

1989

State of Utah v. Frank leroy Archuleta : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
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SUPREME COURT OF UTAH

STATE OF UTAH, :
Plaintiff/Respondent, : BRIEF OF APPELLANT
v. :
FRANK LEROY ARCHULETA, : Criminal No.
Defendant/Appellant. :

BRIEF OF APPELLANT

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STATEMENT OF JURISDICTION

Jurisdiction is granted in this Court pursuant to Utah Code Annotated 78-2-2(3)(i).

ISSUES PRESENTED ON APPEAL

That the evidence was insufficient to sustain the conviction of the Defendant in this matter.

SUPREME COURT OF UTAH

STATE OF UTAH, :
Plaintiff/Respondent, : BRIEF OF APPELLANT
v. :
FRANK LEROY ARCHULETA, : Criminal No.
Defendant/Appellant. :

STATEMENT OF THE CASE

This is an appeal taken from the finding of guilt of the Defendant/Appellant in the Second Judicial District court, in and for Weber County, State of Utah. The above-named Defendant/Appellant, Frank Archuleta, was convicted at trial on December 4, 1983, for the crime of second degree murder, a first degree felony.

1. The Defendant/Appellant was charged with committing criminal homicide, murder in the second degree, on or about July 31, 1988, in Weber County, State of Utah. (Record, page 1)

2. That the victim, Preston Sherman, died of being beaten severely and had various external and internal injuries. (Transcript, page 47, lines 2 through 7)

3. That the death of Preston Sherman was consistent with battered child syndrome. (Transcript, page 62, line 19, 20)

4. That on July 31, 1988, the Defendant/Appellant found the child in the bathroom lying on the floor obviously injured and the Defendant was the only person at home. (Transcript, page 645, line 24 through page 647, line 19)

5. That the Court in issuing this decision found that the victim's mother, Nancy Delgado, was not the disciplinarian and the injuries began to occur after the Defendant moved into the household with Nancy Delgado and the victim. (Transcript, page 688, lines 21 through 25, and page 689, lines 1 through 3)

6. That the Defendant/Appellant testified that he would come home and find the child with a new bruise and she would have an explanation inconsistent with beating. (Transcript, page 633, lines 15 through 22)

7. That another witness, Edward A. Archuleta, testified that he knew the victim's mother and the victim prior to her relationship with the Defendant/Appellant and that he noticed bruises on the backside of child's legs and his back in about March of 1987. (Transcript, page 576, lines 18 through 25, and page 577, lines 1 through 3)

8. He also testified that he saw Nancy Delgado discipline the child. (Transcript, page 577, lines 6 through 16, page 577, lines 20 through 25, and page 578, lines 1 through 3)

9. Donald Pearson testified that he saw bruises on the victim and was with the Defendant/Appellant when the Defendant/Appellant asked Mrs. Delgado how the child got the bruises. (Transcript, page 591, lines 3 through 25 and page 592, lines 1 through 21)

SUMMARY OF ARGUMENT

The summary of the Court that the victim's mother was not the disciplinarian of the child and that no one who testified has seen Nancy Delgado discipline Preston in such a way that would cause injuries of any nature is unsupported by the evidence. Therefore, there is substantial evidence that Nancy Delgado disciplined the child and caused injury in the past and the facts are insufficient to show that the Defendant/Appellant is guilty of the crime of murder in the second degree.

ARGUMENT

THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT A FINDING OF GUILTY OF CRIMINAL HOMICIDE, SECOND DEGREE MURDER, OR FIRST DEGREE FELONY.

It is a fundamental of American Jurisprudence that the state is required to prove a Defendant in a criminal case guilty beyond a reasonable doubt.

The Court has expressed a standard of review in cases such as this to determine the sufficiency of the evidence. In State v. Booker, 709 P.2d 342 (Ut. 1985) the Court stated:

"We reviewed the evidence and all inferences which may be reasonably drawn from it in the light most favorable to the verdict of the jury. We reverse the jury conviction for insufficient evidence only when the evidence so viewed is sufficient inclusively or inherently improbable that reasonable minds must have entertained a reasonable doubt that the Defendant committed the crime of which he was convicted."

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In State v. Ireland, 108 Ut.Adv.Rpt. 3 S.Ct. (May 1989) the court again stated as follows:

"This court will overturn a jury verdict only when the evidence is so lacking and insubstantial that a reasonable person could not have reached that verdict beyond a reasonable doubt."

The Court applies the same standard of review when the fact finder is the judge rather than the jury as in this case. See State v. Johansson, 680 P.2d 25 (Ut. 1984).

The fact finder in this case found that the injuries could not have been caused by Nancy Delgado as previously stated in the statement of facts. This finding is unsupported by the evidence in that it is uncontroverted that Nancy Delgado is the person who took Preston Sherman into the bathroom. (Transcript, page 645, line 12 through 21) Also there is evidence that Preston Sherman incurred serious bruises on the back side of his legs and his back prior to the time Nancy Delgado met Frank Archuleta. Edward Archuleta testified that in approximately March 1987 he noticed bruises on the back side of Preston's legs and on his back. (Transcript, page 576, line 25 and page 577, lines 1 through 3) He also testified "she would jerk him by the arm and come back and swat him on the butt hard, you know, not just a tap, a full-fledged swat." He went on further to say "He would cry. He would also hold his breath until he was ready to faint, like his face would turn blue." (Transcript, page 577, lines 10 through 16)

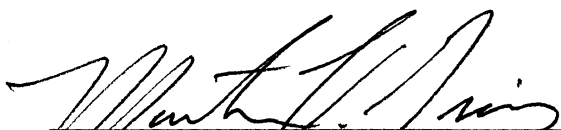
The testimony of Edward Archuleta accompanied by the testimony of Frank Leroy Archuleta and Donald Pearson strongly suggest that Nancy Delgado had disciplined Preston Sherman, the victim, and had caused severe bruising to his lower legs and back and other bruises which were unexplained even when asked by the Defendant/Appellant or Donald Pearson, the mother, Nancy Delgado, did not explain how the child received the bruises.

Nancy Delgado and the Defendant/Appellant did not start seeing each other until November of 1987 and the testimony is that Edward Archuleta observed bruises on Preston Sherman in March of 1987, at least six months prior to the time the Defendant/Appellant was involved with Nancy Delgado.

CONCLUSION

The evidence is insufficient to support the conviction of the Defendant/Appellant in that the mother of the victim, Nancy Delgado, also caused serious bruising to the child and had caused serious bruising to the child prior to the time she began her relationship with the Defendant/Appellant and that she was also alone with the child in the bathroom prior to leaving the residence and the Defendant/Appellant found the child obviously injured in the bathroom.


DATED this 7 day of June, 1989.


MARTIN V. GRAVIS
Attorney for Appellant

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CERTIFICATE OF MAILING

I hereby certify that I have mailed a true and correct copy of the above Brief of Appellant to Paul Van Dam, Attorney General, 236 State Capitol, Salt Lake City, UT 84114, via First-class U.S. Mail postage prepaid this 7 day of June, 1989.


MARTIN V. GRAVIS
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