

1993

The State of Utah v. Lincoln Franklin Murphy : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jan Graham; Attorney General; Christine F. Soltis; Assistant Attorney General; Attorneys for Appellee.

Robert K. Heineman; James A. Valdez; David P. S. Mack; Attorneys for Appellant .

Recommended Citation

Reply Brief, *Utah v. Murphy*, No. 930341 (Utah Court of Appeals, 1993).
https://digitalcommons.law.byu.edu/byu_ca1/5241

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
LINCOLN FRANKLIN MURPHY, : Case No. 930341-CA
Priority No. 2
Defendant/Appellant. :

REPLY BRIEF OF APPELLANT

Appeal from a judgment and conviction for aggravated sexual abuse of a child, a first degree felony, in violation of Utah Code Ann. § 76-5-404.1 (1990), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable J. Dennis Frederick, Judge, presiding.

OF APPEALS

UTAH
DOCU...
KFU
50
sk
D...

930341

ROBERT K. HEINEMAN (5481)
JAMES A. VALDEZ (3308)
DAVID P. S. MACK (4370)
SALT LAKE LEGAL DEFENDER ASS'N
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorneys for Appellant

JAN GRAHAM (1231)
ATTORNEY GENERAL
CHRISTINE F. SOLTIS (3039)
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114

Attorneys for Appellee

FILED
Utah Court of Appeals

SEP 29 1993


Mary T. Noonan
Clerk of the Court

IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
LINCOLN FRANKLIN MURPHY, : Case No. 930341-CA
Priority No. 2
Defendant/Appellant. :

REPLY BRIEF OF APPELLANT

Appeal from a judgment and conviction for aggravated sexual abuse of a child, a first degree felony, in violation of Utah Code Ann. § 76-5-404.1 (1990), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable J. Dennis Frederick, Judge, presiding.

ROBERT K. HEINEMAN (5481)
JAMES A. VALDEZ (3308)
DAVID P. S. MACK (4370)
SALT LAKE LEGAL DEFENDER ASS'N
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorneys for Appellant

JAN GRAHAM (1231)
ATTORNEY GENERAL
CHRISTINE F. SOLTIS (3039)
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114

Attorneys for Appellee

TABLE OF CONTENTS

	<u>page</u>
TABLE OF AUTHORITIES	ii
STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS	1
ARGUMENT	1
POINT I. <u>APPELLANT HAS MARSHALLED THE EVIDENCE</u> <u>SUPPORTING THE TRIAL COURT'S DETERMINATION.</u>	1
CONCLUSION	3

TABLE OF AUTHORITIES

CASES CITED

page

State v. Johnson, 218 Utah Adv. Rep. 3 (Utah 1993) 1

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

Utah Code Ann. § 76-2-305(4) (Supp. 1993) 1

IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
LINCOLN FRANKLIN MURPHY, : Case No. 930341-CA
Priority No. 2
Defendant/Appellant. :

STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

Utah Code Ann. § 76-2-305(4) (Supp. 1993) provides:

(4) "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, mental retardation. Mental illness does not mean a personality or character disorder or abnormality manifested only by repeated criminal conduct.

ARGUMENT

POINT I. APPELLANT HAS MARSHALLED THE EVIDENCE SUPPORTING THE TRIAL COURT'S DETERMINATION.

(RESPONDING TO POINT A., APPELLEE'S BRIEF AT 9-10.)

The State argues that appellant has not presented all the evidence in support of the trial court's finding of no mental illness. Significantly, the State fails to cite a single piece of evidence that appellant has failed to present. "The burden of proving a negative is nearly impossible to meet." State v. Johnson, 218 Utah Adv. Rep. 3, 7 (Utah 1993). This Court should not make short shrift of Mr. Murphy's appeal based on the State's

unsupported and incorrect assertion that he has failed to marshal the evidence.

Even if this Court were to determine that appellant's discussion of the evidence supporting the trial court's determination is too cursory, under the facts of this case it is both understandable and reasonable. As the State clearly recognizes,¹ all of the psychological reports forming the basis of the trial court's decision are confidential. Were they otherwise, appellant would have included the reports as addenda.

The only reports clearly supporting the trial court's determination are the May 16, 1992 and October 16, 1992 reports of Dr. Mark Rindflesh. Each of these reports is only two pages long. It is no hardship to the Court to read them in their entirety. It is questionable whether they can be summarized accurately any more succinctly, however appellant's quotes from these reports accurately convey Dr. Rindflesh's conclusion that Mr. Murphy suffers from no mental illness.²

¹See Appellee's brief at 3 n.1:

The various reports were sealed by the trial court but ordered unsealed by the Utah Supreme Court for purposes of this appeal. To present his claim on appeal, defendant has summarized and quoted from those reports in his appellant's brief. The State agrees that reference to the contents of the reports is necessary for resolution of the issue raised. However, due to the sensitive nature of the contents of the reports, the State will attempt to summarize their contents whenever possible.

²The reports should, of course, be read in the context of their stated purposes: "to determine whether Mr. Murphy is competent to stand trial" (May 16, 1992 report at p. 1), and "to determine whether Mr. Murphy suffers from a psychiatric disorder that would diminish his capacity to form the intent to undertake the actions that led to his arrest." (October 16, 1992 report at p.

The other four reports support Mr. Murphy's contention that he is mentally ill. They should likewise be read in their entirety. Cumulatively, they total 31 pages, little more than the addenda the State has attached to its brief.

CONCLUSION

Mr. Murphy has adequately marshalled the evidence supporting the trial court's determination. The six psychological reports and the presentence investigation are all contained in the record on appeal, have been identified by appellant, and should be reviewed in their entirety.

This Court should reverse the trial court's finding that Mr. Murphy is not mentally ill. The great weight of the evidence, as well as the nature and severity of the crime charged, compel a finding that Mr. Murphy is mentally ill. This matter should be remanded for entry of a finding of mental illness and resentencing in accordance with law.

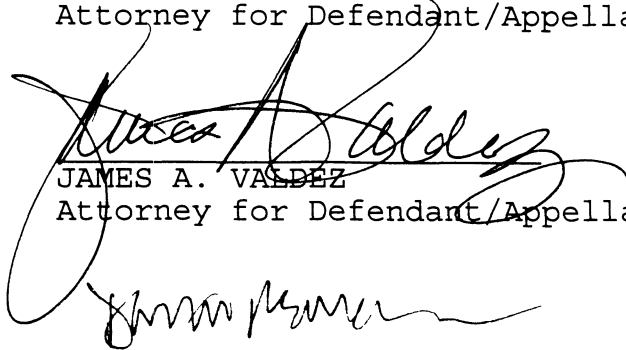
footnote ² (continued)

1 (emphasis added)). Dr. Rindflesh has never specifically addressed the issue before the court: whether Mr. Murphy suffers from a mental illness at all. Dr. Rindflesh's conclusions must therefore be viewed with a degree of skepticism.

RESPECTFULLY SUBMITTED this 29th day of September, 1993.



ROBERT K. HEINEMAN
Attorney for Defendant/Appellant



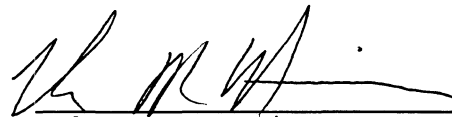
JAMES A. VALDEZ
Attorney for Defendant/Appellant



DAVID P. S. MACK
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, Robert K. Heineman, hereby certify that I have caused eight copies of the foregoing to be delivered to the Utah Court of Appeals, and four copies to Christine F. Soltis, the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 29th day of September, 1993.



Robert K. Heineman

DELIVERED/MAILED this _____ day of September, 1993.
