

1996

State of Utah v. Janet Ward : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

DOCKET NO. 960610 CA

State of Utah,	:	
	:	
Plaintiff and Appellee,	:	Case No. 960610-CA
V.	:	
Janet Ward,	:	Priority No. 2
	:	
Defendant and Appellant.	:	

ADDENDUM TO APPELLANT'S AMENDED BRIEF

APPEAL FROM CONVICTION ON ONE COUNT OF CHILD ABUSE,
A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE
ANN. SECTION 76-5-109(c) (v) AND (2) (a); AND ONE COUNT OF
CHILD ABUSE, A CLASS A MISDEMEANOR, IN VIOLATION OF
UTAH CODE ANN. SECTION 76-5-109 (1) (b) AND (3)(a) (1992),
ENTERED IN THE FOURTH DISTRICT COURT UTAH COUNTY,
STATE OF UTAH , THE HONORABLE LYNN W. DAVIS,
PRESIDING.

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FILED
Utah Court of Appeals
JUN 27 1997
Julia D'Alesandro
Clerk

IN THE UTAH COURT OF APPEALS

State of Utah, :
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V. :
Janet Ward, : Priority No. 2
Defendant and Appellant. :

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Addendum A

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IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH

STATE OF UTAH,)	ORDER STAYING
)	IMPOSITION OF
Plaintiff,)	SENTENCE PENDING
vs.)	AN APPEAL
)	
JANET WARD,)	Civil No. 961400111
)	
Defendant.)	Judge Lynn W Davis

Based upon Defendant's Amended Motion to Stay Imposition of Sentence Pending an Appeal and oral argument heard from the parties on October 10, 1996, and good cause appearing herein:

IT IS ORDERED that Defendant's Motion to Stay Imposition of Sentence Pending an Appeal is hereby granted.

DATED this _____ day of October, 1996.

BY THE COURT:

HONORABLE LYNN W DAVIS

NEPHROLOGY ASSOCIATES

880 EAST 3900 SOUTH
SALT LAKE CITY, UTAH 84107

TELEPHONE (801) 288-2634
FAX (801) 288-1186

RICHARD G. LAMBERT, M.D.,
JAMES B. STINSON, M.D.

ELISABET ATKIN-THO
RICHARD CLINE, M.D.

September 26, 1996

re: Janet Ward

To whom it may concern:

Janet Ward is a 36 year old white female whom I have been following for several years now for numerous medical problems. Her main problems are those of vasomotor neuropathy with severe hypertension. This hypertension causes severe symptoms and Janet suffers from headaches. Stressful situations such as school teaching have exacerbated Janet's blood pressure. She is on numerous medications, i.e. Hyzaar, Procardia, Catapres, Moduretic, and Hygroton. Despite this, her blood pressure has been dangerously high at times. At her last visit to my office on 8/21/96, Janet seemed to be doing well but even at that time her blood pressure was 140/104 sitting and 140/110 standing.

I am very concerned that any stressful situation that Janet is placed in will exacerbate her blood pressure. It is my understanding that she will soon be incarcerated for 30 days. This would represent a major threat to Janet's health. I believe such an incarceration would result in her blood pressure becoming extremely elevated. This could likely result in a stroke, intracerebral hemorrhage, decreased visual acuity, or kidney damage. Such happenings would obviously be a major threat to Janet's life.

I would strongly urge the court to find some other means of punishing Janet. Incarceration could be dangerous and indeed life threatening.

If further information is required, please do not hesitate to contact me.

Best regards,



Richard G. Lambert, M.D.

RGL/aki

MICROFILMED 8, 23, 96

FILED 8-22-96
Fourth Judicial District Court
of Utah County, State of Utah
CARMA B. SMITH, Clerk
Deputy
CS

2:00pm

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH	Plaintiff,	MINUTE ENTRY - JUDGMENT AND ORDER OF PROBATION
vs.		CASE NO. 961400111
JANET WARD	Defendant.	DATE: AUGUST 20, 1996
		JUDGE: LYNN W. DAVIS
		VIDEO: 8:41 (#38)
		CLERK: SGJ

This matter came before the Court for pronouncement of judgment on the above-named defendant on the charge(s) of: **Count I: Child Abuse, a Second Degree Felony; and Count II: Child Abuse, a Class A Misdemeanor.** Deputy County Attorney Sherry Ragan appeared for and on behalf of the State of Utah. The defendant was present. Appearing for the defendant was Sidney Unrau.

On June 8, 1996, the defendant was found Guilty by a jury to the above-named crime(s) and the matter was referred to the Adult Probation and Parole Department for a presentence investigation and report. The report has now been received and considered by the Court. Counsel has been made aware of the recommendation.

The Court has carefully considered the defendant's Motion for Arrest or, in the Alternative, a New Trial and the State's response. Mr. Unrau presented his argument. The State submitted on the brief. The Court finds the jury has the sole duty to determine the facts. The jury deliberated for a long period of time. The Court will not disturb the jury verdict and denies the defendant's motion. Mr. Unrau presented a letter to the Court from the defendant's doctor. The defendant addressed the Court.

There being no legal reason having been shown why sentence should not be pronounced, it is the judgment of the Court that the defendant be sentenced on Count I to the

Utah State Prison for not less than one (1) nor more than fifteen (15) years plus pay a fine in the amount of \$10,000; and on Count II to the Utah County Jail for one (1) year plus pay a fine in the amount of \$2,500. Execution of the sentence is suspended and the defendant is placed on probation for a period of 36 months upon the following terms and conditions:

1. Defendant is ordered to enter into an agreement with the Adult Probation and Parole Department within 10 days and comply strictly with the terms of probation. Defendant is to keep Adult Probation and Parole and this Court advised of his/her current address at all times.
2. Defendant is ordered to make himself/herself available to the Adult Probation and Parole and to the Court when requested to do so.
3. Defendant is ordered to not violate the laws of the United States, the State of Utah, the laws of any state or any municipality.
4. Defendant is ordered to serve 30 days in the Utah County Jail. The defendant is authorized work release and/or work search. The defendant is ordered to report to the Utah County Jail within 60 days of today. If the jail is unable to accept the defendant when he/she reports there due to overcrowding, the jail personnel are directed to give the defendant a definite time to report back and shall accept him/her at that time without further order.
5. Defendant is ordered to pay a fine in the amount of \$640, or complete 128 hours Alternative Community Service, plus pay a surcharge in the amount of \$544..
6. Defendant is ordered to pay supervision fees in the amount of \$30 per month at the discretion of Adult Probation and Parole.
7. Defendant is ordered to pay restitution in the amount of \$393.
8. Defendant is ordered to submit to mental health therapy with an emphasis in parenting and anger control at the direction of Adult Probation and Parole.
9. Defendant is ordered to not have contact with the victims unless approved by Adult Probation and Parole and the Division of Family Services.

At the end of probation, if the defendant faithfully complies with the terms and conditions of probation, the Court will suspend the balance of fines, fees and sanctions. If the

defendant fails to successfully complete the terms and conditions of probation, the Court will call for a review and impose the maximum fine, fees and sanctions.

Attorney David Paul White provided the Court with a Motion to Stay Imposition of Sentence Pending Appeal. The Court received the motion and will allow the State to respond. **Oral Arguments are set for September 30, 1996 at 8:00 a.m.**

The Court retains jurisdiction to make further orders as necessary.

Dated this 20th day of August, 1996.

BY THE COURT:



LYNN W. DAVIS, JUDGE IF IN



cc: Utah County Attorney
Sidney Unrau, Esq.
Adult Probation and Parole
Utah County Jail

Addendum B

Addendum C

DETERMINATIVE CONSTITUTIONAL PROVISIONS

United States Constitutional Amendment VI provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, **and to have the Assistance of Counsel for his defense.** (Emphasis added.)

DETERMINATIVE STATUTES

Utah Code 76-5-109. Child abuse.

(1) As used in this section:

(a) "Child" means a human being who is 17 years of age or less.

(b) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:

(i) a bruise or other contusion of the skin;

(ii) a minor laceration or abrasion;

(iii) failure to thrive or malnutrition; or

(iv) any other condition which imperials the child's health or welfare and which is not a serious physical injury as defined in this section.

(c) "Serious physical injury" means any physical injury or set of injuries which seriously impairs the child's health, or which involves physical torture or causes serious emotional harm to the child, or which involves a substantial risk of death to the child, including:

(i) fracture of any bone or bones;

(ii) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with any object or surface;

(iii) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;

(iv) any damage to internal organs of the body;

(v) any combination of two or more physical injuries inflicted by the same person, either at the same time or different occasions,

(vi) any damage to internal organs of the body;

(vii) any conduct toward a child which results in severe emotional harm, severe developmental delay or retardation, or severe impairment of the child's ability to function;

(viii) any injury which creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;

(ix) any conduct which causes a child to cease breathing, even if resuscitation is successful following the conduct; or

(x) any conduct which results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.

(2) Any person who inflicts upon a child serious physical injury or, having the care and custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a felony of the second degree;

(b) if done recklessly, the offense is a felony of the third degree;

(c) if done with a criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a class A misdemeanor;

(b) if done recklessly, the offense is a class B misdemeanor;

(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) Criminal actions under this section may be prosecuted in the county or district where the offense is alleged to have been committed, where the existence of the offense is discovered, where the victim resides, or where the defendant resides.

Utah Code 78-2a-3 (2)(f) Court of Appeals Jurisdiction.

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

DETERMINATIVE RULES

Utah Rules of Evidence

Rule 615. Exclusion of Witnesses.

(1) At the request of a party the court shall order witnesses excluded **so that they cannot hear the testimony of other witnesses**, and it may make the order on its own motion. (Emphasis added).

Rule 608. Evidence of Character and Conduct of Witness.

(a) Opinion and reputation are evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion and reputation, but subject to these limitations:

(1) the evidence may refer only to **character for the truthfulness or untruthfulness**, (Emphasis added).

Rule 401. Definition of "Relevant Evidence".

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.

All relevant evidence is admissible. . . . **Evidence which is not relevant is not admissible.** (Emphasis added).

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

Rule 801. Definitions. [related to hearsay evidence]

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“Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Rule 802. Hearsay Rule.

Hearsay is not admissible.