

2015

State of Utah v. Adam Howard Jones : Reply Brief of Petitioner

Utah Supreme Court

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Case No. 20140753-SC

IN THE
UTAH SUPREME COURT

STATE OF UTAH,
Plaintiff/Petitioner,

v.

ADAM HOWARD JONES,
Defendant/Respondent.

Reply Brief of Petitioner

On Writ of Certiorari to the Utah Court of Appeals

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Pursuant to rule 24(c), Utah Rules of Appellate Procedure, the State submits this brief in reply to new matters raised in the respondent's brief.

INTRODUCTION

Defendant Jones frames this case as "an alleged mishandling of a family incident." Br.Resp. 3. Starting from the premise that Jones acted as a brother, not a police officer, he—like the magistrate and court of appeals below—concludes that there was no probable cause for the charged offenses.

That is certainly one way to view the evidence. But at the bindover stage, the evidence and all reasonable inferences must be viewed in a light most favorable to the prosecution. Because the magistrate and the court of

appeals here failed to adopt the State's favorable inferences, this Court should reverse.

ARGUMENT

I.

There was probable cause for official misconduct.¹

Jones's basic premise—adopted by both the magistrate and the court of appeals below—is that he was acting as a brother when he responded to his drunken brother's house while in his police cruiser, on duty, and in uniform. The State has addressed this argument in its opening brief. It responds here to specific points that Jones raises in his response.

Jones argues that “the evidence was abundantly clear that he was not formally dispatched to a domestic violence situation,” because the “only reason he went to the home is that he thought Martinez wanted to talk about his nephew.” Br.Resp. 4, 22, 25-26. But the statute does not require a formal dispatch call; it requires merely that the officer “respond[] to a domestic violence call.” Utah Code Ann. § 77-36-2.2. Even the majority below recognized that “the Act is not limited to situations where a call to authorities specifically alleges domestic violence.” *State v. Jones*, 2014 UT App 142, ¶21 n.6, 330 P.3d 97. And as Judge Christiansen explained in

¹ This section responds to Jones's point I.B.

dissent, even if the initial call was not sufficient to put Jones on notice that he was responding to a domestic violence situation, that became abundantly clear on his arrival, when he was greeted by his drunken brother alleging that his girlfriend had assaulted him and a conflicting claim from the girlfriend. *See id.* at ¶41 (Christiansen, J., dissenting); R29:4-6, State's Exh. 1 at 5-7. While there clearly was a "call" here, one can also respond to a "call" alleging domestic violence that comes in person, rather than over the phone or radio. *See, e.g., Call* (n), including "an act or instance of telephoning," "a cry or shout," "a summons, invitation, or bidding." Available at <http://dictionary.reference.com/browse/call?s=t>, last accessed May 1, 2015.

Further, there was sufficient record evidence to conclude that Jones was responding to a domestic violence call where Jones told the jail deputy that he responded to his brother's girlfriend's call to "take care of" his brother; he knew his brother had a drinking problem and became violent when drunk; he knew his brother lived with the girlfriend and had a history of drunkenness and domestic violence with that girlfriend; the girlfriend would call him to calm his brother down when he was drunk; and Jones responded immediately. R29:3-8, 25, 56-57, 63-64; State's Exh. 1 at 3-17.

The legislature could not have intended to condition an officer's duties in such cases to turn on whether the officer was initially dispatched on a domestic violence call. To hold otherwise would work absurd results. *See, e.g., Carter v. Lehi City*, 2012 UT 2, ¶88, 269 P.3d 141 (refusing to impose requirements on initiative measures where requirements would create absurd results).

Domestic violence poses great risks to both officers and victims. *See State v. Vallasensor-Mesa*, 2005 UT App 65, ¶16, 108 P.3d 123 (recognizing that domestic violence cases present "one of the most dangerous, volatile arrest situations confronting police") (citation and quotation omitted). If the Act's duties were triggered only if the initial call specified domestic violence, then the Act would be both under- and over-inclusive. It would be under-inclusive in cases that were initially—but erroneously—thought not to involve domestic violence; it would be over-inclusive for cases that were initially—but erroneously—thought to involve domestic violence. Indeed, the initial call and resulting dispatch may have no content at all, where, for example, a violent cohabitant disrupts a 911 call. *See, e.g., State v. Carreno*, 2006 UT 59, ¶4, 144 P.3d 1152. Further, giving dispositive weight to the initial call or dispatch would also exclude situations in which an officer personally observed domestic violence.

Once those observations are made, the legislature could not have intended—as the court of appeals’ opinion appears to presume—that an on-duty police officer can refrain from performing his duties based on his own or the victim’s preferences. Br.Pet. 36-37. The Act exists to cabin officer discretion, not confer it.

Jones accuses the State of being “intellectually dishonest” by overlooking evidence that he was acting as a brother. Br.Resp. 22-23. He also faults the State for viewing the evidence “in isolation.” *Id.* But the State has merely argued the evidence—as it is entitled to do—in accordance with the bindover standard: viewing the evidence and drawing all reasonable inferences therefrom in the light most favorable to the prosecution. *State v. Clark*, 2001 UT 9, ¶10, 20 P.3d 300. The existence of conflicting evidence is precisely why the ultimate determination of whether Jones was acting as a brother or a police officer should go to a jury. The low hurdle of the bindover standard exists only to “ferret[] out groundless and improvident prosecutions.” *State v. Virgin*, 2006 UT 29, ¶20, 137 P.3d 787. As explained in the State’s opening brief, it does not exist for the magistrate to determine the truth—thereby usurping the jury’s role—by favoring defense-friendly arguments over prosecution-friendly ones. Br.Pet. 22-24.

Moreover, Jones commits the very error he accuses the State of committing—ignoring unfavorable evidence. He argues that Jones responded to the house in response to “a call on his personal cell phone from his [now] sister-in-law simply asking him to come over,” and that she did not “tell him why she wanted him to come over.” Br.Resp. 21-22. But this ignores the evidence that (1) Jones told the jail deputy the next day that the girlfriend called him and asked him to come “take care of” his brother; (2) Jones was thoroughly familiar with his brother’s drinking and domestic violence history with his girlfriend; and (3) the girlfriend tended to call Jones when his brother was drunk to calm his brother down. R29:3-8, 25, State’s Exh. 1 at 3-17. Both the magistrate and the court of appeals were required to accept this evidence over Jones’s later statement that he was being asked to come over to talk about the girlfriend’s son. Further, Jones’s decision to immediately respond to her call just minutes before the end of his shift belies his later claim that it was an informal family visit, and corroborates what he told the jailer.

While Jones was there, he developed probable cause that domestic violence had taken place: the girlfriend called Jones to “take care of” his brother; the girlfriend had a history of calling Jones to help calm his brother down when he was drunk; Jones went over right away; Jones met his

drunken brother, which meant to Jones that he would be acting “stupid,” “unreasonable,” and “extremely violent”; the girlfriend told Jones that his brother had kicked her; his brother had a history of domestic violence with his girlfriend; his brother admitted that he scratched himself in an effort to get his girlfriend arrested – and by inference, to falsely justify his kicking her. Br.Pet. 3-6, 31-34.

Jones argues that a “mere allegation from an intoxicated party, without any redness or bruising as evidence, did not give Jones probable cause to believe that an act of domestic violence had taken place.” Br.Resp. 26. But a “jury can convict on the basis of the ‘uncorroborated testimony of the victim.’” *State v. Robbins*, 2009 UT 23, ¶14, 210 P.3d 288 (citation omitted). If a jury can convict on it, a magistrate must bind over on it. And as shown, it was not the girlfriend’s allegation alone which Jones had to consider – he knew his brother was drunk, was violent when he was drunk, had a history of domestic violence with this girlfriend, and that his brother had fabricated an attack against himself in order to try and get the girlfriend arrested. Br.Pet. 3-5.

Further, the lack of redness or bruising is suspect where it comes from Jones’s own self-serving statements, and where sheriff’s deputies saw bruising forty-five minutes later. Compare R29:6, State’s Exh. 1 at 8 with

R29:46, 51. Even if the bruising took time to show up, the lack of it does not defeat probable cause under all the circumstances here.

And even if Jones had not developed probable cause during his visit, he would still have been required to "prepare an incident report that include[d] [his] disposition of the case," because he was "responding to a complaint of domestic violence." Utah Code Ann. § 77-36-2.2(6)(a). He did not do so.

Jones also argues that the evidence does not support an intent to benefit himself or another because he repeatedly offered to call the sheriff's office and the girlfriend repeatedly refused. Br.Resp. 27. But this ignores the reason why the girlfriend refused: she and the brother could not "afford" to have the brother go to jail "again." State's Exh. 1 at 7-8. As explained in the State's opening brief, the evidence supported reasonable inferences that Jones acted as a police officer, failed to comply with his mandatory duties under the Act, and did so to spare himself the trouble and/or his brother the many consequences of an additional jail stay and domestic violence conviction. Br.Pet. 40-42. The Act's mandatory duties cannot be overcome by a reticent victim's wishes or a reluctant officer's preferences. *Id.* at 37-40.

II.

There was probable cause for witness tampering.²

Jones argues that it is “mere speculation” to infer that he knew an investigation into his conduct was underway or pending. Br.Resp. 16. But as explained in the State’s opening brief, it is not speculation to base rational inferences on the available evidence. Br.Pet. 45-46. Further, a belief in an investigation is not required—a defendant may act merely to *prevent* an investigation. Utah Code Ann. § 76-8-508(1).

The evidence supported reasonable inferences meeting this element. Br.Pet. 45-46. Whether or not Jones believed there was about to be an investigation into his response, the fact that he falsely told his brother and the jailer that his brother was asleep supports a reasonable inference that he knew it was a possibility, and he was trying to head any potential investigation off by suggesting that nothing untoward happened the night before. Further, whether or not Jones was later honest with investigators after the investigation began is irrelevant. *See* Br.Resp. 20. The crime is accomplished by committing an act with intent to prevent an investigation. That the attempt is unsuccessful and the defendant later comes clean does not obviate his culpability—a thief may return stolen goods after being

² This section replies to Jones’s point I.A.

caught, but it does not mean that the goods were never stolen in the first place.

Jones also argues that the State merely speculates on the second element of witness tampering: attempting to "induce or otherwise cause another person to" either "testify or inform falsely" or "withhold any testimony [or] information." *Id.* at § 76-8-508(1)(a)-(b). Br.Resp. 18. Jones acknowledges, but downplays, the jail deputy's testimony, and "submits" that his account of Jones's lie to his brother is "unreliable and incomplete," and cannot support probable cause. *Id.* at 19.

The testimony was not nearly so shaky as Jones asserts. Though the deputy—understandably—did not take precise notes of or record the conversation between Jones and his brother as it was happening, nor—again, understandably—remember their precise words of greeting or order of words, the deputy did later make a report. R29:60-64. He used this report to refresh his recollection, and from his testimony, it was clear that the deputy was close enough to hear the substance of the conversation: Jones told his brother that the brother was passed out the entire time Jones was at the house and that the brother needed "to do something about his

drinking.”³ *Id.* at 55-56, 62. And any potential misunderstanding about what that conversation entailed was cleared up when Jones “sat right next to” the deputy and spoke to him directly. *Id.* at 56. Jones told him what he had just overheard Jones telling his brother, and more: that the girlfriend had called him to “take care of” his brother the night before; that his brother was passed out in bed when Jones got there; and that Jones told her not to disturb his brother and to call the sheriff’s office if she needed help. *Id.* at 57-58.

Jones acknowledges that the deputy testified that Jones told his brother that the brother “was passed out in bed while he was there” — that is, the entire time he was there. Br.Resp. 8 (citing R29:55). But a few sentences later, Jones characterizes it differently, saying that Jones actually told his brother that he “was passed out when [Jones] left the house.” Br.Resp. 8 (citing R29:57). That is not what the record states. On direct examination, the deputy testified as follows:

Prosecutor: Okay. Were you able to overhear what [Jones and his brother] were talking about?

³ The deputy testified that Jones was seven feet away during his conversation with his brother. R29:55. During cross-examination, defense counsel stood at what he estimated was eight to ten feet away, which the deputy agreed was the approximate distance. *Id.* at 60. The magistrate then sua sponte opined that it was “closer to 20 feet.” *Id.* at 61.

Deputy: Yes.

Prosecutor: Will you please just describe for the Court the substance of that conversation?

...

Deputy: He—they were standing over by H3, I was in the middle of the booking counter between the two computers to observe them, and I observed Adam tell Travis that he was at his residence last night, *and that he was passed out in bed while he was there.* And you know, he told him he was obviously intoxicated. They said something—

Court: Who—I thought you just said you heard Adam say this, and now you're saying—who said—Adam's saying this? You're saying Adam is saying this to his brother, Travis? Steven Travis?

Deputy: Yes.

Court: Okay.

Prosecutor: So tell us—Adam told—tell us, what did Adam tell his brother, Travis? If you could just—as best a quote as I can.

Deputy: I'll refer to my report, or my statement. *He said that when he got to his residence he was passed out on his bed.* I then heard something regarding a truck, and advice given to Travis, his brother, that he needs to do something about his drinking.

R29:55-56 (emphasis added).

The deputy maintained this on cross-examination:

Defense counsel: Okay. Did he say any—did Adam say anything about what he found to you, did he say anything about what he found at the residence or the state that Travis was in *when he got to the residence?*

Deputy: Again, *he informed me that his brother was passed out, intoxicated in his bed.* And then he told me that he told his—I

guess it would be his sister-in-law, or his brother's girlfriend or wife — I'm not sure if they were married — that he instructed her not to wake him up.

Defense counsel: Okay.

Deputy: Because he was intoxicated.

Defense counsel: So this statement that *when he got there* Travis was passed out asleep in bed, is that essentially what you heard him tell Travis?

Deputy: Yeah.

Defense counsel: In the holding cell?

Deputy: By the cell, and then he came up and told me, I don't know why, but he did.

R29:57 (emphasis added).

Jones alternatively argues that even accepting the deputy's recollection was accurate, the conversation did not amount to witness tampering because there was no evidence that Jones intended that his brother repeat the lie to investigators. Br.Resp. 19.

But in fact the evidence and reasonable inferences show that Jones's lie was intended to impede any investigation into Jones's handling of the situation. As explained, Jones had probable cause to believe that his brother committed domestic violence assault against his girlfriend. And Jones was the police chief of Kamas, from which it is reasonable to infer that he was familiar with the law governing police duties in domestic violence

situations, and his potential liability for not complying with them. Cf. Utah Code Ann. § 76-2-304(2) ("Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime" absent rare exception). Indeed, Jones agreed during the interview that he understood that police officers have particular duties in domestic violence situations:

Investigator: Ok. So let me slip the recorder on, we'll record this. We got a, we got a request to look into that because when you responded, obviously as a police officer, you understand that when you respond to calls of domestic violence there are certain obligations that we are required to, to kind of check the boxes on.

Jones: Uh-huh (affirmative).

State's Exh. 1 at 1. In context, this can only refer to the requirements of the Act. But at very least, Jones's knowledge of the Act's requirements is a reasonable inference.

Viewed in the proper light, Jones had a duty to comply with the Cohabitant Abuse Procedures Act. He did not. But he knew that sheriff's deputies responded a short time later and arrested his brother. Br.Pet 6. It is reasonable to infer that he then had motive to minimize his knowledge of and involvement in the events of that night, given that either his brother or his girlfriend would likely tell the deputies that Jones had been to the home only forty-five minutes earlier.

It was in this context that Jones went to the jail the next morning and told both his brother and the jail deputy that the brother had been sleeping while Jones was at the house. By doing so, it is reasonable to infer that Jones was trying to influence his hung-over and possibly memory-impaired brother's recollection of events—or at very least, communicate to him what Jones wished him to say if asked about Jones's involvement. If the brother repeated Jones's lie to investigators, it would affect their investigation by minimizing Jones's involvement and providing justification for his inaction. And that there would be an investigation was a reasonable inference—authorities did, in fact, investigate Jones's failure to comply with the Act.

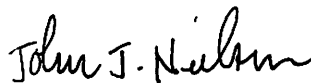
Jones asserts that "all of the evidence demonstrated that Jones believed his conduct that night was proper." Br.Resp. 9. But Jones's statement to his brother and the jail deputy belies that—particularly when viewed—as it must be—in the light most favorable to the prosecution. *Clark*, 2001 UT 9, ¶10.

CONCLUSION

For the foregoing reasons and those stated in the State's opening brief, the Court should reverse the judgment of the Court of Appeals.

Respectfully submitted on May 8, 2015.

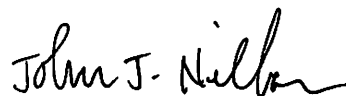
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CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(f)(1), Utah R. App. P., this brief contains 3,236 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with rule 27(b), Utah R. App. P., this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Book Antiqua 13 point.



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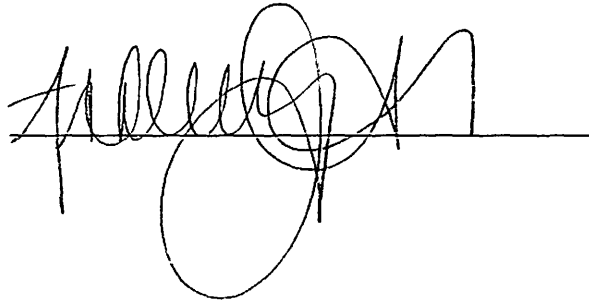
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Also, in accordance with Utah Supreme Court Standing Order No. 8,
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