

2000

State of Utah v. Luckie John Howell : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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BRIGHAM YOUNG UNIVERSITY
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**IN THE SUPREME COURT
OF THE
STATE OF UTAH**

STATE OF UTAH,

Plaintiff/Respondent,

-vs-

LUCKIE JOHN HOWELL,

Defendant/Appellant.

Case No.
14482

BRIEF OF APPELLANT

Appeal from Judgment against Appellant in the First
Judicial District Court in and for the County of Box
Elder, the Honorable VeNoy Christofferson presiding.

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FILED

JUN 15 1976

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff/Respondent, : Case No. 14482
vs. :
LUCKIE JOHN HOWELL, :
Defendant/Appellant. :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is a criminal matter with defendant/appellant having been charged with aggravated assault upon the person of one Gene Bunderson in violation of Section 76-5-103 of the Utah Criminal Code.

DISPOSITION IN LOWER COURT

Defendant/appellant was found guilty of the crime of aggravated assault, a third degree felony, in violation of Utah Criminal Code, Section 76-5-103 in the District Court of Box Elder County, State of Utah. Defendant/appellant was sentenced to the Utah State Prison for a term not to exceed five years.

The case comes before this Honorable Court on a certificate of probable cause entered by District Court Judge VeNoy Christofferson, that a justiciable issue is presented for determination by the Supreme Court of the State of Utah.

Defendant/appellant is free on bond pending appeal.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the lower Court's finding of guilt in light of the defense of insanity and absence of

a culpable state of mind as a result of intoxication.

STATEMENT OF FACTS

On March 17, 1975, appellant was charged by Complaint filed in the City Court of Brigham City, County of Box Elder, State of Utah, with the crime of aggravated assault. On April 23, 1975, a preliminary hearing resulted in appellant's being bound over for trial in District Court. On April 29, 1975, defendant/appellant filed Notice of Defense of Insanity and Irresistible Impulse. On the 30th day of September, 1975, trial was held in the District Court of Box Elder County; Judge VeNoy Christofferson presiding without jury. The defense presented evidence and testimony of appellant's long term abuse of drugs and alcohol and the result and effect on his behavior. Expert evidence was admitted in the form of psychiatric reports. The matter was continued for further hearing on October 28, 1975, at which time a finding of guilty was entered against appellant. Sentencing was continued pending receipt of additional psychiatric reports. On October 28, 1975, the matter was again continued pending psychiatric reports and a report from the Adult Probation and Parole Department. On January 26, 1976, appellant was sentenced to the Utah State Penitentiary for a term not to exceed five years with the recommendation that the prison staff determine the proper environment for intensive inpatient psychiatric treatment. Execution of sentence was stayed pending defense filing of motions to support motion for certificate of probable cause. On February 9, 1976, the matter came on for further hearing

at which time defense motions to release defendant on bond pending appeal and for stay of execution of sentence were granted. The issue comes to the Supreme Court on certificate of probable cause.

ARGUMENT

POINT I.

AGGRAVATED ASSAULT IS A CRIME WHICH REQUIRES THAT THE PROSECUTION PROVE, BEYOND A REASONABLE DOUBT THE EXISTENCE OF A SPECIFIC INTENT AND CONSCIOUS OBJECTIVE TO CAUSE BODILY INJURY. INTOXICATION OF THE DEFENDANT CAN NEGATE SUCH INTENT.

Section 76-5-102, Utah Code Annotated, 1953, as amended defines the crime of assault as follows:

"(1) Assault is: (a) An attempt, with unlawful force or violence, to do bodily injury to another; or (b) A threat, accompanied by a show of immediate force or violence, to do bodily injury to another. (2) Assault is a class B misdemeanor."

The elements of the offense are set forth in Section 76-5-103 as follows:

"(1) A person commits aggravated assault if he commits assault as defined in section 76-5-102 and;
(a) He intentionally causes serious bodily injury to another; or
(b) He uses a deadly weapon or such means or force likely to produce death or serious bodily injury.
(2) Aggravated assault is a felony of the third degree."

The argument that the burden of proving, beyond a reasonable doubt, intent as a necessary element of the crime of assault rests with the prosecution is further supported by

Section 76-2-102, U.C.A. as follows:

"Every offense not involving strict liability shall require a culpable mental state, and when the definition of the offense does not specify a culpable mental state, intent, knowledge, or recklessness shall suffice to establish criminal responsibility. An offense shall involve strict liability only when a statute defining the offense clearly indicates a legislative purpose to impose strict liability for the conduct by use of the phrase 'strict liability' or other terms of similar import."

The case of State v. Seely, Kansas, 510 P2d 115 (1973) involved an appeal from a conviction of aggravated battery. Reversing the conviction and remanding the case for a new trial, the Supreme Court of Kansas held that failure of the lower Court to instruct the jury on simple battery constituted reversible error where the defense was based on intoxication to such a degree that defendant was incapable of forming the intent requisite to a conviction of aggravated battery.

Absent intent, i.e., a culpable mental state, there is no crime. This principle of law was set forth by J. Cooley in People v. Walker, 38 Mich. 156 (1878) as cited and quoted extensively in the case of People v. Crittle, 212 N.W. 2d 196, Mich. (1973).

"The test, to use Justice Cooley's words again, is:

'While it is true that drunkenness cannot excuse a crime, it is equally true that when a certain intent is a necessary element in a crime the crime cannot have been committed when the intent did not exist...if the defendant, for any reason whatever, indulged no such intent, the crime cannot have been committed...'

The Cooley test does not require the defendant to be 'not conscious of what he was doing or why he was doing it,' it only requires in a specific intent crime that the defendant not

have the specific intent."

Commonwealth v. Graves, Pa., 334 A2d 661 (1975) involved an appeal from a conviction of first degree murder, robbery and burglary. Reversing and remanding for new trial, the Pennsylvania Supreme Court said as follows:

"The only permissible probative value evidence of intoxication may have in criminal proceedings is where it is relevant to the question of the capacity of the actor to have possessed the requisite intent of the crime charged. Where the legislature, in its definition of a crime, has designated a particular state of mind as a material element of the crime, evidence of intoxication becomes relevant if the degree of inebriation has reached that point where the mind was incapable of attaining the state of mind required. It must be emphasized that although evidence of intoxication never provides a basis for exoneration or excuse, it may in some instances be relevant to establish that the crime charged in fact did not occur."

Further, citing 22 C.J.S. Criminal Law § 68, the Pennsylvania Court set forth the rule of law:

"Where a particular purpose, motive, or intent is a necessary element to constitute the particular kind or degree of crime, it is proper to consider the mental condition of accused, although produced by voluntary intoxication, and where he lacked the mental capacity to entertain the requisite purpose, motive, or intent, such incapacity may constitute a valid defense to the particular crime charged, and the same rule applies to voluntary intoxication resulting in mental incapacity to indulge premeditation or deliberation, which precludes conviction of an offense wherein premeditation is essential,..... The majority rule, holding intoxication to an extent precluding capacity to entertain a specific intent or to premeditate to be a defense, does so not because drunkenness excuses crime, but because, if the mental status required by law to constitute crime be one of specific intent or of deliberation and premeditation, and drunkenness excludes the existence of such mental state, then the particular crime charged has not in fact been committed. Where a specific intent is an ingredient of the crime charged, the fact that accused's drunkenness

is voluntary does not render the defense of intoxication incompetent, since the intent to become intoxicated does not tend to prove an intent to commit the offense." (Footnotes omitted). 22 C.J.S. Criminal Law § 68, pp. 217-219.

The burden of proving, beyond a reasonable doubt, that defendant had the requisite culpability rests with the state once defendant presents evidence that his intoxication negated the element of intent. This principle of law is set forth in the case of People v. Aguirre, Ill., 334 NE 2d 123, (1975). Aguirre was decided by the Appellate Court of Illinois on appeal from a conviction of aggravated battery, aggravated assault, and disorderly conduct. The Court said:

"The aggravated battery indictments charged defendant with intentionally committing batteries upon officers Lawson and Phifer. For the State to prove that the defendant acted intentionally, it must introduce evidence which demonstrates beyond a reasonable doubt that the defendant's conscious purpose or objective was to commit a battery upon the officers. (Ill. Rev. Stat. 1971, ch. 38, § 4-4.) Ordinarily, the requisite mental state can be inferred from the character of the act. But once a defendant has introduced evidence to show that a drugged condition negated the existence of the requisite mental state and such evidence raises a reasonable doubt, the State must then overcome the affirmative defense by proving, beyond a reasonable doubt, the existence of the requisite mental state." (Citations omitted).

POINT II.

THE UTAH CODE PROVIDES THAT A MENTAL DISEASE OR DEFECT CONSTITUTES A DEFENSE TO A CRIMINAL CHARGE.

Utah Code Annotated, 1953, as amended provides as follows: § 76-2-305.

"(1) In any prosecution for an offense, it shall be a defense that the defendant, at the time of the proscribed conduct, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(2) As used in this section, the terms 'mental disease' or 'defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct."

Mental disease or defect can be caused or aggravated by prolonged use of alcohol and/or drugs which result in bizarre behavior which may or may not be permanent in its manifestations. Such mental defect constitutes a defense to a criminal charge of aggravated assault.

The case of People v. Kelly, Cal., 516 P2d 875 (1973) was decided by the California Supreme Court on appeal from a conviction of assault with a deadly weapon. The defendant in Kelly had an extensive history of drug abuse.

The decision of the lower Court in Kelly and in the case at bar turned on the "consciousness" of defendant during the commission of the assault and the fact that she voluntarily ingested the drugs. The evidence in Kelly as in the case at bar, indicated that defendant was normally sane, but that her ... "voluntary and repeated ingestion of drugs over a two month period had triggered a legitimate psychosis", p. 877, and that, as here, the abuse was the cause of a temporary psychoses. Defendant Kelly raised the defense of insanity. The California Court supported its reversal as follows:

"It is fundamental to our system of jurisprudence that a person cannot be convicted for acts performed while insane. (People v. Nash (1959) 52 Ca. 2d 36, 50-51, 338 P. 2d 416; Pen. Code, § 26, subd. Three.) Insanity, under the California M'Naughton test,

denotes a mental condition which renders a person incapable of knowing or understanding the nature and quality of his act, or incapable of distinguishing right from wrong in relation to that act." (Citations omitted).

In Kelly, the trial Court found that at the time of the crime, the defendant was not capable of knowing right from wrong. In the case at bar, a report by a Court appointed alienist stated specifically and unqualifiedly that in his opinion defendant herein "did not have the capacity to appreciate the wrongfulness of his conduct or to conform to the requirements of the law" due to his impairment as a result of drug and alcohol abuse.

Under the similar circumstances of Kelly, the California Court said:

"As we have already stated, voluntary intoxication by itself is no defense to a crime of general intent such as assault with a deadly weapon. (See fn. 14 and accompanying text.) However, we have repeatedly held that 'when insanity is the result of long continued intoxication, it affects responsibility in the same way as insanity which has been produced by any other cause.'"

"When long-continued intoxication results in insanity, however, the mental disorder remains even after the effects of the drug or alcohol have worn off. The actor is 'legally insane', and the traditional justifications for criminal punishment are inapplicable because of his inability to conform, intoxicated or not, to accepted social behavior."

POINT III.

THE UTAH CODE SPECIFICALLY PROVIDES THAT
INTOXICATION CONSTITUTES A DEFENSE TO CRIMINAL
CHARGES WHEN IT NEGATES THE MENTAL STATE
REQUISITE FOR CONVICTION.

Utah Code Annotated, 1953, as amended provides:

§ 76-2-306. "Voluntary intoxication shall not be a defense to a criminal charge unless such intoxication negates the existence of the mental state which is an element of the offense; however, if recklessness or criminal negligence establishes an element of an offense and the actor is unaware of the risk because of voluntary intoxication, his unawareness is immaterial in a prosecution for that offense."

Even absent insanity, voluntary intoxication can afford a defense to criminal charges when a requisite element of a crime, i.e., intent, is negated by that intoxication. In State v. Seely, supra, the Kansas Court, citing requested jury instructions, said as follows:

"As previously noted, the instruction on mental condition actually given in lieu of appellant's requested instruction was PIK Criminal 54.12: 'Voluntary intoxication is not a defense to a criminal charge, but when a particular intent or other state of mind is a necessary element of the offense charged, intoxication may be taken into consideration in determining whether the accused was capable of forming the necessary intent or state of mind.'

This instruction was in accord with K.S.A. 1972 Supp. 21-3208(2), which provides:

'An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.'

Thus, voluntary intoxication such as afflicted appellant would be a defense if it rendered him incapable of forming a 'particular intent' which formed a necessary element of the crime charged."

The state of intoxication need not render one unconscious in order to diminish capacity sufficiently to negate intent. The California Supreme Court so held in the case of People v. Ray, 533 P 2d 1017 (1975). Ray was heard on appeal from a conviction of voluntary manslaughter. The defense set forth

was that defendant, though conscious, was so intoxicated that he could not form the intent necessary to support a conviction of voluntary, as opposed to involuntary manslaughter. Reversing the lower Court, the California Supreme Court said:

"The weight of the evidence of defendant's intoxication was sufficient for a jury to have believed that although he was conscious he lacked both malice and an intent to kill. (See *id.*, at p. 720, 112 Cal. Rptr. 1, 518 P. 2d 913.) The court was required, accordingly, to have instructed that if, because of a diminished capacity due to defendant's voluntary intoxication, he had harbored neither malice nor an intent to kill the offense could be no greater than involuntary manslaughter."


CONCLUSIONS

Aggravated assault is a crime which requires that the prosecution prove, beyond a reasonable doubt, the existence of a specific intent and conscious objective to cause bodily injury to another. Information of the actor can negate such intent. Without the requisite intent or culpable state of mind, there is no crime.

Insanity which results from intoxication affects responsibility the same as does insanity caused by other factors. In such cases, criminal punishment is inapplicable.

Intoxication is, by statute, a defense to a criminal charge when such intoxication negates the intent or state of mind necessarily requisite as an element of the particular offense.

Respectfully submitted,


GARY L. GALE OF GALE & HAVAS
Attorneys for defendant/appellant

CERTIFICATE OF MAILING

Mailed two true and correct copies of the above and foregoing Brief of Appellant, to attorney for Plaintiff/Respondent, O. Dee Lund, Bos Elder County Attorney, First Security Bank Building, Brigham City, Utah, 84302, postage prepaid on this 14th day of June, 1976.



MITZY MORGAN, Secretary

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