1996

West Valley City v. Lynn Poulsen : Reply Brief

Utah Court of Appeals

J. Richard Catten; Attorney for Respondent.
Lynn Poulsen; Petitoiner.

IN THE SUPREME COURT OF THE STATE OF UTAH

WEST VALLEY CITY,	)	
	)	
Plaintiff/Respondent,	)	Priority No. 15
	)	
vs.	)	Case No. 96-0498
	)	
LYNN POULSEN,	)	Court of Appeal No. 940507-CA
	)	
Defendant/Petitioner.	)	

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

ARGUMENT

POINT I

WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS SUFFICIENT EVIDENCE TO SUPPORT A VERDICT AGAINST POULSEN WHERE ALL THE EVIDENCE WAS PURELY SPECULATIVE AND MERE CONJECTURE.

Respondent's brief placed in the stark reality of the testimony under review by the Appellate Court shows that Poulsen was convicted on no more than speculation and not proof beyond a reasonable doubt. The Respondent's brief misstates the facts entered at trial and only those which the Respondent feels necessary to tell the Court. The relevant facts are as follows will show that the Appellate Court so far departed from other cases decided by this Court as to warrant a granting of a Writ of Certiorari.

> " ... verdict in a criminal case is sustained only when there is relevant evidence from which the jury could properly find or infer, beyond reasonable doubt, that the accused is guilty." In RE Winship, 90 S. Ct. 1068, 1073, 397 U.S. 358, 364 (1970).

RELEVANT FACTS

A. Officer Cox's Testimony Officer Cox saw some horses which were loose in West Valley City; however, he could only identify one horse positively (T. at 17). This was the horse with an eye missing causing blindness and it also had a propensity to kick. This was pointed out to Officer Cox by Salt Lake County deputies on the scene before Poulsen ever arrived (T. at 17). This same horse was identified by a previous owner who testified he had sold the horse and colt to Mr. Paul Rokich, not Poulsen, and that it was not unusual to know of a horse's characteristics that are in the surrounding area (T. at 128, 130, 132, 133). Also, Poulsen knew of the horse while it was owned by Mr. Jeppson (T. at 133). Further, Officer Cox testified affirmatively that he did not know who the owner of the horses was.

> "Q: Do you know who owns the horses?
> A: No, I don't." (T. at 28)

In State v. Anderson[1], this Court stated:

> "In order to sustain a conviction, the evidence ... must be of such persuasive force that the mind might be reasonably satisfied of all the necessary facts constituting the defendant's guilt beyond a reasonable doubt; and where the proof of a necessary fact is dependant solely upon circumstantial evidence, such circumstances must be such as to reasonably exclude every reasonable hypothesis other than the existence of such fact and be consistent with its existence and inconsistent with its non-existence ... the whole chain of circumstances taken together, must produce the required proof."

B. Officer Larsen's Testimony He testified that he had not seen the horses in West Valley City himself but was acting upon call (T. at 47). He first saw horses where Poulsen was (T. at 42). He testified that two horses were tied up with hay rope and four horses were running around, one of these was the one identified as the blind horse. He further testified that Poulsen stated she was not the owner of the horses, but knew who was. Because Larsen could not understand the name Poulsen told him, Larsen was somehow absolved from looking

[1] State v. Anderson, 158 P.2d 127 (Ut. 1945).

for the owner (Resp. Brief at pg. 10). Respondent further states that Poulsen's familiarity with the horses was that she knew of the blindness and tendency to kick which was addressed above as being noticed first by Salt Lake County deputies before Poulsen arrived. The rest of Larsen's testimony concerns that of Poulsen's adult daughter whom the officers never asked if she owned the animals or knew of their owner.

When Larsen was asked if he knew the owner of the horses, he stated he didn't need to look for the owner as these were "county animals" (T. at 65).

The City further misstated the fact that Larsen talked to the brand inspector and no longer looked for the owner, the City's contention is that although Larsen never said the brand inspector stated they were Poulsen's horses it should be speculated because Larsen quit looking for the owner. This is irrational given Larsen's testimony that of the date of trial, he was not convinced Poulsen owned the horses, nor did he know who owned them.

"Q: Do you know who's the owner of the horses?
A: As of now, I still don't know." (T. at 64.)

C. Officer Presbrey's Testimony Presbrey's testimony is that he never saw the horses in West Valley City (T. at 92). When asked if he knew who the owner of the horses was, he answered "no" (T. at 102). Presbrey also stated he never asked Poulsen's daughter if she owned the horses (T. at 103). Presbrey further testified that Poulsen agreed to let the horses in her pasture for the night because of the weather conditions. Also it was at this point only "she agreed to be responsible for them" (T. at 107). Presbrey also testified that the property looked secure and the officers all agreed to leave the horses there (T. at 106-107). The City contends Poulsen admitted to Presbrey the horses were hers; however, there is no evidence as to what horses were being referred to and doesn't negate the fact that Presbrey did not believe that Poulsen owned the horses running loose (T. at 105).

There is evidence also by Presbrey that Poulsen was not aware or out looking for horses on the night in question.

> "Q: Did she ever give you an explanation as to why she was out and about that night?"
> A: No." (T. at 108)

ARGUMENT

POINT II

WHETHER THE COURT OF APPEALS SHOULD HAVE FOUND THAT THE WEST VALLEY CITY ORDINANCE AS APPLIED TO POULSEN WAS UNCONSTITUTIONAL OVER-BREADTH.

All of the evidence at trial, if taken to its logical conclusion, would show not that Poulsen was guilty beyond reasonable doubt of "animals running at large," but is consistent with Poulsen being no more than a "finder of estrays" according to U.C.A. 4-25-5(1). When taken in the context of this Court's ruling in Neztsosie v. Meyer, 883 P.2d. 920 (Utah 1994) that a caretaker "must exercise [a] substantial number of the incidents of ownership ..." There is no proof in the record that Poulsen did any number of incidents that would relate to ownership. In light of the fact that all three of the City's witnesses testified that they did not know who the owner was, it logically flows they could not assume that Poulsen had been given responsibility for their care.

This Court also held in Neztsosie that the merely checking to see if "an animal has sufficient food and water for a limited time" is not evidence of being one charged with responsibility for the animal. Id.

McQuillen on Municipal Law states that in order for one to be charged with "animals at large" [k]nowledge and sufferance constitute the gist of the offense of letting animals run at large ... the owner cannot be made liable for a penalty unless that owner is guilty of some negligence. McQuillen §24.302 p. 229.

There was not a scintilla of evidence to prove that Poulsen had knowledge or let the animals run at large, therefore the Court of Appeals erred in its consideration even in looking at the evidence in light most favorable to the City.

"In holding the evidence in sufficient to sustain guilt an Appellate Court determines that the prosecution has failed to prove guilt beyond a reasonable doubt." Burk v. U.S., 98 S. Ct. 2141 at 2150 (1975).

State v. Workman[2] echoes the same doctrine that the reviewing court is to determine (1) whether there is any evidence that supports each element of the crime charged, and (2) whether inferences that can be drawn from the evidence have a basis in logic and reasonable human experience sufficient to prove each legal element of the offense beyond reasonable doubt. A guilty verdict is not legally valid if it is based solely on inferences that give rise to only remote or speculative possibilities of guilt.

CONCLUSION

The charge was placed on Poulsen who was only a finder and the Appellate Court's decision flies in the face of this Court's decision of Neztsosie v. Meyer. This shows how broadly the Appellate Court allowed the City's ordinance to cover conduct that the State protects for Finders of Estrays and should warrant the review of this Court for such a departure of statutory law and case law. Petitioner prays the Court to grant her Petition for Writ of Certiorari.

Dated this 8th day of January, 1997.

Lynn Poulsen
Plaintiff/Respondent Pro Se

[2] State v. Workman, 852 P.2d 981 (Utah 1993).

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January 1997 I did notify by first class mail that the foregoing **Reply Brief of Petitioner** was mailed, postage pre-paid, to J. RICHARD CATTEN, Senior Attorney, West Valley City, 3600 Constitution Blvd., West Valley City, Utah 84119.