

1998

# State of Utah v. Evan B. Anderson : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

981674

STATE OF UTAH,	)	
	)	BRIEF OF APPELLEE
Plaintiff /Appellee,	)	
v.	)	
EVAN B. ANDERSON,	)	Case No. 981674-CA
Defendant/Appellant.	)	Priority No. 2

BRIEF OF APPELLEE

APPEAL FROM JUDGMENT OF CONVICTION FOR CONTRACTING  
WITHOUT A LICENSE AND APPLYING FOR A BUILDING PERMIT  
WITHOUT A LICENSE, BOTH CLASS B MISDEMEANORS,  
IN VIOLATION OF UTAH CODE ANN. §§58-55-501(1) AND 58-55-501(4)  
IN THE FIFTH JUDICIAL DISTRICT COURT, WASHINGTON COUNTY  
THE HONORABLE G. RAND BEACHAM

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**FILED**

JUN - 3 1999

COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, )  
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 Plaintiff /Appellee, ) BRIEF OF APPELLEE  
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 v. )  
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 EVAN B. ANDERSON, ) Case No. 981674-CA  
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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, )  
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 Plaintiff/Appellee, )  
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 vs. )  
 )  
 EVAN B. ANDERSON, ) Case No. 981674-CA  
 )  
 Defendant/Appellant. )

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BRIEF OF APPELLEE

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**JURISDICTION**

This court has jurisdiction to hear the appeal in this matter pursuant to Utah Code Annotated §77-18a-1(a) and §78-2a-3(2)(e), 1953, as amended.

**ISSUES PRESENTED FOR REVIEW**

I. Did the trial court err in not granting defendant's motion to dismiss, made at the close of plaintiff's case in chief, for failure to prove the elements of the charges of contracting without a license, Utah Code Annotated §58-55-501(1) and filing for a building permit without a license, Utah Code Annotated §58-55-501(4)?

II. Did the trial court err when it did not grant the defendant's motion for a Bill of Particulars?

III. Did the trial court err in terminating a previous consolidation order?

IV: Did the trial court err by allowing O. J. Peck, investigator with the Contractor's Licensing Section of the Utah Department of Commerce Division of Occupational & Professional Licensing, to testify about interpretations of the licensing laws and how the defendant violated these laws?

V: Did the trial court err in allowing O. J. Peck, investigator with the Contractor's Licensing Section of the Utah Department of Commerce Division of Occupational & Professional Licensing, to refresh his memory from his reports?

VI: Did the trial court err in allowing O. J. Peck, investigator with the Contractor's Licensing Section of the Utah Department of Commerce Division of Occupational & Professional Licensing, to testify about other dates when the defendant had been licensed?

VII: Did the jury err in finding the defendant guilty of Contracting without a License, in violation of §58-55-501(1) and Applying for a Building Permit without a License, in violation of §58-55-501(4)?

**CONSTITUTIONAL AND STATUTORY**  
**PROVISIONS CONSIDERED**  
**DETERMINATIVE**

Utah Code Annotated §§58-55-501(1) and 58-55-501(4).

All statutory references in this brief are to Utah Code Annotated 1953, as amended.

## STATEMENT OF THE CASE

On June 12, 1996, Joe and Myrle Mellen entered into a contract with Evan Anderson, the defendant/appellant in this action. The contract specified that the Mellens would get a Skyline modular home; concrete for home, garage and shed; construction of garage and shed; as well as excavating and grading; septic tank with percolation tests; driveway, asphalt paving; water trench two freeze hydrants, and power trench for a total cost of \$136,384.45. The Mellens had already purchased from the defendant Lot 3 Harmony Views Unit IV subdivision, upon which the home and other improvements were to be placed.

At the time the contract was entered into, the defendant was licensed only to do excavating and grading, landscaping and pipeline and conduit work. On that date neither the defendant nor his company, Construction and Sales Management, was licensed as a general contractor.

The Mellens dealt only with the defendant throughout the process of developing their lot, until they became dissatisfied with some of the work performed by the defendant and they hired Gene Beatty to finish the concrete work. In fact, all work done on the lot and fixtures of the Mellen home was done by the defendant or by those hired by the defendant, and the defendant, Evan Anderson, collected the entire \$136,384.45 contract price for that purpose.

Sometime in August of 1996 a building permit application was faxed to the Washington County Building Department concerning the Mellen property. The fax came



from the office of Evan Anderson in New Harmony, Utah. With it came information concerning water right, building plans, septic system plans, and approval for improvements from Harmony Views signed by Evan Anderson, the defendant. These materials were consistent with the materials always filed by the defendant by fax. The building permit application listed the contractor as Spectra Construction Company, a licensed general contractor, and was approved on September 3, 1996. The permit was picked up by Amelia M. Anderson, a daughter of the defendant, who signed the application claiming to be the authorized agent for Spectra. When Washington County Building Inspector Bill Weaver later questioned the defendant about his relationship with Spectra Construction, the defendant stated that he was a part owner of Spectra, that Spectra was acting on his behalf, and that he (the defendant) was acting under Spectra's license. In fact, the defendant, Evan Anderson, had no ties whatsoever to Spectra Construction Company. Therefore, at the time the building permit for the improvements to the Mellen lot was requested by the defendant he was not a licensed general contractor, nor was he acting as an agent for Spectra Construction Company, the licensed contractor listed on the building permit application.

In April of 1997, O. J. Peck contacted the Mellens after Mr. Peck learned that the Mellens were unhappy that some of the work specified in the contract had not been completed by the defendant. The Mellens became upset because Washington County Building Inspector Bill Weaver required that additional work be completed on the site. Following this meeting with Mr. and Mrs. Mellon, a formal investigation by the Division

of Occupational and Professional Licensing was started.

When Inspector O. J. Peck completed his investigation, the results were submitted to the Washington County Attorney's Office for review. An Information was filed on July 22, 1997, and a jury trial was held before the Honorable G. Rand Beacham, District Court Judge, on September 15-16, 1997. Following its deliberations on September 16, 1997, the jury returned verdicts of guilty to the charges of Acting as a Contractor without a License, Utah Code Annotated §58-55-501(1), and Applying for a Building Permit without a License, Utah Code Annotated §58-55-501(4). Sentencing was held on September 18, 1997, and defendant subsequently filed this appeal.

### **SUMMARY OF ARGUMENT**

The State contends that neither the trial court judge nor the jury committed the errors claimed by appellant. In the first six claims of error, appellant alleges that the trial judge erred, and correctly states that the standard of review is for correctness. However, appellant fails to marshal any evidence to support any of the claimed errors, nor does appellant support these claims with any type of authority from statutes or case law.

As to the seventh issue, appellant claims that the jury erred in finding him guilty, and again correctly states that the standard of review is that the jury verdict should be reviewed in the light most favorable to the verdict. But again the appellant failed to marshal evidence to support this claim, and did not support his arguments with authority from either statutes or case law.

## ARGUMENT

**ISSUE I: DID THE TRIAL COURT ERR IN NOT GRANTING DEFENDANT'S MOTION TO DISMISS MADE AT CLOSE OF PLAINTIFF'S CASE IN CHIEF, FOR FAILURE TO PROVE THE ELEMENTS OF THE CHARGES OF CONTRACTING WITHOUT A LICENSE, UTAH CODE ANNOTATED §58-55-501(1) AND FILING FOR A BUILDING PERMIT WITHOUT A LICENSE, UTAH CODE ANNOTATED §58-55-501(4)?**

The trial court did not err in denying defendant's motion to dismiss made at the conclusion of the State's case. The standard of review set out by defendant is correctly stated in *State v. Snyder*, 932 P.2d 120, 125 (Utah App. 1997), "[T]he propriety of a trial court's decision to grant or deny a motion to dismiss is a question of law that we review for correctness," citing *Tiede v. State*, 915 P.2d 500, 502 (Utah 1996). Defendant's argument, however, is not supported by the facts or by any authorities.

However, the State contends that the first issue this Court should address is whether the jury erred in reaching a verdict of guilty beyond a reasonable doubt. In fact, if this Court either upholds or overturns the jury's verdict, the trial court's decision to dismiss or proceed becomes moot. The standard of review for jury trials is that the appellate court "must view the evidence in the light most favorable to the verdict, and will interfere only when the evidence is so lacking and insubstantial that a reasonable person could not have possibly reached a verdict beyond a reasonable doubt." *State v. Blubaugh*, 904 P.2d 688, 694 (Utah App. 1995), (citations omitted).

In fact, even errors of the District Court at preliminary stages of a prosecution are

"cured if the defendant is later convicted beyond a reasonable doubt," *State v. Quas*, 837 P.2d 565, 566 (Utah App. 1992); *United States v. Meck*, 475 U.S. 66, 70, 89 L.Ed.2d 50, 56, 106 S.Ct. 938 (1986). Therefore, the State contends that defendant has put the cart before the horse on this issue. But having done so, defendant still presents no case law, statutes, or evidence to support his contention that the trial judge erred in denying his motion to dismiss.

In the statutes at issue in this action, Utah Code Ann. §58-55-501 (1) and (4), unlawful conduct is defined as including:

(1) engaging in a construction trade, acting as a contractor, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter. Utah Code Ann. §58-55-501(1);

(4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter. Utah Code Ann. §58-55-501(4)

Because the defendant stipulated at trial that he did not fall under the exemptions from licensure under this chapter, we can concentrate on defendant's actions as they relate to the statutes themselves.

The evidence clearly supports the trial court's decision to deny defendant's motion to dismiss at the conclusion of the State's case. The fact that the defendant was not a licensed general contractor at the time of the offenses is evident from Exhibit No. 3, which clearly shows that neither the defendant, Evan Anderson, nor his company, Construction and Sales Mgmt. Inc., had an appropriate general contractor's license during

the time periods in question. Evan Anderson signed the contract (Exhibit No. 2) on June 12, 1996, for himself individually. By the terms of the contract the defendant agreed to take care of all the work required on the Mellen lot, either personally or by contracting with others to do the work, in return for payment of the contract sum of \$136,384.45.

A general contractor is defined in *Black's Law Dictionary*, 6<sup>th</sup> Edition (1990) as "one who contracts for the construction of an entire building or project, rather than a portion of the work. The general contractor hires subcontractors (*e.g.*, plumbing, electrical, etc.), coordinates all work and is responsible for payment to subcontractors. Also called "prime" contractor.

Utah Code Ann. §58-55-102 (12) defines a general building contractor as:

[A] person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or moveable property of any kind or any components of that construction except plumbing, electrical, and mechanical, for which the general building contractor shall employ the services of a contractor licensed in that particular specialty, except that a general building contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical and hire a licensed plumber or electrician as an employee. The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety, and welfare, and for which a license is required unless that general building contractor holds a valid license in that specialty classification.

From the evidence presented at trial it is evident that the defendant, Evan Anderson, held himself out to be a general contractor. Other evidence provided or produced at trial, both through Exhibit No. 3 and the testimony of O. J. Peck and Bill Weaver, showed that the defendant was not licensed to enter into such a contract.

As to the second count in the Information, Applying for a Building Permit without

a License, it is clear from the foregoing statements that the defendant did not have the appropriate contractor's license at the time he applied for a building permit covering the work to be performed on the Mellen property. As shown in Exhibit No. 5, when the defendant applied for a building permit, he duped Washington County into believing that the contract was to be performed by Spectra Construction Company. Washington County Building Inspector Bill Weaver testified that when he asked Evan Anderson about his relationship with Spectra, "He [Evan Anderson] told me, if I recall it right, that he had bought in a partnership or something. He had bought into this company and he was now a portion of Spectra Construction." (Transcript 186 p. 58, lines 7-10) However, at trial Charles C. Moore, who is the sole shareholder of Spectra Construction, stated that he (Mr. Moore) had never met the defendant, Evan Anderson. (Transcript 186, pp. 88, 91)

The foregoing evidence meets all the elements of the statutes at issue and allowed the trial judge to conclude that the issues were ripe for decision, and that the trial should proceed to the next phase. The trial court was correct and did not err in denying the defendant's motion to dismiss.

**ISSUE II: DID THE TRIAL COURT ERR WHEN IT DID NOT GRANT DEFENDANT'S MOTION FOR A BILL OF PARTICULARS?**

The State contends that the trial court was correct in not granting defendant's motion for a bill of particulars. The defendant is correct in his statement that the standard of review by this Court is for correctness of the trial court's decision. However,

defendant's arguments are in error and are not supported by any statutory or case law authority.

Rule 4(e) of the Utah Rules of Criminal Procedure states:

(e) When facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at arraignment or within ten days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and the contents of a bill of particulars shall be limited to a statement of the factual information needed to set for the essential elements of the particular offense charge.

The question that arises from rule 4(e) is whether the trial court abused its discretion in denying defendant's motion for a bill of particulars. As the defendant provided no transcript of the hearing where this motion was denied, it is impossible to know with certainty on what grounds the court denied defendant's motion. However, The State would argue that the trial court did not abuse its discretion in failing to grant defendant's motion.

The Court of Appeals will generally "assume regularity of proceedings below when defendant fails to provide an adequate record on appeal." *Blubaugh*, at 699. Although defendant re-alleges his version of the facts, this alone is not sufficient to challenge the trial court's findings or conclusions. Nor does defendant ever plead that he was prejudiced by the trial court's denial of his request for a bill of particulars.

One other fact that supports the State's position that the trial court did not abuse its discretion is that the defendant was provided full discovery. The defendant received an

Information which complied in all respects with rule 4(b), Utah Rules of Criminal Procedure by "giving the statutory or common law name of the offense, or by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge." The Information likewise met the requirement of setting out the nature and cause of the offense charged which would enable the defendant to prepare a defense, as required by *Blubaugh*, at 701. In accordance with the open file policy of the Washington County Attorney's Office, the defendant received copies of all evidentiary documents in the prosecutor's file, and on February 11, 1998, counsel for the State of Utah mailed via certified mail to the defendant a copy of the Information on file in this action, and a copy of the Case Summary prepared by Inspector O. J. Peck with all attachments.

It is clear from the limited record available that the trial court did not abuse its discretion as set out in rule 4(e) of the Utah Rules of Criminal Procedure.

**ISSUE III: DID THE TRIAL COURT ERR IN TERMINATING A PREVIOUS CONSOLIDATION ORDER?**

The trial court did not err when it rescinded a previous order of joinder and ordered separate trials in two pending cases in which the defendant is the defendant. The decision to join or sever is within the court's sound discretion. *State v. Haga*, 735 P.2d 44, 47 (Utah 1987). It is also important to note that the defendant provides no transcript for review, and therefore the court will generally assume the "regularity of proceedings below when defendant fails to provide an adequate record on appeal." *Blubaugh*, at 699.



In addition, the cases the defendant sought to join involved different victims, different dates of offense, different witnesses, and different facts, which could easily have resulted in confusion at trial. Joinder is commonly made only when the offenses arise out of the same incident, which is not true in the two actions defendant sought to consolidate. Utah Code Ann. §77-8a-1.

Defendant is also mistaken as to the standard of review, which is not correctness, but where it is "affirmatively shown that a defendant's right to a fair trial has been impaired" *State v. Velarde*, 734 P.2d 440, 445 (Utah 1986). This standard is neither argued nor proven by defendant. Therefore, this court should find that the trial court did not err in severing of the two cases for trial.

**ISSUE IV: DID THE TRIAL COURT ERR BY ALLOWING O. J. PECK, INVESTIGATOR WITH THE CONTRACTOR'S LICENSING SECTION OF THE UTAH DEPARTMENT OF COMMERCE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING, TO TESTIFY ABOUT INTERPRETATIONS OF THE LICENSING LAWS AND HOW THE DEFENDANT VIOLATED THESE LAWS?**

The trial court did not err in allowing O. J. Peck to testify at trial about his interpretation of the licensing laws as they apply to the defendant and his action. At trial the defendant at no time objected to the testimony of Mr. Peck concerning this investigator's interpretation of the law. Defendant claims on page 38 of his brief that this interpretation of the law covers pages 145 to 204 in the trial transcript. A thorough reading of the transcript shows that defendant was doing much of the questioning of Mr.

Peck during this period and defendant failed to preserve this issue for appeal.

It should be noted that law enforcement officers in general are given powers to interpret the law and enforce it. In *Peck v. Dunn*, 574 P.2d 367, 369 (Utah 1978), the Supreme Court of Utah wrote, "It is our duty to assume that those who administer a statute will do so with reason and common sense, in accordance with its language and intent; and further, that if there is a choice as to the matter of its interpretation and application that should be done in a manner which will make it constitutional, as opposed to one which will make it invalid."

It is obvious from this statement that investigators have the authority to interpret the law and enforce it. This is what O. J. Peck testified to at trial, and the trial court made no error in allowing his testimony.

**ISSUE V: DID THE TRIAL COURT ERR IN ALLOWING O. J. PECK, INVESTIGATOR WITH THE CONTRACTOR'S LICENSING SECTION OF THE UTAH DEPARTMENT OF COMMERCE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING, TO REFRESH HIS MEMORY FROM HIS REPORTS?**

The trial court did not err when it allowed O. J. Peck to review his notes to refresh his memory during his testimony. In fact, rule 612 of the Utah Rules of Evidence plainly states that a writing can be used for this purpose:

If a witness uses a writing to refresh the witness' memory for the purposes of testifying, either

(1) while testifying, or

(2) before testifying, if the court in its discretion determines it is necessary for the interests of justice,

an adverse party is entitled to have the writing produced at a hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relating to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

Refreshing a witness' memory is allowable, and this was what was done at trial.

Defendant would have this court believe that O. J. Peck just read his notes into the record at trial. This, of course, was not the case. The defendant did make an objection to this testimony at trial (Transcript 187, p.127, lines 18-20), but later withdrew the objection (Transcript 187, p.128, line 8). However defendant did object (Transcript 187 p.151, lines 23-23) to O. J. Peck refreshing his memory from his investigative report, stating that the report was prepared after the investigation was completed. In so doing, the defendant made an objection which has no basis in the law. Reports are summaries of investigations which by their very nature cannot be prepared until after the activities have been completed. Investigators prepare these reports for use by their office staff, by attorneys for both plaintiff and defendant, and for other interested or intended parties at the conclusion of the investigations. Evidence shows that the formulation of this report was based on O. J. Peck's investigations (Transcript 187, pp. 152-153, lines 18-20).

Therefore, the trial court in no way violated rule 612 of the rules of evidence when it allowed O. J. Peck to refresh his memory by referring to his report.

**ISSUE VI: DID THE TRIAL COURT ERR IN ALLOWING O. J. PECK, INVESTIGATOR WITH THE CONTRACTOR'S LICENSING SECTION OF THE UTAH DEPARTMENT OF COMMERCE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING, TO TESTIFY ABOUT OTHER DATES WHEN THE DEFENDANT HAD BEEN LICENSED?**

It is clear that the trial court did not err in allowing O. J. Peck to testify about dates on which the defendant was licensed. In fact, this issue was not preserved for appeal because the defendant did not at any point object to the introduction of testimony concerning the different dates when the defendant was licensed. The defendant cites no authority as to why this testimony would not be admissible, and gives no arguments as to how such testimony would be prejudicial to this case. The Utah Supreme Court stated in *State v. Hamilton*, 827 P.2d 232, 239 (Utah 1992) that:

In reviewing a trial court's ruling on the admissibility of evidence under rule 403, we will not overturn the court's determination unless it was an "abuse of discretion." . . . To state the matter more precisely, we review the trial court's 403 ruling admitting or denying admission to evidence by deciding where, 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."

Since the issue at trial was whether the defendant was licensed at the time of the contracting work and the issuance of the building permit, this evidence was probative. To show that the defendant, who claimed to be licensed at the time, was, in fact, not then so

licensed but later became licensed is not prejudicial but very probative, and was properly admitted into evidence.

**ISSUE VII: DID THE JURY ERR IN FINDING THE DEFENDANT GUILTY OF CONTRACTING WITHOUT A LICENSE, IN VIOLATION OF UCA §58-55-501(1), AND APPLYING FOR A BUILDING PERMIT WITHOUT A LICENSE, IN VIOLATION OF UCA §58-55-501(4)?**

The jury did not err in finding beyond a reasonable doubt that the defendant was guilty of contracting without a license and applying for a building permit without a license.

The standard for review provides that the Court of Appeals "must view the evidence in light most favorable to verdict and will interfere only when evidence is so lacking and insubstantial that a reasonable person could not possibly have reached a verdict beyond a reasonable doubt." *Blubaugh*, 694 (citations omitted).

The evidence clearly shows that the defendant was acting as a general contractor, by talking like one, accepting money like one, controlling the building on the Mellen property like one, paying money out like one, and that he was not a licensed general contractor while he was doing these things. The evidence also clearly shows that at the time the defendant applied for and obtained a building permit he was not licensed as a general contractor. Therefore, the evidence clearly would allow a jury to find the defendant guilty in this case. And even if the defendant could argue that there are alternative hypotheses, it would not be enough to set aside the verdict. *Blubaugh* states

that "the existence of one or more alternative reasonable hypothesis does not necessarily prevent the jury from concluding that the defendant is guilty beyond a reasonable doubt." *Id.* at 695. The State contends that we don't even have any question as to other hypotheses to rule on in this case.

In fact, the State contends that the jury did convict the defendant upon proof beyond a reasonable doubt. In *Hamilton*, the Utah Supreme Court reaffirmed that reviewing a jury verdict, the appellate court need not be convinced beyond reasonable doubt, but rather "must uphold the jury verdict unless reasonable minds could not have found beyond a reasonable doubt that the defendant committed the crime." *Id.* at 236, footnote 1 (citations omitted).

The defendant has provided no authority, evidence, or valid argument as to how this jury could be so wrong that they found him guilty by less than reasonable doubt and in so doing were in error. In *State v. Wood*, 868 P.2d 70, 87 (Utah 1993) the Supreme Court stated, "[w]e will affirm the jury verdict as 'long as there is some evidence, including reasonable inferences, from which findings of all requisite elements of the crime can reasonably be made'" citing *State v. Booker*, 709 P.2d 342, 345 (Utah 1985).


In this case the credible evidence presented to the jury greatly exceeds this minimal standard, and the jury verdict should be upheld.

### **CONCLUSION**

The defendant has failed to marshal any evidence or authority to support the seven

issues raised in his appeal, and his conviction should be affirmed.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of June, 1999.


  
\_\_\_\_\_  
WADE FARRAWAY  
Deputy Washington County Attorney  
Attorney for Plaintiff/Appellee

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of June, 1999, I personally caused two true and correct copies of the foregoing Brief of Appellee to be deposited in the U. S.

Mail, addressed as follows first class postage prepaid:

Mr. Evan Anderson  
3700 East Highway 144  
New Harmony, UT 84747

  
\_\_\_\_\_  
WADE FARRAWAY  
Deputy Washington County Attorney  
Attorney for Plaintiff/Appellee

**ADDENDUM**

**Exhibit No. 2**  
Signed Proposal Dated June 12, 1999

**Exhibit No. 3**  
Certificate of Custodian of Records

**Exhibit No. 5**  
Building Permit Application



P R O P O S A L

DATE: June 12, 1996

TO: Joe and Myrle Mellen  
746 W. Monte Blanco Dr  
SLC, Utah 84123


FROM: Construction and Sales Management Inc.  
3700 East Hwy 144  
New Harmony, Utah, 84757  
Phone 801-586-3478

Project Description: New Home with lot improvements

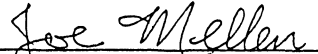
We are prepared to offer you the following items, including the Skyline home you have picked out. Many of the items are work we are licensed to perform ourselves. The ones marked with an \* are the items that will need to be contracted out to specialty contractors directly. On these items we are willing to act in a consulting capacity, to act as your agent in designing, scheduling, and inspection. You will note that we have added a 3% fee on each of the contract bid amounts for this service. Contracts will need to be finalized upon your acceptance for each item. They are as follows:

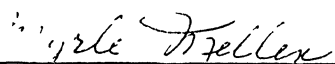
Lot purchase:	Completed previously
*Home purchase (our price per my bid w/original options).....	\$100,000.00
Additional options see attached list.....	2,185.00
Utah State sales tax...	3,372.10
Omit fridg, oven; add double front doors and up grade carpet....(net)....	+ 345.00
Total.....	\$105,902.10
*Concrete for home, garage and shed.....	\$ 11,480.00
3% fee.....	344.40
Total.....	11,824.40
*Garage 28'x32' labor and Material.....	\$ 9,273.28
*Shed 20'x20'.....	3,870.37
Total out building.....	13,143.65
3% fee....	394.30
Total.....	13,537.95
Excavating and grading.....	1,200.00
Septic with perc test.....	1,850.00
Driveway, 16'x100' (no pavement)....	300.00
Asphalt paving 15x100 1500 sqft @ \$1.00...	1,500.00
Water trench/1"pvc/backfill 100'+ 2 freeze hydrants.....	195.00
Power trench/backfill.....	75.00
Total...(bottom line)....	\$136,384.45

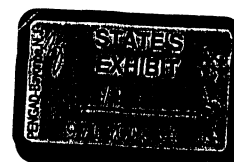
Submitted by:

  
Evan Anderson

Approved by:

  
Joe Mellen

  
Myrle Mellen





DEPARTMENT OF COMMERCE  
DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

Michael O. Leavitt  
Governor  
Douglas C. Borba  
Executive Director  
J. Cray Jackson, R. Ph.  
Division Director

Heber M. Wells Building  
160 East 300 South PO Box 145741  
Salt Lake City Utah 84114-6741  
(801) 530-6628 Fax (801) 530-6511  
Investigations Fax (801) 530-6301  
<http://www.commerce.state.ut.us/web/commerce/dopl/dopl1.htm>

**CERTIFICATE OF CUSTODIAN OF RECORDS**

THIS IS TO CERTIFY that a diligent search made of all records maintained by the State of Utah, Division of Occupational and Professional Licensing, reveals whether an official contractor license has ever been issued to: CONSTRUCTION & SALES MGMT INC AND EVAN ANDERSON, and whether such license, if any, is current or has expired.

It is hereby certified that license number 96-321577-5501 was issued by this office for said licensee on 5-28-96, said license is CURRENT with an expiration date of 7-31-99

**EVAN ANDERSON WAS LICENSED AS FOLLOWS:**

- S310 EXCAVATION & GRADING ON 5-28-96**
- S330 LANDSCAPING ON 5-28-96**
- S410 PIPELINE & CONDUIT ON 5-28-96**
- R200 FACTORY BUILT HOUSING SET UP ON 5-29-97 AND**
- S216 RESIDENTIAL SEWER CONNECT/SEPTIC TANK ON 5-29-97**
- AND LENARD WRIGHT QUALIFIED FOR THE B100 GENERAL BUILDING ON 5-29-97**

This license was issued on the basis of EVAN ANDERSON passing the State of Utah exams and Contractor's Business/Law and Trade, if required, licensing examination, examination scores are: not available.

Passing score in the State of Utah is 70%. All Utah examinations are given by National Assessment Institute (NAI), further examination information given upon request.

I FURTHER CERTIFY that I am a public officer of the State of Utah by virtue of Title 58-1 Utah Code Annotated (1953 as amended), and that I am the legal keeper and custodian of all records pertaining to the Division of Occupational and Professional Licensing and if such records do exist anywhere they would be in my control and possession

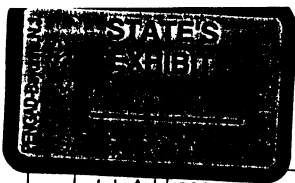
THIS certificate is made for use as court evidence or otherwise in compliance with RULE 44(a) of Utah Rules of Civil Procedure.

IN WITNESS WHEREOF, I have attached my seal of office on October 27, 1997.



*Jane Newton*  
Jane Newton, Licensing Specialist  
Division of Occupational & Professional Licensing





**WASHINGTON COUNTY  
BUILDING PERMIT APPLICATION**  
(Applicant to fill out Numbered spaces)

# 3093

APPLICANT

Job Address  
224 So 3900 E New Harmony

1. Owner: Joe & Myrle Mellen      Legal Description: NEHR-4-3

2. Owner Address: 746 W Monte Blanca Dr      SLC Utah      Zip: 84123      Phone: 801-266-0345

3. Contractor: Spectra Const Co      Phone: 801-599-1111      License No.: 229358

4. Electrical Contractor      License No.

5. Plumbing Contractor      License No.

6. Class of work     New     Addition     Alteration     Repair     Move     TEMP. DWG.

7. Use of Building: home/garage/shed      Valuation of Work \$: 64256.00

OFFICE USE ONLY

8. Notes and Special Conditions

Manufactured home-2496 sq ft=49920 Garage-896 sqft=14336 storage shed

400 sqft =6400 (Red Mountian Service-Set up Contractor-95-2

Plumbing:	0.00
Electrical:	5.00
HCP .002% of Valuation 71-2850-827	128.51
Building Permit 12-3221-000	660.00
1% Surcharge 71-2860-983	6.65

91463-5501)(C&S Mgmt Inc.-96-321577- 5501	PLAN CHECK FEE 0.00	TOTAL Permit Fee 800.16	
Type of Const: FRAME	Occupancy Group: R	Division: 3	
Size of Building (Total Sq Ft): 3392	No. of Stories: 1	Max Occ. Load:	
Fire Sprinklers Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	OFF STREET PARKING		
No. of Dwelling Units: 0	Covered: X	Uncovered:	
Special Approvals	Required	Received	Not Required
ZONING	YES	YES	
HEALTH DEPT.	YES	YES	
FIRE DEPT.			X
SOIL REPORT			X
WATER	YES	YES	
RIGHT OF WAY			X
OTHER			

**NOTICE**

SPECIAL PERMITS MUST BE OBTAINED TO CUT UP STREETS IN MAKING SEWER & WATER CONNECTIONS, DRIVEWAYS, CURBS, ETC. THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 180 DAYS OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 180 DAYS AT ANY TIME AFTER WORK IS COMMENCED. I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS APPLICATION AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. THE GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

*Amelia M. Anderson*  
Signature of Contractor or Authorized Agent (Date)

\_\_\_\_\_  
Signature of Owner (If Owner Builder) (Date)

When Properly Validated (in this space) This is Your Permit

Application Approved By *Bill Weary*      Date *9-3-96*

Payment Received By *Debra Johnson*      Date *9-3-96*