1989

State of Utah v. Willie Vaughn Jr. : Brief of Respondent

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff-Respondent,	:	Case No. 890343-CA
v.	:	
WILLIE VAUGHN, JR., Defendant-Apellant.	:	Category No. 2

BRIEF OF RESPONDENT

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APPEAL FROM A CONVICTION OF ROBBERY, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-301 (1978), AND AGGRAVATED KIDNAPING, A FIRST DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-5-302 (Supp. 1988), IN THE SECOND JUDICIAL DISTRICT COURT, IN AND FOR WEBER COUNTY, STATE OF UTAH, THE HONORABLE RONALD O. HYDE, JUDGE, PRESIDING.

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BRIEF OF RESPONDENT

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of robbery, a felony of the second degree, in violation of Utah Code Ann. § 76-6-301 (1978), and aggravated kidnaping, a felony of the first degree, in violation of Utah Code Ann. § 76-5-302 (Supp. 1988), following a jury trial in Second Judicial District Court, in and for Weber County, the Honorable Ronald O. Hyde, judge, presiding. This Court has jurisdiction in this case pursuant to Utah Code Ann. § 77-35-26(2)(a) (Supp. 1989) and Utah Code Ann. § 78-2a-3(2)(h) (1988).

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

Whether the evidence was sufficient to convict defendant of robbery and aggravated kidnaping.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 76-6-301 (1978):

76-6-301. Robbery.--

> (1) Robbery is the unlawful and intentional taking of personal property in the possession of another from his person, or immediate presence, against his will, accomplished by means of force or fear.

(2) Robbery is a felony of the second degree.

Utah Code Ann. § 76-6-302 (Supp. 1988):

76-5-302. Aggravated kidnaping.--

(1) A person commits aggravated kidnaping if the person intentionally or knowingly, without authority of law and against the will of the victim, by any means and in any manner, seizes, confines, detains, or transports the victim with intent:

(b) To facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony; or

(c) To inflict bodily injury on or to terrorize the victim or another. . . .

(3) Aggravated kidnaping is a felony of the first degree punishable by a term which is a minimum mandatory term of imprisonment of 5, 10, or 15 years and which may be for life.

STATEMENT OF THE CASE

Defendant, Willie Vaughn, Jr., was convicted of robbery in violation of Utah Code Ann § 76-6-301 (1978), a felony of the second degree, and aggravated kidnaping in violation of Utah Code Ann. § 76-5-302 (Supp. 1988), a felony of the first degree following a jury trial in the Second Judicial District Court, in and for Weber County, State of Utah. He was sentenced to imprisonment in the Utah State Prison for a term of not less than one nor more than 15 years on the robbery conviction, and to a minimum mandatory term of five years to life on the aggravated kidnaping conviction with the sentences to run concurrently.

STATEMENT OF THE FACTS

On October 10, 1988, Agnes Reed, a 95-year-old woman who lived alone, offered to pay defendant ten dollars to rake leaves in her yard (T. 6, 8, 85). Defendant agreed and began raking leaves in the yard (T. 5, 22, 29, 39, 49, 85, 86). At approximately 12:10 p.m. a neighbor, Pauline Williams, gave defendant a can of Country Time Lemonade to drink while he was raking (T. 23). After defendant finished raking, he went up onto Ms. Reed's porch and was seen talking with her (T. 5, 29, 40). Ms. Reed paid defendant ten dollars (T. 6, 9). As defendant was talking with Ms. Reed, he suddenly grabbed her, forced her into the house, choked her, injured her leg, forced her onto the bed and told her to "lay there and die" (T. 5, 6, 9). Defendant then took $120 out of her purse (T. 5, 7). Defendant was the only person, aside from Ms. Reed, in her yard that day (T. 10, 24, 36).

Defendant was seen jumping off Ms. Reed's porch (T. 30) and jogging or running away from her house (T. 30, 42). He looked back two or three times as he was running (T. 43). Defendant first went to his grandparents' home and ended up at the nearby home of his sister (T. 66, 90).

Shortly thereafter, when she was physically able, Ms. Reed went across the street to tell her neighbor, Joanna George, what had transpired (T. 40, 41). She told Ms. George that defendant had tried to kill her and identified him as the person who she had paid for doing work in the yard (T. 42).

The police were called and got a description of the suspect (T. 61). Based on this description, and information given by the other witnesses, police picked up defendant at the home of his sister (T. 63).

Defendant denied helping Ms. Reed rake leaves, and claimed that he had not left his sister's apartment since 11:30 a.m. (T. 64, 68, 69, 70, 116). Police took defendant back to the scene of the crime, where he was positively identified by Ms. Williams and Ms. George (T. 25, 44, 64, 68). While at the scene he denied to Ms. Williams, who had conversed with him and given him lemonade, that he had ever been in Ms. Reed's yard (T. 25). Ms. George testified that defendant had changed his pants (T. 44, 47). Another witness, Anna Rice, testified that the man who was raking leaves in the yard was the man who was arrested. (T. 49, 50).

The lemonade can, from which defendant drank, was examined and found to bear his fingerprints (R. 71-72). A "Nike" partial shoe print was found in the dirt in Ms. Reed's yard; defendant was wearing Nike shoes which matched the print (R. 62-63, 65-66).

Officer Coxey testified that Ms. Reed was unable to identify defendant at the scene of the crime because she could not see inside the window of the police car (T. 67). Defendant contradicted this testimony and claimed that he wound the window down and stuck his head out of the car, and alleged that Ms. Reed said that he was not the person who robbed her. (T. 111). At trial defendant admitted to raking Ms. Reed's yard, but denied

going onto her porch (T. 107), assaulting, choking, or taking her money. (T. 93,94).

SUMMARY OF THE ARGUMENT

The evidence in this case was sufficient to establish, beyond a reasonable doubt, defendant's guilt of robbery and aggravated kidnaping.

ARGUMENT

THE EVIDENCE WAS SUFFICIENT TO ESTABLISH BEYOND A REASONABLE DOUBT DEFENDANT'S GUILT OF ROBBERY AND AGGRAVATED KIDNAPING.

Defendant claims that the evidence produced at trial was insufficient to convict of robbery and aggravated kidnaping. He claims that a crime never occurred and somehow Ms. Reed was just confused when she ran terrified and bleeding to her neighbors home, or in the alternative that the victim mistook the defendant, a 6'6", 200 pound, black man for Benny, a short Mexican (A.B. 10). The Utah Supreme Court pointed out in State v. Booker, 709 P.2d 342 (Utah 1985), that when a defendant claims the evidence is insufficient to sustain his conviction, an appellate court should limit the scope of its review.

> [W]e review the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict of the jury. We reverse a jury conviction for insufficient evidence only when the evidence, so viewed, is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted. State v. Petree, Utah, 659 P.2d 443, 444 (1983); accord State v. McCardell, Utah, 652 P.2d 942, 945 (1982). In reviewing the conviction, we do not substitute our judgment for that of the jury. "It is the exclusive function of the jury to weigh the evidence and to determine the

> credibility of witnesses. . . ." State v. Lamm, Utah, 606 P.2d 229, 231 (1980); accord State v. Linden, Utah 657 P.2d 1364, 1366 (1983). So long as there is some evidence, including reasonable inferences, from which findings of all the requisite elements of the crime can be made, our inquiry stops. . . .

Id. at 345. This Court has also succinctly stated that unless there is a clear showing by the appellant of lack of evidence, the jury verdict will be upheld. State v. Gabaldon, 735 P.2d 410, 412 (Utah App. 1987); State v. One 1982 Silver Honda Motorcycle, 735 P.2d 392, 393-394 (Utah App. 1987).

Utah Code Ann. § 76-6-301 (1978) sets out the elements of robbery. This section provides:

> **76-6-301. Robbery.--**
>
> (1) Robbery is the unlawful and intentional taking of personal property in the possession of another from his person, or immediate presence, against his will, accomplished by means of force or fear.
>
> (2) Robbery is a felony of the second degree.

The elements of aggravated kidnaping are set out in Utah Code Ann. § 76-5-302 (Supp. 1988). This section provides in pertinent part:

> **76-5-302. Aggravated kidnaping.--**
>
> (1) A person commits aggravated kidnaping *if the person intentionally or knowingly*, without authority of law and against the will of the victim, by any means and in any manner, seizes, confines, detains, or transports the victim with intent:
>
> (b) To facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony; or

> (c) To inflict bodily injury on or to terrorize the victim or another. . . .
>
> (3) Aggravated kidnaping is a felony of the first degree punishable by a term which is a minimum mandatory term of imprisonment of 5, 10, or 15 years and which may be for life.

The evidence in this case is sufficient to establish beyond a reasonable doubt the elements of each crime.

Ms. Reed was positive in her affirmation that the man who raked leaves in her yard was the man who forced her into her house, choked her, and took her money (T. 5, 6, 7, 8, 42). Four witnesses testified that they saw the defendant raking leaves in Ms. Reed's yard (T. 22, 29, 39, 49). One of these witnesses did not recognize the defendant in court. However, she did testify that the man who was raking leaves in the victim's yard was the man who was arrested (T. 49, 50). Although at the time of arrest defendant denied being at Ms. Reed's home, he testified at trial that he raked leaves in the victim's yard. (T. 86, 103).

After raking the leaves, defendant went onto Ms. Reed's porch where she payed him ten dollars. As they were talking, defendant grabbed her, choked her, injured her leg, and forced her into the house. He forced her onto her bed and told her "to lay there and die" (T. 5, 6, 9). Defendant then took $120 dollars out of her purse. (T. 5, 7). Defendant initially denied ever going onto Ms. Reed's porch (T. 92), however two witnesses corroborated Ms. Reed's testimony (T. 29, 40). One witness testified that she saw defendant jump off Ms. Reed's porch and jog away from her house (T. 30). Defendant was seen by another witness running away from the house looking back two or three times (T. 42, 43).

Defendant was positively identified at the scene after the arrest by two witnesses as the man who was at Ms. Reed's home. (T. 25, 44, 64, 68). When confronted by a witness at the scene, defendant denied ever being in Ms. Reed's yard (T. 25).

Defendant makes the specious claim that Ms. Reed, because of her age, was mistaken about money being stolen (A.B. 9-10). This is implausible in light of the testimony given at trial. Ms. Reed was positive at all times as to the amount of money stolen. Mr. Winfield, who cared for Ms. Reed, testified that Ms. Reed was very fussy about her money and never let anyone fiddle with it (T. 18, 19).

Defendant next argues that Ms. Reed was mistaken in her identification of the defendant as the perpetrator of the crime, instead postulating that it may have been a person named Benny, who had been seen in the area. It seems unlikely that Ms. Reed could have been thus mistaken. Defendant is a black male who is 6'6" tall and weighs over 200 pounds (T. 64). Benny, whom defendant avers may have been the perpetrator of the crime, was described by a witness as a short Mexican (T. 36).

This Court has recently held that an argument that the victim's testimony "is so unreliable that reasonable minds must entertain a reasonable doubt as to [defendant's] guilt . . . does not recognize that it is the function of the jury to make determinations about the credibility of witnesses; for us to do so would be an improper substitution of our judgment for that of the jury." State v. Russell, No. 880390-CA, slip op. at 3 (Utah App. June 8, 1989) (unpublished opinion), citing Booker, 709 P.2d

at 345. The evidence supports the jury's conclusion that defendant was guilty of robbery and aggravated kidnaping. The evidence was not so insubstantial or lacking that a reasonable person would not have reached a guilty verdict beyond a reasonable doubt. Gabaldon, 735 P.2d at 412.

CONCLUSION

The defendant, Willie Vaughn, Jr., was properly convicted of robbery, a second degree felony, and aggravated kidnaping, a first degree felony. For the foregoing reasons, and any additional reasons advanced at oral argument, the State of Utah respectfully requests that this Court affirm defendant's conviction.

RESPECTFULLY submitted this 7th day of June, 1989.

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CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Respondent were mailed, postage prepaid, to Robert L. Froerer, attorney for defendant, 2568 Washington Blvd., Suite 203, Ogden, Utah 84401, this 7th day of June, 1989.