

1982

State of Utah v. Don A. Elton : Additional Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :
 :
 Plaintiff-Respondent, :
 :
 vs. : Case No. 18151
 :
 DON A. ELTON, :
 :
 Defendant-Appellant. :

ADDITIONAL BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN THE FOURTH JUDICIAL DISTRICT
COURT IN AND FOR UTAH COUNTY

HONORABLE GEORGE E. BALLIF, JUDGE

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 DON A. ELTON, :
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 Defendant-Appellant. :

ADDITIONAL BRIEF OF APPELLANT

The Court has requested additional briefing in this matter on the question of whether Sections 76-2-101 and 76-2-102, Utah Criminal Code, have any application in cases brought under Section 76-5-401, Utah Criminal Code.

ARGUMENT

POINT I.

UNLAWFUL SEXUAL INTERCOURSE IS NOT A STRICT LIABILITY CRIME.

Section 76-2-102, Utah Criminal Code, specifically sets forth the definition of a strict liability crime.

Every offense not involving strict liability shall require a culpable mental state, and when the definition of the offense does not specify a culpable mental state, intent, knowledge, or recklessness shall suffice to establish criminal responsibility. An offense shall involve strict liability only when a statute defining the offense clearly indicates a legislative purpose to impose strict liability for the conduct by use of the phrase "strict liability" or other terms of similar import.

The legislature carefully defined a narrow situation when a crime could involve strict liability. If the statute does not meet the narrow classification, it is not a strict liability crime. The statute establishing a strict liability crime must clearly indicate a legislative purpose to make the crime strict liability. This clear purpose is indicated by use of the phrase "strict liability" or other terms of similar import.

A careful examination of Section 76-5-401(1), Utah Criminal Code, reveals that the words "strict liability" are not used. There are no terms in Section 76-5-401(1) of similar import to the term "strict liability." The only thing we can learn from an examination of Section 76-5-401(1) is that terms relating to a culpable state of mind, such as "knowingly, intentionally, or recklessly," are absent.

In the case of People v. Bridges, 620 P.2d 1 (Colo. 1980), the Colorado Supreme Court considered the consequences of an absence of words relating to a culpable mental state:

Legislative silence on the element of intent in a criminal statute generally is not construed as an indication that no culpable mental state is required. The United States Supreme Court, interpreting federal legislation, has held that, by definition, a crime ordinarily requires the conjunction of an act and a culpable mental state.
620 P.2d at 3.

A crime does not become a strict liability crime from the absence of words related to a culpable state of mind. To be a strict liability crime, the statute must contain the words "strict liability" or words of similar import.

Since the terms "strict liability" or terms of similar import are not contained in Section 76-5-401(1), Utah Criminal Code, the crime defined by that section is not a strict liability crime. The status of "strict liability" is restricted to those statutes which clearly indicate that the legislature affirmatively intended the statute to be strict liability. In the absence of such a clear indication, the Court can only assume that the legislature did not intend to have Section 76-5-401(1) define a "strict liability" crime.

This concept has been analyzed in other states as well as Utah. In the case of Spitz v. Municipal Court of City of Phoenix, 621 P.2d 911 (Ariz. 1980), the Arizona Court stated:

The requirement of wrongful intent or mens rea in criminal cases, however, is the rule rather than the exception, (citation omitted), and we will resolve any doubt in favor of a requirement of criminal intent unless there is manifested a clear legislative intent that the crime does not require such guilty knowledge. 621 P.2d at 913.

Only in rare circumstances may a statute define a crime involving strict liability. If those requirements are not met, the statute is like any other statute requiring a culpable mental

state. Unless the statute contains express indication that it is to be a strict liability crime, any doubt must be resolved in favor of requiring proof of a culpable mental state.

POINT II.

MISTAKE OF FACT MAY BE USED AS A DEFENSE IF THE MISTAKE DISPROVES THE CULPABLE MENTAL STATE.

It is clear from Section 76-2-304, Utah Criminal Code, that a mistake of fact can be a defense to a crime if the mistake disproves the culpable mental state.

Unless otherwise provided, ignorance or mistake of fact which disproves the culpable mental state is a defense to any prosecution for that crime.

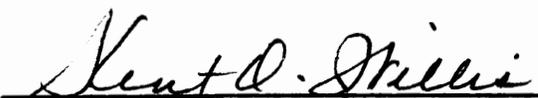
Before mistake of fact can be used as a defense, it must be shown that the crime is one which requires proof of a culpable mental. Since the crime of Unlawful Sexual Intercourse is not a strict liability crime as shown above, and since it is a crime which requires proof of a culpable mental state, mistake of fact may be used as a defense where the mistake disproves the culpable mental state. The questions of whether the mistake of fact exists and whether the mistake disproves the culpable mental state are questions of fact to be determined by the trier of fact.

CONCLUSION

Since Section 76-5-401(1), Utah Criminal Code, does not use the term "strict liability" or terms of similar import, it is not a strict liability crime. Any doubt must be resolved in favor of requiring proof of a culpable mental state unless the statute expressly provides for strict liability. Section 76-5-401(1) does not contain such an express provision and should, therefore require proof of a culpable mental state.

Mistake of fact may be a defense to prosecution for a crime if that mistake disproves the culpable mental state required to prove that crime. Since Section 76-5-401(1) requires proof of a culpable mental state, a mistake of fact may be a defense to prosecution under that section. A reasonable belief that the victim is over the age of 16 is a mistake of fact which can disprove the culpable mental state involved in such a prosecution. The case should be remanded for a new trial with the jury being allowed to consider whether the Appellant's belief was reasonable and whether that belief disproves the culpable mental state.

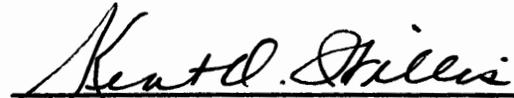
RESPECTFULLY SUBMITTED this 18th day of November, 1982.



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DELIVERY CERTIFICATE

I hereby certify that I delivered two true and correct copies of the foregoing Additional Brief of Appellant to David L. Wilkinson, Utah Attorney General, at 236 State Capitol Building, Salt Lake City, Utah 84111, this 18th day of November, 1982.



Kent O. Willis