1979

# State of Utah v. Charles Steven Archuletta : Brief of Respondent

Utah Supreme Court

IN THE SUPREME COURT OF THE

STATE OF UTAH

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STATE OF UTAH,

Plaintiff-Respondent,

-vs-

CHARLES STEVEN ARCHULETTA,

Defendant-Appellant.

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BRIEF OF

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APPEAL FROM A JURY
FORCIBLE SODOMY IN THE
COURT IN AND FOR SALT
UTAH, THE HONORABLE
JR., JUDGE

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IN THE SUPREME COURT OF THE

STATE OF UTAH

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Plaintiff-Respondent, :

-vs- : Case No. 15919

CHARLES STEVEN ARCHULETTA, :

Defendant-Appellant. :

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# BRIEF OF RESPONDENT

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## STATEMENT OF THE NATURE OF THE CASE

Appellant was charged by information with one count of rape and one count of forcible sodomy in violation of Utah Code Ann. § 76-5-402 and 403, respectively.

## DISPOSITION IN THE LOWER COURT

In a trial before a jury presided over by the Honorable Stewart M. Hanson, Jr., conducted on June 1 and 2, 1978, in the Third Judicial District, appellant was found guilty of forcible sodomy. Appellant was accordingly sentenced to a term of 1-15 years in the Utah State Prison.

## RELIEF SOUGHT ON APPEAL

Respondent urges this Court to sustain the conviction and sentence of appellant.

## STATEMENT OF THE FACTS

In the evening of September 27, 1977, Michelle S. Christiansen and several of her girlfriends were returning home from a picnic when they noticed appellant driving a pick-up truck on a parallel course (T. at 15, 137, and 147). A conversation started and appellant invited Ms. Christiansen and her friends to a party (T. at 16). The women followed appellant to the site of the party where he left his truck and rode with them as they drove home to change clothes (T. at 17). One of the women, Diane Visick, decided not to return to the party, but allowed Michelle and her friend Lisa Don Thornwall to return with appellant in her (Ms. Visick's) car (T. at 17,18). The three purchased some beer and then went to the party for a short while (T. at 18 and 154). Although marijuana was being used at the party (T. at 18 and 155), Ms. Christiansen denies having smoked any (T. at 37). None of the other witnesses could say whether she had had any or not (T. at 125 and 155).

Appellant, Michelle S. Christiansen, and Lisa Don Thornwall, then left the party and drove to an area in the vicinity of the State Capitol Building where they

continued to drink beer (T. at 19). Both girls were kissing appellant (T. at 20 and 157). Michelle Christiansen testified:

> And then Charley (Appellant) asked us if we had ever taken vitamin pills to coat your stomach so that you don't get drunk, you don't get sick from drinking. And I said, "yeah". And he said, "Do you want to take some?" And I said, "no." And then he took some. And so I thought, well, that's probably what they are, so Lisa Don and I took a pill from him.

(T. at 19).

She noted that the pill was football-shaped and green, of a jelly compound. Appellant also gave the victim another capsule, claiming it too was a vitamin pill (T. at 19 and 20). Lisa Don Thornwall confirmed Ms. Christiansen's account with respect to the party and then the pills (T. at 155 and 160). Unlike Ms. Christiansen, however, Ms. Thornwall noted that she was home in bed within two hours of taking the pills (T. at 160).

The three left the capitol area and drove to appellant's mother's house (T. at 21). Lisa Don Thornwall took the car and returned home, leaving appellant with Ms. Christiansen (T. at 21). Appellant said that he would get a car from his sister. Ms. Christiansen indicated that she wanted to use a restroom and appellant responded that his mother was asleep. He led the victim around the corner to an apartment he described as that of his good friend and his

"home away from home." (T. at 22). Appellant went in through a window and opened the door. Ms. Christiansen noted that at that point she was feeling tired and very dizzy. After using the bathroom, she sat down on the couch and passed out as appellant stated that he would check to see if his sister had returned with the car (T. at 23).

When Ms. Christiansen came to, appellant was standing in the doorway. She got up, but at his insistance, sat down on the floor feeling all the while tired, dizzy and weak. Appellant pushed her over and began rubbing lotion on her back as he removed her shirt (T. at 23 and 24). The victim testified:

> Q. Did you want him to take the shirt off?
>
> A. No. I was just laying there on the floor, I thought I was going to pass out again. I was really dizzy. . . . I said I didn't want him to take my shirt off.

(T. at 24).

Appellant then removed all Ms. Christiansen's clothes and began to rub lotion all over her body (T. at 24). The victim described the succeeding events:

> Q. Did you want him to take the rest of your clothing off?
>
> A. No.
>
> Q. Did you do anything to prevent him from doing it?
>
> A. No.
>
> Q. Why?

A. I felt dizzy, I felt like I was going to pass out. I just felt like I was asleep.

Q. Did you tell him you didn't want him to take your clothes off?

A. I told him I didn't want him to take my clothes off.

Q. Did he make any response to that statement?

A. I don't believe so.

Q. Did he do anything in response to that statement?

A. He just took my clothes off.

Q. Then what happened?

A. Then he kept rubbing my back and putting lotion all over me, and started putting it in my hair and stuff. And then he laid down on top of me, or was laying on my stomach on the floor, and he started to have intercourse with me.

Q. Will you describe what you mean when you say "have intercourse"?

A. He started--he just laid on top of me, and started to have intercourse with me.

Q. Describe what you mean by "have intercourse"?

A. Have sex. His penis was entering inside of my body.

Q. What part of your body?

A. In my vagina.

Q. And what occurred at that time?

A. I asked him to stop. And I tried to get up, but I just--it was like I didn't have any control over my muscles. And I just laid there on the floor.

Q. Then what happened?

A. And then--then he, then he rolled me over so I was on my back, and he continued having intercourse with me. And then he stopped, and he said that he wanted me to have oral sex with him. And I said no. I said, "I want to go home." I said, "Just let me go, I want to go home." And so he said, "No," he said, "I want you to do this for me." And I said, "No, I don't want to. I want to go home."

And then--then he grabbed--I tried to get up, he grabbed me and he pushed me back down on the floor. And he said, you know, "Do it for me." And I just said, "No." And I started to cry. And he got mad at me.

Q. At this point how did you feel?

A. I was scared. And I wanted to go home.

Q. How did you feel physically?

A. I was sick to my stomach, I was dizzy. I started--I could move around, I could, you know, sit up.

Q. Did you make any other effort to prevent what he was doing?

A. I tried to get away, and then I couldn't get away.

Q. Why couldn't you?

A. He was holding me down. And then I tried to scream. And he grabbed my face, and he put his hand over my

face and he said, "Don't scream" he said, "Nobody can hear you, anyway." And he started getting really mad at me.

And then--and then I wouldn't do what he was asking me to do. And so there was a Michelob bottle sitting on the coffee table behind us.

Q. What is a Michelob bottle?

A. It's a beer bottle.

Q. Then what happened?

A. And he picked that bottle off the table, and he started to peel the paper off the bottle. And he was still--he was laying on my back and kind of sitting on my feet. And I said, "What are you going to do?" I said, "Let me go." I said, "I thought we were going to go to breakfast." And he said, "No, we are not going." And I said, "What are you trying to go?" He said, "You know what I am going to do." And I said, "What are you going to do?" And he said, "I'm going to make it easier for you to do this."

And I said, "Let me go." And he said, "No." He said, "I know you want to do this. You are just trying to make me mad." And so he took the Michelob bottle, and he tried to force it up into my vagina. And I grabbed his arm, and I told him to stop, and I told him I'd do what he wanted me to do. And so--so then I tried to do it for him, and he kept getting mad at me and he kept telling me I wasn't doing it right.

Q. Will you describe what it was you tried to do for him?

A. He had me put his penis in my mouth and kiss it, and stuff like that.

Q. Did you actually do that?

A. Yes.

Q. Did you want to do that?

A. No.

Q. Why didn't you?

A. I was afraid he was going to hurt me.

Q. All right. Then what happened?

A. Then I tried--thought if I just did that for him, that maybe, you know, he'd let me go and I could just leave. And I kept trying, but I kept gagging and choking. And he'd get made at me and tell me that he knew that I knew how to do it, and that I was getting sick on purpose to make him mad.

And then he got mad at me, and he grabbed me and he forced himself down my throat. And then he laid on top of me and said that if I didn't make him have a climax that I was going to be sorry. And so I tried to do what he wanted me to do. And then he had a climax in my mouth, and I spit it on the floor. And he got mad at me. And I said I wanted to go, I wanted to go home. And he said--he grabbed me, and he said, "Do you love me?" And I said--I looked at him and I was scared. And he said, "I know you love me." He says, "You love me, don't you?" And I says, "Yes, I do." And then--

Q. Did you love him?

A. No.

Q. Why did you say that?

A. Because I thought maybe that he would let me go. I wanted to leave, and I would have said anything he wanted me to say.

Q. And then what happened?

A. Then I said, "I want to go. Let's go out to breakfast or something." I wanted to get out of the house. And he said no. He said, "Come in here." And he grabbed me by my arm, and he pushed me into the other room and pushed me down on the bed. And he said, "Move up to the top of the bed." And I said, "No, I won't." And he said, "Move up." And I said, "No." And then he grabbed me, and I passed out again.

And then later, I woke up, and he was-- he had his arm over the top of me, and he was just on the bed next to me, and he was asleep or passed out. And so I just got off the bed, and I grabbed my clothes, I pulled on my shirt and my pants, and I grabbed my shoes, and I ran out of the house down the street.

(T. at 25 to 29).

Ms. Christiansen found some people on the street and, using a phone in a lady's house, called her parents who came and got her and then called the police (T. at 30). She was asked if she made an effort to stop appellant:

A. As much as I could.

Q. And what do you mean by that?

A. I wanted to leave, but I was just really tired. I felt like I couldn't get up. I tried to get up; I couldn't move. When it got later and I started to be able to move around more and tried to get away, the more violent he got, and I didn't want him to hurt me. . . .

Like when I'd push myself up, I'd try to get up, he knocked me back down on the floor. When I tried to scream, he grabbed my face and stopped me from screaming. He pulled my hair.

> Every time I tried to move away from him he just grabbed me and pulled me back down.

(T. at 30 and 31).

She testified that she had been instructed in a high school class to not resist a rapist if she felt she was physically unable to make the rapist incapable of hurting her and that she had done all she felt she could (T. at 52).

Ms. Christiansen was examined by Dr. Keith Evens, an obstetrics-gynecology resident at the University Hospital. Although he noted no signs of physical or psychological trauma, (T. at 113 and 116), he did note that he was unaware that she had been sedated (T. at 116), and that his examination took place approximately 12 hours following the incident (T. at 112). He also stated that many of the normal symptoms of physical abuse would not be visible so long after the trauma (T. at 116 and 117).

During the examination, blood and urine samples were taken from the victim and eventually transported to the toxicology center at the University of Utah for analysis (T. at 61, 63, 64 and 66). Detective Pat Smith carried the samples with her for a period of time. (It is unclear from the record how long a period since the incident began on the 27th, (T. at 15) the examination must have taken place on the 28th, although it appears from Dr. Evans' testimony to have occurred on the 27th. The samples were

delivered to toxicology on the 29th. At any rate, there was a period of one to two days when the samples were carried, without refrigeration, in Detective Smith's purse. This lack of refrigeration [redacted] made the result somewhat lower [redacted] than a [redacted] check would have revealed [redacted] if the samples had been refrigerated (T. at 94, 95).)

An associate toxicologist, Ladislav Kopjak, testified that analysis of the samples indicated that the victim had had chloral hydrate introduced into her body (T. at 96 and 99).

Dr. Brian S. Finkle, director for the University of Utah Center for Human Toxicology, testified as to the effects of chloral hydrate. He noted that the substance quickly breaks down to trichloral ethanol (which was the substance tested for an found by Mr. Kopjak). He noted that practically the only reason anyone would have trichloral ethanol in their system would be because of indigestion of chloral hydrate (T. at 103). Dr. Finkle noted:

> . . . the drug chloral hydrate and trichloral ethanol which I have explained is the active product, is a sedative. It is designed deliberately to induce sleep, sedation in individuals, depending upon the dose. It is commonly used in its sedative dosages to induce or to allay anxiety, to relax people, and to make them generally sedated--not necessarily to go to sleep or to feel sleepy, but certainly to be relaxed. In doses higher than that it is often

> employed medically to assist people who have insomnia, who can't go to sleep at night, and they might take a dose of this drug such that it would induce sleep at about half an hour or an hour after they took the drug.

(T. at 105).

Dr. Finkle further indicated that "many, many, many manufacturers make this drug in many forms--but the usual form is a capsule, a soft gelatin capsule, a soft gelatin capsule, and it generally comes in two different sizes, and a dose could be one capsule of either size." The doses are 500 milligrams and 1,000 milligrams (T. at 106).

In consideration of a hypothetical question containing the reported concentration of trichloral ethanol and the other facts of this case, Dr. Finkle stated:

> The concentration that I was given, albeit, again twelve hours after the dosage, would in and of itself, in my opinion, have at least induced sedation, and could in some subjects have induced sleep. Therefore, obviously, as I said earlier, the blood concentration, at some point, be it prior to the blood sample that was taken, was much higher than six. I would say that the individual who had ingested that drug in all probability ingested a dose greater than that which would have been given by a physician for medical purpose, and subsequent blood concentration would have been such, certainly, as to have made them drowsy and possibly would have put them to sleep.

(T. 105).

Preston J. Truman, the host of the party attended by the victim, appellant, and Lisa Don Thornwall, testified that he was under the care of a physician and had been prescribed chloral hydrate as a sedative. He noted that the chloral hydrate was in the form of a gelatin football-shaped green capsule. His pills were kept in plain sight in his bathroom. The inventory after the incident revealed that he was short by about seven capsules the quantity he should have had if he had been taking them at the prescribed level (T. at 122 to 124).

After consideration of the evidence, the jury returned a verdict of not guilty of rape, but guilty of forcible sodomy (T. at 182).

## POINT I

THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE JURY FINDING OF GUILT BEYOND A REASONABLE DOUBT.

The crime of forcible sodomy is set forth in Utah Code Ann. § 76-5-403 (1953), as amended:

> (1) A person commits sodomy when he engages in any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant.
> (2) A person commits forcible sodomy when he commits sodomy upon another without the other's consent. (Emphasis added.)

Lack of consent is explained in Utah Code Ann. § 76-5-406 (1953), as amended:

> An act of sexual intercourse, sodomy, or sexual abuse is without consent of the victim under any of the following circumstances:
> (1) When the actor compels the victim to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or
> (2) The actor compels the victim to submit or participate by any threat that would prevent resistance by a person of ordinary resolution; or
> (3) The victim has not consented and the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist; or
> (4) The actor knows that as a result of mental disease or defect, the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it; or
> (5) The actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse; or

> (6) The actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without his or her knowledge; or
>
> (7) The victim is under fourteen years of age. (Emphasis added.)

In reviewing a claim of insufficient evidence it is well settled that:

> It is the prerogative of the jury to judge the weight of the evidence, the credibility of the witnesses, and the facts to be found therefrom. For a defendant to prevail upon a challenge to the sufficiency of the evidence to sustain his conviction, it must appear that viewing the evidence and all inferences that may reasonably be drawn therefrom, in the light most favorable to the verdict of the jury, reasonable minds could not believe him guilty beyond a reasonable doubt. To set aside a verdict it must appear that the evidence was so inconclusive or unsatisfactory that reasonable minds acting fairly must have entertained reasonable doubt that defendant committed the crime. Unless the evidence compels such conclusion as a matter of law, the verdict must be sustained.

State v. Mills, 530 P.2d 1272 (Utah 1975) (emphasis added). See also State v. Middelstadt, 579 P.2d 908, 909 (Utah 1978); State v. Reddish, 550 P.2d 728 (Utah 1976); State v. Harless, 23 Utah 2d 128, 459 P.2d 210, 211 (1969); and State v. Sims, 30 Utah 2d 357, 517 P.2d 1315, 1317 (1974).

Moreover, this Court has maintained that in a sex offense case, a conviction may be based upon the testimony of the prosecutrix alone:

> In regard to the general charge that the evidence does not support the verdict: the defendant argues that the conviction should be scrutinized with great care because it is a charge easy to make and hard to defend against; particularly so here because important parts of the state's case rest entirely upon the testimony of the prosecutrix. With that general proposition we are in accord. But it also should be kept in mind that this offense is rarely committed in the presence of witnesses and often the conviction of the guilty could only be had upon the victim's testimony. It has often been held that if there is nothing inherently contradictory or incredible in her story a conviction may rest upon the victim's testimony alone.

State v. Ward, 10 Utah 2d 34, 347 P.2d 865, 868 (1959). See also State v. Studham, 572 P.2d 700, 701-702 (Utah 1977).

There is nothing inherently contradictory in Ms. Christiansen's story and there is more than sufficient evidence to support a reasonable belief that no reasonable doubt existed as to appellant's guilt. Although, as appellant notes in his brief on page 10, there is no physical evidence to corroborate the fact of intercourse or sodomy, neither is there any compelling inconsistency in the jury's belief that one or both of the acts took place. Evaluation of all the evidence, including the credibility of Ms. Christiansen's testimony, is the sole prerogative of the jury and their verdict should not be upset unless such a result is compelled by inherent inconsistency. State v. Ward, supra.

Ms. Christiansen's description of the events leading up to the time when she and appellant were left alone was corroborated in virtually every detail by all witnesses. Her account of her weakened physical state exactly accords with Dr. Finkle's description of the effect of chloral hydrate (T. at 25-29 and 105). Cloral hydrate was found to have been present in her system (T. at 96 and 99) and an obvious source for the drug was identified (T. at 122-124).

It is not inconsistent for Ms. Christiansen to have felt weak and dizzy and out of control and yet still have some ability to talk and move about. Her capacity to resist was reduced by the drug. As Dr. Finkle noted, the drug:

> . . . is commonly used in its sedative dosage to incude or to allay anxiety, to relax people, and to make them generally sedated. . . not necessarily to go to sleep or feel sleepy, but certainly to be relaxed.

(T. at 105.)

Although the examining physician found no bruises or evidence of physical trauma, he noted that such evidence might not be apparent after so long a time and that he was not aware at the time of examination of the possibility that Ms. Christainsen had been sedated. (T. at 112-117).

As to appellant's character, he states in his brief on page 10 that Ms. Christiansen testified that he was concerned about her well-being and refers the reader to page 23 of the transcript. Although she said, at that point, that he asked, "don't you feel good?", he also asked, "are you high?" and then proceeded to get her to sit down on the floor and began rubbing lotion on her. Concern for her well-being might be one characterization, but a more rational one would be concern over whether the drug had taken effect. The prosecutrix's testimony as to appellant being "nice" was in response to the question concerning how she felt about him at the party before the incident (T. at 39). Detective Smith did say in direct examination for the defense that appellant was cooperative, but that is all:

> Q. Okay. Now, you talked to Charley about this occurrence, didn't you?
> A. Yes.
> Q. And he was cooperative at all times?
> A. Yes.

(T. at 130.)

Ms. Visick stated that appellant was concerned and helped search for Ms. Christiansen (T. at 143) but such action could easily be explained as an attempt to cover up

or avoid prosecution for what he had just done. It simply does not follow, from what the various witnesses said about appellant's disposition, that a reasonable person must entertain a reasonable doubt that he would have committed the crime.

Ms. Christiansen's lack of consent was established under any of several subsections of Utah Code Ann. § 76-5-406, supra. Subsection (1) requires that the actor: ". . . compel the victim to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances." The victim was weak and dizzy (T. at 25). She had been instructed in school to not resist when resistance appeared hopeless (T. at 52). Given that she was substantially incapacitated, she gave as much resistance as could be expected under the circumstances.

Subsection (2) requires that the actor ". . . compel the victim to submit or participate by any threat that would prevent resistance by a person of ordinary resolution." Here again, the evidence indicates that appellant threatened Ms. Christiansen with the beer bottle and physical violence (T. at 27). She was in no way capable of resisting such force. The jury was justified in believing that a person of ordinary resolution might submit in the face of such threats under those conditions.

Appellant was shown, finally, to have given two capsules to both Ms. Christiansen and Ms. Thornwall, representing them to be vitamins when they were, in all probability, chloral hydrate (T. at 19, 20, 155 and 160). Subsection (6) of Section 76-5-406 requires that the actor intentionally impair "the power of the victim to appraise or control his or her conduct by administering any substance without his or her knowledge."

Proof of lack of consent requires that the state establish only one of the subsections of Section 76-5-406. In this case, the facts satisfy three. Clearly, there was more than sufficient evidence to establish the victim's lack of consent beyond a reasonable doubt.

State v. Horne, 12 Utah 2d 162, 364 P.2d 109 (1961), may be distinguished and is not determinative in the instant case. In that case the victim, a 21 year old woman supposedly struggled and fought with the defendant for over three hours and yet her son sleeping in the next room was not disturbed. There was no evidence of marks or bruises, and the complaint was not made until two and one-half hours after the supposed rape. There was no indication of any use of drugs in that case. In the instant matter, however, it was established that the victim was

drugged with a sedative. As soon as she recovered from the effects of the drug she grabbed her clothes and ran to a phone (T. at 29). Although, as in Horne, there was no physical evidence of a struggle nor of a vigorous attempt to seek help and there was some time delay in making the complaint. The absence of such evidence and the delay can easily be explained by the effect of the sedative. Unlike the account of the prosecutrix in Horne, Ms. Christiansen's story is neither improbable nor inherently contradictory.

## CONCLUSION

In reviewing a case where the appellant claims insufficient evidence the conviction should only be set aside when a reasonable mind would be compelled to have a reasonable doubt as to the appellant's guilt. A conviction based upon the prosecutrix's testimony alone in a sex offense case should be upheld unless the story is inherently contradictory or incredible. In light of these standards, the instant conviction must be affirmed. The victim's description of the appearance and effect of the drugs was corroborated by expert testimony. Chloral hydrate was shown to have been introduced into her system. The presence of the drug explains the victim's inability to make strenuous efforts to resist or escape and the delay

in reporting the crime. The delay in reporting accounts for the lack of soreness or bruises. The record does not support a conclusion that appellant's character was inconsistent with the commission of the crime. The victim's lack of consent was established under any of three of the seven alternative subsections of Utah Code Ann. § 76-5-406 (1953), as amended. Clearly, in examining the facts in a light most favorable to the jury's verdict, the conviction and sentence must be affirmed.

Respectfully submitted,

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