

1991

Utah v. Kenneth Glenn Roberts : Brief of Appellant

Utah Supreme Court

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R. Paul Van Dam; attorney general; attorneys for appellee.

Brooke C. Wells, Elizabeth Holbrook; Salt Lake Legal Defender Assoc.; attorneys for appellant.

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IN THE SUPREME COURT OF THE STATE OF UTAH
BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff/Appellee,	:	
	:	
v.	:	
	:	
KENNETH GLENN ROBERTS,	:	Case No. 910164
	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLANT

Appeal from a judgment and conviction for aggravated assault by a prisoner, a first degree felony, in violation of Utah Code Ann. section 76-5-103.5(2)(a), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Scott Daniels, Judge, presiding.

BROOKE C. WELLS
ELIZABETH HOLBROOK
SALT LAKE LEGAL DEFENDERS ASSOC.
424 EAST 500 SOUTH, SUITE 300
SALT LAKE CITY, UTAH 84111

Attorneys for Mr. Roberts

R. PAUL VAN DAM
ATTORNEY GENERAL
236 STATE CAPITOL BUILDING
SALT LAKE CITY, UTAH 84114

Attorney for State of Utah

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BROOKE C. WELLS
ELIZABETH HOLBROOK
SALT LAKE LEGAL DEFENDER ASSOC.
424 EAST 500 SOUTH, SUITE 300
SALT LAKE CITY, UTAH 84111

Attorneys for Mr. Roberts

R. PAUL VAN DAM
ATTORNEY GENERAL
236 STATE CAPITOL BUILDING
SALT LAKE CITY, UTAH 84114

Attorney for State of Utah

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STATEMENT OF JURISDICTION

This Court's jurisdiction is provided by Utah Code Ann. section 78-2-2(3)(i) (jurisdiction over "appeals from the district court involving a conviction of a first degree or capital felony").

STATEMENT OF ISSUE

Is Mr. Roberts entitled to present a compulsion defense to charges of aggravated kidnapping and aggravated assault by a prisoner?

STANDARD OF REVIEW

This issue is a question of law, which is reviewed for correctness. State v. Ramirez, 159 Utah Adv. Rep. 7, 16 n.3 (Utah 1991).

STATUTES AND CONSTITUTIONAL PROVISIONS

The following statutes and constitutional provisions will be relied upon, and are contained in the body of the brief or Appendix 1:

Constitution of Utah, Article I section 7 (1991)
Constitution of Utah, Article I section 12 (1991)
United States Constitution, Amendment VI
United States Constitution, Amendment XIV
Utah Code Ann. section 76-5-103.5 (1990)
Utah Code Ann. section 76-2-302 (1990 Repl. Vol.)
Utah Code Ann. section 76-5-302 (1990 Repl. Vol.)

STATEMENT OF THE CASE

Mr. Roberts was originally charged with aggravated kidnapping and aggravated assault by a prisoner (R. 6-8).¹

Prior to trial, defense counsel subpoenaed witnesses and documents from the Department of Corrections for trial (R. 20, 33-40, 63-79). The Department of Corrections moved to quash the subpoenas arguing that the subpoenas were not served personally, and did not give sufficient advance notice to the busy and important Corrections employees (R. 42-62). The hearing on this motion was held five days before trial was scheduled to begin (R. 19, 41). The attorney for Corrections indicated that the Department did not intend to subvert Mr. Roberts' defense, but simply required adequate notice and legal service of the subpoenas (T. 3-4).

1. The district court pleadings file will be referred to as "R."; the transcript of the hearing held on January 17, 1991 will be referred to as "T."; the transcript of the hearing held on March 8, 1991 will be referred to as "T.2".

At the hearing on the motion to quash, the prosecutor argued in support of Corrections' motion to quash the subpoenas, despite the fact that Corrections had filed and argued the motion to quash through one of Corrections' private legal staff. The prosecutor argued that under the rules and the constitution, without some foundational showing, Mr. Roberts was not entitled to the testimony of Corrections employees (T. 7). The prosecutor argued that the evidence sought in the subpoenas was irrelevant to the case (T. 7). The prosecutor recognized that Mr. Roberts was planning to present a compulsion, or justification defense, and concluded that Mr. Roberts should not be allowed to "put on his little circus act in front of the jury." (T. 7-8).

Defense counsel noted that this is a criminal case involving two first degree felonies, and that the Department of Corrections employs the victim and controls all of the witnesses to the events at issue (T. 9). She indicated that the subpoenas were necessary because Corrections had not responded to discovery requests concerning Mr. Roberts' case (T. 13).

Defense counsel indicated her intent to present numerous specific examples of Mr. Roberts' efforts to seek administrative relief from threats to his physical safety, and argued that denying Mr. Roberts the opportunity to examine the witnesses from Corrections would jeopardize his rights to a fair and constitutionally protected trial (T. 15, 18).

The trial court quashed the subpoenas because they were not served personally on the Department of Corrections employees, and because the subpoenas were not served sufficiently in advance of

trial (T. 19-20).

The trial court then ruled that Mr. Roberts was legally precluded from raising a defense of compulsion (T. 19-20). The trial court's ruling relating to Mr. Roberts' inability to present the defense was as follows:

I am inclined to agree with Mr. Skordas' position on relevance of this testimony. I don't think the defense of compulsion is a viable defense as a matter of law in this case. I don't think the law is if you are being mistreated at the prison you are therefore justified in taking a hostage. That's just not the law. This statute was made for a situation where someone is threatened. If you don't commit this crime, if you don't wait for me in the get-away car, then I will shoot you, that kind of compulsion. Not the kind of compulsion we are talking about here. I think the testimony of these witnesses would be irrelevant. That defense is not available as a matter of law and I am not going to let you put on that evidence.

I am just -- even if you wanted to re[-]serve them [the subpoenas], I am just not going to make this a trial of the Department of Corrections. The issue here is going to be did he commit the crime or didn't he, and the subpoenas will be quashed.

(T. 20).

After a continuance, Mr. Roberts entered a plea of guilty to one count of aggravated assault by a prisoner (T.2 4-8; R. 81-87). This plea was explicitly conditioned on Mr. Roberts' appeal of the trial court's ruling barring his defense to the criminal charges (T.2 3, 5, 7; R. 80, 81).

Following the entry of this plea, the trial court sentenced Mr. Roberts to a term of five years to life in the Utah State Prison, to run concurrently with Mr. Roberts' preexisting sentences (T.2 9; R. 88-89).

STATEMENT OF FACTS

In 1982, Mr. Roberts, while on parole, committed several crimes and seriously injured Ms. LaDawn Prue.² After a criminal prosecution, Mr. Roberts was convicted of several first degree felonies and returned to the prison.

As a result of Mr. Roberts' crimes against Ms. Prue while he was on parole, intense scrutiny was brought to bear on the parole policies and the Department of Corrections. The Department of Corrections was sued, and numerous employees of the Department were fired.

Because of the consequences to Corrections and the entire parole system stemming from Mr. Roberts' crimes while he was on parole in 1982, Mr. Roberts has been at a special risk while in the prison. He has filed numerous administrative complaints, repeatedly seeking safety from several serious and specific threats to his safety, to no avail.

Mr. Roberts was compelled to take the prison guard hostage in order to obtain his own safety.

2. The facts underlying Mr. Roberts' defense are found in the argument of defense counsel, at pages 14 through 18 of the transcript. The record of Mr. Roberts' intended defense is not more detailed for two reasons: 1) defense counsel was unable to obtain records and information from the Department of Corrections necessary to the preparation of Mr. Roberts' defense (T. 13); and 2) defense counsel was not notified that the hearing on Corrections' motion to quash the subpoenas would encompass the viability of the compulsion defense, which intended defense had been discussed with the prosecutor and trial court without objection for months prior to the hearing on the motion to quash (T. 21).

The following facts underlying the charges against Mr. Roberts are alleged in the information:

On March 26, 1990, in the Uinta II Facility of the Utah State Prison, Draper, Salt Lake County, Utah, defendant Kenneth Glenn Roberts threatened Correctional Officer Joe Hughes with a sharpened eight-inch steel rod fashioned into a knife (shank) and informed Correctional Officer Joe Hughes that he was being taken hostage by defendant, an inmate lawfully incarcerated at the Utah State Prison for conviction of a first degree felony.

Correctional Officer Joe Hughes stated that defendant further threatened his life with the above described weapon by holding it close to his head and other vital parts of his body. Correctional Officer Joe Hughes believed his life to be in danger and was held hostage by defendant for a period of approximately two and one-half hours.

...[D]efendant told Correctional Officer John Irons to refrain from entering the area where Correctional Officer Joe Hughes was held hostage or the latter would be killed. Defendant also told Correctional Lieutenants Taylor and Rowzee that he demanded to speak with Utah Department of Corrections Executive Director Gary DeLand and Mr. DeLand was the only person with whom defendant would speak. If defendant's demand was not met, Correctional Officer Joe Hughes would be killed.

(R. 6-8).

SUMMARY OF THE ARGUMENT

Every criminal defendant is entitled to defend against criminal charges. In forbidding Mr. Roberts to present his defense, the trial court violated some of the most fundamental rights provided by the Utah and Federal Constitutions.

The compulsion defense is applicable in this case, where Mr. Roberts contends that he was compelled to kidnap a prison guard because the Department of Corrections has failed to respond to and has exacerbated the unique, specific and imminent threats to Mr. Roberts' safety.

ARGUMENT

I. THE UTAH AND FEDERAL CONSTITUTIONS ENTITLE MR. ROBERTS TO PRESENT HIS DEFENSE.

In ruling that Mr. Roberts was legally barred from presenting a compulsion defense, the trial court overlooked Mr. Roberts' fundamental constitutional rights to present a defense, which rights are afforded to all criminal defendants. Mr. Roberts' rights to present a defense are explicitly protected by Article I section 12 of the Utah Constitution. This Court has also recognized the Due Process section of the Utah Constitution as a protector of Mr. Roberts' rights to present a defense. State v. Harding, 635 P.2d 33 (Utah 1981) (citing Article I section 7).

The Federal Constitution has also been interpreted as guaranteeing the rights to defend against criminal charges. See Crane v. Kentucky, 476 U.S. 683, 690 (1986) ("Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a

meaningful opportunity to present a complete defense.'") (citations omitted); Morris v. Slappy, 461 U.S. 1, 14 (1983) ("Of course, inconvenience and embarrassment to witnesses cannot justify failing to enforce constitutional rights of an accused: when prejudicial error is made that clearly impairs a defendant's constitutional rights, the burden of a new trial must be borne by the prosecution, the courts, and the witnesses; the Constitution permits nothing less.").

II. THE COMPULSION DEFENSE APPLIES IN THIS CASE.

The statutory compulsion defense is not limited to particular crimes. Utah Code Ann. section 76-2-302 provides, in part, as follows:

(1) A person is not guilty of an offense when he engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would not have resisted.

(2) The defense of compulsion provided by this section shall be unavailable to a person who intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

This Court has recognized that the compulsion defense may be raised in cases involving crimes at the prison. E.g. State v. Tuttle, 730 P.2d 630 (Utah 1986) (compulsion is a valid defense to a charge of escaping from the prison). While the compulsion defense must be narrowly drawn in prison cases because life in prison is inherently dangerous and coercive, the defense is available to

prison inmates who face serious, imminent, specific threats to their physical safety. Id. at 633-635. See also People v. Lovercamp, 118 Cal. Rptr. 110 (1974) (discussing evolution of common law, from opinions refusing to allow compulsion defense in any prison cases, to opinions allowing the defense in narrow circumstances).³

A helpful discussion of the application of the compulsion defense to a prison kidnapping case appears in State v. Little, 312 S.E.2d 695 (N.C. App. 1984). There, three prison inmates held prison employees hostage for over three days, demanding press coverage of their grievances concerning prison conditions, and demanding to be transferred to a different prison. Id. at 696 (N.C. App. 1984). In appealing their kidnapping convictions, the defendants contested the trial court's ruling that the defendants could not raise a compulsion defense based on general prison conditions. Id. at 697. The Court of Appeals of North Carolina

3. In State v. Tuttle, 730 P.2d 630 (Utah 1986), this Court adopted the following common law limitations on the compulsion defense in prison escape cases: the defendant must be faced with a specific imminent threat of serious bodily injury, there must be no time for complaints to authorities or a history of futile complaints, and the defendant must report to authorities once the coercion justifying the escape abates. Id. at 634-635. The common law limitations on the compulsion defense in escape cases would probably require some modification in kidnapping and assault cases. See State v. Little, 312 S.E.2d 695, 698 (N.C. App. 1984) (court recognizes that common law limitations on compulsion defense in escape cases may require adjustment in kidnapping cases). The trial court could combine necessary elements from Tuttle with elements found in other common law defense cases. E.g. Bird v. Municipality of Anchorage, 787 P.2d 119, 120-121 (Alaska App. 1990) ("To establish the necessity defense the defendant must show that (1) The act charged was done to prevent a significant evil; (2) there was no adequate alternative; (3) the harm caused was not disproportionate to the harm avoided.").

upheld the trial court's ruling, noting that the defendants had never claimed that they personally faced any specific threats, had never claimed any personal connection to events discussed in prison records subpoenaed by the defense, and had never examined prison officials to demonstrate that the defendants had made complaints to the prison administration. Id. at 698. The appellate court also upheld the trial court's order quashing the subpoenas of prison records, because the defendants had failed to make a threshold showing that they were faced with specific threats and had no effective opportunity to seek redress through the prison administration or the courts. Id. at 699.

In contrast, Mr. Roberts' compulsion defense is focused exclusively on specific threats to his own personal safety, on his own prison records, and on the Corrections employees who have personally failed to respond to his repeated and specific requests for relief.

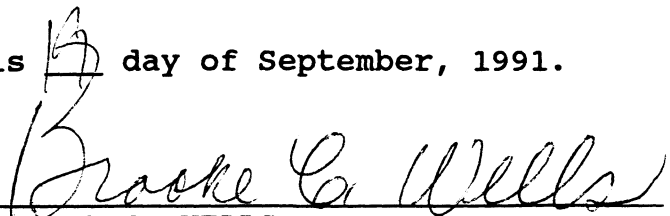
Under the Utah and Federal Constitutions, Mr. Roberts should be allowed to develop and present his defense. See Point I, supra. When Mr. Roberts is able to present evidence in support of the compulsion defense, the trial court should instruct the jury on that defense.⁴

4. See State v. Harding, 635 P.2d 33, 34 (Utah 1981) ("It is ... axiomatic that where the defendant has asserted a defense to justify or excuse the criminal charge, and where there is a reasonable basis in the evidence to support it, the viability of the defense then becomes a question of fact and the jury should be charged regarding it. Where, however, there is no reasonable basis in the evidence to support the defense or its essential components, it is not error for the trial judge to either refuse to instruct the jury as to the defense, or to instruct them to disregard it.").

CONCLUSION

This Court should reverse the trial court's order barring the presentation of Mr. Roberts' compulsion defense, and remand this case to the trial court so that defense counsel can prepare and present Mr. Roberts' defense.

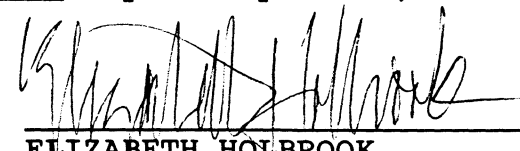
Respectfully submitted this 13 day of September, 1991.


BROOKE C. WELLS
Attorney for Mr. Roberts


ELIZABETH HOLBROOK
Attorney for Mr. Roberts

CERTIFICATE OF DELIVERY

I, ELIZABETH HOLBROOK, hereby certify that eight copies of the foregoing will be delivered to the Utah Court of Appeals, 400 Midtown Plaza, 230 South 500 East, Salt Lake City, Utah 84102, and four copies to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 13 day of September, 1991.


ELIZABETH HOLBROOK

DELIVERED by _____

this _____ day of September, 1991.

APPENDIX 1

TEXT OF STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

Article I, section 7 of the Constitution of Utah provides:

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Article I, section 10 of the Constitution of Utah provides:

Sec. 12. [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

Amendment VI to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defence.

Amendment XIV to the Constitution of the United States provides:

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Utah Code Ann. section 76-5-103.5 provides:

76-5-103.5. Aggravated assault by prisoner.

(1) Any prisoner not serving a sentence for a felony of the first degree, who commits aggravated assault is guilty of a felony of the second degree.

(2) Any prisoner serving a sentence for a felony of the first degree who commits aggravated assault is guilty of:

(a) A felony of the first degree if no serious bodily injury was caused; or

(b) A capital felony if serious bodily injury was intentionally caused.

Utah Code Ann. section 76-2-302 provides:

76-2-302. Compulsion.

(1) A person is not guilty of an offense when he engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would not have resisted.

(2) The defense of compulsion provided by this section shall be unavailable to a person who intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

(3) A married woman is not entitled, by reason of the presence of her husband, to any presumption of compulsion or to any defense of compulsion except as in Subsection (1) provided.

Utah Code Ann. section 76-5-302 provides:

76-5-302. Aggravated kidnaping.

(1) A person commits aggravated kidnaping if the person intentionally or knowingly, without authority of law and against the will of the victim, by any means and in any manner, seizes, confines, detains, or transports the victim with intent:

(a) To hold for ransom or reward, or as a shield or hostage or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct; or

(b) To facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony; or

(c) To inflict bodily injury on or to terrorize the victim or another; or

(d) To interfere with the performance of any governmental or political function; or

(e) To commit a sexual offense as described in Part 4 of this chapter.

(2) A detention or moving is deemed to be the result of force, threat, or deceit if the victim is mentally incompetent or younger than sixteen years and the detention or moving is accomplished without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis to the victim.

(3) Aggravated kidnaping is a felony of the first degree punishable by a term which is a minimum mandatory term of imprisonment of 5, 10, or 15 years and which may be for life.