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The State of Utah v. Carvin Johnson : Brief of Appellant

Utah Supreme Court

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GLENN K. IWASAKI; Attorney for Appellant ROBERT HANSEN; Attorney for Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :

Plaintiff-Respondent, :

v. : Case No. 16927

CARVIN JOHNSON, :

Defendant-Appellant. :

BRIEF OF APPELLANT

Appeal from a conviction of three counts of Aggravated Sexual Assault in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Jay E. Banks, Judge presiding.

GLENN K. IWASAKI
Salt Lake Legal Defender Assoc.
333 South Second East
Salt Lake City, Utah 84111
Attorney for Appellant

ROBERT HANSEN
Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Attorney for Respondent

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ROBERT HANSEN
Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
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Plaintiff-Respondent, :
v. : Case No. 16927
CARVIN JOHNSON, :
Defendant-Appellant. :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant was convicted as charged of three counts of Aggravated Sexual Assault in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Jay E. Banks, Judge presiding.

DISPOSITION IN THE LOWER COURT

After Appellant's conviction he was sentenced to a term of an undeterminate term of five years to life in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the judgment rendered by the Court and an entry of judgment of acquittal, or in the alternative, a new trial.

STATEMENT OF THE FACTS

The State produced the following evidence to support three counts of Aggravated Sexual Assault against Appellant. Laura ReNae Sheffield testified that on the evening prior to May 9, 1979, she was at her boyfriend's apartment in the vicinity of 5300 South and about Seventh West (T. 4, 5). Ms. Sheffield was fourteen years old on May 9, 1979 (T.4). She testified that at approximately 7:20 a.m. on May 9, she left her boyfriend's apartment and began hitchhiking. She was picked up by a man she identified as the Appellant (TR. 5). He offered to take her to her destination and she went along with him (TR. 6,7). Ms. Sheffield testified that Appellant had passed her exit and asked her to go to his ranch (TR. 7). She went along with him to an area southwest of the city. She did not know the exact location (TR. 8). It was later determined to be in the area of 5600 West and approximately Ninth South (TR. 33). Appellant propositioned Ms Sheffield. Ms. Sheffield, according to her police report statement, replied "If it's cock or walk, I'll walk." Ms. Sheffield denied making such a statement to the Appellant though she admitted making that statement to the police officer, Jo Barton. Ms. Sheffield testified that Appellant then told her he would take her home. According to Ms. Sheffield's testimony, Appellant then held a gun to her and asked her to get in the back seat.

Appellant and Ms. Sheffield got into the back seat where they had intercourse (TR. 13). During this time, Ms. Sheffield suggested they purchase some beer and pot and go to a motel room to party, and "take care of it" (meaning to continue the sexual intercourse) (TR. 14). That plan was agreed upon and the two then proceeded to a house in Salt Lake City (TR. 14). Both Appellant and Ms. Sheffield entered the home; a few minutes later, Ms. Sheffield left and went across the street. Ms. Sheffield told a man, later identified as Pickard Haynes, that a black man was "trying to kill" her, and he then called the police (TR. 15, 35, 37).

Testimony was also adduced as to the alleged rape of Brenda Troyer. Ms. Troyer was seventeen years old on the date of the incident (TR. 38). At approximately 10:00 a.m., the day of May 9, Ms. Troyer and her twelve-year-old sister-in-law, Tina, were hitchhiking on Fourth South and about Second West (TR. 39). The two girls were picked up by a man Ms. Troyer identified as the Appellant. He took Tina and Brenda Troyer to the home of Mildred Troyer (approximately Seventh North and Redwood Road) (TR. 40,41). Mildred Troyer is Brenda Troyer's mother-in-law. Appellant had earlier asked Ms. Troyer if she would like some beef (TR. 41). She responded yes, and it was agreed that her mother-in-law, Millie Troyer, would get some meat as well (TR. 41). After stopping in at Millie Troyer's, Appellant and Brenda Troyer went and picked up the meat (TR. 43). The meat was taken to Ms. Troyer's apartment

on Fifth South and Fifth East for the purpose of cutting the meat up so it could be divided (TR. 44). While Appellant and Ms. Troyer were at her apartment, Ms. Troyer's boyfriend and his brother came over. They all had a drink, and over Mr. Troyer's protests, her boyfriend and his brother left (TR. 45). Ms. Troyer testified that she was frightened of Appellant and told her boyfriend that she was scared, yet she made no attempt to try to leave with him or extricate herself from the situation of being left alone with Appellant (TR. 62, 63). Ms. Troyer testified that Appellant then took her into the bedroom because he wanted to talk to her. She was frightened, but made no effort to leave the apartment even though she had testified that she had the opportunity to leave (TR. 47, 65). She had returned to her kitchen to put out her cigarette and could have left then. Also, Ms. Troyer testified that she never asked Appellant to leave her apartment after she became frightened (T.69). Ms. Troyer testified that Appellant took her into the bedroom again where he hit her with his fist (TR. 48). He quit hitting her after she promised to quit screaming (TR. 49). According to Ms. Troyer, Appellant then held an empty coffee can above his head in a cocked fashion as though he were going to hit her (TR. 49). Ms. Troyer then agreed to have sexual intercourse with Appellant. Later, Ms. Troyer testified, Appellant apologized to her, took her into the bedroom where they engaged in intercourse again (TR. 52). It was finally at this point that Ms. Troyer asked Appellant to leave (TR. 53).

She caught a bus back to Mildred Troyer's home, where Mildred Troyer was just getting ready to leave with Appellant (TR. 54). Brenda Troyer was screaming hysterically and Millie Troyer slapped her to get her under control (TR. 80, 81). Brenda told Mildred Troyer that she had been raped and Mildred called the police (TR. 55).

ARGUMENT

POINT I

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT.

Appellant contends that the evidence was insufficient to support the verdict in Count I, Aggravated Sexual Assault upon Laura ReNae Sheffield. Appellant also contends that the evidence was insufficient to support the verdict in Counts II and III, Aggravated Sexual Assault upon Brenda Troyer.

The authority of the reviewing court to review a case on sufficiency of the evidence is clear. The standard for review of the sufficiency of the evidence for a conviction is that:

It must appear that upon so viewing the evidence, reasonable minds must necessarily entertain a reasonable doubt that the defendant committed a crime. State v. Wilson, 565 P.2d 66 (1977) at 68.

In State v. Mills, 530 P.2d 1272 (1975), this court also discussed a challenge to the sufficiency of the evidence:

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. 530 P.2d at 1272.

As to Count I, Ms. ReNae Sheffield was the sole witness that the State produced to prove the elements of an aggravated sexual assault. Ms. Sheffield's testimony was unbelievable and so inconclusive and unsatisfactory that "reasonable minds acting fairly upon it . . . entertained reasonable doubt" that Appellant committed this crime. State v. Danks, 350 P.2d 146 (Utah, 1960).

Appellant contends that as to Counts II and III, the prosecutor failed to meet the State's burden of proof in that the evidence as to the aggravated nature of the rape was so inconclusive that reasonable minds could not differ in concluding that Appellant did not compel submission by threat of "kidnapping, death or serious bodily injury." Evidence was adduced that Ms. Brenda Troyer was struck by Appellant; however, this is not "serious bodily harm." There was no evidence as to use of a dangerous weapon, which use of weapon would escalate the assault to an "aggravated" status. The evidence supports, if anything, nothing more than a rape charge.

CONCLUSION

The State has failed to meet its burden of proof because of insufficient evidence. Therefore, Appellant contends that this Court dismiss the case, or in the alternative, reverse the conviction and remand for a new trial in the matter.

Respectfully submitted,

GLENN K. IWASAKI
Attorney for Appellant