

1980

# The State of Utah v. Carvin Johnson : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

CARVIN JOHNSON,

Defendant-Appellant.

Case No. 16927

BRIEF OF RESPONDENT

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.

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

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:  
STATE OF UTAH, :  
Plaintiff-Respondent, :  
-vs- : Case No. 16927  
CARVIN JOHNSON, :  
Defendant-Appellant. :

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:  
BRIEF OF RESPONDENT  
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STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with three counts of aggravated sexual assault in violation of Utah Code Ann. § 76-5-405 (Supp. 1973).

DISPOSITION IN THE LOWER COURT

Appellant was tried before a jury and found guilty on all three counts on January 23, 1980, in the Third Judicial District Court, the Honorable Jay E. Banks presiding. On February 14, 1980, the trial judge sentenced the appellant to an indeterminate term of not less than five years to life for each count.

RELIEF SOUGHT ON APPEAL

Respondent seeks an order of this Court affirming

the judgment of the jury.

#### STATEMENT OF THE FACTS

Early in the morning of May 9, 1979, fourteen year old Laura ReNae Sheffield was hitchhiking when appellant picked her up. (T. 6). Miss Sheffield told appellant where she lived and he offered to take her home (T. 6). Noting that appellant had passed the appropriate freeway exit, Miss Sheffield questioned him and appellant explained he was taking a different route (T. 7). When it became apparent to Miss Sheffield that appellant was not taking her home, she repeatedly asked him to turn back (T. 8). Appellant then promised to take Miss Sheffield home after showing her his nearby ranch (T. 8). Appellant turned down a dirt road and stopped the car at an isolated clearing (T. 9). Appellant's response to Miss Sheffield's repeated requests to leave was, "Don't I get a little before we go?" (T. 10). Miss Sheffield indicated she would rather walk and attempted to get out of the car but was pulled back by appellant who ordered her to shut the door (T. 10). Appellant then took a pistol from under his seat, pointed it at Miss Sheffield's head, cocked it, and commanded Miss Sheffield to get into the back seat (T. 11). At gunpoint appellant ordered Miss Sheffield to take off her

pants (T. 12). Appellant climbed into the back seat of the car and had intercourse with Miss Sheffield (T. 13). Prompted by fear for her life, Miss Sheffield complied with appellant's demands (T. 20).

During the act of intercourse appellant complained that he was not satisfied with Miss Sheffield's performance (T. 14, 24). With the intention of assuaging appellant's distress and escaping, Miss Sheffield suggested they procure some beer and marijuana and continue their sexual activity in a motel room (T. 14, 18, 25, 26). Appellant agreed, allowed Miss Sheffield to dress, and took her to a house in Salt Lake City (T. 14). Miss Sheffield entered the house with appellant but made her escape as appellant walked into another room (T. 15). Screaming for help, Miss Sheffield ran across the street where a workman calmed her and phoned the police (T. 15, 35, 36).

Later that same morning, seventeen year old Brenda Troyer began hitchhiking with her twelve year old sister-in-law, Tina (T. 39, 58). Appellant picked the girls up and offered to take them to their destination, Mrs. Mildred Troyer's home (T. 40). During the ride appellant mentioned that he had two sides of beef he wanted to sell or give away and offered

to give some beef to Ms. Troyer (T. 41). Ms. Troyer accepted appellant's offer and also suggested that Mildred Troyer might also want some beef (T. 41). Appellant and the girls drove to the home of Mildred Troyer who recognized appellant as an acquaintance (T. 43). After a brief discussion appellant asked Ms. Troyer to accompany him to get the beef. Ms. Troyer agreed and asked her sister-in-law, Tina, to join them (T. 43). Appellant objected to this suggestion, stating he didn't want any "kids" around (T. 43). Taking comfort in the fact that Mildred Troyer was acquainted with appellant, Ms. Troyer agreed to go with appellant to pick up the beef (T. 43, 44).

After picking up the beef appellant and Ms. Troyer went to her apartment where appellant was to cut the section of meat into pieces (T. 44). During this operation Ms. Troyer's boyfriend and his brother stopped in to visit (T. 44). Their presence disturbed appellant who asked them to leave so he could complete the meat cutting process (T. 45). Ms. Troyer walked her boyfriend to the door and asked him to stay because she was afraid of appellant (T. 45). Her boyfriend responded by saying she had nothing to fear and he would return in two hours (T. 45, 62-64).

Alone with Ms. Troyer, appellant grabbed her arm

and pulled her toward the bedroom saying he had something to talk over with her (T. 46, 64). Ms. Troyer refused to go into the bedroom but appellant insisted (T. 47). Ms. Troyer stated she needed an ash tray for her cigarette (T. 47). Appellant let Ms. Troyer go into the kitchen to put out her cigarette but then immediately began dragging her toward the bedroom again. While holding Ms. Troyer by the arm, appellant locked and chained the door and dragged her into the bedroom over her protestations (T. 47, 69). Appellant threw Ms. Troyer on the bed, held her down, and began hitting her (T. 48, 66, 70). Ms. Troyer began screaming. To overcome her resistance appellant threatened to beat her with a coffee can (T. 49, 64).

Ms. Troyer agreed to stop screaming if appellant would put the can down which he did (T. 50). Ms. Troyer struggled to get away from appellant but he repeatedly hit her and began choking her (T. 50), 68). The pressure appellant applied to Ms. Troyer's throat seriously impaired her ability to breathe and she stopped struggling (T. 51). Appellant ordered Ms. Troyer to take off her pants (T. 51). Out of fear that she would be beaten and choked again, Ms. Troyer complied with appellant's demand and submitted to two acts of intercourse with appellant (T. 51-53).



ReNae Sheffield and Brenda Troyer both identified appellant as their assailant (T. 5, 40) their description of his car was corroborated by Christine Maxwell, who was living with appellant in May, 1979 (T. 7, 40, 83). Miss Sheffield's description of the gun used by appellant was also corroborated by Christine Maxwell who testified that appellant owned such a gun (T. 11, 83).

#### ARGUMENT

##### POINT I

THE EVIDENCE WAS SUFFICIENT TO  
ESTABLISH THAT APPELLANT COMMITTED  
AGGRAVATED SEXUAL ASSAULT UPON RENAE  
SHEFFIELD AND BRENDA TROYER.

This appeal comes before this Court based on the appellant's assertion that the evidence presented at trial was insufficient to support the conviction of appellant for aggravated sexual assault. Utah Code Annotated (1953), as amended, Section 76-5-405 defines aggravated sexual assault:

In the course of a rape. . . :  
    (i) the actor causes serious bodily  
        injury to the victim; or  
    (ii) The actor compels submission to  
        the rape . . . by threat of kidnapping,  
        death, or serious bodily injury to be  
        inflicted imminently on any person . . .

In State v. Gorlick, 605 P.2d 761 (Utah 1979),

this Court reiterated the standards of appellate review used in determining whether the evidence is sufficient to sustain a conviction:

The evidence is to be viewed in the light most favorable to the jury's verdict, State v. Jones, Utah, 554 P.2d 1321 (1976). The standard for determining whether there is insufficient evidence is that the evidence must "be so inconclusive or so inherently improbable that reasonable minds could not reasonably believe defendant had committed a crime." State v. Romero, Utah, 554 P.2d 216, 219 (1976), and cases cited therein. A jury verdict will be upheld unless the evidence compels the conclusion as a matter of law that fair-minded persons must have entertained reasonable doubt as to defendant's guilt, State v. Mills, Utah, 530 P.2d 1272 (1975). The function of this Court "is not to determine guilt or innocence, the weight to give conflicting evidence, the credibility of witnesses, or the weight to be given defendant's testimony," State v. Romero, supra, at 218.

Appellant, in concluding that Miss Sheffield's testimony was inconclusive, fails to establish that the evidence was so improbable that reasonable minds could not believe appellant committed the crime.

This Court in State v. Middlestadt, 579 P.2d 908 (Utah 1978) stated, "a conviction may be sustained upon the uncorroborated testimony of the victim." This rule was reaffirmed in State v. Sisneros, 581 P.2d 1339 (Utah 1978),

where the defendant was convicted of forcible sexual abuse, based on the testimony of the seven year old victim.

In State v. Studam, 572 P.2d 700 (Utah 1977), the rule was again stated:

"if there is nothing so inherently incredible about the victim's story that reasonable minds would reject it, a conviction may rest upon the testimony alone."

Id at 701.

An evaluation of the evidence establishes that it was sufficient to support appellant's conviction. There were no internal inconsistencies in Miss Sheffield's testimony. She was taken by appellant to an isolated road and forced at gun point to submit to sexual intercourse. Miss Sheffield's testimony is uncorroborated because appellant planned for the rape to occur at an isolated location, where there would be no one to assist Miss Sheffield or witness the rape (T. 6-13). However, Miss Sheffield's testimony is in harmony with the testimony of Richard Haynes, Christine Maxwell, and Brenda Troyer. Mr. Haynes testified he responded to Miss Sheffield's cries for help and assisted her in calling the police (T. 35-37), Ms. Maxwell established appellant had a gun like the one Miss Sheffield described (T. 83), and

Ms. Troyer's description of both appellant and his car (T. 40-42) was consonant with the description given by Miss Sheffield (T. 6, 7, 18). Respondent asserts that Miss Sheffield's testimony was sufficient to sustain appellant's conviction.

In State v. Anselmo, 558 P.2d 1325 (Utah 1977), the defendant was convicted of aggravated sexual assault. This Court, in response to defendant's contention that he had not forced the victim into submission by threatening he, said:

while the defendant did not actually state his intent to kill or seriously injure the victim, or to kidnap her, such an oral statement is not necessary to constitute a threat when by acts and conduct the threat . . . is made manifest . . .

Id. at 1327.

Respondent submits that appellant's conduct falls within the limits demarcated in Anselmo. Appellant ignored Ms. Troyer's protestations and compelled her into submission by hitting, choking, and threatening to beat her with a coffee can (T. 48, 49, 50). Appellant's acts, which placed Ms. Troyer in (fear of) imminent serious bodily injury, overcame her resistance. This conduct clearly demonstrated

appellant's willingness to seriously injure her.  
Appellant's acts satisfy the requirements of § 76-5-405  
for aggravated sexual assault; in that he did compel  
submission to rape by threats of serious bodily injury.

#### CONCLUSION

Appellant has failed to show that the evidence  
was so inconclusive that reasonable minds must have doubted  
appellant's guilt. The evidence establishes that appellant  
on May 9, 1979 compelled ReNae Sheffield and Brenda Troyer  
to submit to sexual intercourse by threatening them with  
serious bodily injury or death. Respondent urges that this  
Court uphold the rulings of the trial court which found the  
defendant guilty on three counts of aggravated sexual assault.

Respectfully submitted,

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