

1999

The State of Utah v. Martha Jane Howell : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 :
 MARTHA JANE HOWELL, : Case No. 991050-CA
 : Priority No. 2
 :
 Defendant/Appellant. :

REPLY BRIEF OF APPELLANT

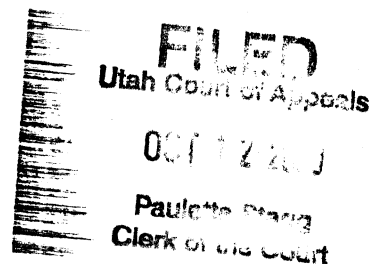
Appeal from a judgment of conviction for aggravated assault, a third degree felony, in violation of Utah Code Ann. § 76-5-103 (1999), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Lee A. Dever, Judge, presiding.

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ARGUMENT

I. APPELLANT MET HER BURDEN OF PROOF TO MARSHAL THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE JURY VERDICT.

The State erroneously asserts that Appellant Martha Jane Howell ("Howell") failed to meet her marshaling requirement on appeal, stating that she "acknowledges some, but not all, of the evidence presented." State's Brief ("S.B.") 8. The State, however, fails to note which facts Howell omits to recount to this court. See generally S.B. Point I.A.

Contrary to the State's assertion, Howell candidly and unreservedly highlights the facts that support the jury's verdict in this case. See Appellant's Brief ("A.B.") at 12-14 (citing State v. Strain, 885 P.2d 810, 819 (Utah App. 1994) (noting that Appellant bears burden to "marshal all the evidence supporting the jury's verdict and then demonstrate how this evidence, even when viewed in the most favorable light, is insufficient to support the verdict"). Indeed, to this end, Howell recounts even the most damaging facts of the case, including testimony that she wielded a knife when the victim had his back to her and was

leaving her apartment, R.110[137-38,148]; and that she did so unprovoked and while no physical or verbal fighting was occurring, R.110[134-36,145,148]. See id. Accordingly, the State's argument is without merit.

II. THE STATE'S SUFFICIENCY ARGUMENT MISCONSTRUES ITS BURDEN OF PROOF TO DISPROVE HOWELL'S SELF-DEFENSE CLAIM BEYOND A REASONABLE DOUBT.

The State, in defending the sufficiency of the evidence on appeal, see S.B. Point I.B., does not discuss the burden of proof it must bear in such cases - to establish beyond a reasonable doubt that Howell did not act in self-defense when she stabbed the victim. See State v. Knoll, 712 P.2d 211, 214 (Utah 1985); State v. Torres, 619 P.2d 694, 695 (Utah 1980). Rather, the State repeatedly asserts that the evidence was sufficient simply because the jury chose to believe the victim rather than Howell. See generally S.B. Point I.B. In so doing, the State characterizes the ultimate issue at trial as "whether defendant stabbed Roberts as he was trying to leave." S.B. 11.

In so narrowly characterizing it's burden of proof on appeal, and the issue before the trial court below, the State's argument fails to address the issue on appeal, which is whether the State proved beyond a reasonable doubt that Howell did not act in self-defense. See Knoll, 712 P.2d at 214; Torres, 619 P.2d at 695. Indeed, the State's argument effectively shifts the burden of proof onto Howell since it implies that she failed to

convince the jury of her self-defense claim. As noted by this Court in State v. Strieby, 790 P.2d 98 (Utah App. 1990), "[i]t is not the defendant's burden to 'establish a defense of self-defense beyond a reasonable doubt, or even by a preponderance of the evidence.'" Id. at 101 (quoting Knoll, 712 P.2d at 214). In turn, it was not the jury's function in this case to believe or disbelieve Howell, but to decide whether the State proved beyond a reasonable doubt that she did not act in self-defense. See Knoll, 712 P.2d at 214; Torres, 619 P.2d at 695; Strieby, 790 P.2d at 101. For the reasons set forth in Howell's opening brief, the jury's verdict, seen in its proper light, fails for insufficient evidence. See A.B. 14-20. Consequently, the State's argument in support of the sufficiency of the evidence is without merit.

CONCLUSION

In light of the foregoing and the arguments set forth in her opening brief, Howell respectfully requests this Court to reverse her aggravated assault conviction for insufficient evidence.

SUBMITTED this 12th day of October, 2000.


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Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, CATHERINE E. LILLY, hereby certify that I have caused to be hand-delivered eight copies of the foregoing to the Utah Court of Appeals, 450 South State Street, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, Third Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 12th day of October, 2000.


CATHERINE E. LILLY