

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20040260-CA	
v.)		
)	F I L E D	
Edwin Birdhand Lehi,)	(January 12, 2006)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2006 UT App 15</td></tr></table>	2006 UT App 15
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Seventh District, Monticello Department, 001700085
The Honorable Lyle R. Anderson

Attorneys: Kristine M. Rogers, Salt Lake City, for Appellant
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake
City, for Appellee

Before Judges Bench, Greenwood, and Billings.

PER CURIAM:

Edwin Birdhand Lehi appeals his convictions of driving under the influence and other charges. We affirm.

Lehi asserts that the reasonable doubt instruction was insufficient because it did not contain the language that the State must "obviate all reasonable doubt." He based this assertion on this court's holding in State v. Reyes, 2004 UT App 8, 84 P.3d 841 (Reyes I). In Reyes I, this court found a reasonable doubt instruction to be deficient when it did not include specifically that the State must "obviate all reasonable doubt," based on the first requirement in the three-part test of State v. Robertson, 932 P.2d 1219 (Utah 1997), overruled on other grounds by State v. Weeks, 2002 UT 98, 61 P.3d 1000. See Reyes I, 2004 UT App 8 at ¶19.

Reyes I, however, has now been overruled by the Utah Supreme Court in State v. Reyes, 2005 UT 33, 116 P.3d 305 (Reyes II). In Reyes II, the supreme court expressly abandoned the "obviate all reasonable doubt" element of the Robertson test. See id. at ¶30. As a result, the legal premise upon which Lehi's appeal is based is no longer good law.

Lehi's sole issue on appeal is that the specific phrase "obviate all reasonable doubt" was not used in the reasonable doubt instruction, which requirement is no longer in force. There is no other assertion of error regarding the instruction, and in fact, the instruction was primarily as proposed by defense counsel. The instruction was not insufficient.

Accordingly, Lehi's convictions are affirmed.

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge