreeing, consenting or arranging to distribute a controlled substance, a second degree felony, under Utah Code Ann. § 58-37-8(1)(a)(ii) (Supp. 1992).

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

STATEMENT OF ISSUES PRESENTED ON APPEAL

AND STANDARDS OF APPELLATE REVIEW

The sole issue presented on appeal is whether the Metro Narcotics Strike Force, whose "buy money" was lost in defendant's crime, is a "victim" under Utah's restitution statute.

A trial court's statutory interpretation is accorded no deference on appeal, but is reviewed for correctness. City of Monticello v. Christensen, 788 P.2d 513, 516 (Utah), cert. denied, 489 U.S. 841 (1990); State v. Singh, 819 P.2d 356, 359 (Utah App. 1991).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

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

STATEMENT OF THE CASE

The State charged defendant with two counts of unlawful distribution of or offering, agreeing, consenting or arranging to distribute a controlled substance under Utah Code Ann. § 58-37-8(1)(a)(ii) (Supp. 1992) (R. 6-7).

Pursuant to a plea bargain, defendant pled guilty to one count, and the other count was dismissed (R. 16-24). The trial court then sentenced defendant to a term of one to fifteen years at the Utah State Prison, fined him \$1,600 plus an 85% surcharge, and ordered him to pay \$240 in restitution to the Metro Narcotics Strike Force (R. 26).

STATEMENT OF FACTS

A statement of facts beyond that which appears above in the Statement of the Case is not necessary to the resolution of the issues presented on appeal.

SUMMARY OF ARGUMENT

The trial court's restitution order was proper. Oregon, the immediate source of Utah's restitution statute, has ruled that the police are a "victim" under its restitution statute in a case presenting the identical issue as that presented here. Furthermore, the rationale behind the Oregon ruling, that restitution is allowable in cases in which the

parties are not "in pari delicto," is followed in Utah.

ARGUMENT

POINT I

**THE TRIAL COURT'S RESTITUTION ORDER IS
SUPPORTED BY SIGNIFICANT AUTHORITY AND WAS
PROPER**

Following his conviction, the trial court ordered defendant to pay restitution in the amount of \$240 to the Metro Narcotics Strike Force ("Metro Narcotics"), which paid defendant that sum in its sting operation. Defendant claims the restitution order is improper because Metro Narcotics is not a "victim" under the restitution statute.

A. Standard of Review

The trial court's statutory interpretation is accorded no deference on appeal, but is reviewed for correctness. City of Monticello v. Christensen, 788 P.2d 513, 516 (Utah), cert. denied, 489 u.s. 841 (1990); State v. Singh, 819 P.2d 356, 359 (Utah App. 1991).

B. The Merits

Utah Code Ann. § 76-3-201 (Supp. 1992) (amended 1993) provides in pertinent part:

(3) (a) (i) When a person is adjudged guilty of criminal activity which has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution up to double the amount of pecuniary damages to the victim or victims of the offense of which the defendant has pleaded guilty

. . . .

(4) As used in Subsection (3):

(b) "Pecuniary damages" means all special

damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes, but is not limited to, the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses such as earnings and medical expenses.

. . .

(d)(i) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

The State has been unable to locate any Utah cases relevant to the reach of the term "victim" under the statute. However, in State v. Twitchell, 832 P.2d 866, 869 (Utah App. 1992), this Court recognized that Utah's restitution statute was derived from Oregon's restitution statute, that the statutes were substantially similar, and that Oregon case law was appropriate authority for interpreting Utah's restitution statute. See also State v. Depaoli, 835 P.2d 162, 163 (Utah 1992).

In State v. Pettit, 698 P.2d 1049 (Or. Ct. App. 1985), the court analyzed the precise issue raised by defendant in the instant case. The court concluded that a city police department was a "victim" entitled to restitution because it was capable of recovering "pecuniary damages" under the statute. Specifically, the court determined that the city could bring a civil action for rescission of an illegal contract (the contract for the purchase of drugs) and restitution. The court noted that while parties to an illegal contract are not generally entitled to rescission where they are equally at fault, the general exception to the

rule was applicable in this case where the city police were clearly not in "pari delicto" in acting to limit criminal activity. Id. at 1051.

The Utah Supreme Court has also recognized that restitution is available where parties are not equally at fault. See Andrew v. Ideal Nat'l Ins. Co., 29 Utah 2d 343, 509 P.2d 367, 370 (1973); McCormick v. Life Ins. Corp. of America, 6 Utah 2d 170, 308 P.2d 949, 952 (1957). Based on the acknowledged authority of Oregon law bearing on the meaning of section 76-3-201(3), and of Utah authority recognizing the rationale upon which Pettit relies, the trial court's restitution order was proper.

Contrary to defendant's argument, Depaoli does not require a different conclusion. There, the issue was whether the restitution statute authorized the trial court to order the defendant to pay restitution to the Salt Lake City Police Department (SLCPD) for the expense of a "code R" examination of the victim sexually assaulted by the defendant. The Utah Supreme Court held that, "[b]ecause the cost of the code R examination could not be recovered by the SLCPD in a civil action against [the] defendant, the SLCPD has not sustained pecuniary damages as defined by our statute and therefore is not a victim." 835 P.2d at 164. Here, under the rationale of Pettit, the police would be able to recover from defendant in a civil action; therefore, the police have suffered pecuniary damages as defined by the restitution statute and are a "victim."

Furthermore, although defendant presents a line of

authority that is contrary to Pettit, see People v. Evans, 461 N.E.2d 634, 639 (Ill. App. 1984), this Court has correctly looked to Oregon authority for interpretation of Utah's restitution statute. See Twitchell, 832 P.2d at 869. "[W]hen the Legislature adopts a statute from another state, the presumption is that the Legislature is familiar with that state's judicial interpretations of that statute and intends to adopt them also." Jensen v. Intermountain Health Care, Inc., 679 P.2d 903, 904 (Utah 1984) (citing 73 Am.Jur.2d Statutes § 333 at 46 (1974)). See also Depaoli, 835 P.2d at 164-65 (looking to Oregon case law for interpretation of Utah statute patterned after Oregon statute). Therefore, Pettit should be preferred over Evans.

CONCLUSION

Based on the foregoing arguments, this Court should affirm the trial court's restitution order.

RESPECTFULLY submitted this 19th day of July, 1993.

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CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to Ronald S. Fujino, Salt Lake Legal Defender Assoc., 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, this 19th day of July, 1993.

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