

IN THE UTAH COURT OF APPEALS

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| State of Utah, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Plaintiff and Appellee, |) | |
| |) | Case No. 20070895-CA |
| v. |) | |
| |) | F I L E D |
| Bryan J. Tavenner, |) | (November 28, 2008) |
| |) | |
| Defendant and Appellant. |) | 2008 UT App 424 |

Third District, Salt Lake Department, 051909072
The Honorable Stephen L. Henriod

Attorneys: Linda M. Jones and Catherine E. Lilly, Salt Lake
City, for Appellant
Mark L. Shurtleff and Christine F. Soltis, Salt Lake
City, for Appellee

Before Judges Greenwood, Billings, and Orme.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

When considering a sufficiency of evidence claim, "we review the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict of the jury." State v. Shumway, 2002 UT 124, ¶ 15, 63 P.3d 94. "We will reverse a jury conviction for insufficient evidence only when the evidence is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted." Id.

"As a general rule, claims not raised before the trial court may not be raised on appeal." State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346. The plain error exception argued by Defendant obligates Defendant to demonstrate both "that the evidence was insufficient to support [his] conviction" and "that the

insufficiency was so obvious and fundamental that the trial court erred in submitting the case to the jury." Id. ¶ 17.

Defendant has not demonstrated the requisite evidentiary insufficiency. Viewing the evidence in a light most favorable to the jury's verdict, we do not think that the evidence was "sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that [Defendant] committed the crime of which he was convicted." Shumway, 2002 UT 124, ¶ 15. On the contrary, the jury could reasonably have been convinced of Defendant's guilt from viewing the surveillance footage that showed Defendant was parked in the hospital's restricted parking lot on three consecutive nights and that Defendant carried items to his car and was moving around the hazardous waste shed immediately before the burglary was discovered. Moreover, Defendant was the only individual observed by security near the break-in site during the time period between when it was last secured by hospital personnel and when a security employee reported Defendant's presence to other security personnel, who in turn observed Defendant flee and noted that the shed's locks were broken. Further, some of the waste material linked to the hospital--and found between the hospital and Defendant's home--had been stored in the shed. Especially given the many inconsistencies in Defendant's testimony and the implausibility of his explanations, the jury was entirely justified in drawing the inferences it did.

Affirmed.

Gregory K. Orme, Judge

WE CONCUR:

Pamela T. Greenwood,
Presiding Judge

Judith M. Billings, Judge