

1969

State Of Utah v. Pete Castillo : Brief of Respondent

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Vernon B. Romney, Lauren N. Beasley, Joseph P. McCarthy, and Clare A. Jones; Attorneys for Respondent

Recommended Citation

Brief of Respondent, *Utah v. Castillo*, No. 11447 (1969).
https://digitalcommons.law.byu.edu/uofu_sc2/4446

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

In The Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondent

vs.

PETE CASTILLO,

Defendant-Appellant.

Case No.
1147

BRIEF OF RESPONDENT

Appeal from the Judgment of the District Court
of Salt Lake County, State of Utah,
the Honorable Leonard W. Elton, Presiding.

VERNON B. ROMBERG
Attorney General

LAUREN N. BEARMAN
Assistant Attorney General

JOSEPH P. MCCARTHY
Assistant Attorney General

CLARE A. JONES
Assistant Attorney General

236 State Capitol
Salt Lake City, Utah
Attorneys for Respondent

JAY V. BARNEY
231 East Fourth South
Salt Lake City, Utah
Attorney for Appellant

FILED
JUN 4 - 1969
Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF NATURE OF CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	
THE TRIAL COURT DID NOT ERR TO THE PREJUDICE OF THE DEFENDANT-APPEL- LANT IN REFUSING TO INSTRUCT THE JURY AS TO HIS THEORY OF THE CASE.	3
A. Instructions must pertain to and be based upon evidence presented.	3
B. No substantial evidence was presented upon which the proposed instructions could be based.	5
C. The proposed instructions were faulty in their statements of the law.	7
CONCLUSION	8

CASES CITED

People v. Cummings, 141 C.A.2d 193, 296 P.2d 610 (1956)	3
People v. McDonnel, 94 C.A.2d 885, 211 P.2d 910 (1949)	7
People v. Zuckerman, 56 C.A.2d 366, 132 P.2d 545 (1942)	7
State v. Johnson, 112 Utah 130, 185 P.2d 738 (1947)	4
State v. Newton, 105 Utah 561, 144 P.2d 290 (1943)	4
State v. Mosley, 75 N.M. 348, 404 P.2d 304 (1965)	3
State v. Romero, 73 N.M. 109, 385 P.2d 967 (1963)	4

In The Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondent

vs.

PETE CASTILLO,

Defendant-Appellant.

} Case No.
11447

BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

On April 12, 1968, the appellant was charged with the crime of assault with a deadly weapon in connection with the stabbing of his former wife, Caroline Castillo, on March 12, 1968. The appellant was bound over and tried in the Third District Court for the crime accused.

DISPOSITION IN LOWER COURT

After a trial by jury which began on August 9, 1968, and concluded on August 12, 1968, the appellant was found guilty of assault with a deadly weapon. Motion was made for a new trial and was denied. This is an appeal from the conviction and denied motion.

RELIEF SOUGHT ON APPEAL

The respondent seeks affirmation of the appellant's conviction and of the lower court's denial of his motion for new trial.

Throughout this brief, references as to the Record will be designated R. Those pertaining to the Transcript will be designated TI or TII for the two volumes respectively.

STATEMENT OF FACTS

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

1. Not only did Santana Gonzales not want his sister to talk to the appellant, but Mrs. Castillo herself had expressed the same desire (TI.5,8,30).

2. Appellant fails to mention in his statement of the facts that Santana Gonzales confirmed the testimony of Mrs. Castillo as to how appellant first attacked Gonzales with a knife and as to how she was stabbed (TI.30-32).

3. Officer Clark's testimony as to the physical condition of the appellant after the incident (TI.60) can be used just as easily to corroborate the testimony of Santana Gonzales (TI.30-23).

4. While appellant contends in his facts that there was "substantial testimony" of "mutual hostility", the record reflects that the testimony was far from substantial (TI.17,34), and that the hostility was more unilateral than mutual (TI.35).

ARGUMENT

THE TRIAL COURT DID NOT ERR TO THE PREJUDICE OF THE DEFENDANT-APPELLANT IN REFUSING TO INSTRUCT THE JURY AS TO HIS THEORY OF THE CASE.

A. Instructions must pertain to and be based upon evidence presented.

The time honored standard for determining the propriety of instructions given is whether the instructions given adequately relate to the evidence presented. In the case of *People v. Cummings*, 141 C.A.2d 193, 296 P.2d 610 (1956) which involved an attempt to commit an abortion, the California court expressed this fundamental doctrine:

"While it is well settled that a defendant is entitled to instructions based on the theory of his defense, the court may refuse proffered instructions on a theory that is not supported by substantial evidence."

While there is a judicial split as to the amount of evidence needed to warrant an instruction, some courts saying any evidence, others calling for substantial evidence, the trend seems to require substantial evidence.

In *State v. Mosley*, 75 N.M. 348, 404 P.2d 304 (1965) the New Mexico Supreme Court echoed the California decision in the *Cummings* case, *supra*, in holding:

" . . . it is well established that the court is not required to charge the jury on the defendant's theory of the case unless it is supported by substantial evidence."

This same court in *State v. Romero*, 73 N.M. 109, 385 P.2d 967 (1963) earlier said that the refusal of requested instructions on the doctrine of self-defense is proper where the evidence does not raise a reasonable doubt as to whether the crime charged was committed in self-defense.

Can it be said, regarding the instant case, that the evidence presented was sufficient to raise a reasonable doubt as to whether the crime charged was committed in self-defense? Perhaps the *Romero* case provides the clue as to what the courts mean by "substantial evidence."

This "substantial evidence" test appears to be the standard used by Utah courts also. In the case of *State vs. Johnson*, 112 Utah 130, 185 P.2d 738 (1947) which involved the defense of self-defense in a conviction for involuntary manslaughter, this Court said:

"It is admitted that the defendant is entitled to have the jury instructed on his theory of the case if there is any substantial evidence to justify giving such an instruction. However, when the legislature permits a defendant to avoid the consequences of his act because the killing was excusable, an instruction is not necessary unless the facts and circumstances impelling the accused to act are in some way consistent with the legislative intent to excuse."

In the earlier case of *State vs. Newton*, 105 Utah 561, 144 P.2d 290 (1943) this Court seems to have added an additionally required ingredient, that of competence. In that case, the Court said that each party is entitled to have his theory of the

case, if supported by competent evidence, submitted to the jury by appropriate instructions.

From the foregoing, it is apparent that the test of substantiality and competence of evidence must be met before proffered instructions can be appropriately presented to the jury.

B. No substantial or competent evidence was presented as to appellant's theory of the case, i.e., self-defense.

There was no evidence presented on behalf of the appellant as to how he supposes his former wife was stabbed.

By his own testimony, the appellant concedes his inability to relate what he claims must have happened. He states, "After that, I don't remember much if I struggled with the knife or how I took the knife away from him, or stabbing my wife or stabbing him" (TII.14).

He was then asked, "And after you saw him coming at you with a knife, what do you remember next?" (TII.15).

He answered, "Well, the next thing I remember was that I was on top of him and he was asking me not to hurt him any more" (TII.15).

Appellant would have us believe that because he cannot remember how his former wife was stabbed, it must have been accidental during an act of self-defense.

It can hardly be contended that such a theory is substantial by either substantial or competent evidence.

The appellant fails to recall any intervention on the part of his wife. Thus, while by his own testimony he attempts to bridge the gap of self-defense against Santana Gonzales, the

second and most expansive gap, that of the accidental stabbing of his former wife, alludes him completely and remains unexplained.

While there is evidence, the competence of which is highly questionable, that the appellant was defending himself against an attack by the victim's brother, there is no evidence whatsoever that the victim herself was stabbed during such a defense. And while it is conceivable that a third person might be accidentally *cut* during such an alleged affray, it is difficult to imagine an *accidental stabbing* as serious as that inflicted upon Mrs. Castillo.

As has been said, the evidence must be competent to merit any related instruction. The competence of the appellant's own testimony must be weighed in light of the predicament in which he finds himself. Certainly that portion of the appellant's testimony which portrayed the instrument of the stabbing being mysteriously transferred from his own pocket to his alleged attacker's hand and then just as mysteriously back to his own, contributed little to the competence of his testimony (TII.21, 22).

The competence of the appellant's testimony also wears a little thin in his attempt to explain who ended up with the knife (Compare TII.15 with TII.22).

It is conceded that while the jury is normally the weigher of fact, certainly the judge as the giver of the law must initially weigh the evidence presented to determine which law by way of instruction need be given the jury. In essence, it would appear that the specificity with which instructions are to be given the jury depends on the degree to which the evidence presented warrants such instructions.

C. Appellant's proposed instructions were faulty in their statement of the law.

With reference to the proposed instructions at R.34 and R.35, it cannot go without note that the retreat doctrine as limited there only applies if the appellant at the time of the alleged self-defense is in a place where he has a lawful right to be. The transcript indicates he barged into a private dwelling against the expressed desires of the inhabitants (TI.15). See *People v. Zuckerman*, 56 C.A.2d 366, 132 P.2d 545 (1942) and *People v. McDonnell*, 94 C.A.2d 885, 211 P.2d 910 (1949). In this same regard, the law is resplendent with cases which hold that the claimant of self-defense must be free from fault in bringing on the difficulty.

With respect to the proposed instruction at R.36, while this instruction may be partially correct, such anticipation must be reasonable. There is nothing in the record to show that prior to the visit by the appellant to the victim's home that her brother had propensities for violence. On the contrary, there is evidence that Santana Gonzales made every effort to avoid such violence (TI.35).

This instruction was also faulty in that it should have stated that arms used in the advanced arming of oneself may not be of a type, the natural use of which would have exceeded the force necessary to repel or defend against the anticipated attack.

Proposed Instruction at R.37, The instruction as proposed only requires the defendant to come forward with "some" evidence to avail himself of the defense. The cases cited thus far in this brief indicate that "substantial and competent" evidence is required.

While that portion of the closing sentence of the instruction which states that if a reasonable doubt exists as to whether

defendant *did not* act in self-defense, he should be acquitted. is an accurate statement of the law, it can hardly be conceded that if a reasonable doubt exists as to whether defendant *did* act in self-defense, he should be acquitted. The latter is simply an inaccurate statement of the law.

Proposed Instruction at R.39. This instruction suffers from the same defect as the Instruction at R.37. Appellant would have the jury believe that if they “. . . should have a reasonable doubt . . . that the defendant *was* lawfully endeavoring to defend himself . . . and that he had had *no intent* . . .” (emphasis added) they must acquit him. The standard for acquittal is reasonable doubt as to guilt not as to innocence.

Proposed Instruction at R.41. The appellant makes the statement, “If you should have a reasonable doubt as to whether defendant’s theory of this case is *true* you should acquit him.” (Emphasis added.) Again we have a request for acquittal if reasonable doubt exists as to defendant’s *innocence*.

While it is admitted that many of these objections to the proposed instructions are somewhat technical, when considered in connection with the lack of supporting evidence it is not difficult to appreciate the court’s ruling as to such instructions.

CONCLUSION

The universal standard which governs the basis for and the propriety of giving instructions to the jury in a criminal case is the existence of substantial and competent evidence to support such instructions. The record in this instance fails to reflect the productions of either substantial or competent evidence sufficient to support the giving of appellant’s proposed instructions. In addition, the instructions themselves are replet with

half-statements and misstatements of the law sufficient to cause their rejection. It is submitted that the evidence presented required no more than the giving of a general instruction as to "just cause or excuse," and that the rejection of appellant's proposed instructions was in no way inappropriate. For these reasons, it is further submitted that the lower court's judgment and conviction be affirmed in all respects.

Respectfully submitted,

VERNON B. ROMNEY

Attorney General

LAUREN N. BEASLEY

Assistant Attorney General

JOSEPH P. McCARTHY

Assistant Attorney General

CLARE A. JONES

Assistant Attorney General

236 State Capitol

Salt Lake City, Utah

Attorneys for Respondent