

2005

Vance Hunt v. John Burton : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS

VANCE HUNT, :

Plaintiff, Appellant :

vs. : Appellate Case No. 20050065

JOHN BURTON, :

Defendant, Appellee. :

BRIEF FOR APPELLANT

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REQUEST FOR ORAL ARGUMENT

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REQUEST FOR ORAL ARGUMENT

LIST OF ALL PARTIES

Appellant/Plaintiff is Mr. Vance Hunt and will be hereinafter referred to as “Mr. Hunt.” Appellee/Defendant is Mr. John M. Burton and will be hereinafter referred to as the “Defendant.”

TABLE OF CONTENTS

List of All Parties	i
Table of Contents.....	ii
Table of Authorities.....	iii
Jurisdictional Statement	1
Issue Statement & Standard of Review.....	1
Statutory and Constitutional Provisions	2
Statement of Case	2
Statement of Facts	3
Summary of Argument	6
THE APPELLATE COURT SHOULD REVERSE THE JURY VERDICT AND AWARD DAMAGES TO MR. HUNT BECAUSE THE GREAT WEIGHT OF THE EVIDENCE SHOWS THAT DEFENDANT ASSAULTED MR. HUNT AND CAUSED THE RESULTING INJURIES AND DAMAGES SUFFERED BY MR. HUNT.....	6
A. <u>Mr. Hunt Presented Testimony of an Expert that Defendant’s Assault caused Mr. Hunt’s Damages, and Defendant Offered no Evidence Refuting this Testimony</u>	8
B. <u>Defendant’s is Liable to Mr. Hunt for Damages as a Matter of Public Policy</u>	9
Conclusion.....	10

TABLE OF AUTHORITIES

STATUTES

U.C.A. § 78-18-1 2

CASES

Child v. Gonda, 972 P.2d 425, 433 (Utah 1998) 8

Harding v. Bell, 2002 UT 108, ¶ 19 (2002) 7

Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896, 899 (Utah 1989) 1

State v. Boyd, 2001 UT 30, ¶ 13 7

State v. Heaps, 2000 UT 5, ¶ 19 (2000)..... 1, 8

JURISDICTIONAL STATEMENT

On December 16th, 2004, a jury verdict was rendered in the Second Judicial District Court in Ogden, Utah before Judge Scott M. Hadley in favor of the Defendant. The court entered its final order dismissing the case on February 17th, 2005. On March 15th, 2005, Appellant filed an Amended notice of Appeal, which appeal is now before this court. This court has jurisdiction over the matter pursuant to Rule 3, Appeal as of Right, Utah Rules of Appellate Procedure.

ISSUE STATEMENT & STANDARD OF REVIEW

Whether there is sufficient evidence to support the jury verdict that Defendant's assault on Appellant ("Mr. Hunt") did not cause Mr. Hunt's injuries and that Defendant is therefore not liable to Mr. Hunt for damages.

Appellant must marshal the evidence in support of the trial court's ruling. The Appellant must then demonstrate that in the light most favorable to the trial court, the evidence was insufficient to support the findings. *Reid v. Mutual of Omaha Ins. Co.*, 776 P.2d 896, 899 (Utah 1989). The appellate court will reverse a jury verdict only when, after viewing the evidence and all inferences drawn therefrom in a light most favorable to the verdict, the court finds that the evidence supporting the verdict was completely lacking or so slight and unconvincing as to make the verdict plainly unreasonable and unjust. *State v. Heaps*, 2000 UT 5, ¶ 19 (2000).

STATUTORY AND CONSTITUTIONAL PROVISIONS

Utah Code Annotated Section 78-18-1 allows for punitive damages to be awarded for willful or malicious conduct and “knowing and reckless indifference toward, and disregard for the rights of others.”

STATEMENT OF THE CASE

Petitioner, Mr. Vance Hunt, respectfully requests that this Court reverse the jury verdict finding that Defendant, the Appellee, is not liable to Mr. Hunt for injuries and then make an appropriate award of damages.

The jury found that Defendant assaulted Mr. Hunt; but in a miscarriage of justice, the jury awarded him no damages. This jury finding was in spite of the evidence provided by Mr. Hunt’s physician, Dr. Seth Rich Lewis, who testified that he was sure beyond any doubt that Mr. Hunt’s hematoma and other injuries were caused by Defendant’s assault. (T. at 106-107.) Defendant presented no evidence contradicting or refuting Dr. Lewis’s testimony.

Because the great weight of the evidence does not support the jury’s verdict, Mr. Hunt requests that this court reverse the jury’s findings and find that Defendant is liable for Mr. Hunt’s injuries and award general damages in the amount of \$100,000.00, special damages for medical treatment and lost wages totaling \$42,019.56, and punitive damages in the amount of \$100,000.00.

STATEMENT OF THE FACTS

1. On the 15th and 16th of December 2004, a jury trial was held regarding Defendant's assault and battery upon Mr. Hunt in the Second Judicial District Court in Ogden.
2. Mr. Hunt testified that on November 19th, 2002 at approximately 3:45pm, he arrived at work at Hill Air Force Base and was assigned by "the planner" on duty to deliver "work control papers" to a third party. (T. at 4-5.)
3. Mr. Hunt found Defendant/Appellee in a conversation with this third party and completely blocking his path to the desk of the third party. Plaintiff testified: "There was not enough room to go around either side, it's quite, it was quite a narrow area and I, I was far enough away I couldn't throw the papers on his desk out of respect." (T. at 8.)
4. After Mr. Hunt was noticed by Defendant and had stood behind him waiting, he asked "Excuse me John," then finally tapped him on the shoulder with the documents he was delivering to get his attention and asked again, "John, please excuse me." (T. at 8.)
5. Defendant, who had a reputation for a quick temper and previous cases of assault, may have used this touching as an excuse to begin a physical beating because he hit Mr. Hunt very hard in the sternum, in the face, in the groin, and in the shoulder. (T. at 8-9.)

6. Mr. Hunt testified that he did not fight back, except for one shove after he was beaten and as he was leaving, objecting that he was not a punching bag. "I just put my hands in the air and I says I don't want any more part of this. I do not want a piece of this anymore, and I walked out." (T. at 10.)
7. Defendant responded to Mr. Hunt's unwillingness to fight with vulgarities: "Come on you mother fucker, you want to dance with the devil? Bring it on. Let's dance." Mr. Hunt did not fight back. (T. at 9.)
8. After retreating from the scene of the assault, Mr. Hunt called his supervisor, Monty. "I wanted to call 9-1-1, but I thought, well, I'd better call my bosses first, and so that's what I did. I went out in my truck, just out the door, and called my boss." (T. at 11-12.)
9. Monty instructed Mr. Hunt to report the incident to upper management. Mr. Hunt reached Chris Hansen. "I called Chris and said I've just been assaulted by John. Do I need to call security forces or call 9-1-1, or what do I need to do? He says Mike Gates is right here in front of me. I'll send him over. He can call security forces and he can call Larry Bingham, which is the main person on base at night." (T. at 13.)
10. When Mr. Hunt subsequently approached Mike Gates and Defendant, Mike said, "[Defendant's] got something to tell you," and Defendant apologized. Mike Gates then said "[Defendant] just give him a big hug and rub his balls, he'll feel better." (T. at 14.)

11. Mr. Hunt left work in pain that night, "My chest hurt extremely bad. It's probably the worst. My groin, and my face was almost numb up here in the cheek area, very tender." (T. at 15.)
12. When he returned to work the next day, Monty, his boss, instructed him to go to security forces to fill out a report. Mr. Hunt filled out a form for an assault where he gave his testimony of the assault under oath. (T. at 15.)
13. After the assault, Mr. Hunt experienced excruciating pain. On November 27th, 2002 he saw his doctor, Dr. Seth Rich Lewis, who eventually diagnosed him with an infected sub-mandible hematoma. (T. at 18-19, and 85.)
14. As a result of the hematoma, Mr. Hunt missed many days of work and was hospitalized three times for intravenous antibiotics, CAT scans, and surgical drainage of the infected hematoma. (T. at 86.)
15. He received medical billings for doctor visits, MRI's, CAT scans, surgeries, and hospitalizations totaling \$16,979.00. (T. at 28.)
16. He also incurred the cost of prescriptions totaling \$730.00. (T. at 25.)
17. He missed 394 hours of work at an hourly wage of \$22.74, which totaled \$8,959.56. (T. at 25.)
18. He estimates that he missed 450 hours of overtime work at an hourly wage of \$34.11, which totaled \$15,349.50. (T. at 26.)
19. Dr. Lewis, Mr. Hunt's physician, testified as to the cause of Mr. Hunt's injuries as follows:

Q Do you have any doubt that Vance Hunt was struck in the face and that's what caused the hematoma?

A No.

Q You believe he was struck in the face and that's what caused the hematoma?

A Yes.

Q At one point when you treated this injury was it life threatening to the plaintiff, Mr. Hunt?

A Yes. Untreated that would have grown and cut off his airway and, and could have been lethal. (T. at 106-107.)

20. Defendant proffered no direct evidence at trial contradicting or refuting the testimony of Mr. Hunt's doctor.

SUMMARY OF THE ARGUMENT

The jury verdict entered from the court below must be reversed and Appellant awarded damages for injuries sustained as a result of Defendant's assault upon him. The jury found that the Defendant assaulted the Appellant, but that the Defendant was not liable for Appellant's injuries or for any damages. This verdict is not supported by the evidence. Appellant's treating physician testified he was sure beyond any doubt that Appellant's injuries and hematoma were life threatening and a result of Defendant's assault. Defendant presented no direct evidence to refute this expert testimony. Furthermore, as a matter of public policy, if our courts allow a victim, such as the Appellant in this case, to be denied civil redress, as this Appellant has been denied, even after the considerable social risk and personal expense of bringing a lawsuit against the

bully that beat him, many unfortunate things will result. For these reasons, the jury verdict should be reversed and Appellant should be awarded general damages including pain and suffering of \$100,000.00, special damages for medical treatment and lost wages totaling \$42,019.56, and punitive damages in the amount of \$100,000.00.

ARGUMENT

THE APPELLATE COURT SHOULD REVERSE THE JURY VERDICT AND AWARD DAMAGES TO MR. HUNT BECAUSE THE GREAT WEIGHT OF THE EVIDENCE SHOWS THAT DEFENDANT'S ASSAULT UPON MR. HUNT CAUSED THE RESULTING INJURIES AND DAMAGES SUFFERED BY MR. HUNT.

“When challenging a jury’s verdict, a party must marshal the evidence in support of the verdict and then demonstrate that the evidence is insufficient when viewed in the light most favorable to the verdict.” *Harding v. Bell*, 2002 UT 108, ¶ 19 (2002) citing *State v. Boyd*, 2001 UT 30, ¶ 13. In the present case, there is insufficient evidence to support the jury’s verdict that Defendant is not liable for Mr. Hunt’s injuries and damages. This verdict is against the great weight of the evidence provided by Appellant’s expert witness, and Defendant offered no direct evidence to refute the expert’s testimony.

A. Mr. Hunt Presented Testimony of an Expert that Defendant's Assault caused Mr. Hunt's Damages, and Defendant Offered no Direct Evidence Refuting this Testimony.

"When reviewing a jury verdict on an insufficiency of the evidence argument, we view the evidence and all inferences therefrom in a light most favorable to the verdict."

State v. Heaps, 2000 UT 5, ¶ 19 citing *Child v. Gonda*, 972 P.2d 425, 433 (Utah 1998).

"We will reverse the jury verdict only when, after viewing the evidence and all inferences drawn therefrom in a light most favorable to the verdict, we 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." *Id.*

The jury found that Defendant assaulted Mr. Hunt, and Appellant presented the testimony of Dr. Lewis as evidence. He testified that in his expert opinion, Mr. Hunt suffered from a hematoma and that he was sure beyond any doubt that Mr. Hunt's injuries and hematoma were caused by Defendant's assault.

Q Do you have any doubt that Vance Hunt was struck in the face and that's what caused the hematoma?

A No.

Q You believe he was struck in the face and that's what caused the hematoma?

A Yes.

Q At one point when you treated this injury was it life threatening to the plaintiff, Mr. Hunt?

A Yes. Untreated that would have grown and cut off his airway and, and could have been lethal. (T. at 106-107).

Because the Defendant offered no direct evidence refuting Dr. Lewis's testimony, the jury's verdict is manifestly unjust and inadequate based upon the greater weight of the evidence presented by Appellant at trial. In light of the jury's error, this court should reverse the jury's verdict and award general damages to Mr. Hunt including pain and suffering in the amount of \$100,000.00, special damages for medical treatment and lost wages totaling \$42,019.56, and punitive damages in the amount of \$100,000.00.

B. Defendant is Liable to Mr. Hunt for Damages as a matter of Public Policy.

As a matter of public policy, if our courts allow a victim such as this Plaintiff to be denied redress civilly, as this Plaintiff has been denied, even after the considerable social risk and personal expense of bringing a lawsuit against the bully that beat him, several unfortunate things will follow.

1. The biggest, strongest, and most feared bully in any group will tend to dominate and control the group by intimidation.
2. Fear of retaliation will prevent reports of beatings and other acts of aggression and intimidation because the risk of retaliation will outweigh the probability of any effective redress by our legal system.
3. Efforts at self help and revenge by frustrated victims will likely intensify, resulting in what might be called the "post-office" approach, with more frustrated people feeling the need to carry guns to defend themselves.

The results of this lawsuit will send a loud message to Hill Air Force Base and other places. This Plaintiff should and must receive just compensation for his injuries.

CONCLUSION

For all the foregoing reasons, the Court of Appeals should reverse the jury's verdict that Defendant did not cause Appellant's injuries and award general damages to Appellant including pain and suffering in the amount of \$100,000.00, special damages for medical treatment and lost wages totaling \$42,019.56, and punitive damages to the appellant in the amount of \$100,000.00.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed, postage prepaid and by US mail, this
10th day of May, a true and correct copy of the foregoing BRIEF FOR APPELLANT to
the following:

Michael J. Boyle
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UTAH COURT OF APPEALS

VANCE HUNT, :

Plaintiff, Appellant, :

ADDENDUM

vs. :

JOHN BURTON, :

Appellate Case No. 20050065

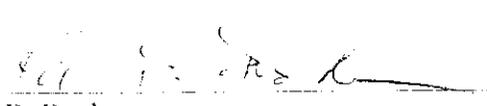
Defendant, Appellee. :

Documents included in Addendum:

Final Order: Findings of the Jury and Order of Dismissal, included herewith.

DATED this 11 day of May, 2005.

REX B. BUSHMAN, P.C.

By: 

Rex B. Bushman

Attorney for Plaintiff/Appellant

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**IN THE SECOND JUDICIAL DISTRICT COURT, OGDEN DEPARTMENT
IN AND FOR WEBER COUNTY, STATE OF UTAH**

VANCE HUNT,

Petitioner,

vs.

JOHN M. BURTON,

Respondent.

**FINDINGS OF THE JURY AND
ORDER OF DISMISSAL**

Case no. 030904184

Judge SCOTT M. HADLEY

FINDINGS OF THE JURY

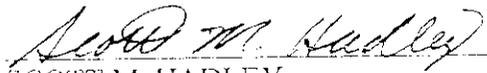
A jury trial was conducted before this Court on the 15th and 16th of December, 2004. The Petitioner presented its case in chief beginning on the 15th day and concluding the next day. The Respondent presented its case to the jury on the 16th day of December, 2004. At the conclusion of testimony both parties presented closing arguments before the final jury instructions were read to the jury. The jury retired for deliberations and reached a final verdict. A special verdict form was provided to the jury. The jury answered the question of whether the Petitioner had been assaulted by Respondent in the affirmative. The second question was whether the assault caused

the injuries complained of by the Petitioner; the jury answered no.

ORDER OF THE COURT

The jury having determined that the Defendant was not liable for the Plaintiff's injuries, this case is dismissed.

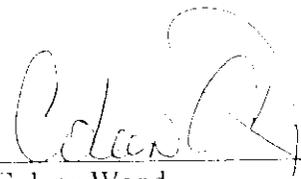
DATED this 17 day of February, 2005.


SCOTT M. HADLEY
SECOND DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the ¹⁵15th day of February, 2005, a true and correct copy of the foregoing Findings of the Jury and Order of Dismissal was mailed, postage prepaid, addressed as follows:

REX BUSHMAN, Esq.
115 East Social Hall Avenue
Salt Lake City, Utah 84111


Coleen Wood

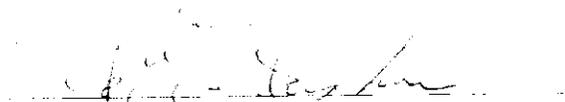
STATE OF UTAH }
COUNTY OF WEBER } ss
I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE
ORIGINAL ON FILE IN MY OFFICE
DATED THIS 17th day of Feb '05
PAULA GARR
CLERK OF THE COURT
BY: M.K. Dixon DEPUTY



CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing ADDENDUM to the following counsel, postage prepaid and by U.S. Mail, this 11 day of May, 2005:

Michael J. Boyle
Boyle & Drage, P.C.
2554 Monroe Boulevard
Ogden, Utah 84401

A handwritten signature in cursive script, appearing to read "Michael J. Boyle", is written over a horizontal line.