

1991

Utah v. Workman : Reply Brief

Utah Supreme Court

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BRIEF

910190

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Petitioner, : Case No. 910190
v. :
DAVID L. WORKMAN, : Priority 14
NITA WORKMAN, :
Defendants-Respondents.

REPLY BRIEF OF PETITIONER
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TABLE OF CONTENTS

SUMMARY OF ARGUMENT	1
ARGUMENT	1
CONCLUSION	5

TABLE OF AUTHORITIES

CASES CITED

<u>Corenevsky v. Superior Court</u> , 682 P.2d 360 (Cal. 1984)	1
<u>State v. Myers</u> , 606 P.2d 250, 251 (Utah 1980)	passim
<u>State v. Ramirez</u> , 157 Utah Adv. Rep. 10, 19 n.3 (Utah 1991) . .	2
<u>State v. Schad</u> , 470 P.2d 246, 247 (Utah 1970)	3
<u>State v. Watts</u> , 675 P.2d 566, 569 (Utah 1983).	2,3

CONSTITUTIONS, STATUTES AND RULES

Utah Code Ann. § 76-5a-3 (1990)	3
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REPLY BRIEF OF PETITIONER

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SUMMARY OF ARGUMENT

Defendants misinterpret the State's argument and the case law. The standard of review to be applied is correction of error rather than abuse of discretion. Case law requiring the jury to exclude a reasonable hypotheses other than guilt does not support the court of appeals ruling. When the jury chose to disbelieve defendants and make the reasonable inferences of guilty knowledge from the circumstantial evidence, they had excluded all reasonable alternatives other than guilt.

ARGUMENT

DEFENDANTS MISAPPREHEND THE STATE'S ARGUMENTS
AND THE APPLICABLE LAW.

In Point III of their brief, defendants state that the standard of review for this Court is that "[t]he trial court's order may be set aside only if it constitutes abuse of discretion, and is presumed correct. Corenevsky v. Superior Court, 682 P.2d 360 (Cal. 1984)." (Br. at 18). This is an

incorrect statement of the standard of review to be applied by this Court. A trial court may arrest judgment only if it can do so as a matter of law. State v. Myers, 606 P.2d 250, 251 (Utah 1980). Consequently the trial court's order and the court of appeals' decision were rulings on questions of law. This Court reviews questions of law for correctness and affords no deference to the lower courts. State v. Ramirez, 157 Utah Adv. Rep. 10, 19 n.3 (Utah 1991).

Defendants also assert that the State misunderstands a critical difference between Myers and this case (Br. at 10). They argue that because there was no witness testifying directly about their mental states, neither the trial court nor the court of appeals could have disbelieved any witness that the jury believed. However, it is not the State's position that these courts disbelieved a witness on the issue of defendant's knowledge. The State agrees that there was no witness who directly testified that defendants knowingly consented to or permitted Clinton Kelly's exploitation of their daughter. Indeed, it would be unusual if the State were able to produce a witness who could testify directly to the mental state of any defendant. See State v. Watts, 675 P.2d 566, 569 (Utah 1983) (requisite mental state for crimes most frequently inferred from circumstances).

The State's position is that the jury must have disbelieved the defendants' self-serving denials that they knowingly consented to or permitted Kelly's exploitation of their daughter.

Conversely, the jury must have believed the circumstantial evidence and made the reasonable inferences pointing to defendants' knowledge of his actions. Because the jury did not accept defendants' testimony, the courts were not free to accept it under the Myers standard.

Defendants appear to assert that the jury is not free to disbelieve their testimony unless there is direct evidence refuting it. If this was the criterion for a criminal conviction, few individuals would ever be convicted. It is not unusual for defendants to deny that they performed an act with the mental state necessary to establish the act as a crime. It is extremely unusual, on the other hand, for any witness to be able to testify that the defendant possessed a particular mental state.

Defendants also urge that it is crucial that Kelly and defendants testified that defendants never saw the photograph (exhibit 16) and that no witnesses testified that they saw it (Br. at 13). This point is not as crucial as defendants contend. The sexual exploitation statute, Utah Code Ann. § 76-5a-3 (1990), does not require that the defendants see the finished product to have knowingly consented to or permitted its production. Thus, the jury could have believed the witnesses on this point and still have convicted defendants of sexual exploitation.

Additionally, defendants argue that circumstantial evidence, to support a conviction, must exclude all other reasonable hypotheses (Br. at 14, citing Watts, 675 P.2d at 569). They contend that the lower court's ruling is supported by their

denials of guilt since no witnesses directly refuted them. This proposition is not as simplistic as defendants would have this Court believe. The Court has previously elaborated on the concept:

It is true, as the defendant contends, that where a conviction is based on circumstantial evidence, the evidence should be looked upon with caution, and that it must exclude every reasonable hypothesis except the guilt of defendant. This is entirely logical, because if the jury believes that there is a reasonable hypothesis in the evidence consistent with the defendant's innocence, there would naturally be a reasonable doubt as to his guilt. Nevertheless, that proposition does not apply to each circumstance separately, but is a matter within the prerogative of the jury to determine from all of the facts and circumstances shown; and if therefrom they are convinced beyond a reasonable doubt of the defendant's guilt, it necessarily follows that they regarded the evidence as excluding every other reasonable hypothesis.

State v. Schad, 470 P.2d 246, 247 (Utah 1970) (footnote omitted).

In this case, the jury chose to disbelieve defendants' denials of guilt, and chose to infer from circumstantial evidence that defendants consented to or knowingly permitted Kelly's exploitation of E. Once the jury rejected defendants' claims of ignorance, and embraced the inferences of defendants' knowledge, they had excluded the only reasonable hypothesis other than guilt. Defendants may not parse the evidence and prevail by relying on the lack of testimony directly refuting defendants' claims of ignorance.

Finally, defendants refer to standards established by the American Bar Association for directed verdicts and urges this

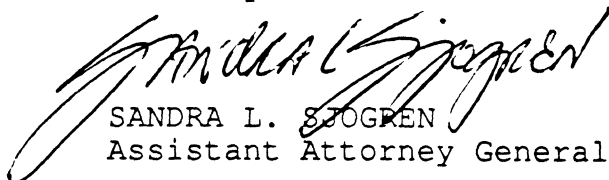
court to adopt these standards in Utah. Defendants emphasize that the ABA standard rejects the principle that the jury is the exclusive judge of the evidence (Br. at 19). Significantly, in this case, there was no directed verdict. While the trial court ordering a directed verdict is necessarily removing the case from the jury, a Utah court is not allowed to disregard the jury function and arrest judgment when there is evidence and reasonable inferences which, if believed by the jury, supports the verdict. Myers, 606 P.2d at 251. In order to apply the ABA directed verdict standard in an arrest of judgment setting, this Court would be required to overturn Myers and the longstanding, well-accepted rule that the jury is the sole determiner of the evidence. This Court should not overturn this well-established principle that is integral to the criminal law of this State.

CONCLUSION

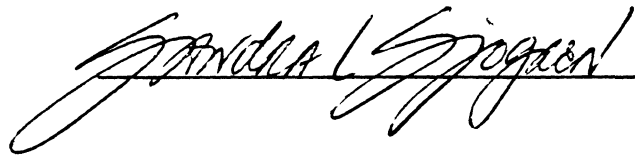
Based upon the foregoing, the State again requests this Court to reverse the judgment of the court of appeals and reinstate the jury verdict.

RESPECTFULLY submitted this 16 day of December, 1991.

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I hereby certify that four true and accurate copies of the foregoing Reply Brief of Petitioner were delivered to Edwin Beus, Attorney for Appellee, 36 South State Street, #1200, Salt Lake City, Utah 84111, this 16 day of December, 1991.

A handwritten signature in cursive script, reading "Sandra L. Sjogren", is written over a horizontal line.