

1999

West Valley City v. Wade Hutto : Reply Brief

Utah Court of Appeals

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V

IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,	:	REPLY BRIEF OF APPELLANT
Plaintiff/Appellee,	:	Case No. 990211-CA
vs.	:	Priority No. 2
WADE HUTTO,	:	
Defendant/Appellant.	:	

REPLY BRIEF OF APPELLANT

Appeal from the Third District Court, Salt Lake County, West Valley Department, Judge Anthony B. Quinn, for a judgment and conviction of Mr. Wade Hutto for assault, a class B misdemeanor violation of section 76-5-102 UCA (1953 as amended) and criminal mischief, a class B misdemeanor violation of section 76-6-106 UCA (1953 as amended).

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INTRODUCTION

The Appellant maintains all positions asserted in the opening brief, and pursuant to Rule 24(c), Rules of Appellate Procedure, answers only what new matters West Valley City has raised in its brief, as follows:

ARGUMENT

THE MARSHALING REQUIREMENT IS MET HERE REGARDLESS OF ADEQUACY OF FINDINGS OF FACT ACTUALLY MADE BY THE COURT

The Appellant has not intentionally withheld from the court of appeals any factual findings supportive of the trial court's decisions. The Appellant has provided the court of appeals with the full "Trial Court Transcript" (hereinafter, "T."). All potential findings of fact supportive of the trial court's decisions may be found there. However, the trial court in the present case set out actual findings of fact that were already connected with its decisions--these decisions with accompanying factual findings have been quoted in full below. Further, the Appellant has already provided additional facts in his original brief that were presented at trial but not specifically named by the trial court as facts supportive of its decisions (enumerated

hereafter). The Appellee has also provided additional facts presented into evidence, and some facts presented for limited purposes, at trial which the trial court may have thought supported its decisions but did not name in conjunction with its decision.

The marshaling requirement, as specifically applied to criminal bench trials, compels the appellant in a case to connect the trial court's factual findings with the trial court's decisions, first, and then to gather evidence from the trial record to argue against the trial court's decisions. State v. Benvenuto, 372 Utah Adv. Rep. 3, 4 (Utah 1999); State v. Decorso, 370 Utah Adv. Rep. 11, 15 (Utah 1999) (stating marshaling requirement not fulfilled when defendant "merely argued selected portions of the evidence which he believes support[] his own position"); State v. Gray, 851 P.2d 1217, 1225 (Utah Ct. App. 1993) (concluding not only did defendant fail to marshal evidence in support of her motion to dismiss, she did not marshal evidence in opposition; instead she simply reargued her motion without referring to record); State v. Gentlewind, 844 P.2d 372, 376 n.3 (Utah Ct. App. 1992) (noting defendant failed to marshal evidence supporting trial court's findings that he did not meet statutory qualifications for probation); State v. Peterson, 841, P.2d 21, 25 (Utah Ct. App. 1992) (noting defendant failed to marshal evidence supporting court's findings as to transfer and distribution in general of cocaine, however, defendant adequately marshaled regarding finding that she arranged for distribution of

cocaine); State v. Burk, 839 P.2d 880, 886 (Utah Ct. App. 1992) (assuming findings supported by evidence when defendant did not marshal evidence supporting trial court's findings about improper contact between jurors and witnesses).

Appellate courts in Utah have underlined the importance of the trial courts' burden of providing adequate findings of fact to support their decisions against subsequent appeals. State v. Ramirez, 817 P.2d 774, 787-89 (Utah 1991); State v. Vigil, 815 P.2d 1296, 1300 (Utah Ct. App. 1991). Trial court findings are deemed to merit deference when the trial court's factual findings adequately set out the steps the court exercised in reaching its ultimate conclusion. State v. Genovesi, 871 P.2d 547, 549-52 (Utah Ct. App. 1994) (holding trial court made inadequate factual findings by failing to address some things and making irrelevant factual findings as to others); State v. Hodson, 866 P.2d 556, 564 (Utah Ct. App. 1993) (concluding trial court failed to set forth factual findings in sufficient detail for court of appeals to review validity of warrantless body search and seizure of defendant), rev'd on other grounds, 907 P.2d 1155 (Utah 1995); State v. Vigil, 815 P.2d 1296, 1301 (Utah Ct. App. 1991) (remanding because trial court failed to set forth factual findings about consent question); State v. Lovegren, 798 P.2d 767, 770 (Utah Ct. App. 1990) (stating trial court's findings were inadequate to support conclusion that officer had reasonable suspicion).

The Utah Court of Appeals has clarified the relationship between adequate factual findings by the trial court and the requirement of the appellant to marshal the evidence in support of the trial court's findings:

Specific, detailed findings not only ease the burden of appellate review by communicating the steps by which the ultimate legal conclusions are reached, they also enable appellate counsel to properly frame issues on appeal and to comply with our rigid requirement of marshaling evidence in support of subsidiary facts when challenging a trial court's findings.

Vigil, 815 P.2d 1296, 1300-01 (Ut. Ct. App. 1991).

The Appellant will quote fully from the Trial Court Transcript in order to demonstrate the general, conclusory factual findings of the trial court's decisions as to: 1) the admission of the alleged victim Therese Tyson's statements into evidence as excited utterances and 2) the verdict as to both counts in the present case.

The following is the decision and findings of facts of the trial court as to the admission of statements by the alleged victim, Therese Tyson, as excited utterances:

THE COURT: I appreciate the arguments of counsel. I'm going to rule on this case that the foundation for an excited utterance are met. I think what we have here is a particularly startling event, given the injuries to the victim in this case. I think that's an event that a reasonable person would expect to result in stress that would continue for some time.

I find that the statement was made while the declarant was still under the stress or excitement of the event, and that the statements we are going to receive are going to be limited to those statements that relate to that startling event.

(T. 20, 21).

The following is the verdict with findings of fact of the trial court as to the charges against the Defendant, Wade Hutto, in the present case:

THE COURT: Mr. Miller, you are right in that we are disadvantaged by not having the victim here today. I would very much like the opportunity to weigh her credibility.

I do have the opportunity, however, to weigh Mr. Hutto's credibility, and I don't find his story to be credible. Based upon the evidence that's presented to me, I'm going to find Mr. Hutto guilty on both of these charges.

When it comes to determining credibility, when we instruct juries we talk--we give them a fairly broad instruction that says that they are to use their common sense, they are to observe the demeanor of the witness, they are to compare the witness' testimony to other evidence that's admitted, they are to consider the witness' interest in testifying. And I try to apply all those same measures myself. But when it comes right down to it, it's very much a gut feel and a common sense determination of who is telling the truth. And I find the idea that Ms. Tyson inflicted these injuries upon herself, I find that to be incredible. You know, the fact that the injuries happened is the strongest evidence, I think, of what actually took place. Unless I find that she self-inflicted them, I've got to find that they were inflicted by the defendant. And that's what I find in this case.

I think that the destruction of the dresser or the desk, whatever it was, and the assault on the victim, were part and parcel of the same startling event. And I don't really find any less credibility with respect to what the victim said about how the property was damaged than how she was injured. I think they were all part of the same episode. I believe what she told the officer about what took place and, therefore, I'm going to find the defendant guilty on both charges.

(T. 46, 47).

When the trial court set out its decisions as to the admission of statements as excited utterances and as to verdicts in the case, the proper place to look for factual findings to support these decisions would be the facts expressly given by the

court as supporting these decisions. If the trial court had failed to make findings on the record there would be an additional requirement of the Appellant to bring out such findings that it would be reasonable for the trial court to make. The Utah Supreme Court has upheld "the trial court even if it failed to make findings on the record whenever it would be reasonable to assume that the court actually made such findings." State v. Ramirez, 817 P.2d 774 (Utah 1991). No assumption of factual findings beyond which the trial court made in connection with the rendering of its decisions need be made here, because the trial court made factual findings, even if they were general and conclusory.

However, the Appellant, in his original brief, did present several facts in the record which could have been specified by the trial court as supportive of the trial court's decisions as to admission of victim statements as excited utterances or as to the verdict in the case: 1) Officer Jensen testified to her observations concerning red marks and a small quarter-inch cut on Ms. Tyson both during the factual predicate (T. 11, 12) to admitting the alleged excited utterance and after such statement was admitted (T. 22); 2) Officer Jensen "observed wood chips, like from a desk or a table, and pieces of that scattered around the kitchen area of the residence. And I observed what appeared to have been a desk or a table, in pieces piled up" (T. 26); 3) Officer Jensen also observed a hammer in the general area (T. 26); 4) Ms. Tyson ran approximately six blocks (T. 22, 23, 43) in

the middle of the night (T. 22); 5) Ms. Tyson spoke with Officer Jensen about the alleged incident that was to have occurred approximately six hours earlier; 6) Officer Jensen testified that concerning Ms. Tyson: "When I first observed her, she didn't quite . . . she didn't get quite as emotional until she started talking about it" (T. 7); and 7) While interviewing Ms. Tyson, Officer Jensen directed Ms. Tyson to fill out a witness statement and had to continually ask her to keep writing the statement "because she would stop" (T. 20).

The Appellee presents the following facts from the record that the trial court might have employed to support its decisions to admit victim statements as excited utterances or to render its verdict: 1) Officer Jensen observed several injuries to Tyson. She testified that Tyson had a small cut on her forehead that had been bleeding, she had red marks on her neck, a one or two inch diameter red mark on her stomach, and a four or five inch in diameter red mark on her back (T. 11-12); 2) Officer Jensen testified that her impression of Tyson's emotional state was "extremely upset", "very agitated", "quite nervous, her body language", fluctuating emotional state, and shaking and crying even during "calm" periods (T. 7-8), 3) Officer Jensen testified that she had been told by Tyson that Tyson's live in boy friend, Wade Hutto, had assaulted her between three o'clock in the morning and 3:30 (T. 10); and 4) Officer Jensen testified that Tyson told her that during the argument Hutto punched her in the side of the head, knocking her head into another object which

caused the cut on her forehead, that Hutto also hit her in the back with something, but Tyson didn't know what the object was, and also that Hutto had been standing on her neck (T. 22).

CONCLUSION

This Court should decide that a proper marshaling of the evidence has been accomplished that serves to make this Court's task easier in examining factual findings additional to the general, conclusory findings actually made by the trial court.

This Court should reverse Mr. Hutto's conviction and remand this case for a new trial, instructing the trial court to exclude Ms. Tyson's statements to the investigating officer as excited utterances made approximately six hours (T. 15, 17, 45) after the alleged incident.

RESPECTFULLY SUBMITTED this 1ST day of December, 1999.


STEVEN D. MILLER
Attorney for Appellant

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that this the 1ST day of December, 1999, I shall cause to be served seven copies with one original of the foregoing to the Utah Court of Appeals and two copies of the foregoing to the West Valley City Prosecutor, Richard Catten, Attorney for Appellee, 3600 Constitution Blvd., West Valley City, Utah 84119.

