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In The Supreme C
of the State of U

STATE OF UTAH,

Plaintiff-R

vs.

PETER A. PETERSON,

Defendant-A

BRIEF OF R

Appeal from the Judgm
District Court for Salt Lake
Croft, Judge.

RICHARD SHEPHERD

231 East Fourth South
Salt Lake City, Utah

Attorney for Appellant

FILE

MAR

Clerk, Supreme

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CASES CITED

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In The Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondent,

vs.

PETER A. PETERSON,

Defendant-Appellant.

Case No. 10900

BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

The appellant was charged with the crime of assault with a deadly weapon with intent to do bodily harm. He was convicted of the crime on January 13, 1967, in the Third Judicial District Court for Salt Lake County. This is an appeal from that conviction.

DISPOSITION IN LOWER COURT

The appellant was tried in the lower court subsequent to a plea of not guilty to a charge of assault with a deadly weapon with intent to do bodily harm.Upon a trial by jury he was found guilty and convicted of the crime as charged and sentenced to the Utah State Prison.

RELIEF SOUGHT ON APPEAL

The respondent seeks affirmation of the lower court's judgment and appellant's conviction.

STATEMENT OF FACTS

The respondent is in general agreement with the statement of facts as contained in the appellant's brief with the following exceptions, additions and alterations:

1. That while Miss Skelton testified that Mr. Magnuson tried to choke her (Tr. 44), Mr. Magnuson asserts that he only tried to kiss her, at which time "she jumped up against the wall" (Tr. 15).

2. The cut inflicted on the hand of Mr. Magnuson required six stitches to close (Tr. 25).

3. The verdict returned by the jury said nothing about *great* bodily harm (R. 24), nor is the degree of harm intended as an element of the offense.

ARGUMENT

THE SUFFICIENCY OF EVIDENTIARY FACTS REQUIRED TO CONVICT FOR THE CRIMINAL OFFENSE CHARGED IS A MATTER TO BE DECIDED BY THE JURY, AND AN APPELLATE COURT IS PRECLUDED FROM REVERSING A CONVICTION WHERE EVIDENCE IS SUFFICIENT SO THAT REASONABLE MINDS ACTING FAIRLY UPON IT COULD FIND THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

A. Specific intent is an issue of fact to be determined by the jury.

One of the elements of the crime for which the appellant was convicted was "that the said assault was done with the intent to do bodily harm. . . ." (R. 21).

The appellant's main argument is, in essence, that the evidence presented at the trial was insufficient as a matter of law to sustain the conviction in that the specific intent required to commit the crime was not adequately shown. Thus, the appellant would have the court believe, in a round about way, that the determination of intent is a matter of law as opposed to fact.

In the case of *State v. Jensen,* 120 U. 531, 236 P.2d 445 (1951), the court said, "The question of intent is practically always one for the jury."

On a number of occasions, California courts have treated this same issue. In *People v. Pineda,* 41 C.A.2d 100, 106 P.2d 25 (1940), the court held:

> Where specific intent is a necessary element of an offense, the intent is a question of fact to be determined from all the circumstances, and, except where facts proven afford no reasonable ground for inference as to intent, it is the province of the jury to find the intent and to say what particular intent follows from the acts done.

Later in *People v. Bateman,* 175 C.A.2d 69, 345 P.2d 334 (1959), California Courts reiterated their position, "Intent with which an act is done may be gathered from all cir-

cumstances shown in the evidence and is a question of fact."

This universality of opinion was also displayed in the Oklahoma case of *Ogelsby v. State*, 411 P.2d 974 (Okla. 1966), in which the court declared:

> . . . intent, in a case where specific intent is a necessary element of the offense, is a question of fact for the jury, to be determined from all the circumstances and beyond a reasonable doubt. . . .

In helping juries to decide this issue, the very nature of intent has been of some assistance, and certain presumptions are authorized. In *People v. Vogel*, 46 C.2d 798, 299 P.2d 850 (1956), the California Supreme Court said in essence:

> An unlawful act proved to have been done by person accused thereof is presumed to have been intended, and burden is on him to prove justification or excuse overcoming such presumption.

Mr. Justice Crockett, expressing the views of this court in *Uintah Freight Lines v. Public Service Commission*, 119 U. 491, 229 P.2d 675 (1951) said, ". . . in criminal cases . . . a person is presumed to intend the natural and probable consequences of his unlawful acts. . . ."

This view was also voiced in the Washington case of *State v. Leach*, 6 Wash.2d 641, 219 P.2d 972 (1950), where the State Supreme Court held:

> Although commission of an overt act does not establish the particular intent to commit a specific crime, yet intent, being a state of mind, may be in-

> ferred *by the jury* from all the facts and circumstances as is the case in consummated crimes. (Emphasis added.)

From the foregoing, it can be easily ascertained that the matter of intent is an issue of fact to be determined by the jury. It is within their province not only to weigh the pertinent evidence but to determine whether such evidence has in fact indicated the requisite intent. In the instant case, the jury weighed the evidence presented and appropriately concluded that the appellant had in fact entertained the specific intent to do bodily harm.

B. Role of appellate court in reviewing criminal convictions.

The role of an appellate court in reviewing criminal convictions has been traditionally restricted so as to preserve the judicial system generally. The sanctity of the jury as the trier of fact has been held inviolate, and the standards of review applied by appellate courts have reflected that degree of respect.

1. Courts will not invade the province of the jury.

In *State v. Whitely,* 100 U. 14, 110 P.2d 337 (1941), this court through Chief Justice Moffat expressed its views vis-a-vis the proper respect to be accorded the jury function. It said:

> The findings of fact made by a jury or the trial court sitting as a jury, when supported by substantial evidence, are final and will not be disturbed on appeal.

The California Supreme Court ruled similarly in *People v. Henderson,* 34 C.2d 340, 209 P.2d 785 (1949):

> Questions of weight of evidence and credibility of witnesses are for trial court and where circumstances reasonably justify finding of guilt, an opposing view that they also may be reconciled with innocence will not warrant interference with judgment on appeal.

A later case decided by the same court wherein a writ of certiorari was denied resulted in a decision, which in essence held that it was not the function of an appellate court in a criminal case to reweigh the evidence. *People v. Wein,* 50 C.2d 383, 326 P.2d 457 (1958). This court in the case of *State v. Hedger,* 14 U.2d 197, 381 P.2d 81 (1963) has more recently treated this very subject:

> In answer to the appellate's contentions, which go to the weight of the evidence, we need only reiterate the oft-stated rule that unless it can be said as a matter of law that the finder of fact made an erroneous decision, this Court will not weigh the evidence.

Two other cases are particularly in point with our present case. In *People v. Reichenan,* 173 C.A.2d 584, 343 P.2d 603 (1959), the court said in essence that "where each element of an offense is a question of fact for jury, the jury's determination should not be disturbed on appeal."

In the case of *Bayne v. State,* 72 Okl.Cr. 52, 112 P.2d 1113 (1941), involving an assault with a deadly weapon with intent to do bodily harm, the Oklahoma Court said that "a conviction for assault with intent to do bodily harm

should not be disturbed, even where the evidence was conflicting."

In the instant case, the jury found sufficient facts to satisfy each of the elements of the crime, and upon those conclusions the appellant was convicted. As has been shown, it is not the prerogative of a reviewing court to interfere with this jealously guarded jury function.

2. Standard applied in reviewing convictions.

In consonance with the foregoing display of the rightful function of the jury in a criminal conviction, it is necessary to relate that function with the standards applied by courts reviewing such convictions. There is an abundance of Utah law outlining these standards to be applied.

In *State v. Sullivan,* 6 U.2d 110, 307 P.2d 212 (1957), in which certiorari was denied, this court held:

> Before a verdict may properly be set aside, it must appear that evidence was so inconclusive or unsatisfactory that reasonable minds acting fairly upon it must have entertained reasonable doubt that defendant committed the crime, and unless evidence compels such conclusion as matter of law, verdict must stand.

In *State v. Ward,* 10 U.2d 34, 347 P.2d 865 (1959), this court further declared:

> . . . it is the prerogative of the jury to judge the credibility of the witnesses and to determine the facts; . . . evidence will be reviewed in the light most favorable to the verdict; and . . . if when so viewed it appears that the jury, acting fairly and

> reasonably could find the defendant guilty beyond a reasonable doubt, the verdict will not be disturbed.

Even more recently, it was Justice Wade, while voicing the majority opinion in *State v. Berchtold,* 11 U.2d 208, 357 P.2d 183 (1960) who said:

> We reverse a jury verdict only where we conclude from a consideration of all of the evidence and the inference therefrom viewed in the light most favorable to such verdict that the findings are unreasonable.

Perhaps the latest expression of this court on the matter is contained in *State v. Canfield,* 18 U.2d 292, 442 P.2d 196 (1967). Here Chief Justice Crockett speaking for the court said:

> It is our duty to respect the prerogative of the jury as the exclusive judges of the credibility of the witnesses and as the determiners of the facts. Consequently, we assume that they believed the State's evidence, and we survey it, together with all fair inferences, that the jury could reasonably draw therefrom, in the light most favorable to their verdict.

Needless to say, Utah is not alone in applying these standards. The New Mexico Supreme Court in *City of Roswell v. Hall,* 45 N.E. 116, 112 P.2d 505 (1941) has said:

> We have held in numerous cases that if there is substantial evidence to support a judgment or sentence in a civil or criminal case that it will not be disturbed on appeal; and in determining whether there is substantial evidence we will consider only that part of the evidence supporting the judgment,

and reject the opposing or conflicting testimony.

In *People v. Ketchel,* 59 C.2d 503, 381 P.2d 394 (1963), the Supreme Court of California expressed, in essence, the following:

> An appellate court will search only for substantial evidence to support conclusion of trier of fact where sufficiency of evidence to sustain a conviction is raised on appeal, and every fact reasonably deducible from the evidence will be assumed in favor of the judgment.

Thus can be seen the attitude with which the court must approach this appeal by this appellant. Unless his appeal can withstand the rigors of these exacting standards of review, it must of necessity fail.

CONCLUSION

The resondent submits that there was sufficient evidence whereby the jury, in exercising its proper function as the trier of fact, could have found as it did that the appellant had the requisite intent to inflict bodily harm. The respondent further submits that this court is precluded from disturbing those findings of fact and should affirm the conviction of the appellant as adjudged in the lower court.

Respectfully submitted,

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