2001

The State of Utah v. Rickey Lee Jackson : Brief of Appellant

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:

RICKEY LEE JACKSON, a minor,
Defendant-Appellant.

Case No.
13661

Brief of Defendant-Appellant

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 State of Utah filed a delinquency petition in the Second District Juvenile Court charging that (1) on or about August 21, 1973, at Highway 37, State of Utah, approximately one mile north of Tooele City limits, in violation of Title 76, Chapter 5, Section 203 (1) (b), Utah Code Annotated 1953, as amended 1973, said child intending to cause serious bodily injury committed an act clearly dangerous to human life, to-wit:

he shot Tito Alfonso Suazo which caused the death of Tito Alfonso Suazo; (2) on or about August 21, 1973, at Tooele County, State of Utah, in violation of Title 76, Chapter 5, Section 103(1) (b), Utah Code Annotated 1953 as amended 1973, said child did intentionally or knowingly cause bodily injury to Paul Mondragon by use of a deadly weapon, and (3) on or about August 21, 1973, at Tooele County, State of Utah, in violation of Title 76, Chapter 5, Section 103 (1) (b), Utah Code Annotated 1953 as amended 1973, said child did intentionally or knowingly cause bodily injury to Elmer Gonzales by use of a deadly weapon.

In a trial without a jury, before Judge Regnal Garff, defendant was not found guilty of second degree murder, but was found guilty of manslaughter [R-310] in regard to allegation #1, and was found guilty as charged of counts 2 and 3. Defendant now appeals the decree of the juvenile court pursuant to Section 55-10-112, Utah Code Annotated 1953 as amended, which states in part:

> "55-10-112. Appeal to Supreme Court from order, decree or judgment of juvenile court—Procedure.—An appeal to the Supreme Court may be taken from any order, decree, or judgment of the juvenile court."

DISPOSITION IN THE LOWER COURT

On October 30, 1973, Honorable Regnal Garff, Jr., found defendant guilty of one count of man-

slaughter (what would have been voluntary manslaughter under the old Code) and two counts of aggravated assault (formerly assault with a deadly weapon). Disposition of the case was set for December 5, 1973, at which time defendant was ordered committed to the State Industrial School.

Following Notice of Appeal, the Court granted a Petition for a Certificate of Probable Cause and released defendant without bail to his guardian, pending the outcome of this appeal.

RELIEF SOUGHT ON APPEAL

The defendant, Rickey Lee Jackson, pursuant to Section 55-10-112 Utah Code Annotated 1953 as amended, seeks a reversal of the decision of the juvenile court finding him guilty of manslaughter and two counts of aggravated assault.

STATEMENT OF FACTS

On August 21, 1973, appellant and three companions, Jerry Caldwell, Kenny Martinez and Steven Spafford, were driving north on main street from Tooele to the Motor-Vu Drive-In near Stansbury Park [R. 197, 235]. As the appellant's automobile passed the Dairy Queen, one of the boys in the appellant's car called out to a friend [R-197, 235]. Another car, containing the deceased, Tito Alfonso Suazo, and his

friends, was behind appellant's car and for unknown reasons began to tailgate appellant's car as it continued down Highway 36 [R-198, 243]. The Suazo car also contained Earl Mondragen, Elmer Gonzales and Paul Mondragen [R-114]. Suazo was 23 and weighed approximately forty pounds more than appellant [R-230, 275]. The decedent's car tried many times to pass appellant's car but the oncoming traffic wouldn't permit it [R-205]. Eventually as these cars were proceeding north at about fifty miles per hour, Suazo passed appellant's car [R-198] and immediately slowed down, causing a small collission [R-214, 258]. Finally, the Suazo car skidded to a stop [R-103] causing another collision which damaged the front of the appellant's automobile [R-199].

As the appellant was trying unsuccessfully to start his car [R-244], Suazo and his friends, who had been drinking, [R-85, 252, 130, 161], lighted from their car and came towards the appellant's automobile [R-117, 209, 245]. Suazo grabbed appellant [R-210, 203] by the neck [R-244, 268] through his open car window and appellant, having a .22 pistol in his glove compartment from rabbit hunting the day before [R-266] fired one shot [R-244]. Suazo kept strangling and so appellant fired another shot [R-246, 268, 269]. Appellant got out of the car and told the others to get out of there because he didn't want to hurt them too [R-246, 271]. One of Suazo's friends then grabbed appellant from behind and held in a "full-nelson" [R-177, 247, 248].

As one began to approach him [R-249] appellant shot that person [R-247, 249, 250] and then turned the gun to his own side and shot his assailant [R-250]. Appellant then flagged down another car [R-76] [R-251] and went directly to the Tooele City Police Department for help [R-77].

ARGUMENT

POINT I: SELF-DEFENSE AND JUSTIFICATION FOR DEFENDANT'S CONDUCT AS A MATTER OF LAW WAS ESTABLISHED DURING THE TRIAL.

Appellant contends the language of Utah Code Annotated 76-2-402, 1953 as amended, entitled "Force in defense of person" clearly justifies the actions of appellant in regard to the charge of manslaughter and the charges of aggravated assault. The statute in the Code states:

> "76-2-402. Force in defense of person — (1) a person is justified in threatening or using force against another when and to the extent that *he* reasonably believes that such force is necessary to defend himself or a third person against such other's imminent use or unlawful force; however, a person is justified in using force which is intended or likely to cause death or serious bodily injury only if *he* reasonably believes that the force is necessary to prevent death or serious bodily injury to himself *or a third person*, or to prevent the commission of a forcible felony." [emphasis added].

This statute is part of a new Criminal Code enacted by the Utah Legislature which became effective on July 1, 1973. The former statute on self-defense was Utah Code Annotated 76-30-10, entitled: "Justifiable homicide by others". The new statute is noteworthy in that it expands the scope of justifiable homicide to the defense of third persons against another's imminent use of unlawful force. The old statute, Utah Code Annotated 76-30-10(3) states that homicide was justifiable:

> "(3) When committed in the lawful defense of such person, or of a wife, husband, parent, child, master, mistress or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury and there is imminent danger of such design being accomplished."

Under this previous statute, therefore, appellant would not have been justified in using the force he used if his intention had been to defend his three other friends in his car. Significantly, the new statute permits him to defend himself as well as "a third person". other than the notion of the newly created justification to defend any third person, the new statute, as it applies to the instant case does not materially differ from the old one, but seems to codify the Utah law of self-defense as it has been interpreted by the courts. One is, therefore, justified in applying case law which developed prior to July, 1973, to actions tried under the self-defense statute, Utah Code Annotated 76-2-402, 1953 as amended.

According to the weight of the evidence, or at least a fair interpretation, the following is a description of events of the evening of August 21, 1973, from the standpoint of the appellant, a sixteen year old student at Tooele High School [R-234]. Appellant, Rickey Lee Jackson, and three of his high school friends decide to go to a drive-in movie. They obtain permission from their parents [R-196] and proceed northward along Tooele's Main Street [R-196]. They had not been drinking [R-112]. Upon leaving the main part of town, a car load of Chicanos, whom they did not know personally [R-237, 238] but knew of, begin to tailgate them [R-243]. As the Chicano car passes, Appellant and his friends hear bottles or rocks hit their car [R-198, 204, 205, 243, 254, 256]. Immediately upon passing, the Chicano car slows [R-258] and then skids to a stop [R-199, 206] and its driver, seven years older than appellant and forty pounds heavier [R-230, 275] jumps out and hurries toward appellant [R-117]. Suazo grabs appellant [R-203] around the neck and attempts to strangle him [R-244]. Appellant testified and the evidence was unmistakable, that Suazo and his friends had been drinking [R-116, 125, 130, 131, 161, 252]. Terrified by his assailant and remembering stories of other attacks of Chicanos on whites in the Tooele area [R-240, 276, 277], appellant grabs a .22 pistol from the glove compartment [he had been hunting rabbits with it the day before [R-266] and shoots Suazo [R-244]. Suazo continues to squeeze appellant's neck and so appellant shoots again [R-246]. Appellant then jumps out of the car and tells everyone to leave [R-

246], that he does not want to hurt them [R-271], but is attacked again [R-247, 211] from the rear and thereafter that assailant and another of Suazo's Chicano friends are wounded with shots [R-249, 250].

Although the prosecution introduced evidence to the effect that appellant began shooting at Suazo before Suazo had even touched Appellant, the blood on the outside of the door of Jackson's car shown in a photograph marked State's Exhibit #7 renders such an interpretation highly improbable. Even the State's witness, Jerry Caldwell, who was in the appellant's car, testified that he saw someone grabbing appellant [R-209] and the shooting. The appellant's car was approached on the passenger side by other occupants of Suazo's automobile [R-244, 245].

Applying these facts to the Utah Code Annotated 76-2-402, it is unmistakable that the Appellant acted in self-defense — both in defense of himself and in defense of his three friends who were riding with him. The statute states that a person is justified in using force which is intended or likely to cause death or serious bodily injury only if he reasonably believes that the force is necessary to prevent death or *serious bodily injury* to himself or a third person, or *to prevent the commission of a forcible felony.*

Jackson testified that he believed he was in danger of serious bodily injury [R-253]. Upon cross-examination, appellant further clarified what he meant by serious bodily injury [R-277, 278]:

"MR. WATSON (COUNTY ATTORNEY): What kind of harm did you feel that you were going to receive?

A. (JACKSON): Maybe knocked out, or beat up, or have Xs carved on me, or just get beat up.

Q. Get beat up generally.

A. Get my car smashed up.

Q. What fear did you think was going to come to the occupants of your car

A. They'd probably get it as bad as I did."

Although Utah Code Annotated 76-2-402, 1953 as amended, says that a person is justified in using deadly force if he reasonably believes such force is necessary to prevent serious bodily injury or to prevent the commission of a forcible felony, the Code nowhere defines what is meant by the term "forcible felony".

As a practical matter, it seems obvious that the legislature probably intended that "forcible felony" be interpreted to mean just what its words signify. Thus, "forcible felony" would mean any felony in which some degree of force was manifest. For example, mayhem is an act in which force is used and which can result in a felony charge.

In addition to this logical interpretation, an analysis of the derivation of the current self-defense statute renders useful information in helping to define what is meant by "forcible felony". Utah Code Annotated 76-2-402, the statute in question, was derived

from the Georgia Criminal Code and appears in the Utah Code as an exact duplicate of the Georgia Provision [See Ga. Code Ann. 26-902]. Significantly, the Georgia Code does define "forcible felony", Georgia Code Annotated 26-401(f) states:

> " 'Forcible felony' means any felony which involves the *use or threat of physical force* or violence against any person". [emphasis added]

Therefore, since Jackson believed [and the State presented no evidence whatever to dispel such a belief] that he would be beat up, or carved up with a knife, it is reasonable to conclude the Appellant was defending himself and his friends from the commission of a forcible felony. A sixteen year old high school boy could reasonably conclude that when he is being strangled by a twenty-three year old male Chicano who weighs forty more pounds than himself, who had been drinking and throwing bottles at his car, he is in danger of serious bodily injury, or of a "forcible felony". In weighing the evidence, one is compelled to believe appellant's corroborated testimony. Deputy Sheriff Jones, of the Tooele County Sheriff's Office testified at [R-21] that appellant gave the unsolicited remark when he arrived at the Sheriff's Office "He had me around the throat, what was I supposed to do?" This remark isn't the result of a scheming mind contriving some kind of justification, but a spontaneous utterance of a boy at a time nearly contemporaneous with the event itself.

The only element of the defense of justification which remains to be fulfilled is the question of whether or not appellant reasonably believed that the force he used was necessary. Fortunately, the Utah Supreme Court has dealt with this issue of reasonableness in the context of a claim of self-defense.

In *State v. Terrell,* 55 Utah 314, 186 P. 108 [1919], where defendant was convicted of assault with a deadly weapon with intent to do bodily harm, regarding the necessity of defense, the court stated:

> ". . . the necessity need not be real; it need be only reasonably apparent, and the resistance offered in good faith, upon reasonable grounds of belief that the invasion of some right accorded by the statute is being made by the offender . . ." *Id.* at 111.

In the case of the appellant, then, one does not judge by hindsight whether in the given circumstances the amount of force used in defense of oneself was reasonable or not — the necessity to defend oneself need be only reasonably apparent and offered in good faith.

In *State v. Turner,* 95 Utah 129, 79 P.2d 46 [1938], defendant was convicted of voluntary manslaughter. The Utah Supreme Court discussed at length and with enlightenment the justification of self-defense. That Court stated:

> "There must generally be some act or demonstration on the part of the deceased which induced a reasonable belief on the part of the defendant that he was about to lose his life or suffer some

> great bodily harm." [or be the victim of a forcible felony under the present statute] *Id.* at 51

Again, the weight of the evidence reveals that appellant, Rickey Lee Jackson, was being strangled. As to whether such an act would justify a reasonable belief on the part of the defendant, the *Turner* court continued:

> "He (defendant) might have awaited until he received great bodily harm, but if one who is attacked must restrain himself until subsequent events determine whether the attack will result fatally or in grievous bodily harm, then the right of self-defense is one in name only. This is not the law. A person assailed may *act upon appearances* as they present themselves to him, meet force with force, and even slay his assailant; and, though in fact he was not in any actual peril, yet if the circumstances were such that a reasonable man would be justified in acting as he did, the slayer will be held blameless." *Id.* 58, 59

The court further stated:

> ". . . . a person will not be held responsible civilly or criminally if he acts in self-defense, from real or honest convictions induced by reasonable evidence, although he may be mistaken as to the existence of actual danger." *Id.* 59

Clearly, appellant, Jackson, was not the aggressor in the instant case. There was no evidence whatsoever presented at trial that appellant or any of his friends approached the Suazo car before Suazo and his friends jumped out and headed for appellant and his friends. Under all evidence before any shot was fired, whether

or not appellant was in fact in danger of death or serious bodily injuries, he was entitled to decide based upon appearances as they presented themselves at the moment. He did: that he and his friends were in danger. Finally, a forcible felony, i.e., attempted strangulation of appellant, did actually take place.

Under terms of Utah Code Annotated 76-2-402 then, appellant was unquestionably justified in using force which was likely to cause death or serious bodily injury to protect himself. When he was out of the car and was again attacked from the rear, he again was entitled to defend himself.

As recently as 1944, the Utah Supreme Court has reiterated its reasoning in *Turner*. In *State v. Law*, 106 Utah 196, 147 P.2d 324 [1944], where a defendant was found guilty of voluntary manslaughter, the court summarized the basic elements of self-defense. In an opinion which concurred with the majority, Justice Larson reasoned:

> ". . . The element of self-defense, or justifiable homicide is predicated upon two propositions: (a) That the circumstances and surroundings were such that a man *might* reasonably believe he was in imminent peril of death or great bodily injury. (b) That the actor did actually believe he was in such danger." *Id.* 329

It is the contention of the appellant that the evidence in the case at hand is so conclusive that every reasonable mind must say the force employed was necessary to defend against aggression. Therefore, as a matter

of law, the appellant was justified in his actions in defending himself and his friends from the forcible felonies. The question of whether appellant could reasonably have concluded that a forcible felony was about to be committed is a factual question which, in the instant case, was left to the judge to decide. Nevertheless, on the basis of the evidence presented, both by the state and the defense, appellant contends the trial court erred as a matter of law and in its interpretation of the facts.

As regards the two counts of aggravated assault, the judge in the juvenile court hearing concluded at a certain point in the altercation, appellant became the aggressor, and therefore, Utah Code Annotated 76-2-402(2) (c) became controlling. This statute reads as follows:

> "(2) A person is not justified in using force under the circumstances specified in paragraph (1) of this section if he:
>
> > (c) Was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other notwithstanding, continues or threatens to continue the use of unlawful force."

There is conflicting evidence as to what occurred after Suazo was shot. The evidence indicates that appellant got out of his car and told the other Chicanos to get out of there because he did not want to hurt

them, whereupon he was again attacked from the rear and put in a "full-Nelson" [R-185, 186]. Even Paul Mondragen, a State's witness and one of those shot, testified that as Jackson got out of the car, he heard appellant say, "Get out of here, get out of here." [R-176, 182, 183]. This testimony was corroborated by another State's witness, Jerry Caldwell, who said he heard appellant say "Get out of here" or "go on" or "something like that" [R-210, 271]. It is also uncontradicted evidence that appellant did not fire any shots after the two at Suazo, until he was attacked again. The conclusion of the trial judge in juvenile Court that appellant was the aggressor is so offensive to any fair interpretation of the facts that one is compelled to wonder why complaints were not brought against the riders in the Suazo automobile, instead of appellant.

Applying the foregoing evidence to Utah Code Annotated 76-2-402 (2) (c), it is incredible to conclude that appellant ever became the aggressor. The statute states that even if one was the aggressor, which appellant obviously was not, he may still justify defending himself if he effectively communicates to such other person his intent to do so. The testimony cited immediately above indicates without doubt the communicated desire to leave his assailants alone, but he was attacked again anyway. The members of the Suazo party were the aggressors, as was Suazo himself — not appellant nor his friends.

In *State v. Turner*, *supra*, the court dealt with the effect of one abandoning his intention to inflict injury:

> ". . . Where, however, a person has in good faith abandoned his intention to inflict injury on another and is retreating, he is entitled to defend if pursued and attacked." *Id.* 60

Here, appellant abandoned any intention to inflict injury further, but was attacked again. He was, therefore, entitled to defend himself by virtue of Utah Code Annotated 76-2-402 (2) (c), and the reasoning of the Utah Supreme Court as enunciated in *Turner.*

In the instant case, the trial court failed to comprehend the clear meaning of the Utah statutes dealing with justification or self-defense.

POINT II: REASONABLE DOUBT WAS ESTABLISHED AS A MATTER OF FACT.

Utah Code Annotated 77-31-4, 1953 as amended, states:

> "A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal."

Appellant respectfully contends that the case presented by the State did not prove beyond a reasonable doubt the guilt of the appellant. In a case where there is evidence regarding the possibility of self-defense, the appellant is *not* required to establish his defense beyond a reasonable doubt. In *State v. Coyle,* 41 Utah 320, 126 P. 305, the Court stated:

> "Under this section, (regarding self-defense) it is error to instruct the jury that the defendant is required to establish his defense beyond a reasonable doubt. If his defense creates a reasonable doubt in the mind of the jury of his guilt, he is entitled to an acquittal."

In the later case of *State v. Talarico*, 57 Utah 229, 193 P. 860, the court reiterated its holding in *Coyle*:

> "In a prosecution for assault with a deadly weapon, with intent to commit bodily harm, defendant was not required to establish his claim of self-defense by preponderance of the evidence, but was entitled to acquittal if on the whole evidence the jury entertained a reasonable doubt as to whether or not he acted in self-defense."

The evidence presented in the instant case without question raises a reasonable doubt as to whether or not appellant acted in self-defense. In the trial court, the judge declared without explanation and in a conclusory fashion, that "the court has rejected the idea or the defense of self-defense" [R-310]. The judge added that: "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]. These two phrases by the court are the only ones in the entire record which deal with the issue of self-defense. It would appear the judge thought the defendant had to prove his innocence through his affirmative defense, *beyond a reasonable doubt*, instead of the other way around. Further, the court completely neglects the mention of the notion of

"forcible felony", relying solely on appellant's fear of "death or serious bodily injury" to himself or his friends. That the facts show clearly that appellant had a reasonable fear of Suazo committing a "forcible felony" has been covered in Point I.

In *State v. Harris*, 58 Utah 331, 199 P.145, the Court spoke again of the nature of the burden of proof in establishing self-defense:

> "When the defendant offers proof of self-defense, he is entitled to acquittal if he has produced sufficient evidence of his justification to create in the minds of the jury a reasonable doubt of his guilt of the offense charged."

Appellant contends that as a matter of fact such reasonable doubt was raised, as to create in the mind of any reasonable jury, doubt of defendant's guilt of the offense charged. Even if the trial judge had in his mind that the defendant was required to sustain the burden by "preponderance of the evidence", *State v. Talarico, supra*, dispels such a notion.

In view of the possible uprising of the Tooele Chicano community, had appellant not been convicted of *something*, perhaps the way in which the traditional burden of "beyond a reasonable doubt" was somehow ignored in the instant case is explicable. Rationalizing a decision for the sake of political expediency, however, is not the course of the law. The evidence presented in this case was not complicated or terribly contradictory; further, the evidence that was in any way contradictory

was almost consistently voluminous in favor of the appellant.

For example, those who were riding with Suazo, testified that although they had been drinking, they had not thrown any empty bottles or cans of beer. [R-111, 179]. Yet a witness who lived in a trailer court on Highway 36, Walter Miner, testified that as two cars passed the trailer court, a few minutes before the shootings, a bottle struck the driveway going into the trailer court and broke upon impact [R-101]. The evidence further indicated that although the Suazo vehicle passengers had purchased two six packs of bottled beer, there were a number of bottles missing when the cars were searched after the shootings — meaning that these bottles were either thrown out of the car, or emptied in a trash can some where along the way.

Since the judge in a criminal case which is tried in juvenile court acts as both the judge and jury, the possibilities for gross unfairness are multiplied. The comments of the judge in his decision in the juvenile court hearing indicate confusion as to the burden appellant had to comply with in order to establish his affirmative defense [R-310].

Appellant submits that a thorough reading of the record leaves no basis for a conclusion that the appellant was guilty beyond a reasonable doubt.

POINT III: THE LANGUAGE IN SECTION 76-5-103, UTAH CODE ANNOTATED, 1953 AS

AMENDED, IS AMBIGUOUS AND AS SUCH DOES NOT DEFINE THE COMMISSION OF A PUBLIC OFFENSE. TO CHARGE THE DEFENDANT WITH THE COMMISSION OF AN OFFENSE WHICH IS NOT DEFINED IS CLEARLY VIOLATIVE OF ESTABLISHED LAW.

In a case presently before the Utah Supreme Court, *State of Utah vs. Vincent Joseph Archuletta*, Case No. 13579 this issue has been raised. Appellant in the instant case submits that the holding of the Utah Supreme Court in the *Archuletta* case will be dispositive of this issue for the case at hand as well. If the District Court is upheld in its ruling, there was no aggravated assault statute in Utah during the alleged commission of the aggravated assaults of the appellant, Rickey Lee Jackson, and therefore, the verdict as to the two counts of aggravated assault must be reversed.

CONCLUSION

For the reasons stated above, the appellant's clear establishment of sufficient evidence of justification and self-defense to create a reasonable doubt of appellant's guilt, the failure of the State to sustain the burden of proving beyond a reasonable doubt the guilt of the appellant, appellant requests the decision of the Juv-

enile Court be overturned and that the appellant be found not guilty of any of the offenses charged.

Respectfully submitted,

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