2001

State of Utah v. Rickey Lee Jackson : Brief of Respondent

Utah Supreme Court

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

THE STATE OF UTAH,
Plaintiff-Respondent,
In the Interest of:
RICKY LEE JACKSON, a minor,
Defendant-Appellant.

Case No. 13661

BRIEF OF RESPONDENT

Appeal from a Judgment of Guilty in the District Juvenile Court for Tooele County, State of Utah, Before Honorable Regnal Garff, Jr., Judge, Sitting in Salt Lake County.

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STATEMENT OF THE NATURE OF THE CASE

The defendant, Ricky Lee Jackson, appeals from a finding of guilty in the Second District Juvenile Court of one count of manslaughter in violation of Title 76, Chapter 5, Section 205, Utah Code Ann. (Supp. 1973), and two counts of aggravated assault in violation of Title 76, Chapter 5, Section 103, Utah Code Ann. (Supp. 1973).

DISPOSITION IN THE LOWER COURT

On October 30, 1973, Judge Regnal Garff found

the defendant not guilty of second degree murder, but found him guilty of one count of manslaughter (voluntary manslaughter under the old Code), and two counts of aggravated assault (formerly assault with a deadly weapon). Defendant was ordered committed to the State Industrial School.

RELIEF SOUGHT ON APPEAL

Respondent seeks an affirmance of the decision of the Juvenile Court.

STATEMENT OF FACTS

Respondent disputes appellant's statement of facts as being biased and argumentive and will restate them.

On the night of August 21, 1973, appellant and three companions were driving north out of Tooele city limits. At the same time, Tito Alfonso Suazo, and three passengers in his car, were proceeding north out of Tooele's city limits behind appellant's vehicle. Mr. Suazo, with some difficulty, passed appellant's car, and shortly thereafter appellant twice collided into the back of Mr. Suazo's vehicle (R. 243). Mr. Suazo stopped his car and he and his companions got out and approached appellant's car. When Mr. Suazo was at, or near, the driver's door of appellant's car, appellant fired two shots into Mr. Suazo's chest (R. 134, 143). Appellant then got out of his vehicle, and gun in hand, approached where Mr. Suazo had fallen (R. 246). At this juncture appellant was grabbed from behind by one of Mr.

Suazo's companions. Another of Mr. Suazo's companions, Paul Mondragen, who had been crouched behind the Suazo car during the initial shooting, then stood up and was shot in the chest by appellant (R. 249). Appellant and Elmer Gonzales, who had grabbed him, then fell to the ground where appellant succeeded in turning the gun and shot Mr. Gonzales in the chest (R. 250).

Tito Alfonso Suazo was pronounced dead on arrival at Tooele Valley Hospital. Paul Mondragen and Elmer Gonzales were seriously injured but have recovered. Neither the appellant nor his companions were injured in any way.

ARGUMENT

POINT I

A. SELF DEFENSE AND JUSTIFICATION WERE NOT ESTABLISHED FROM THE EVIDENCE PRESENTED AS A MATTER OF LAW.

A. THE ISSUE OF SELF DEFENSE AND JUSTIFICATION ARE, WHEN THE EVIDENCE IS IN CONFLICT, TO BE DETERMINED BY THE FINDER OF FACT.

Appellant has suggested that self defense was established as a matter of law. This contention is clearly erroneous under both Utah Code Ann. § 76-2-402,

(Supp. 1973), and under case law which has developed the standards of self defense in Utah.

Appellant would like this court to believe that whenever a party believes his life to be in danger he can respond with deadly force and kill with impunity. The crucial element of self defense and justification, which is glossed over by appellant, is that the belief must be *reasonable.* This standard of reasonableness is, as the Utah cases show, not a personal subjective standard, but rather, an objective "reasonable man" standard. The question to be asked is not: Did this individual apprehend to kill or seriously injure on the part of an assailant, but would a reasonable man in the same circumstances have perceived the need to resort to deadly force in order to protect himself or another from death or serious bodily injury. As this Court said in *State v. Terrell,* 55 Utah 314, 186 P. 108 (1919),

> "Something more, however, is required under our statute than a bare fear on the part of the slayer that an offense is about to be committed against his habitation, person or property.
>
> "But the circumstances must be sufficient to excite the fears of a *reasonable person,* and the party killing must have acted wholly under the influence of such fears." *Id.* at 111. (Emphasis added).

The concurring opinion in *Terrell, supra,* states this "reasonable man" standard more emphatically still,

> "It is not sufficient, however, for the slayer merely to say that the danger appeared actual or real to him. Unless it appears from all facts and circumstances in evidence that the slayer had good or sufficient cause to believe that there was imminent danger he may not take life with impunity." *Id.* at 113.

This concept of reasonableness was reiterated by this Court in *State v. Turner,* 95 Utah 129, 79 P.2d 46 (1938), and *State v. Law,* 106 Utah 196, 147 P.2d 324 (1944). see also, Utah Code Ann. § 76-30-11 (1953).

Contrary to appellant's assertion, a slayer's act is judged by hindsight to determine whether the total circumstances justified the quantum of force which was resorted to. In assessing the evidence which has been adduced there can be no doubt that self defense was not established as a matter of law. The uncontradicted evidence of record shows only that Mr. Suazo passed appellant's car, that appellant collided with the rear of the Suazo car two times, that Mr. Suazo and his companions got out of their vehicle and approached appellant's car where Mr. Suazo was slain and two others grieviously injured.

Those circumstances which appellant contends were sufficient to cause appellant to fear death or serious bodily injury were contradicted by members of the Suazo party and other evidence. Appellant, and one of his passengers, contended that the members of the Suazo vehicle were throwing bottles at them. This was contra-

dicted by both Earl Mondragen (R. 148) and Paul Mondragen (R. 172), of the Suazo party. Officer Park, of the sheriff's department, testified after examining appellant's car that he could perceive no dents or paint chips on the left side of the vehicle where appellant claimed to have been hit by a bottle (R. 217). The testimony of Mr. Miner does not support appellant as the location of the driveway on the west side of the road, where he testified a bottle hit prior to the altercation, would make it seem more likely that it was either thrown from the appellant's vehicle or from deceased's vehicle *away* from that of appellant (R. 99-102). The weight of the testimony did not support appellant on this issue.

Appellant also testified that he was being strangled. This is uncorroborated by any other source. One of his companions, Jerry Caldwell, said only that someone had a hand in the car and was "trying to get Rick out" (R.-210, 215). This was contradicted by Earl Mondragen (R. 132).

Even if Tito Alfonso Suazo was at the door of appellant's car, and even if he did have his hand upon appellant, it is evident that the appellant had chosen to use deadly force before any need for it was perceived, if, in fact, any need ever arose. Jerry Caldwell, appellant's passenger, testified that the appellant asked him to get the gun out just after they had been passed by the deceased's car (R. 201, 203). Appellant himself testified that he got his gun before being approached by anyone,

"I got my gun as soon as I hit." (Second collision, R. 245).

What emerges from this evidence is the fact that the case is certainly not so clear cut as to remove the decision from the finder of fact and rule as a matter of law. An examination of the Utah cases dealing with self defense and justification leave little doubt that the issue, when the testimony and the evidence is conflicting, is to be determined by the finder of fact. *State v. Law, supra.*

> " . . . if there is room for reasonable minds to differ as to whether there is reasonable grounds to apprehend a design to . . . do some great bodily injury and there is imminent danger of such design being accomplished the question is one for the jury." *Id.* at 327.
>
> "The matter of self defense, that is, whether the homicide was justifiable, was clearly a question for the jury." *Id.* at 328.

The fact that this was a juvenile court proceeding with the judge acting as the finder of fact did not render this trial defective. As early as *Mill v. Brown,* 31 Utah 473, 88 P. 609 (1907), this Court held that no procedural or constitutional defect was engendered because of a nonjury trial in a juvenile case. Great weight should be attached to the decision rendered by a trial court or jury in its finding of fact, for it is they who can weigh the testimony and judge the credibility of witnesses first hand. It is a general rule of law that upon

review the findings of a jury or trial court (as to whether or not a defendant acted in self defense) will not be disturbed unless the weight of the evidence is preponderantly against the verdict, and the judgment thereon clearly appears to be wrong, *State v. Sullivan*, 6 Utah 2d 110, 307 P.2d 212 (1957), *McDaniels v. State*, 62 Ariz. 339, 158 P.2d 151 (1945).

Respondent respectfully submits that the record shows that there is sufficient evidence upon which the trial court legitimately fashioned its decision. This applies to both the finding of guilty as to manslaughter and aggravated assault. Appellant has suggested that the trial court erred in finding that appellant had become the aggressor. The record fails to support appellant in that contention. The evidence shows that appellant got out of his car after shooting Tito Alfonso Suazo twice in the chest, *and gun in hand,* pursued Suazo to where he had fallen (R. 246). Then waving the gun, he ordered the companions of Suazo to abandon their injured friend (R. 162, 175). It is evident from the circumstances that Suazo's companinons could reasonably believe themselves to be under attack after seeing their friend shot, and consequently felt the need to defend themselves. Both the appellant and Jerry Caldwell, his passenger, testified that they never saw the deceased or his companions with any weapons in their hands at any time (R. 200, 201, 260, 261). Respondent submits that it is highly unlikely than an unarmed man would attack an armed person who has already shown his deadly intent unless it was to protect himself or his fallen comrad.

POINT II

A. THE TRIAL JUDGE DID NOT MISAPPLY THE BURDEN WHEN DEFENDANT SOUGHT TO ESTABLISH SELF DEFENSE AND JUSTIFICATION.

B. THE EVIDENCE SUBMITTED IN TRIAL COURT FAILED TO RAISE A REASONABLE DOUBT AS TO THE QUESTION OF SELF DEFENSE.

Appellant has correctly stated the law in contending that one claiming self defense and justification need not establish his defense by a preponderance of the evidence, but need only raise a reasonable doubt as to whether or not he acted in self defense. *State v. Harris,* 58 Utah 331, 199 P. 145 (1921). However, respondent contends that the trial judge was aware of that burden and did not misapply it. The trial judge's statement upon rendering judgment reveals only that, from the evidence submitted, no reasonable doubt was raised as to the issue of self defense.

> "The first comment I want to make is that the court has rejected the idea or the defense of self defense. The court is not convinced from the evidence that has been produced that Rickey Jackson reasonably believed that the shooting was necessary to prevent death or serious bodily injury to him or the others in his car." (R. 310).

It does not show, as appellant contends, that the judge thought that the defendant had to prove self defense beyond a reasonable doubt.

The facts in evidence do not show sufficient grounds to justify the resort to deadly force. They do not establish that Rickey Lee Jackson was being strangled. What is apparent from the appellant's own testimony is that he was excited and afraid, and not necessarily from what had taken place that evening. He testified that he was afraid that he might have X,s carved on him (R. 277, 278), and yet both he and his fellow passenger testified that they had seen no weapons of any kind. Jerry Caldwell testified that he was scared yes, but stated, "Because I didn't know what would happen to us." (R. 207). Utah Code Ann. § 76-30-11 (1953) states that a bare fear will not justify the resort to deadly force, and this has been the law since at least 1919. *State v. Terrell, supra.* Respondent submits that even if appellant did have just grounds for apprehension, he did not reasonably resort to deadly force under the circumstances. The trial judge, from the evidence, correctly ruled that no reasonable doubt as to self defense was raised.

POINT III

THE LANGUAGE IN UTAH CODE ANN., SECTION 76-5-103 (SUPP. 1973), IS CLEAR AND UNAMBIGUOUS, AND DOES DEFINE THE COMMISSION OF A PUBLIC OFFENSE;

NO VIOLATION OF ESTABLISHED LAW OCCURRED IN CHARGING AND FINDING DEFENDANT GUILTY OF THIS OFFENSE.

This issue is presently before the Utah Supreme Court in *State v. Archuletta,* Case No. 13579. Respondent contends that the disposition of that case will resolve any impediment to the affirmance of defendant's conviction of aggravated assault based upon the supposed ambiguity of the statute in question. The trial court supported by the evidence determined that the appellant became the aggressor and with a deadly weapon caused serious bodily injury to two persons in clear violation of Utah Code Ann. § 76-5-103(1) (a) and (b). Appellant's conviction of aggravated assault should be affirmed.

CONCLUSION

For the reasons stated above respondent requests the affirmance of the juvenile court decisions as to both manslaughter and aggravated assault.

Respectfully submitted,

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