

1982

State of Utah v. Don A. Elton : Respondent'S Brief on Rehearing : Respondent'S Brief on Rehearing

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-v- : Case No. 18151
DON A. ELTON, :
Defendant-Appellant. :

RESPONDENT'S BRIEF ON REHEARING

In accordance with this Court's request for additional briefing discussing the effect of Utah Code Ann., § 76-2-101 and 102 (1953), as amended, on Utah Code Ann., § 76-5-401 in the case of State v. Elton, Case No. 18151, respondent submits the following arguments (A copy of the opinion is attached as Appendix "A").

ARGUMENT

POINT I

UTAH CODE ANN., § 76-5-401 (1953), AS AMENDED, IMPOSES STRICT LIABILITY.

The opinion already issued in this case, State v. Elton, ___ P.2d ___ (Case No. 18151, decided September 10, 1982), clearly indicates that this Court has no doubt as to the Legislature's intent to make the crime of unlawful sexual intercourse, defined in § 76-5-401, a strict liability offense. Therefore, it is not necessary to reiterate here the

arguments and citations included in respondent's original brief which support that conclusion. The request for additional briefing suggests that the Court is, however, concerned about the textual inconsistency between the provisions of the three criminal Code sections cited above. Respondent will address that issue.

Section 76-2-101 provides:

No person is guilty of an offense unless his conduct is prohibited by law and:

(1) He acts intentionally, knowingly, recklessly or with criminal negligence with respect to each element of the offense as the definition of the offense requires; or

→ (2) His acts constitute an offense involving strict liability.

Section 76-2-102 reads:

Every offense not involving strict liability shall require a culpable mental state, and when the definition of the offense does not specify a culpable mental state, intent, knowledge, or recklessness shall suffice to establish criminal responsibility. An offense shall involve strict liability only when a statute defining the offense clearly indicates a legislative purpose to impose strict liability for the conduct by use of the phrase "strict liability" or other terms of similar import.

Finally, § 76-5-401 defines unlawful sexual intercourse as follows:

(1) A male person commits unlawful sexual intercourse if he has sexual intercourse with a female, not his wife, who is under sixteen years of age.

(2) Unlawful sexual intercourse is a felony of the third degree except when at the time of intercourse the male is no more than three years older than the female, in which case it is a class B misdemeanor. Evidence that the actor was not more than three years older than the victim at the time of the intercourse shall be raised by the defendant.

It is immediately apparent that § 76-5-401 does not contain the "phrase 'strict liability' or other terms of similar import," as is required by § 76-2-102 to make a crime a strict liability offense. The question, therefore, is what effect the failure of § 76-5-401 to comport with the requirements of §§ 76-2-101 and 102 has on the operation of that statute as one imposing strict liability.

First, given the wide agreement in this country's courts that statutory rape is a strict liability crime, there is no reason to believe that the Legislature intended that § 76-5-401 be anything but a strict liability statute. As already noted, this Court has accepted that conclusion. In State v. Elton, supra, at 1, it said:

. . . Utah courts, as elsewhere, traditionally have considered and approved sanctions for offenses like that charged here, connoting a "strict liability" that is implicit in the offense itself, whether those words are included in the legislation defining the offense or not.

Therefore, if this Court were strictly to follow § 76-1-102 and require that "intent, knowledge, or recklessness" be shown to establish criminal responsibility under § 76-5-401, which admittedly neither uses words imposing strict liability nor specifies a culpable mental state, it would frustrate an obvious legislative purpose to impose strict liability for the offense of unlawful sexual intercourse.

Unlawful sexual intercourse, as defined in § 76-5-401, is precisely the type of crime in which legislatures and courts across the country have historically imposed strict liability because of the nature of the act. In State v. Superior Court of Pima County, Ariz., 454 P.2d 982 (1969), the Arizona Supreme Court outlined the history of such crimes, stating:

. . . [w]e feel compelled to first observe that the social consequences of legislative action is not ordinarily a matter with which courts are concerned. It is sufficient to say that the constitutional justification for criminal responsibility lies in the recognition that a female under the age of eighteen years, although physically mature, may be mentally and emotionally incapable of making a proper value judgment. The statute is bottomed on the premise that those who deal with the young must do so at their peril and are strictly accountable for their conduct.

454 P.2d at 984. The Court analyzed and rejected the Hernandez decision, as did this Court in its original opinion

in this case, stating:

It is true, as stated by the Supreme Court of California, that the courts have uniformly failed to satisfactorily explain the nature of the criminal intent present in the minds of one who, in good faith, believes he has obtained a lawful consent before engaging in the prohibited act. But this is immaterial. The offense here is of that class which, by reason of an unbroken line of judicial holdings, it can be said that the statute denounces the mere doing of the act as criminal, regardless of whether the perpetrator had a bad mind, the generalized intent to engage in a course of criminal conduct ...

454 P.2d at 985 (Emphasis added). There can be no doubt that the Utah Legislature intended that unlawful sexual intercourse fall within the class of crimes in which strict liability is imposed. The statute is intended to protect persons under the age of sixteen. This Court in its opinion in this case recognized the purpose behind such a statute: "Courts have taken the position that a statute calling for the protection of young women below a specific age is necessary and contributive to the common welfare." State v. Elton, supra, at p. 2 of the opinion.

Section 76-5-401 can be compared to then Section 41-6-44.2 (1953) prohibiting driving while under the influence of alcohol. In Greaves v. State, Utah, 528 P.2d 805, 807 n. 5 (1974), this Court held that such offense falls within the class of offenses characterized by strict liability, even

though the definition of the offense did not and does not use the phrase "strict liability" or other similar terms. This is just one example of several offenses in which the Legislature has imposed strict liability without using the phrase or any similar phrase. See, e.g. § 76-5-402 (1981 Supp.), [rape]; § 76-5-403 (1981 Supp.), [sodomy and forcible sodomy]; and several others. This Court did not hold the failure to use the phrase "strict liability" precluded interpreting the offense as one imposing strict liability and this ruling should apply here.

In drafting § 76-5-401, the Legislature simply overlooked the necessity of including words expressly denoting strict liability in order for that section to be consistent with § 76-2-102. In short, the Legislature left a gap in the statute. Faced with a similar "gap" in State v. Wood, Utah, 648 P.2d 71 (1982), this Court did not hesitate to fill it. There, the Legislature had failed to specify in Utah Code Ann., § 76-3-207 (1953), as amended, the requisite standard of persuasion to be applied in the sentencing phase of a capital case. Citing In re Boyer, Utah, 636 P.2d 1085, 1091 (1982), the Court said:

When the Legislature has not specified the requisite standard of persuasion or certitude necessary in an adjudication, it is the duty of the Court to fill such a gap by weighing the relative interests of the State and the defendant in light of potential constitutional considerations and legislative intent to determine what the degree of persuasion ought to be.

648 P.2d at 83 (Emphasis added).

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The Wood Court relied on the genera
contained in § 76-1-104 and § 76-1-106 for gu
construing the criminal code and as a basis f
in the statute. Section 76-1-106 provides:

The rule that a penal statute
be strictly construed shall not apply to
this code, any of its provisions, or any
offense defined by the laws of this state.
All provisions of this code and offenses
defined by the laws of this state shall be
construed according to the fair import of
their terms to promote justice and to
effect the object of the law and general
purposes of Section 76-1-104.

§ 76-1-104 reads in pertinent part:

- The provisions of this code shall be
construed in accordance with these general
purposes.
- (1) Forbid and prevent the commission of
offenses;
- (2) Define adequately the conduct and
mental state which constitute each offense
and safeguard conduct that is without
fault from condemnation as criminal.



Just as they did in Wood, supra, these provisions provide the
vehicle in the instant case for this Court to fill the gap in
a criminal statute and thereby construe it in such a way as to
fulfill the purposes of the criminal code. Moreover, in Wood,
this Court proceeded to specify the requisite standard of
persuasion for capital sentencing--the textual absence of
which it perceived represented a gap in § 76-3-207--even in
the face of considerable evidence that the Legislature may

though *

the have intended there be no such burden of persuasion requirement. Thus, the Court should have little difficulty proceeding to specify a standard of strict liability for the offense defined in § 76-5-401, where the Legislature's failure to include specific words denoting strict liability is most reasonably interpreted as but an unfortunate oversight.

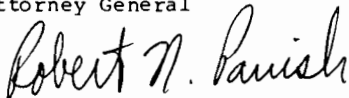
CONCLUSION

It is a long-standing rule in Utah that in the construction of a statute, the Court must be controlled by the evident purpose of the Legislature to attain a certain end. State v. Navaro, 83 Utah 6, 26 P.2d 955 (1933). In arriving at legislative intent, a court should consider the purposes sought to be accomplished through enactment of a particular statute. State v. Helm, Utah, 563 P.2d 794 (1977); Utah Farm Bureau Ins. Co. v. Utah Ins. G. Association, Utah, 564 P.2d 751 (1977). Insuring proper effect to legislative intent and purpose is a primary consideration. Parson Asphalt Production, Inc. v. Utah State Tax Commission, Utah, 617 P.2d 397 (1980); Millett v. Clark Clinic Corp., Utah, 609 P.2d 934 (1980). Thus, a statute should not be construed or applied so as to result in incongruous results which were never intended. Snyder v. Clune, 15 Utah 2d 254, 390 P.2d 915 (1964). Accordingly, a conclusion by this Court that the Legislature intended that § 76-5-401 impose strict liability, and that the

court, in construing the statute, may proceed to fill a gap therein (per the reasoning of Wood, supra) in order to insure proper effect to legislative intent, is entirely consistent with the law of this state. The intended imposition of strict liability for a violation of § 76-5-401 is, therefore, not affected by that statute's technical inconsistency with §§ 76-2-101 and 102.

Respectfully submitted this 22nd day of November, 1982.

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CERTIFICATE OF MAILING

I hereby certify that I mailed two true and exact copies of the foregoing Brief, postage prepaid, to Kent O. Willis, Attorney for Appellant, 43 East 200 North, P.O. Box "L", Provo, Utah, 84601, this 22nd day of November, 1982.

