

1984

The State of Utah v. John Ray Garcia : Brief of Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,)	
)	
Plaintiff-Respondent,)	
)	
vs.)	Case No. 18973
)	
)	
JOHN RAY GARCIA,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

AN APPEAL FROM THE CONVICTION OF AGGRAVATED ASSAULT,
A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN.
§ 76-5-103 (1978), IN THE THIRD JUDICIAL DISTRICT
COURT OF SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE JAMES S. SAWAYA, JUDGE, PRESIDING

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BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellant, John Ray Garcia, appeals from his conviction of aggravated assault, a third degree felony, in violation of Utah Code Ann. § 76-5-103 (1978).

DISPOSITION IN THE LOWER COURT

Appellant, John Ray Garcia, was tried by jury on September 20-21, 1982, in the Third Judicial District Court of Salt Lake County, State of Utah, the Honorable James S. Sawaya, Judge, presiding. The jury found appellant guilty of aggravated assault, a third degree felony, in violation of Utah Code Ann. § 76-5-103 (1978). Appellant was sentenced as provided for a third degree felony and was placed on probation.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the conviction below.

STATEMENT OF THE FACTS

Respondent agrees with the statement of facts set forth in appellant's brief. Such additional facts and testimony as respondent plans to utilize will be incorporated into the argument.

ARGUMENT

POINT I

THE EVIDENCE ADDUCED AT TRIAL WAS SUFFICIENT TO SUPPORT APPELLANT'S CONVICTION OF AGGRAVATED ASSAULT.

Appellant was charged in the Information with the commission of aggravated assault, a third degree felony, in violation of Utah Code Ann. § 76-5-103 (1978) as follows:

[D]efendant, JOHN RAY GARCIA, assaulted Chuck Pitts by attempting to do bodily injury to him with unlawful force or violence and intentionally caused serious bodily injury to him; and/or assaulted Chuck Pitts by attempting to do bodily injury to him with unlawful force or violence, by the use of a deadly weapon or such means or force likely to produce death or serious bodily injury;

Section 76-5-103(1) of the Utah Code Ann. (1978) provides in pertinent part that:

A person commits aggravated assault if he commits assault as defined in section 76-5-102 and:

(a) He intentionally causes serious bodily injury to another; or

(b) He uses a deadly weapon or such means or force likely to produce death or serious bodily injury. . . .

Subsections (a) and (b) of the aggravated assault statute read in the disjunctive. Thus, a person will have committed aggravated assault if he committed assault and he either intentionally caused serious bodily injury to another or he used a deadly weapon or such means or force likely to have produced death or serious bodily injury.

Appellant claims that the evidence presented against him at trial was insufficient to support his conviction of aggravated assault. Although the jury is the sole judge of the facts of the case, of the credibility of the witnesses, and of the weight of the evidence, the Utah Supreme Court has the right to review the sufficiency of the evidence to support the verdict. State v. Petree, 659 P.2d 443, 444 (Utah 1983); State v. Howell, 649 P.2d 91, 97 (Utah 1982); State v. Wilson, 565 P.2d 66, 68 (Utah 1977); State v. Minousis, 64 Utah 206, 213, 228 P. 574, 577 (1924).

The standard of review for sufficiency of the evidence is as follows:

This Court will not lightly overturn the findings of a jury. We must view the evidence properly presented at trial in the light most favorable to the jury's verdict, and will only

interfere when the evidence is so lacking and insubstantial that a reasonable man could not possibly have reached a verdict beyond a reasonable doubt. . . . We also view in a light most favorable to the jury's verdict those facts which can be reasonably inferred from the evidence presented to it. "Thus, intent to commit [a crime] . . . may be found from proof of facts from which it reasonably could be believed that such was the defendant's intent."

State v. McCardell, 652 P.2d 942, 945 (Utah 1982) (citations omitted).

Respondent, the State of Utah, proved each element of the charged offense of aggravated assault at least to the extent that a reasonable man could have reached a verdict beyond a reasonable doubt. Appellant does not contend that the evidence was insufficient to prove the elements of simple assault which are set out in Utah Code Ann. § 76-5-102 (1978) as follows:

Assault is:

- (a) An attempt, with unlawful force or violence, to do bodily injury to another; or
- (b) A threat, accompanied by a show of immediate force or violence, to do bodily injury to another. . . .

Appellant makes different arguments under the two subsections of the aggravated assault statute, either subsection of which may have been utilized by the jury to convict the appellant. There is, in fact, substantial credible evidence to support a verdict under either of the subsections.

Appellant asserts that there was no evidence to support a conviction under subsection (a) of the aggravated assault statute, which provides that a person commits aggravated assault if he commits assault as defined in Section 76-5-102 (quoted above) and he intentionally causes serious bodily injury to another. He does not present any discussion or argument regarding the specific intent element of subsection (a). If the jury believed the testimony of the victim or if it drew logical inferences from the actions and words of appellant as described by the victim, it could have ascribed the requisite intent to the appellant. The victim, Chuck Pitts, testified that appellant told him he was going to die prior to the victim's and Loretta Martinez' departure from O.C. Tanner's parking lot (T. 23). Mr. Pitts further reported that, following the infliction of injuries upon him by appellant, appellant told him that appellant was going to kill him (T. 33). Such threats indicate an intent to inflict serious bodily injury.

Even when there is sharp conflict in the testimony between the state and the defendant, there need be only "some evidence and circumstances from which the jury might draw certain inferences as to specific intent of the defendant." State v. Minousis, 64 Utah 206, 212, 228 P. 574, 577 (1924).

Here, appellant followed Mr. Pitts and Ms. Martinez (T. 25) and engaged in an affray with Mr. Pitts immediately after Mr. Pitts arrived at the parking lot of the Willows Condominiums (T. 28). According to the testimony of Mr. Pitts, appellant drove up to Ms. Martinez' car at a very rapid rate of speed, jumped out of his vehicle running full force, and commenced attacking Mr. Pitts (T. 28). Mr. Pitts received blows to the head (T. 31) which required medical attention (T. 66). Thus, there are clearly "some evidence and circumstances" from which the jury could draw inferences as to the specific intent of the appellant. The indicia exist even in light of appellant's claim of self-defense, as testified to by Loretta Martinez (T. 135), and in light of the implied claim of defense of a third person, as hinted at in the testimony regarding claimed sexual advances by Chuck Pitts against Loretta Martinez.

Subsection (a) also requires proof that appellant caused serious bodily injury to the victim, Chuck Pitts. As defined at Utah Code Ann. § 76-1-601(8) and (9) (1978):

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ or creates a substantial risk of death.

Chuck Pitts testified that his left eye was injured during his encounter with appellant (T. 33), that the corner of his left eyebrow is continually pulled up more than it had previously been, that he had blurring of vision for some time (several months) after the incident and continues to occasionally have blurred vision, that his left eye becomes fatigued from reading or driving, and that the injury was very painful (T. 46). The attending physician, Dr. Bruce Argyle, testified as to the specific nature of the eye and eyebrow injury sustained by the victim (T. 66) and as to the scar that remains as a result of the injury (T. 73). From the testimony of the victim and of the doctor, the jury could have reasonably concluded that appellant had caused serious bodily injury to Chuck Pitts, the victim.

Appellant contends that there was insufficient evidence to support a conviction under subsection (b) of the aggravated assault statute, which provides that a person commits aggravated assault if he commits assault as defined in Section 76-5-102 (quoted above) and he uses a deadly weapon or such means or force likely to produce death or serious bodily injury.

There was contradictory testimony as to whether any weapon was involved. The victim, Chuck Pitts, testified that

appellant had some type of instrument, pipe, club, or rod probably about sixteen to eighteen inches long which appellant brought against Mr. Pitts' face with appellant's right hand (T. 30). Mr. Pitts also testified that he heard a sound, like the metallic sound or an object hitting, as he and the appellant were going to the ground (T. 34).

Dr. Bruce Argyle testified that Mr. Pitts' injury was inconsistent with a blow by the fist or with striking one's head on asphalt pavement, but rather was consistent with a blow by a cylindrical heavy object (T. 67-70).

Omar Leeman, who was present with Chuck Pitts and Loretta Martinez at the Green Street in Trolley Square prior to the incident, testified that Loretta Martinez phoned him following the incident, and told him appellant had jumped Chuck Pitts and had hit him with a pipe (T. 162).

Scott Robinson, a Murray City Police officer who investigated the incident, testified that Ms. Martinez told him it was too dark for her to tell whether Chuck Pitts was hit by appellant with some kind of object (T. 169).

Taking the evidence in the light most favorable to the jury's verdict, reasonable minds need not necessarily conclude that appellant was without a weapon in the scuffle. This is true even considering the testimony to the contrary.

Ms. Martinez testified that she never saw a pipe, that appellant had nothing in his right hand when he raised it (T. 135), and that she did not tell Omar Leeman that appellant hit Chuck Pitts with a pipe (T. 173). Dennis Chavez Trujillo testified that he was an eyewitness to the fight (T. 150) and that there were no weapons or instruments in appellant's hand during the encounter (T. 152). Mr. Trujillo also testified that appellant carried two pieces of something in his hand (T. 158), which appellant claims to be inconsistent with the theory that he carried away the weapon. Scott Robinson, investigating police officer, testified that no pipe was found in a search of the area where the incident took place (T. 85).

The jury was not obligated to believe the evidence at trial which was most favorable to appellant. State v. Howell, 649 P.2d 91, 97 (Utah 1982). Further, when there is conflicting evidence, as there was in the instant case, the Utah Supreme Court is "obliged to accept that version of the facts which supports the verdict." Id. at 93. Therefore, the jury need not have believed the testimony most favorable to appellant, or that which indicated that there was no weapon; and the reviewing court must accept the version of the facts which supports the verdict, or that which indicated that there was a weapon.

Whether there was a weapon used in the scuffle is not necessarily dispositive, however. Subsection (b) of the aggravated assault statute alternatively provides that an aggravated assault occurs if a person uses a deadly weapon or such means or force likely to produce death or serious bodily injury. The wording is in the disjunctive, so a deadly weapon need not have been used for appellant to have committed aggravated assault.

Dr. Argyle testified that if a pipe had been swung at Chuck Pitts so that Mr. Pitts had been struck directly behind the eye (slightly behind it in the temple area) rather than his having received a glancing blow over the eyebrow, the impact could have easily caused death (T. 71). The jury may not have believed that there was a weapon but could still have reasonably concluded that a direct blow to Chuck Pitt's temple with the fist could have produced death or serious bodily injury.

The jury reasonably could have believed that appellant was capable, through the use of his fists alone, of creating a true risk of death or serious bodily injury for his victim, Chuck Pitts. The testimony at trial illuminated the age difference between appellant and Chuck Pitts. Appellant was just barely over twenty years old at the time of the incident, and Chuck Pitts was nearly forty years old (T. 35).

Also, Chuck Pitts testified that he did not exercise, that he was six feet tall and that he weighed 155 pounds (T. 53). There was no testimony relative to the height and weight of appellant. However, the jury was able to observe appellant and to compare his stature and apparent physical condition to that of the victim, Chuck Pitts. It could have concluded that appellant was able to create a risk of death or serious bodily injury for Chuck Pitts.

The above-mentioned testimony of Dr. Argyle was the sole evidence on the element of the likelihood of the production of death. Additionally, the jury was at liberty to draw whatever inferences that it reasonably could from all direct and circumstantial evidence.

The jury could have concluded that the victim actually suffered serious bodily injury. As discussed above, Chuck Pitts had a permanent disfigurement in the form of a scar and suffered from blurred vision, eye fatigue, and the like. On the other hand, the jury could have believed that appellant used such means or force likely to cause serious bodily injury, whether it was actually caused or not. The jury needed to draw the first conclusion to convict under subsection (a) or the second conclusion to convict under subsection (b) of the aggravated assault statute.

Appellant did not, in his brief, discuss either the self-defense theory or the defense of a third person theory raised at trial. He did, however, claim the existence of a general insufficiency of the evidence. Therefore, respondent feels constrained to observe that the mere raising of one or more defenses did not automatically create a reasonable doubt of appellant's guilt. As previously noted, the jury was the sole judge of the facts, the credibility of the witnesses, and the weight given the testimony. The jury properly elected to disbelieve the theories of self-defense and the defense of a third person interposed at trial.

Reasonable minds need not have necessarily entertained a reasonable doubt that appellant committed the crime. The self-defense issue boiled down to a conflict in testimony between the victim, Chuck Pitts, who testified that he was assaulted without provoking or first grabbing or hitting appellant (T. 30), and the witnesses for appellant. Loretta Martinez testified that Chuck Pitts grabbed appellant by appellant's chest or neck or something (T. 135) prior to appellant's hitting Chuck Pitts; and Dennis Chavez Trujillo testified that Chuck Pitts called appellant a name and grabbed appellant before blows were thrown (T. 151). The jury could

reasonably have found the victim's testimony more persuasive than that of appellant's witnesses.

The defense of a third person theory was founded largely upon innuendos. Appellant presented some evidence that he was defending Loretta Martinez against the sexual advances of the victim, Chuck Pitts. The only activity of which appellant could have been aware was the kiss shared by Ms. Martinez and Mr. Pitts while they were in her car at the O.C. Tanner parking lot. Loretta Martinez testified that Chuck Pitts kissed her and tried to touch her breast (T. 131). Ms. Martinez also testified that she did not know when appellant arrived at the O.C. Tanner parking lot (T. 132), that she thought appellant had seen the kiss (T. 141), and that she did not advise appellant that Chuck Pitts was making unwanted advances or that she needed help (T. 142). Thus, there was no direct evidence that appellant observed or was otherwise aware of Chuck Pitts' alleged sexual advances. Further, there was no evidence or impropriety in Chuck Pitts' actions when he and Loretta Martinez arrived at the Willows Condominiums parking area.

All of the other testimony concerning the possibility of the defense of a third person was given by Loretta Martinez (T. 129) and by Michelle Egan Berry (T. 108-109), who sat with Loretta Martinez and Chuck Pitts at the Green Street. The two

women claimed that Chuck Pitts put his arm around the back of Loretta Martinez' chair, whispered in her ear, and placed his arm at least in the direction of, if not directly on, her knee. Appellant was not privy to this information and it was, therefore, irrelevant. Additionally, Omar Leeman, a business acquaintance of the victim's who was the fourth person sharing a table at the Green Street on the evening of the incident, testified that he did not see Chuck Pitts whisper in Loretta Martinez' ear (T. 99) or otherwise engage in conduct that could be characterized as sexual advancement (T. 97). Chuck Pitts testified that he did not remember making any romantic overtures (T. 57).

The testimony concerning the alleged sexual advances by Chuck Pitts towards Loretta Martinez was in sharp conflict. Even if the jury had believed that Mr. Pitts made such advances, the jury would also have concluded that appellant did not observe the overtures and was not told about them by Loretta Martinez. Because appellant was unaware of the claimed actions of Chuck Pitts, he could not have been going to the rescue of Loretta Martinez. The theory that appellant was defending Ms. Martinez from the sexual advances of the victim was based upon the barest of evidence and did not have to be accepted by the jury.

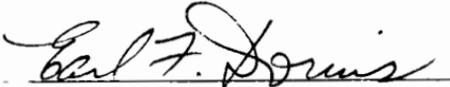
CONCLUSION

As stated by the Utah Supreme Court in State v. Howell, 649 P.2d 91, 97 (Utah 1982): "It is not sufficient that on appeal an appellate court views the evidence as less than wholly conclusive." Rather, to overturn the guilty verdict on a claim that the evidence at trial was insufficient for a conviction of aggravated assault, the Utah Supreme Court would have to find that reasonable minds would entertain a reasonable doubt and that reasonable men could not have reached the verdict beyond a reasonable doubt. Id.

There is substantial credible evidence to support the conviction of aggravated assault. For the above stated reasons, appellant could have reasonably been found guilty on either arm of the aggravated assault statute. Thus, appellant's conviction should be affirmed.

RESPECTFULLY SUBMITTED this th 30 day of March, 1984.

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MAILING CERTIFICATE

I hereby certify that I mailed a true and exact copy of the foregoing Brief of Respondent, postage prepaid, to Stephen R. McCaughey, Attorney for Appellant, 72 East 400 South, Suite 330, Salt Lake City, UT 84111.

DATED this 31st day of March, 1984.

Kathleen Kallenberg