1978

State of Utah v. Dung Hung Vo : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE

STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

DUNG HUNG VO,

Defendant-Appellant.

Case No. 15788

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE THIRD DISTRICT JUVENILE COURT, IN AND FOR UTAH COUNTY, STATE OF UTAH, THE HONORABLE MERRILL L. HERMANSEN, JUDGE, PRESIDING

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TABLE OF CONTENTS

		Page
STATEMENT OF THE NATURE OF THE CASE		1
DISPOSITION IN THE LOWER COURT		1
RELIEF SOUGHT ON APPEAL		2
STATEMENT OF FACTS		2
ARGUMENT		
POINT I:	THE CHARGES BROUGHT AGAINST THE APPELLANT ALLOWED A CONVICTION UPON THE ESTABLISHMENT OF EITHER OF TWO ALTERNATIVE SETS OF ELEMENTS	3
POINT II:	THE CORPUS DELICTI RULE IN THIS CASE SHOULD ONLY REQUIRE THAT THE STATE PROVE THE INJURY SPECIFIED IN THE STATUTE OCCURRED AND THAT IT WAS CAUSED BY THE ACT OF SOME PERSON	4
POINT III:	THE REMAINING ELEMENTS UNDER EITHER CONVICTION ALTERNATIVE WERE ESTABLISHED BY THE STATE	9
CONCLUSION		12

CASES CITED

State v. Davis, 16 Wash. App. 657, 558 P.2d 263 (1977)	12
State v. Johnson, 31 N.J. 489, 158 A.2d 11 (1960)	7
State v. Knoefler, 563 P.2d 175 (Utah, 1977)	6
State v. Macri, 28 U.2d 69, 498 P.2d 355 (1972)	11, 12
State v. Tillman, 152 Conn. 15, 202 A.2d 494 (1964)	7
State v. Tritt, 23 U.2d 365, 463 P.2d 806 (1970)	9, 10

STATUTES CITED

U.C.A. § 78-3a-19, 1953 as amended	1,3,10,11,12

OTHER AUTHORITIES CITED

	Page
Wharton's Criminal Evidence, 13th Edition, Vol. 1 § 17	6
Wigmore on Evidence, 3rd Edition, § 2072	6, 7

IN THE SUPREME COURT OF THE
STATE OF UTAH

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STATE OF UTAH, :

Plaintiff-Respondent, :

-vs- : Case No. 15788

DUNG HUNG VO, :

Defendant-Appellant. :

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BRIEF OF RESPONDENT

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STATEMENT OF THE NATURE OF THE CASE

Appellant was charged on two counts with violations of § 78-3a-19, U.C.A., 1953 as amended, in that he willfully, intentionally and unlawfully harbored a runaway minor and did thereby cause that minor to become delinquent.

DISPOSITION IN THE LOWER COURT

The defendant was tried without a jury before the Honorable Merrill Hermansen in the Third District Juvenile Court for Utah County, State of Utah on one count and was found guilty as charged on the 17th day of April, 1978. The defendant plead guilty to the other count. He

was then sentenced to 90 days in the Utah County Jail under a work-release program and a fine of $150.00 on each count or $300.00 in total.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the lower court's verdict and sentence.

STATEMENT OF FACTS

Becky Horton, a juvenile (R.5), ran away from home on September 19, 1977. She went from Provo to Springvi to visit several friends and then travelled back to Provo a proceeded to appellant's apartment where she found a friend named Cindy Graves (R.6-8). The appellant, a Vietnamese alien with limited English language ability, arrived three or four hours later and greeted the girls by saying "hi" (R. Both girls stayed at the apartment that night (R.11).

The next day Becky left the apartment for awhile to visit with her boyfriend (R.11) and when she returned, her friend Cindy was gone (R.14). That evening, when the appellant returned, he questioned Becky as to what she had told her boyfriend and why she had run away from home (R.23, He also told Becky that he had moved Cindy so that if one of them got caught, the other would not (R.17). Becky also testified that she was never made to feel uncomfortable in the apartment by the appellant (R.24) although sexual advance

were made towards her by two other Vietnamese males in the apartment when the appellant was not present (R.19, 20). That night, Becky slept in the appellant's bedroom while he moved into the other bedroom (R.18 and 30).

During the third day, Becky's father and the police arrived at the apartment and found Becky hiding in a bathroom closet (R.24 and 33).

POINT I

THE CHARGES BROUGHT AGAINST THE APPELLANT ALLOWED A CONVICTION UPON THE ESTABLISHMENT OF EITHER OF TWO ALTERNATIVE SETS OF ELEMENTS.

Although the appellant was charged with a violation of § 78-3a-19, U.C.A. as amended 1953, (T.2, 3) the various subsections of that statute indicate alternative categories of adults who may be tried by the juvenile courts for offenses committed against children. These subsections, therefore, provide alternative routes by which a defendant may be convicted. The actions of the appellant are proscribed by either subsection (1),

> "Any person eighteen years of age or over who induces, aids, or encourages a child to violate any federal, state, or local law or municipal ordinance, or who tends to cause children to become or remain delinquent, or who aids, contributes to or becomes responsible for the neglect or delinquency of any child;"

or subsection (3),

> "Any person eighteen years or over who forcibly takes away a child from, or encourages him to leave, the legal or physical custody of any person, agency, or institution in which the child has been legally placed for the purpose of care, support, education, or adoption, or any person who knowingly detains or harbors such child." [Emphasis added.]

In the instant case, the pertinent elements under subsection (1) are that the defendant;

1. must be over age eighteen and
2. induce, aid, or encourage a child to violate the law or tend to cause children to become or remain delinquent or aid, contribute to, or become responsible for the neglect or delinquency of an child;

or, under subsection (3); that the defendant

1. must be over eighteen and
2. knowingly
3. detain or harbor a child who has left the physical custody of those responsible for him or her.

POINT II

THE CORPUS DELICTI RULE IN THIS CASE SHOULD ONLY REQUIRE THAT THE STATE PROVE THE INJURY SPECIFIED IN THE STATUTE OCCURRED AND THAT IT WAS CAUSED BY THE ACT OF SOME PERSON.

Some of the most damaging evidence with respect to appellant's position in the lower court came out through either re-statements of admissions made by the defendant to a witness or through direct statements of the appellant during the trial. (See Memorandum of Findings and Order, finding of fact No. 4 and R.17.) Appellant contends that the corpus delicti rule requires that proof of his involvement in a crime must be introduced before the court may consider any admissions of the appellant himself.[1] Utah precedent and other authority, however, would indicate that the rule is not nearly so broad.

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[1] It should be noted, at this point, that appellant claims as error only the introduction of Becky Horton's testimony to the effect that the appellant told her that he was splitting her and her friend up so that both would not be caught at the same time. Additional evidence was presented through Miss Horton's testimony which demonstrates the same knowledge element as will be discussed below.

Respondent feels obligated, however, in spite of appellant's concession on pages 8 and 9 of his brief that the State had proven the age element to note that the appellant's majority was not established via evidence independent from the appellant's own admissions. It is the respondent's contention, however, that neither proof of knowledge nor appellant's majority is a required portion of the corpus delicti in this case, even though they are clearly elements of the crime, as noted above.

The corpus delicti rule is stated in State v. Knoefler, 563 P.2d 175 (Utah, 1977).

> "An admission or a confession, without some independent corroborative evidence of the corpus delicti, cannot alone support a guilty verdict. To sustain a conviction, the requirement of independent proof of the corpus delicti requires only that the State present evidence that the injury specified in the crime occurred, and that such injury was caused by someone's criminal conduct."

Wharton's Criminal Evidence, however, points out that:

> "For the preliminary purpose of determining whether an extrajudicial confession or admission is to be allowed in evidence--or, putting it another way, whether the corroboration of an extrajudicial confession or admission sufficient to support a conviction is present, there must be proof of the corpus delicti not beyond a reasonable doubt, but rather the evidence adduced need only tend to show consistency with unlawfulness in causing the injury in question." Charles E. Torcia, Wharton's Criminal Evidence, 13th Edition, Vol. I, § 17, p. 28.

Thus, the State does not have to prove the entire case beyond a reasonable doubt before admitting any of the defendant's admissions, but rather need only introduce evidence demonstrating the corpus delicti.

Wigmore on Evidence, 3rd Edition, § 2072 further explaines the purpose and extent of the corpus delicti rule:

> ". . .it warns us to be cautious in convicting, since it may subsequently appear that no one has sustained any loss at all; for example, a man has disappeared, but perhaps he may later re-appear alive." (at p. 401.)

Wigmore then goes on to note that "to find that he is in truth dead, yet not by criminal violence. . .is not the discovery against which the rule is designed to warn and protect us." (at p. 401.)

In State v. Johnson, 31 N.J. 489, 158 A.2d 11 (1960), a felony murder conviction, the court held that:

> "The State was not required to prove, independently of the defendants' confessions, the fact that the shooting occurred during the commission of a felony. Of the three elements of murder, i.e. death, criminal agency and the connection of the defendants therewith, the State need independently prove only the first." (at p. 19.)

See also State v. Tillman, 152 Conn. 15, 202 A.2d 494 (1964).

This reasoning is especially applicable in the instant case. Miss Horton testified that she had run away and was allowed to hide within appellant's apartment (R.6-8,11,13). This is the harm against which the statute under which the appellant was convicted is designed to protect. Whether or not this harm came about as a result of criminal conduct is not determined, in this case, by the nature of the acts of the appellant, but rather by the nature of the appellant himself. The harm to the minor, consisting of being helped to become or remain

delinquent or of having been harbored and therefore aided in remaining without the lawful and legal supervision and care of her parents, would have occurred whether the appella had been 16 or 32, given the same conduct on the part of the appellant. The State had demonstrated, before the testimony of appellant as to his age or the testimony of the police officer concerning appellant's admission of his age, that the harm or injury had occurred. This should satisfy the requirements of the corpus delicti rule in this case.

In addition, the court should take note of several other unusual aspects of this case. The appellant is a Vietnamese alien. As a result, foreign records as to his birth are very difficult, if not impossible to obtain from his homeland. While the Federal Department of Immigration and Naturalization may have some documents similar to a birth certificate, they often do not and their records contain, in many cases, nothing more than admissions of immigrants as to their age. Therefore, in cases such as this, to require independent proof of a defendant's age, when such proof may simply not be available could seriously hamper the processes of criminal justice within the state.

Another important point is that the appellant had, only a few months prior to this trial, been charged

with a violation of this same statute before the same trial judge. (Note that there are two counts involved, appellant plead guilty to one and appealed a conviction on the other.) It was known to all participants that in spite of the lack of independent evidence as to the appellant's age, he was of majority. Although defense counsel refused to stipulate to his client's age, he does not challenge on appeal the court's conclusion that appellant was over 18 years of age.

The State argues that the corpus delicti rule was satisfied and that the conviction below should be upheld.

POINT III

THE REMAINING ELEMENTS UNDER EITHER CONVICTION ALTERNATIVE WERE ESTABLISHED BY THE STATE.

Although Utah does not have a statutory definition of "delinquency" or of "contributing to the delinquency", The Supreme Court has stated, in State v. Tritt, 23 U.2d 365, 463 P.2d 806 (1970) that:

> "The terms 'delinquency' and 'contributing to the delinquency' as applied to minors has for many decades had such a widespread usage as to give clear and understandable meaning that it denotes actions that will aid, encourage or involve children in conduct which is contrary to law, or which is so contrary to the generally accepted standards of decency and morality that its result will be substantially harmful to the mental, moral or physical well-being of the child." (at 808, 809.)

A child who has run away from home involves conduct which could likely result in harm to the moral, if not physical or mental well-being of the child. In any event, to foster and encourage a child's separation from his or her home and parents through the provision of shelter and aid in avoiding detection would certainly come within the above definition of "contributing to the delinquency" of a minor.

Although it is true, as appellant points out in his brief on page 7, that the Juvenile Court may take jurisdiction of a runaway child upon referral from the Division of Family Services, whether or not that child can be considered "delinquent" for the purposes of the prosecution of an adult under § 78-3a-19, U.C.A., 1953 as amended, is not determined by that fact. In other words, it has been determined, in this state, that a child may become delinquent without committing any specific crimes and that encouragement or aid to commit a crime is not a necessary element of contributing to a child's delinquency. See State v. Tritt, supra.

In the instant case, Becky Horton, a minor, had left her parent's home without permission and was hiding from her parents and the police when she was found (R.31a). Even though she was never encouraged or asked to commit any specific crimes, she was delinquent and any help given to her in her attempts to evade her parents and the police constitutes a

contribution to her delinquency. Thus, the remaining element under subsection (1) was established.

Subsection (3) requires that the defendant knowingly harbor a runaway minor.

While it is not clear whether or not the appellant knew that Becky Horton was a runaway minor when he first found her in his apartment, the fact that he asked her why she had run away on the second night clearly indicates that he knew that she was a runaway (R. 28, 29).

Appellant cites State v. Macri, 28 U.2d 69, 498 P.2d 355 (1972) to demonstrate that the simple act of providing shelter to a runaway does not constitute "harboring" under § 78-3a-19(3). That case can be distinguished from the present case and is not determinative here.

In Macri, the appellant was operating an institution whose prime purpose was to help alienated youth and people involved with drug problems. The minor involved in that prosecution was one of many youths from many different areas staying at that appellant's church. The minor and her friend in Macri also elected to return home and did so. Here, no particular positive function could be filled by Becky's staying with the appellant. There were never more than two girls in the apartment and, as evidenced by the sexual advances made by other residents of the apartment, the

apartment was hardly a place where Becky's problems could have been helped. Becky did not elect to return home, but instead, hid when the police and her father came looking for her. The facts are therefore distinguishable and although the conduct of the appellant in Macri in providing shelter may not have been proscribed by the intent of the statute, the actions of the appellant here should be.

Appellant also noted that no evidence as to the ownership of the apartment was introduced. He cited State v. Davis, 16 Wash. App. 657, 558 P.2d 263 (1977) to demonstrate the necessity of such proof. The case can also be factually distinguished in that while in that case the defendant was merely found to be asleep in the same house, the appellant here clearly moved out of his own bedroom to allow Becky Horton and Cindy Graves a place to sleep. By acting as he did, the appellant in this case did knowingly harbor Becky Horton, a runaway minor.

CONCLUSION

By proceeding under Utah Code Ann. § 78-3a-19, 1953 as amended, the State had the option of proving either the elements of subsection (1) or subsection (3). Although the only evidence clearly establishing the appellant's knowledge and majority was his own statement, the nature of the crime involved indicates that the State need not necessarily prove age or knowledge as parts of the corpus

delicti even though they are elements of the crime. All of the other elements of the crime were established via sufficient evidence. The State, therefore, urges the court to uphold the conviction and sentence of the lower court.

Respectfully submitted,

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