

2002

The City of Orem, Plaintiff, vs. Jonathon D. Cornejo, Defendant : Brief of Appellant

Utah Court of Appeals

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Randy M. Lish; Attorney for Appellant.

Michael G. Barker; Orem City Prosecutor; Attorney for Appellee.

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IN THE UTAH COURT OF APPEALS

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THE CITY OF OREM,	:	Appellate No. 20021030-CA
	:	
Plaintiff,	:	
	:	Trial Court No. 021201235
vs.	:	
	:	
JONATHAN D. CORNEJO,	:	Priority No. 2
	:	
Defendant.	:	

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BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF GUILTY DATED DECEMBER 10, 2002,
ENTERED BY THE HONORABLE JOHN C. BACKLUND, FOURTH JUDICIAL
DISTRICT COURT OF UTAH COUNTY, OREM DEPARTMENT

Attorney for Appellee
Michael Barker
97 E. Center
Orem, UT 84057

Attorney for Appellant
Randy M. Lish
3610 N. University Ave.,
Suite 375
Provo, UT 84604

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Attorney for Appellee
Michael Barker
97 E. Center
Orem, UT 84057

Attorney for Appellant
Randy M. Lish
3610 N. University Ave.,
Suite 375
Provo, UT 84604

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STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Utah Code Ann. §78-2(a)-3(2)(d) and (f) (1953, as amended).

STATEMENT OF THE ISSUES

A. Did the prosecution present evidence beyond a reasonable doubt that Defendant was indeed guilty of the crime of assault-domestic violence.

Standard of Review: The standard of review is that, if the Trial Court's Findings of Fact are erroneous or clearly erroneous, said Findings of Fact should be set aside. U.R.C.P. 52(a); State v. Pena, 869 P. 2d 932.

STATEMENT OF FACTS

5. STATEMENT OF FACTS:

a. The City of Orem alleges that the Defendant committed the of the crime of Assault–Domestic Violence by assaulting his wife, Wendy, after a verbal argument escalated into physical violence.

b. At the trial, the Victim testified that she and Defendant got into an argument over diner, and after dinner was completed, while watching television, Defendant hit her in the arm and kicked her in the leg, leaving a bruise on each area.

c. The victim waited for two days and then reported the assault to the police.

d. At trial, the Defendant insisted that, although he did not know how the

Victim was bruised, he had not at any time touched her, and certainly did not cause the bruises, or harm her in any way.

SUMMARY OF ARGUMENT

The Defendant insists that at no time during the argument, or after it was over, did he touch his wife, or do anything that would cause the bruising she reported to the police. There was evidence to support either party, but Defendant believes that the City did not prove he was guilty beyond a reasonable doubt because of the evidence he produced that contradicted the Victim's testimony.

ARGUMENT

POINT I

DID THE PROSECUTION PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS GUILTY OF THE CRIME OF ASSAULT-DOMESTIC VIOLENCE?

It is well-established law in Utah as well as other jurisdictions that, in order to convict a defendant of a crime, the prosecution must prove guilt beyond a reasonable doubt. The specific elements of the crime of retail theft which must be proven by the prosecution, and which are at issue here, are outlined in §76-5-102, U.C.A. (1953), as amended:

A person is guilty of assault-domestic violence who:

- (a) an attempt, with unlawful force or violence, to do bodily injury to another;
- (b) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another;
- (c) an act, committed with unlawful or violence, that causes or creates a

substantial risk of bodily injury to another.

In the present case, the victim testified that she had just gotten home from work, and the Defendant and some friends were playing some loud music. (Tr. P. 8, 9). She was tired, and asked them to leave. Defendant stated that they would leave in a short time. After the friends left, Defendant began to prepare a plate for dinner from food that was on the stove. His wife objected when found that Defendant's father was going to be over for dinner. The Victim made a comment about charging the Defendant's father, while the father was there, which upset the Defendant. Defendant tried to talk to his wife about the problem after his father left, but his wife ignored him. (Tr. P. 9-11). At this point, the stories diverge. The Defendant testified that he went to bed, and his wife stayed up and watched television. (Tr. P. 36). His wife, however, testified that the Defendant became angry during the argument, she tried to push past Mr. Cornejo, he grabbed her, and then let her go. He grabbed her again, put her on the couch, and when she tried to struggle free, he began to hit and kick her. As a result of the struggle, he left a bruise on her forearm where he hit her, and on her leg where he kicked her. (Tr. p. 13). Defendant raised in support of his claim that he never touched his wife the fact, not disputed by either party, that Mrs. Cornejo waited two days before making a police report.

Judge Backlund chose to believe Mrs. Cornejo's testimony that her husband hit and kicked her, and convicted Defendant. However, it is Defendant's contention that, in light of the undisputed facts that the parties were involved in a custody dispute, and the fact that Mrs. Cornejo waited at least two days before filing a report of the assault, a reasonable

person could not have found him guilty. Judge Backlund was impressed by the fact that Mr. Cornejo could not explain how the bruises appeared on his wife. However, it was uncontroverted that she did not report the fight for two days. (Tr. P. 9). The parties did not have any contact with each other during that time, and clearly the bruises could have been caused in any number of ways other than as she testified in court, or told the police when she made the report. Mr. Cornejo would not be aware of how the bruising occurred under any of these possible scenarios. The parties were already having problems in their marriage, and Mrs. Cornejo had both ample opportunity and cause to make up a story.

This Court has ruled that in order to set aside a finding of fact, the following standard must be met: “To challenge the trial court’s findings of fact, the challenging party ‘must first marshal all of the evidence that supports the trial court’s findings. . . after marshaling the supportive evidence, the {challenging party} then must show that even when viewing the evidence in a light most favorable to the trial court’s ruling, the evidence is insufficient to support the trial court’s findings. State v. Gamblin 1 P. 3rd 1108 (Ut App. 2000).

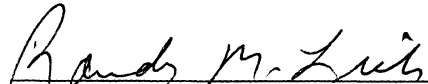
In the present case, the trial court chose to rely on the testimony of Mrs. Cornejo, and disbelieve completely the testimony of her now-ex-husband, Mr. Cornejo. However, the trial court did not account for the substantial delay in the filing of the report by Mrs. Cornejo, nor did the trial court acknowledge that the parties’ had been having problems in their marriage, and Mrs. Cornejo would have had reason to make up a story against the Defendant. There were major problems in the victim’s own testimony that should have raised a red flag regarding her reliability, but the trial court chose to ignore the red flag, and find Mr. Cornejo

guilty. Because of the problems in Mrs. Cornejo's testimony, this court should reverse the verdict issued below .

SUMMARY

The City did not prove beyond a reasonable doubt that Defendant was guilty of the crime of assault-domestic violence. As shown by the facts from the transcript, there are at least two points of crucial evidence that was overlooked by the court in reaching a guilty verdict; had the court considered those points, Defendant would have been found not guilty. Accordingly, because the trial court's findings of fact were clearly erroneous, the judgment should be set aside.

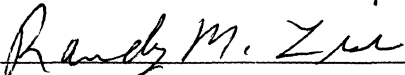
DATED this 15th day of August, 2003.



Randy M. Lish
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2003, I mailed a true and correct copy of the foregoing Brief of Appellant/Defendant to the Orem City Prosecutor, 97 E. Center, Orem, UT 84057.

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No addendum is necessary.