

1987

Utah v. Rudy Ringo Duran : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

R. Paul Van Dam; Attorney General; Attorney for Respondent.

Brooke C. Wells; Salt Lake Legal Defender Assoc.; Attorney for Appellant.

Recommended Citation

Reply Brief, *Utah v. Duran*, No. 870531 (Utah Court of Appeals, 1987).

https://digitalcommons.law.byu.edu/byu_ca1/731

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
K F U
50
.A10
DOCKET NO.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

870531-CA

THE STATE OF UTAH, :
Plaintiff/Respondent, :
v. :
RUDY RINGO DURAN, : Case No. 870531-CA
Defendant/Appellant. : Priority No. 2

REPLY BRIEF OF APPELLANT

Appeal from a judgment and conviction for Assault by a Prisoner, a third degree felony, in violation of Utah Code Ann. §76-5-102.5 (1953 as amended), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Raymond S. Uno, Judge, presiding.

BROOKE C. WELLS
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant

R. PAUL VAN DAM
ATTORNEY GENERAL
236 State Capitol Building
Salt Lake City, Utah 84114

Attorney for Respondent

FILED

JAN 27 1989

COURT OF APPEALS

IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE STATE OF UTAH, :
 :
 Plaintiff/Respondent, :
 :
 v. :
 :
 RUDY RINGO DURAN, : Case No. 870531-CA
 : Priority No. 2
 Defendant/Appellant. :

REPLY BRIEF OF APPELLANT

Appeal from a judgment and conviction for Assault by a Prisoner, a third degree felony, in violation of Utah Code Ann. §76-5-102.5 (1953 as amended), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Raymond S. Uno, Judge, presiding.

BROOKE C. WELLS
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant

R. PAUL VAN DAM
ATTORNEY GENERAL
236 State Capitol Building
Salt Lake City, Utah 84114

Attorney for Respondent

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.	ii
INTRODUCTION	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT:	
POINT I: <u>THE STATE HAS INTERPRETED AND</u> <u>DISTORTED MR. DURAN'S CLAIMS OF LEGAL</u> <u>JUSTIFICATION.</u> (Reply to Respondent's Point I, A and B)	2
POINT II. (No reply)	
CONCLUSION.	6

TABLE OF AUTHORITIES

	<u>Page</u>
<u>State v. Dock</u> , 585 P.2d 56 (Utah 1978)	4
<u>State v. Knoll</u> , 712 P.2d 211 (Utah 1985)	4, 5
<u>State v Maestas</u> , 564 P.2d 1386 (Utah 1977)	4

IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff/Respondent, :
v. :
RUDY RINGO DURAN, : Case No. 870531-CA
Defendant/Appellant. : Priority No. 2

INTRODUCTION

The Jurisdictional Statement, Statement of the Case, and Statement of the Facts are set forth in Appellant's opening brief at v.-vi., 1-6. Appellant takes this opportunity to reply briefly to Point I of Respondent's Brief.

SUMMARY OF ARGUMENT

The State has misapprehended the opening brief of Appellant, and Appellant replies to clarify his claims of justification based on the unlawful behavior of prison guards in their unwarranted intrusion into his cell to forcefully and without explanation remove him from his cell and carry him to the more harsh confinement of maximum security.

ARGUMENT

POINT

(Reply to Respondent's Point I)

THE STATE HAS MISINTERPRETED AND DISTORTED MR. DURAN'S CLAIMS OF LEGAL JUSTIFICATION.

The State suggests in its brief that Mr. Duran is attempting to divert the Court's attention from a criminal assault to a procedural violation by the prison (Brief of Respondent at 7). Yet, at the same time, the State insists that no evidence was presented showing that the entrance into Mr. Duran's cell was unlawful (Brief of Respondent at 17). The State's argument is inconsistent and misinterprets Mr. Duran's position. Mr. Duran proffers the procedural violations of the prison officials as part of the evidence demonstrating that their actions in entering his cell were unlawful and unsupportable.

The State again misstates the position of Mr. Duran contending that Mr. Duran asserts himself to be the aggressor and that Mr. Duran argues that the prison guards did not verbally or physically threaten him (Brief of Respondent at 15). Both claims are erroneous. Mr. Duran insists he was not the aggressor. He was actually asleep when the guards came to roust him and move him to maximum security (T. 306). He further, though not legally necessary, retreated to the back of his cell before acting, urging the officers to refrain from touching him (T. 166, 183, 186-88). Mr. Duran clearly claims, and the record supports, a threat from Officer Carpenter and a physical threat by the trio appearing at his door the following morning and entering his cell to forcefully

remove him without a lawful basis to do so (T. 305, 315, 318). One of the trio, Officer Yalcovich, even uttered that they would take him "the hard way" if need be (T. 319).

The State further attempts to obfuscate Mr. Duran's position by claiming he attempts to hide his assaultive behavior behind the protective cloak of the Constitution by deceptively suggesting that Mr. Duran assaulted the officer to preserve the right to a pre-transfer hearing (Brief of Respondent at 10). Such is not the case.

Mr. Duran simply claims the legal justifications of self-defense and defense of habitation for the assault of Officer Yalcovich. Those defenses require that Mr. Duran reacted to unlawful force and/or unlawful entry by the prison guards. Accordingly, Mr. Duran proffers the violation of prison policies and constitutional safeguards not to preserve a pre-transfer hearing but rather to demonstrate the unlawfulness of the officers' attempt to move Mr. Duran to maximum security in a threatening manner.

More specifically, Mr. Duran is not before this Court requesting a pre(or post)-transfer hearing; he is here requesting a reversal of his conviction and a substantiation of his right to self-defense and defense of habitation.

Therefore, the bulk of the State's brief and case citations misses the issue entirely or, at best, glosses over the question. The issue is readily discernible. This Court must decide whether the behavior of the prison officials was supportable by law--whether they stayed within their own rules and constitutional

standards; and if not, whether Mr. Duran was then justified in defending himself against their unlawful intrusion into his cell to forcefully remove him without explanation to maximum security.

In particular, the State mistakenly relies on two Utah Supreme Court cases where the Court affirmed convictions of assault by a prisoner to dispose of Mr. Duran's appeal. Brief of Respondent at 16, citing State v. Maestas, 564 P.2d 1386 (Utah 1977), and State v Dock, 585 P.2d 56 (Utah 1978). Both cases, however, are readily distinguishable and demonstrate the merit of Mr. Duran's claims. In State v. Maestas and State v Dock, the trial court refused to give instructions of self-defense because the defendants' theories were unsupported by the facts adduced at trial. In the case at bar, Mr. Duran's theory was supported by substantial evidence and the instructions were given to the jury as requested by Mr. Duran.

Moreover, the Supreme Court in State v. Dock, 585 P.2d at 57, relied on the fact that the defendant had failed to present evidence of unlawful behavior by guards to find no basis for his claims. Mr. Duran has demonstrated the unlawfulness of the prison guards' actions in his case (Brief of Appellant at 7-19) such that his contention is substantiated and his appeal well based. Also, it is not insignificant that in neither opinion does the Court suggest a prisoner lacks the legal capacity to assert a claim of self-defense once supported by the facts. The dispositive opinion in this case is State v. Knoll, 712 P.2d 211 (Utah 1985), where the Court stated:

[I]f there exists a reasonable doubt in any case where the accused was justified or excusable in committing [an assault], then there exists a reasonable doubt as to his guilt.

Id. at 215 (emphasis added). Mr. Duran's case fits within the statutory definition of self-defense and defense of habitation. He produced evidence to support that claim. The State failed to prove beyond a reasonable doubt that his assertion of justification was unfounded as is their burden. State v. Knoll, 712 P.2d at 214-15. Mr. Duran insists that the evidence at trial was sufficient such that the jury should have found the behavior of the guards unsupportable by law and that Mr. Duran therefore was justified in defending himself against their unlawful intrusion.

Finally, the State attempts to encourage a decision against Mr. Duran contending that a ruling to the contrary would result in chaos and a judicial endorsement for assaultive behavior as a remedy for any administrative procedural violation (Brief of Respondent at 10). This attempt to move the Court must be rejected as unpersuasive.

Surely this Court is capable of fashioning an opinion which correctly balances the rights of prison inmates to be free from abusive and arbitrary treatment by prison officials while sending a message to inmate and guard alike that policies of the prison and constitutional principles will be adhered to and safeguarded. Such an opinion will not beget violence; rather, this Court has the opportunity with this opinion to reinforce that rules and standards cannot be breached with impunity by either side of

this affray.

Vindicating Mr. Duran's right to self-defense will require that prison officials respect and honor the Constitution and their own prison policies yet equally forewarn inmates that a retreat to violent self-help is an unacceptable and intolerable remedy.

This Court cannot accept the State's position without validating the behavior of the prison guards. A decision against Mr. Duran is the decision which will foster further violence as it could only widen the chasm between the factions. Mr. Duran therefore urges this Court to author a ruling which will bring the two factions together on the foundation of actual adherence to the articulated standards of the Constitution and prison policies. Mr. Duran requests the Court to vacate his conviction.

CONCLUSION

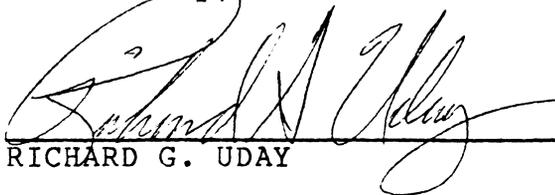
For any and all reasons articulated herein and in his opening brief, Mr. Duran requests this Court to reverse his conviction and order the charges against him dismissed or alternatively remand for a new trial.

Respectfully submitted this 27th day of January, 1989.


BROOKE C. WELLS
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, RICHARD G. UDAY, hereby certify that eight copies of the foregoing will be delivered to the Utah Court of Appeals, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102 and four copies to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114 this 27th day of January, 1989.


RICHARD G. UDAY

DELIVERED by _____
this _____ day of January, 1989.
