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# IN THE SUPREME COURT OF THE STATE OF UTAH

PEARL ANN HOLDAWAY,
*Plaintiff-Respondent,*

vs.

ROGER VERNON HALL,
*Defendant-Appellant.*

Case No. 12836

# BRIEF OF RESPONDENT

**Appeal from a Verdict of the Third Judicial District Court in and for Salt Lake County Honorable Merrill C. Faux, Judge**

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ED, HE OWES THE PLAINTIFF HIS LIFE, FOR SHE WOULD HAVE BEEN JUSTIFIED UNDER THE EVIDENCE OF THIS CASE TO HAVE KILLED THE DEFENDANT WHEN HE FORCED HIS WAY INTO HER HOME AND PERMANENTLY DISABLED HER. .......... 7

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THE JURY WAS POLLED AND EVERY JUROR CONFIRMED THE VERDICT AND JUDGMENT AS THEIR OWN. COUNSEL FOR PLAINTIFF WAS NOT PRESENT AND COUNSEL FOR DEFENDANT WAS PRESENT AND COULD HAVE OBJECTED PRIOR TO ANY TRIAL COURT ACTION BEING TAKEN.

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# IN THE SUPREME COURT OF THE STATE OF UTAH

PEARL ANN HOLDAWAY,
*Plaintiff-Respondent,*

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# BRIEF OF RESPONDENT

## STATEMENT OF FACTS

Plaintiff and defendant had been going together. The plaintiff became fearful of the defendant (R 7 & 8) and in an effort to terminate the relationship, the plaintiff sought medical assistance and advice (R 8 & 9).

On the 25 day of January, 1969, the defendant, against the plaintiff's desires, forced the plaintiff to leave her home and four small minor children to accompany him to a bowling alley (R 9). The plaintiff, in an effort to evade the defendant, did without the defend-

ant's knowledge, call her sister-in-law to come to the bowling alley to get her (R 10). To safely leave, the plaintiff left her shoes and ball at the bowling alley. Arrived home, bolted the doors and windows, and drove to a service station and called the police because she was afraid of the defendant and requested police assistance. Returned home, put the washer and dryer in front of the back door and locked it. Locked the front door, barricaded the door with the television, a large couch, and again called the police because she was fearful of the de-defendant (R 12). Plaintiff turned out the lights, wrote the police telephone number in large numbers so she could see it in the dark, left the curtains open enough to see out and sat down to wait. At about 1:00 A.M. she observed a shadow coming over to her home from the church across the street. At the time, the defendant had parked his car in the church parking lot (R 13 & 14) and was walking across the street to the plaintiff's unlighted home, knowing full well the plaintiff had a telephone and the number thereof which he could have called. By defendant's own admissions he admitted to the following:

1. He was upset with the plaintiff before they went bowling (R 144).

2. Plaintiff had friends come and get her from the bowling alley, although he anticipated taking her home (R 145).

3. That plaintiff and defendant quarreled at the bowling alley; when he finished bowling, she wasn't there, and he was not particularly angry then (R 146).

4. After finding plaintiff gone, defendant went to her house (R 147).

5. Defendant knew plaintiff had a telephone but did not call her (R 147).

6. Parked his car not across the street from the plaintiff's home, but in the church parking lot (R 147).

7. There were no lights on in the house (R 148).

8. Went to the back door first and rang the doorbell there, receiving no answer (R 148).

9. Then went to the front door, knocked on the door, hollered the plaintiff's name, forced the door open and went inside (R 149).

10. Plaintiff did not invite the defendant inside (R 149).

11. That when he forced the front door open there was a television, a cupboard and a couch against the door (R 149 & 150).

12. That the defendant does weigh approximately 195 pounds (R 150).

13. He was not angry when he forced his way through the house (R 150).

14. While he arguing with the plaintiff he never touched her; the injury happened when she was reaching for the telephone, he wasn't through talking to her, and he reached to grab the telephone out of her hand to hang it back up; he hurt her finger, bent it backwards (R 151).

15. That he had the right to stop plaintiff from using the telephone because he was not finished talking to her. She had not finished listening to what he had to say (R 152).

16. That he knew there were four small children in the home at the time (R 152).

17. That he damaged the front door when entering the house (R 155).

The plaintiff testified that when the defendant walked across the street and over to her back door:

1. I immediately called the police, told them who I was and hung up the telephone (R 84).

2. He tried the back door first, he couldn't get in. He then went around to the front door and just broke right in, tore the screen door off and broke the door in. And all the furniture was—the television—went through the door and he came into the kitchen and grabbed hold of me and bent my hand back, went to throw me back, and these three fingers were all swollen, and as a result of the blow, my finger was permanently injured (R 84).

3. That six officers arrived (R 85).

4. That she went to her family physician the next day (R 90).

D. John L. Clayton testified:

1. That he was a plastic and reconstructive surgeon (R 159).

2. That he saw the defendant on March 4, 1969, at which time plaintiff told him that her finger had been bent backwards at the time of the attack (R 159).

3. That he operated on plaintiff's finger (R 61).

4. That plaintiff's injury is permanent in nature (R 162).

5. That after the operation he recommended that she see two surgeons in San Francisco, California, if anything else surgically could be done, and it would be necessary to incur expenses (R 162).

6. That it would cost for her to go to San Francisco for consultation; the operation would cost between three to five hundred dollars, the anesthetist would cost one hundred dollars, hospitalization for a day or two would cost two hundred fifty dollars, probably more than three hundred dollars, and then afterwards possibly physical therapy and plaintiff would be unable to work or even function (R 163 & 164).

7. Personally, I think that she is always going to have some deformity with that joint (R 163).

8. That the injury is very painful (R 164).

9. For the injury sustained, it required a considerable amount of force to tear the structures of the finger (R 164).

## DAMAGES

With regard to special damages, the Appellant disregards the testimony of Dr. Cutler hereto before referred to concerning possible future medical expenses. (Also, although not of record, the plaintiff has, since time of trial, had another operation on her hand without successful results by Dr. Mark Greene, (See R 166). These expenses would be additional to the $654.95 referred to in Appellant's brief. Plaintiff is entitled to be compensated for future medical expenses including doctors, medicines, nurses, X-rays, etc., and/or hospital services shown with reasonable certainty will be incurred in the future. (See JIFU, page 166 & 167, Section 90.6, and Berry v. St. Louis-San Francisco Ry Co., 324 Mo 775, 26 S. W. 2nd 988).

## REPLY TO POINTS ON APPEAL

### POINT I

Believe the Court was not in err, and it is submitted that the trial record supports the Court. Dr. Clayton testified that the injury was the result of an attack (R 159).

### POINT II

The jury considered and gave effect to future medical expenses, and related costs that Dr. Clayton testified to and which plaintiff will sustain.

## POINT III

The damages were not excessive and the punitive damages reduced by trial Court from $10,000.00 to $5,000.00 should be re-instated.

## POINT IV

The defendant does not owe the plaintiff the amount awarded, he owes the plaintiff his life, for she would have been justified under the evidence of this case to have killed the defendant when he forced his way into her home and permanently disabled her.

## POINT V

The jury was polled and every juror confirmed the verdict and judgment as their own. Counsel for plaintiff was not present and Counsel for defendant was present and could have objected prior to any trial Court action being taken.

## SUMMARY

The defendant is fortunate that he was not killed by the plaintiff at the time he caused this unjustifiable injury to the plaintiff (Pictures thereof are in file). She did everything possible to avoid being injured and still protect her children. The defendant owes the plaintiff his life, not the money awarded, which will probably

never be paid by the defendant to the plaintiff. The punitive damages reduced by the trial Court should be reinstated and restored to the plaintiff. The plaintiff, since time of trial, has already undergone another operation without success and will be in Court at time of hearing in the event there is a question of the last operation being successful.

Respectfully submitted,

GEORGE H. SEARLE

Attorney for Plaintiff-Respondent