

2002

State of Utah v. Jose Daniel Robinson : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS FOR THE STATE OF UTAH

--0000000--

THE STATE OF UTAH,)	
)	APPELLEE'S BRIEF
Plaintiff,)	
)	
vs.)	COURT OF APPEALS NO.
)	20020027
JOSE DANIEL ROBINSON,)	
)	
Defendant.)	

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THIS IS AN APPEAL FROM A DISMISSAL OF A CRIMINAL CHARGE
ENTERED IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY,
STATE OF UTAH. THE HONORABLE GARY STOTT, TRIAL JUDGE.

PRIORITY NO. 2

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FILED
Utah Court of Appeals

AUG 06 2012

Paulette Stagg
Clerk of the Court

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August 27, 2002

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UTAH COURT OF APPEALS
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Salt Lake City, Ut 84114-0230

Re: State v. Robinson
Case No. 20020027-CA

Paulette
Dear Ms. Stagg:

This is to inform you that the State, appellant in the above-entitled case, will not be filing a reply brief.

Very truly yours,

JOANNE C. SLOTNIK
Assistant Attorney General

cc: Sheldon Carter

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U.C.A. 76-5-205. Manslaughter.

A. Criminal homicide constitutes manslaughter if the actor:
(a) recklessly causes the death of another.

U.C.A. 76-2-103 (3),(4)

(3) Recklessly, or maliciously, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint

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STATEMENT OF ISSUES

The trial court dismissed the ‘manslaughter’ charge here at the preliminary hearing stage. The trial court found particularly that no evidence was introduced to make a finding of reckless conduct as required. The issue presented here is whether the trial court’s findings should be reversed.

STATEMENT OF CASE

Defendant was accused of manslaughter, which required to the State to prove at the preliminary hearing that the defendant’s conduct was reckless as defined by statute. The evidence here suggests that this matter was a unfortunate accident but did not raise to the level of reckless conduct. A gun misfired for unknown reasons of which the defendant and the police have limited knowledge. The State

failed to produce evidence to suggest that the defendant was consciously aware of the risk of the gun misfiring and that he consciously disregard the risk.

STATEMENT OF RELEVANT FACTS

On June 9, 2000, the defendant came home and joined his sister-in-law in the living room. They were watching television and drinking some beers. R.36. L. 10. The victim had purchased the beer and she had consumed about four of the six beers. R. 11 L. 6. Other family members had been in the room but had left the two of them alone at some time. R. 11 L. 12. The two continued to drink and watch television.

At about 1:15 a.m., the defendant retrieved the gun from a closet at the victim's request. R. 11 L. 18/ R. 13 L. 1. He handed it to the her and she was looking and handling the gun. R. 12 L. 17. He heard her activate the slide and this caught his attention. R. 12 L. 19. He asked for the gun back and she gave it back to him. R. 12 L. 21. There was nothing that would suggest that she had activated a round or that the gun was loaded. R. 13 L. 2. He then set back down.

It appeared that the gun was jammed or some material caused it to not shut fully. R. 13 L. 10. As a result, he pulled the slide back and a full round was ejected from the gun. He did this to clear in live ammunition. R. 13 L. 11 evidencing to him that the gun was then safe.

He remembers sitting on the love seat but he was not sure if the gun was at his hand if it was resting on his leg. R. 13 L. 20. He next remembers a bang. R. 13 L. 22. He then looked over and saw the victim slumped over. R. 13 L. 24.

There was nothing to indicate that the gun was load or in a firing position. R.14 L. 12. He had assumed that it was empty and did not have a round in the

chamber and it didn't have a clip in the gun. R. 15 L. 1. He believed the gun was safe. R. 15 L. 3.

The officer reports that there was nothing to suggest any criminal intent. R. 16 L. 24. The officer advised that from the information he obtained there was nothing suggesting that he knew the gun was loaded or had a bullet in the chamber. R. 17 L. 4. The officer testified that the gun appeared to have been jammed. R. 18 L. 1. He referred to another officer, more of an expert in firearms, and the second officer reported that the gun was jammed. R. 18 L. 10.

SUMMARY OF ARGUMENTS

The State charged the defendant with manslaughter. This required some evidence that the defendant was consciously aware the gun in this case would misfire and he consciously disregarded the risk. The evidence in the case suggest by the testimony of the State's sole witness that this was an accident and the defendant did not know of the risks of the gun misfiring. The officer's herein suggest that it was an unfortunate accident and that the defendant had no knowledge of any risk that the gun would misfire.

The State argues that this Court should take some limited facts and make inferences to suggest knowledge. The State then argues that these inferences should override the direct evidence from the police that the defendant did not possess such knowledge.

ARGUMENT

To bind a defendant over for trial, statutorily the State must show probable cause at a preliminary hearing by presenting sufficient evidence to establish that the crime charged has been committed and that the defendant has committed it. State v. Pledger, 896 P.2d 1226, 1229 (Utah 1995); Evans v. State, 963 P.2d 177, 182 (Utah 1998).

Although the burden is low for the State, they must produce enough evidence sufficient to survive a motion for directed verdict with respect to each element of the crime." State v. Talbot, 972 P.2d 435, 438 (Utah 1998) The prosecution, at a minimum, must establish a prima facie case against the defendant from which the trier of fact could conclude the defendant was guilty of the offense as charged. State v. Pledger, 896 P.2d at 1229.). Here the critical element is recklessness. The State failed to produce believable evidence of recklessness. The testimony from the State's sole witness supported the fact that this was an unfortunate accident and was not reckless behavior.

A trial court should dismiss the charge, as here, if the State did not establish a prima facie case against the defendant by producing "believable evidence of all the elements of the crime charged." State v. Emmett, 839 P.2d 781, 784 (Utah 1992); See also State v. Smith.

The prosecution must present sufficient evidence to support a reasonable belief that an offense has been committed and that the defendant committed it. This "reasonable belief" standard allows the magistrate to fulfill the primary purpose of the preliminary

hearing of ferreting out groundless and improvident prosecutions. Anderson, 612 P.2d at 783-84; State v. Clark, 2001 Ut 9, 20 P.3d 300.

Application to Case.

The defendant was accused of manslaughter in that he 'did recklessly cause the death of another' in violation of U.C.A. 76-5-505 and not negligent homicide. The State's burden then was to demonstrate a reckless state of mind and not negligence.

The U.C.A. 76-2-12 defines both reckless and criminal negligence as follows:

(3) Recklessly, or maliciously, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint

By the State charging this offense as reckless conduct required the State to prove that the defendant '*was aware*' of the risk and '*consciously choose*' to disregard the risks. This is as opposed to a criminal negligence standard of which requires that he '*ought to be aware*'.

The State agrees that there is an obligation to give evidence of the 1) subjective and 2) objective components of the defendant's perception of the risk. They suggest that they had to *prove that the defendant was aware of the risks* and secondly he consciously disregarded the same. This conforms to the holdings in State v. Standiford, 769 P. 2d 254 (Utah 1988).

The State argues that the evidence reflects that the defendant was aware of the specific risks. The State argues that the Court should infer such a finding. The basis for such finding being the defendant retrieving the gun from the victim and that he knew the gun was mechanically amiss. They then suggest that he replaced the bullet in the clip. (However, the clip was not in the gun.). The inference suggested would have to then override the direct evidence elicited from the one witness Officer Grothe. This would also override the inference that the gun was safe since he cleared the action of the gun by discharging the bullet.

Grothe spoke to these issues directly.

Officer Grothe testified that the defendant did not know that the gun was loaded.

The transcript reports the following:

R. 14

Q. Detective, **what did he tell you that would make you think that he knew that the gun was loaded** or in a firing position? R. 14 L. 12.

A. *There was **nothing** that made him think that.* L. 15

Q. **He didn't think it was loaded?** L. 16

A. *No.* L.17

Contrary to the State's position, the clip was not in the gun.

R.15.

Q. There was **no clip in the gun**. L.4

A. That's what he stated. L. 5

Q. He advised you that **the gun was safe**. L 6.

A. Yes. L. 7.

The officer agreed that this was merely an accident.

R.16

Q. Would it be fair to describe this, that **this was an accident**? L. 21.

A. Yeah. L. 23.

Specifically regarding the gun being loaded, the officer advised:

R.17

Q. And you're telling me from your information you've gathered that he **did not know the gun was loaded or had a bullet in the firing chamber**? L. 1

A. Yes. L. 4.

Q. What information do you have to suggest that Mr. Robinson **knew the gun to have live ammunition in it that could be fire**? L. 14

A. **There was no information** that I have that would have confirmed for sure the he knew that it was loaded. L. 21.

Q. Did you make any **examination of the gun** as to its malfunctioning abilities, or how---was it function properly? Was there any reason to explain why that bullet would be in that firing position? L. 22.

R.18

A. I'm not a gun expert per se, but from what I saw, it appeared that it had been jammed. It was a round that had been spent that was in the process of being ejected out of the gun and **got jammed in there**. Detective Orndorff, who is much more skilled person in firearms, he's an instructor, and he looked at the gun closer than I did. L. 1

Q. What information did Detective Orndorff give you?

A. Other than what I just said. I don't recall any.

Q. That it **was jammed**?

A. **Yeah.** L. 10.

The State's direct evidence produce evidence of negligence at best. It failed to produce any evidence that the defendant was consciously aware of the risk and consciously disregarded the same. The magistrate may have the obligation to look favorably upon the State's evidence but it has no obligation to go into legal contortions to find probable cause. The Magistrate need not make inferences when contradicted by direct testimony.

CONCLUSION

The State has a low burden of proof at the preliminary hearing level but it still does have a burden. The State still must satisfy each and every element of the charge with some quantum of believable evidence.

However, a magistrate is not required to go to such extremes as would require him/her to override direct testimony of a witness by drawing some inferences that may be possible but speculative. The judge still has a job to do and he/she is not simply a slave to the State's wishes. If the direct testimony states that the defendant did not know of the risk, the magistrate should not be overturned by a speculative inference.

Respectfully submitted this 6th day of August, 2000


Sheldon Carter

Attorney for Appellee/Defendant

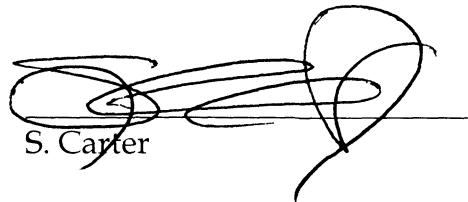
MAILING CERTIFICATE

I hereby certify that I mailed a copy of motion and order to extend time to file appellant's brief to:

Attorney General for the State of Utah (four copies)
124 State Capitol
Salt Lake City, Utah 84114

Utah Court of Appeals (eighth copies)
450 South State
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Salt Lake City, Utah 84114-0230

Postage prepaid this 6 day of August, 2002.


S. Carter

Addendum A

NONE