

1979

State of Utah v. Charles Erwin Alexander : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH, :
 :
 :
 Plaintiff-Respondent, :
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 vs. : Case No. 16025
 :
 CHARLES ERWIN ALEXANDER, :
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 :
 Defendant-Appellant. :
 :
 :

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF THE FOURTH
JUDICIAL DISTRICT COURT OF DUCHESNE
COUNTY, THE HONORABLE ALLEN B. SORENSEN,
PRESIDING

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FILED

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant and a codefendant were charged with aggravated kidnapping and aggravated sexual assault.

DISPOSITION IN LOWER COURT

Appellant was found guilty by the Court on April 17, 1978, of the charge of aggravated sexual assault in violation of Section 76-5-405(1)(a)(ii), Utah Code Annotated (1953), as amended.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction on the basis he acted under coercion due to threats of violence.

STATEMENT OF FACTS

Appellant and a codefendant, Luther Lee Cook, were arrested and charged with having committed the crimes of aggravated kidnapping and aggravated sexual assault.

Defendant Cook plead guilty to the charge of aggravated

sexual assault, and at the time of appellant's trial, was in custody of the Division of Corrections for the purpose of undergoing a 90-day evaluation. Cook testified for the State at appellant's trial and admitted having committed the rape.

On April 17, 1978, appellant, having waived the jury, was tried by the Court on the charge of aggravated sexual assault. Testimony was offered, by appellant and the victim, to the effect that both appellant and the victim were threatened with death or serious bodily harm by codefendant Cook at the time of the commission of the crime. No evidence was offered to indicate that appellant himself actually raped the victim.

The Court found appellant guilty on the basis he aided and abetted Cook in the commission of the sexual assault. The charge of aggravated kidnapping was dismissed on the basis of the single criminal episode rule. Appellant was committed for a 90-day evaluation and subsequently sentenced, on a reduction to a second degree felony, to one to fifteen years in the Utah State Prison.

ARGUMENT

POINT I

APPELLANT ACTED UNDER COERCION OF IMMINENT
PHYSICAL FORCE AND THREAT OF FORCE TO HIS
PERSON AND TO THE PERSON OF THE VICTIM

Section 76-2-302, Utah Code Annotated (1953) as amended, provides in pertinent part:

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when he engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would not have resisted.

The key element in the foregoing provision for purposes of this appeal is that the force or threatened would not have been resisted by a person of reasonable firmness "in his (the defendant's) situation".

Thus, the standard set forth is a subjective one, i.e., the situation is to be viewed from the perspective of the defendant. In the instant case, the defendant was shown to have suffered from both hypoglycemia and a bleeding ulcer at the time the rape occurred. The testimony of Dr. White indicated appellant had been hypoglycemic for some years and was admitted to a hospital, shortly after his arrest, for treatment of a bleeding ulcer.

Dr. White further testified at trial to the effect that both of the foregoing physical conditions could cause weakness, dizziness, nausea, loss of memory and disorientation--in short, the very symptoms which defendant testified, and the victim corroborated, he was suffering from on the date of the crime.

Appellant's physical state on the date in question significantly impaired his volitional ability. His will to resist codefendant Cook's threats of violence was diminished. Appellant contends that any reasonable person in appellant's physical and mental condition at the time the crime occurred would not have resisted the threats of force by Cook.

The victim of the rape herself testified that appellant was ill at the time the crime was committed. In fact, she remained at the scene to assist appellant even after Cook had left. (Rec. on App., pp. 65-66) Further, the victim confirmed that appellant allowed her to leave the scene and even directed her so as to avoid Cook in the event he werereturning. (Rec. on App., pp. 68-69).

Both appellant and the victim had their lives threatened by Cook. The victim stated she overheard Cook threatening to kill appellant if he refused to assist him in the commission of the crime. (Rec. on App., p. 57).

The current Utah statute on compulsion and coercion has not been authoritatively construed by the Utah Supreme Court. However, the former statute was construed in the case of State v. Pearson, 15 Utah 2d 353, 393 P.2d 390 (1964). In that case, the Supreme Court of Utah held that the claimed coercion or threat of force must be immediate, not merely speculative.

In the instant case, the evidence clearly indicates that numerous threats of imminent violence were made by Cook , from the initial threat to shoot the victim if she refused to cooperate, through the threat to kill appellant if he refused to assist in the crime.

POINT II

APPELLANT ACTED REASONABLY IN NOT
RESISTING THE THREATENED USE OF FORCE,
WHETHER REAL OR APPARENT

In the situation in which appellant found himself, he

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acted reasonably for the protection of himself and the victim from further serious harm and possible death.

Appellant maintains the standard to be applied to his conduct is whether or not the threatened use of force created a condition of real or apparent danger of physical harm. Thus, if appellant had reasonable ground to believe, and actually did believe, his life and the girl's were in apparent danger, then he acted within the law in allowing the crime to be committed. Such would be the case even if it were later established that the danger of harm was not real or actual. It is the appearance at the time of the events which is significant.

The doctrine of apparent necessity has been applied in a line of Colorado cases dealing with self-defense claims. In Chacon v. People, 488 P.2d 56 (1971), the Supreme Court of Colorado, in following an earlier decision of Young v. People, 107 P. 274 (1910), stated:

A person who is in a situation where it appears that he is in real danger has the right to act upon appearances, even though such appearances may prove to be deceptive. 488 P.2d at 57.

Appellant herein urges that the same rationale should be applied to one who is coerced into assisting in the commission of a felony in the belief that to resist the apparent use or threat of force would result in harm to himself or further harm to the victim of the felony.

Thus, appellant could be excused for not risking his life and the victim's life to prevent the rape by Cook.

CONCLUSION

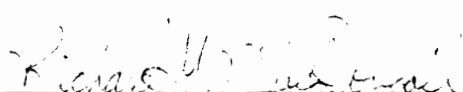
Appellant contends the evidence at trial was insufficient to find him guilty beyond a reasonable doubt of the charge of aggravated sexual assault. The evidence of appellant's physical and mental condition at the time the crime occurred, coupled with the evidence of threats of force by Cook, corroborated by the victim, established a presumption that appellant acted under coercion in aiding and abetting Cook. That presumption was not sufficiently rebutted.

For the foregoing reasons, appellant urges this Court to reverse his conviction.

DATED this 24 day of February, 1979.



Stephen R. McCaughey



Richard G. MacDougall

Attorneys for Appellant

CERTIFICATE OF DELIVERY

I hereby certify I delivered two copies of the foregoing Brief of Appellant to the Attorney General's Office, 236 State Capitol, Salt Lake City, UT 84114, this 5th day of February, 1979.

Richard H. McLaughlin