2003

Utah v. Peterson : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff/Appellee,	:	
	:	Case No. 20030704-CA
vs.	:	
DON ENOCH PETERSON Defendant/Appellant.	:	

BRIEF OF APPELLEE

An appeal from a judgment of conviction for one count of Child Abuse, a Class A misdemeanor, in violation of Utah Code Ann. §76-5-109 (2002), in the Third District Court, in and for Salt Lake County, State of Utah, the Honorable Denise P. Lindberg, Judge, presiding.

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

STATUTES

IN THE UTAH COURT OF APPEALS

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vs.	:	
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JURISDICTION AND NATURE OF THE PROCEEDINGS

This is an appeal from conviction for Don Enoch Peterson for one count of Child Abuse, a Class A Misdemeanor, in violation of UTAH CODE ANN. §76-5-109(3)(a) (2003), in the Third District Court, the Honorable Judge Lindberg presiding.

This Court has jurisdiction pursuant to UTAH CODE ANN. § 78-2a-3(2)(2001).

STATEMENT OF THE ISSUES

Question One

1. Whether the trial court was right in denying the appellant's motion for directed verdict and concluding that the evidence was sufficient to send the case to the jury. Also whether the evidence given supported the subsequent guilty verdict returned by the jury.

   Standard of Review. "We review a challenge that there was insufficient evidence to warrant sending the case to the jury under 'the same standard

applied to a claim that insufficient evidence exists to support a jury verdict.' *State v. Dibello*, 780 P.2d 1221, 1225 (Utah 1989). Thus, to reverse a jury verdict we must find that 'the evidence to support the verdict was completely lacking or was so slight and unconvincing as to make the verdict plainly unreasonable and unjust. *State v. Heaps*, 2000 UT 5, ¶19, 999 P.2d 565 (citation and internal quotations omitted)." 2002 UT App. 348, ¶52.

Question Two

2. Whether the jury properly inferred that the appellant intentionally or knowingly injured his child when he grabbed the two-year-old child by the throat.

Standard of Review. "We review a challenge that there was insufficient evidence to warrant sending the case to the jury under 'the same standard applied to a claim that insufficient evidence exists to support a jury verdict.' *State v. Dibello*, 780 P.2d 1221, 1225 (Utah 1989). Thus, to reverse a jury verdict we must find that 'the evidence to support the verdict was completely lacking or was so slight and unconvincing as to make the verdict plainly unreasonable and unjust. *State v. Heaps*, 2000 UT 5, ¶19, 999 P.2d 565 (citation and internal quotations omitted)." 2002 UT App. 348, ¶52.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The following statutes, rules, or constitutional provisions whose interpretation is relevant to this appeal are attached at addendum A:

STATEMENT OF THE CASE

On February 25, 2003, appellant was charged with one count of child abuse, a Class A misdemeanor, in violation of UTAH CODE ANN. § 76-5-109 (2003). R.1. On July 14, 2003, the Honorable Denise P. Lindberg denied the appellant's motion for directed verdict. R.70: 66. Subsequently, on July 14, 2003, the appellant was found guilty of one count of child abuse. R.49. On August 26, 2003, the appellant filed a timely notice of appeal. R.52-53.

STATEMENT OF THE FACTS[1]

On November 27th, 2002, Andrea Campbell dropped off her two-year-old son, Mathew Campbell, at the home of the parents of the appellant, Don Peterson. R.70: 35-36. The appellant and his mother were to watch the child, who was the appellant's son, from about 9:00 am to 4:00 pm while Ms. Campbell was at work. R.70: 35-36, 71. Ms. Campbell came back to pick up the child from the appellant's house between 3:00 and 4:00pm. R.70: 36. When Ms. Campbell picked up her two-year-old, she noticed that he had bruises on both sides of his neck. R.70: 36. Appellant initially told her that the bruises came from wrestling. R.70:36. When Ms. Campbell began questioning the appellant about the bruises, he was

[1]Except as otherwise noted, this brief recites the facts in the light most favorable to the jury's verdict. See *State v. Litherland,* 2000 UT 76, ¶ 2, 12 P.3d 92.

acting funny and would not look her in the eyes. R.70: 36. After being questioned for half an hour, the appellant changed his story and admitted that he had caused the marks on the child's neck when he picked the two-year-old up and put him back in the chair. R.70: 36, 40.

Appellant related the following story to Ms. Campbell and then to the police. Around noon, the appellant and his mother made lunch for the child in the kitchen. R.70: 72. While the child was eating his lunch the appellant's mother left out the back door to get something from a trailer on the side of the house. R.70: 73. The child initially wanted to follow his grandmother but the appellant told him to eat his lunch. R.70: 73. After a few minutes the child quickly got up and went running towards the door his grandmother had used. R.70: 73. The appellant got up and went running after the child to stop him. R.70: 73. After telling the child to stay and eat his lunch, the appellant reached out and grabbed the child by the neck forcefully enough to cause instant bruising and red marks. R.70: 73-74. He then dragged the child back to his seat by the neck. R.70: 75. Appellant said he grabbed the two-year-old by the neck and the shoulder. R.70:74-75.

At about 9:00 pm two officers of the Midvale City Police Department were dispatched to the home of Andrea Campbell. R.70: 52. The two officers examined the child and took three photographs of the injuries on the appellant's neck. R.70: 48-50. Ms. Campbell identified the pictures in court, saying that the marks were actually darker, like dark red blood blisters, so that a person could see where fingers had been placed on the two-year-old's neck. R:70:38-39, 42. Officer Woffinden observed red marks on the two-year-old's neck but saw no marks on the two-year-old's arm. R.70:50-51, 61.

After the officers arrived back at the station one of them, Officer Woffinden spoke to the appellant on the phone. R.70: 77. After Officer Woffinden told the appellant who he was and that he was calling about the child, the appellant identified the child as his son. R.70: 53. Officer Woffinden then told the appellant that he was concerned about the marks on the neck of the child. The appellant told the officer in answer to this question that "he had lost it." The Appellant went on to explain his version of the events that led up to his grabbing the child and told Officer Woffinden that he needed help with his anger. R.70:54. The appellant also told the officer that he had been going to domestic violence counseling but that he had run out of money and had quit going. R.70: 54. The appellant ended by saying he needed help with his anger and should not be locked up. R.70: 54.

SUMMARY OF THE ARGUMENT

At the close of the State's case, the appellant motioned for a directed verdict claiming there was insufficient evidence to send the case to the jury. R. 70:66. The trial court denied the appellant's motion determining there was sufficient evidence to allow the jury to determine the factual issue as to whether the appellant intentionally harmed his child. R. 70:67. The appellant now claims that the trial court erred in denying his motion to dismiss and that there was insufficient evidence to convict him. Specifically, the appellant argues that the State did not prove that the appellant intentionally harmed his child when he grabbed him by the throat. However, the appellant's argument fails because the jury properly inferred that the appellant had the requisite intent required under Utah Code. Ann. § 76-5-109(3)(a)(2003).

I. THE TRIAL COURT PROPERLY SUBMITTED THE CASE TO THE JURY BECAUSE THE STATE ESTABLISHED A PRIMA FACIE CASE, PRODUCING PHOTOGRAPHS OF THE INJURIES AND AN ADMISSION BY THE APPELLANT THAT HE CAUSED THEM.

"In determining whether there is sufficient evidence to send a case to the jury, the court uses the same standard as for a claim of insufficient evidence to support a jury verdict." *State v. Taylor*, 884 P.2d 1293, 1296 (Utah Ct. App. 1994) (quoting *State v. Dibello*, 780 P.2d 1221, 1225 (Utah 1989)). "[A]ppellate courts should 'uphold the trial court's decision if, upon reviewing the evidence and all inferences that can be reasonably drawn from it, [the court] conclude[s] that some evidence exists from which a reasonable jury could find that the elements of the crime had been proven beyond a reasonable doubt.'" Id. "Therefore, a motion for a directed verdict made at the close of the state's case may be denied if the trial court finds that the State has established a 'prima facie case against the appellant by producing 'believable evidence of all the elements of the crime charged.'" *State v. Montoya*, 2004 UT 5, ¶ 29, 84 P.3d 1183, 1190 (quoting *State v. Emmett*, 839 P.2d 781, 784 (Utah 1992)). All evidence from the trial court is "viewed in the light most favorable to the state." Id. (quoting *Mahmood v. Ross*, 1999 UT 104, ¶ 16, 990 P.2d 933 (stating, "'When reviewing any challenge to a trial court's denial of a motion for directed verdict, we review the evidence and all reasonable inferences that may fairly be drawn therefrom in the light most favorable to the party moved against . . . .'"). The question of intent is for the trier of fact, not the judge. See *State v. Minousis*, 228 P. 574, 577 (Utah 1924) (stating, "As to whether or not the specific intent existed in the mind of the accused is a question of fact to be submitted to and determined by the jury from all the evidence in the case and the inferences to be drawn

therefrom, and is not a matter of legal presumption.).

In this case, the State presented a prima facie case by presenting photographic evidence of the injuries to the child, testimony that the appellant admittedly grabbed his child by the throat, stating that he "lost it," and that the appellant admitted that he had a problem with anger. Thus, with all inferences in favor of the State, the trial judge concluded that there was sufficient evidence for the jury to determine the appellant's guilt beyond a reasonable doubt.

II. THE APPELLANT'S CONVICTION SHOULD BE UPHELD SINCETHE JURY PROPERLY INFERRED THAT THE APPELLANT INTENTIONALLY OR KNOWINGLY INJURED HIS CHILD WHEN HE GRABBED THE TWO-YEAR-OLD BY THE THROAT.

The Utah Supreme Court stated:

> When we examine a challenge to the sufficiency of the evidence supporting a jury verdict, we review the evidence and all inferences reasonably drawn therefrom in the light most favorable to the jury verdict. We also assume that the jury believed the evidence that supports the verdict. We will reverse a jury conviction "for insufficient evidence 'only if the evidence presented at trial is so insufficient that reasonable minds could not have reached the verdict.'" Further, in reviewing the sufficiency of the evidence, we refuse to "re-evaluate the credibility of the witnesses or second-guess the jury's conclusion." *State v. Fedorowicz*, 2002 UT 67, ¶ 40, 52 P.3d 1194, 1204 (citations omitted).

The appellant was appropriately convicted of child abuse because the State proved all the elements of the statute for which he was charged. Utah Code Ann. § 76-5-109(3), provides, "Any Person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows: "(a) if done intentionally or knowingly, the offense is a class A misdemeanor. . . ." Utah Code Ann § 76-2-103, provides, "A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.
(2) A person acts knowingly or with knowledge, with respect to the result of his conduct when he is aware that his conduct is reasonably certain to cause the result."

Utah Code Ann § 76-2-104(3), provides, "If acting knowingly is sufficient to establish the culpable mental state for an element of an offense, that element is also established if a person acts intentionally."

In *State v. Peterson*, the defendant was convicted of assault with a deadly weapon. 453 P.2d 696, 696-97 (Utah 1969). The defendant argued that the statute required a showing that he had the specific intent to commit the offense. The Supreme Court disagreed stating:

> With respect to the intent: It is true that the State was unable to prove directly what was in the defendant's mind relative to doing harm to the victim; and that he in fact denied having any such intent. However, his version does not establish the fact, nor does it even necessarily raise sufficient doubt to vitiate the conviction. If it were so, it would lie within the power of a defendant to defeat practically any conviction which depended upon his state of mind. As against what he says, it is the jury's privilege to weigh and consider all of the facts and circumstances shown in evidence in determining what they will believe. This includes not only what was said and what was done, but also the drawing of reasonable inferences from the conduct shown, which in this instance they may well have regarded as speaking louder than the defendant's defensive claims as to what his intentions were. **This is in accord with the elementary rule that a person is presumed to intend the natural and probable consequences of his acts**.).

In *State v. Maestas*, the Utah Supreme Court further stated:

> Because of the near impossibility of proving intent directly, Utah law clearly permits the inference of such intent from the actions of the defendant considered in light of the surrounding circumstances. This Court has stated: The argument that the state did not prove the defendant's specific intent to committed the crimes charged ignores two well-settled principles. The first is that the jury can find not only the facts shown directly by the evidence, but also such additional facts as may reasonably be inferred therefrom. 652 P.2d 903, 906 (1982),

Assuming in arguendo that the circumstantial evidence alone is not sufficient to find the appellant intentionally grabbed the child by the throat, the direct evidence of the bruises to the neck point to the necessary intent. In murder cases, it has been found that the injuries sustained by the victim can establish intent. *State v. James*, 891 P.2d 781 at 790 (Utah 1991). In *James*, the defendant was charged for murder under a statute that required intentional conduct for conviction. *Id.* at 788. Since there was no direct evidence of intentional conduct, the trial court was forced to infer the intent from the injuries sustained by the victim coupled with circumstantial evidence. In examining this decision the Supreme Court looked to other similar cases and found that "in the majority of cases, evidence of intent is generally supplied by evidence of the injury by which the victim died or of the act which caused the death." *Id.* at 790. However, the Supreme Court did not find this evidence sufficient in *James*, and instead concluded that intent was established "from the overall circumstances of the death." *Id.* at 792. Using this information, the Supreme Court upheld the finding of intentional conduct based upon the facts of the case.

The court also found that injuries can supply intent in a more factually similar case. In *State v. Widdison*, 2001 UT 60, ¶74, 28 P.3d 1278, 1293, the defendant was charged with intentional infliction of serious physical injury upon a child that caused her death in violation of §76-5-203(1)(d) (1999) and §76-5-109(2)(a) (1999) of the Utah Code. In upholding defendant's conviction, the Supreme Court found the evidence in the case sufficient to establish the requisite intent. *Ibid.* The Court held that the finding of intentional conduct was supported by "overwhelming medical evidence and lay testimony." *Id.* at ¶76. The evidence

itself "suggested that [the victim's] injuries were non-accidental . . ." *Ibid.*

The physical evidence in the present case also establishes overwhelmingly that the appellant meant to grab the child by the throat. When the pictures of the child's injuries are examined, the appellant's finger marks are clearly visible on the neck. If the appellant's contention that he meant to grab the child by the shoulders and his hands slipped up the throat is to be believed, the injuries would be different. The marks would surely be less defined and there might even be markings from the sliding of the appellant's fingers up the neck of the child and on the child's shoulder. Instead, the finger marks are consistent with the appellant's grabbing the neck of the two-year-old from the front and closing his fingers around it intentionally. Also, there were no marks on the child's shoulder. Based upon this physical evidence, the jury was justified in finding that the appellant intentionally grabbed the child by the throat.

Even if the appellant had no intent to injure initially, the act of grabbing a two-year-old child by the throat and then carrying or dragging the two-year-old back to his chair has to be seen by anyone as likely to result in injury to the child. Indirect evidence is also known as circumstantial evidence. See *State v. Vance*,110 P. 434, 449 (Utah 1910) J. Staup dissenting (circumstantial evidence is frequently termed indirect evidence). In Utah, "[i]t is well settled in this state that 'a conviction can be based on sufficient circumstantial evidence.'" *State v. Lyman*, 966 P.2d 278, 281 (Utah Ct. App. 1998) (quoting *State v. Brown*, 948 P.2d 337, 344 (Utah 1997)).

In this case, the State proved the appellant's requisite intent or knowledge by introducing evidence of: the injuries, the appellant's admission that he caused the injuries, and

the appellant's admission that he had an anger problem and "lost it" when he grabbed his child by the throat. From all the evidence, the jury determined that the appellant acted intentionally or knowingly when he grabbed his child by the throat and carried or dragged the two-year-old back to his chair causing the injuries.

CONCLUSION

Based on the foregoing, appellant's conviction should be affirmed.

RESPECTFULLY submitted on this 9th day of July, 2004.

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Deputy District Attorney
Attorney for Plaintiff/Appellee

CERTIFICATE OF DELIVERY

I, Roger S. Blaylock, hereby certify that I have caused to be delivered eight copies of the foregoing brief to the Utah Court of Appeals, 450 South State Street, 5th Floor, P.O. Box 140320, Salt Lake City, Utah 84114-0230, and two copies to Wesley J. Howard, Attorney for the Appellant, 424 East 500 South, Suite 300, Salt Lake City, UT 84111, this 12th day of July, 2004.

Roger S. Blaylock
Deputy District Attorney
Attorney for Plaintiff/Appellee

DELIVERED to the Utah Court of Appeals and the *Appellant* as indicated above this 12th day of July, 2004.

ADDENDUM A

Addendum A

Utah Code Ann. §76-2-103 (2003)

76-2-103 Definitions

A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(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.

History: C. 1953, 76-2-103, enacted by L. 1973, ch. 196, § 76-2-103; 1974, ch. 32, § 4.

Utah Code Ann. §76-5-109 (2003)

§76-5-109 Child Abuse

(1) As used in this section:

(a) "Child" means a human being who is under 18 years of age.
(b) "Child abuse" means any offense described in Subsection (2) or (3), or in Section 76-5-109.1.
(c) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:

(i) a bruise or other contusion of the skin;
(ii) a minor laceration or abrasion;
(iii) failure to thrive or malnutrition; or
(iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(d).

(d) "Serious physical injury" means any physical injury or set of injuries which seriously impairs the child's health, or which involves physical torture or causes serious emotional harm to the child, or which involves a substantial risk of death to the child, including:

(i) fracture of any bone or bones;
(ii) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;
(iii) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;
(iv) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
(v) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;
(vi) any damage to internal organs of the body;
(vii) any conduct toward a child which results in severe emotional harm, severe developmental delay or retardation, or severe impairment of the child's ability to function;
(viii) any injury which creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;
(ix) any conduct which causes a child to cease breathing, even if resuscitation is successful following the conduct; or

(x) any conduct which results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.

(2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a felony of the second degree;
(b) if done recklessly, the offense is a felony of the third degree; or
(c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a class A misdemeanor;
(b) if done recklessly, the offense is a class B misdemeanor; or
(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be deemed to have committed an offense under this section.

History: C. 1953, 76-5-109, enacted by L. 1981, ch. 64, § 1; 1992, ch. 192, § 1; 1997, ch. 289, § 5; 1997, ch. 303, § 2; 1998, ch. 81, § 1; 1999, ch. 67, § 1; 2000, ch. 125, § 1.