

2006

State of Utah v. Thomas Charles Powell : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,
Plaintiff / Appellee,

vs.

GEORGE AARON POWELL,
Defendant / Appellant.

Case No. 200690465-CA
District Court No. 051500399

BRIEF OF THE APPELLEE

APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT, WASHINGTON COUNTY,
STATE OF UTAH, FROM A JUDGMENT, SENTENCE, AND COMMITMENT AFTER A
CONVICTION BY JURY BEFORE THE HONORABLE ERIC A. LUDLOW

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TABLE OF CONTENTS

Table of Authorities ii

Statement Of Jurisdiction 1

Issues Presented And Standard Of Review 1

Statutes 2

Statement of the Case 2

Facts 2

Summary Of Argument 4

Argument 5

**THERE IS SUFFICIENT EVIDENCE SHOWING THAT THE DEFENDANT
INTENDED TO ASSAULT OFFICER LUCAS 5**

Conclusion 8

Statement Regarding Addendum 8

Certificate Of Service 9

TABLE OF AUTHORITIES

CASES

<i>State v. Clowell</i> , 994 P.2d 177, 185-86 (Utah 2000)	1, 5
<i>State v. James</i> , 819 P.2d 781, 789 (Utah 1991)	5, 6

Statutes

Utah Code Ann. § 76-5-102	1, 2
Utah Code Ann. § 76-5-102.4	1, 2
Utah Code Ann. § 78-2a-3(2)(e)	1
Utah R. App. P. 24(b)(2)	2, 8

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BRIEF OF THE APPELLEE

STATEMENT OF JURISDICTION

Defendant appeals a conviction for Assault Against A Peace Officer, a class A misdemeanor, in violation of Utah Code Ann. § 76-5-102.4, 76-5-102, in the Fifth Judicial District Court in Washington County, State of Utah, the Honorable Eric A. Ludlow presiding¹. This court's jurisdiction is based upon Utah Code Ann. § 78-2a-3(2)(e).

ISSUE PRESENTED AND STANDARD OF REVIEW

Issue: Is the evidence sufficient for the jury to determine the Defendant intentionally assaulted Officer Lucas when he aggressively exited his vehicle causing the officer to lose his balance, and then approached the officer with his fists clenched and breathing hard?

¹ The Defendant was also convicted of failing to provide proof of insurance, and pled guilty to interfering with arrest, but these charges are not subjects of this appeal.

Standard of Review: To review a claim of sufficiency of the evidence the court reviews the evidence and only overturns the conviction when the evidence is so inconclusive or improbable that a reasonable jury must have entertained a reasonable doubt. *State v. Clowell*, 994 P.2d 177, 185-86 (Utah 2000).

STATUTES

The provisions to Utah Code Ann. § 76-5-102 and § 76-5-102.4 are contained in the addendum to the Brief of the Appellant and pursuant to Utah R. App. P. 24(b)(2) are incorporated herein by reference.

STATEMENT OF THE CASE

The State accepts and incorporates the Defendant's statement of the case except to note that not all of the Defendant's jail time was suspended. The Defendant was ordered to serve 10 days in jail. (R. 80-82; R. 104 pp. 6)

FACTS

On March 19, 2005 Officer Clayton Lucas of the St George City Police Department initiated a traffic stop on a van to investigate a perceived registration violation. (R. 103 pp. 16). The van had an expired temporary registration tag in the window as well as a license plate. (R. 103 pp. 16).

The driver of the van was George Aaron Powell, the Defendant. (R. 103 pp. 43-44). Officer Lucas informed the Defendant why he was stopped, and asked for license, registration, and insurance. (R. 103 pp. 18). The Defendant partially rolled down his window and showed his license to Officer Lucas, but did not give the license to Officer Lucas, who had to reach inside the vehicle and take it from

the Defendant. (R. 103 pp. 18). Officer Lucas obtained the vehicle's registration, and the Defendant's driver's license but not proof of insurance. (R.103 pp. 18).

When Officer Lucas again asked the Defendant for proof of insurance the Defendant started to open his van door. (R. 103 pp. 18). Officer Lucas pushed his hand against the door and asked the Defendant to remain in the vehicle. (R. 103 pp. 18). While Officer Lucas still had his hand against the door the Defendant "shoved" the door open which caused Officer Lucas to be pushed backwards and off balance. (R. 103 pp. 19). Officer Lucas used his training to "step off line" and keep from falling or stumbling into the street. (R. 103 pp. 44).

After opening his door the Defendant exited the van and came at Officer Lucas. (R. 103 pp. 19). The Defendant had his arms up with his fists clenched and he was breathing hard and was gritting his teeth. (R. 103 pp. 19). Officer Lucas had to back up and told the Defendant, "Get back in the vehicle. You know, for your safety and mine, get back in the vehicle now." (R. 103 pp. 20). Officer Lucas told the Defendant to get back in the vehicle at least four times and then pulled out his taser and pointed it at the Defendant while calling for backup." (R. 103 pp. 20, 22). The Defendant continued to "charge at" Officer Lucas. (R. 103 pp 22). Officer Lucas feared for his safety because of the Defendant's actions. (R. 103 pp. 22).

Officer Lucas retreated to the front of his vehicle, which was parked one and a half to two car lengths behind the van, at which point the Defendant was near the back of his van and he stated, "I can do what ever I want and I'm not

getting back in.” (R. 103 pp. 22-23). The Defendant then opened his van door, removed the temporary registration tag from the window and then returned to the driver’s seat and got in the van. (R. 103 pp. 23).

Within seconds of the Defendant getting back into his van other officers arrived to assist Officer Lucas. (R. 103 pp. 23). There were at least five officers present. (R. 103 p. 49). Officer Lucas asked the Defendant to exit his vehicle and opened the door to the van. (R. 103 pp. 23). Officer Lucas described the way the Defendant exited the vehicle as being in the exact same manner as when the Defendant first exited the van. (R. 103 pp. 23-24). Officer Felton, who arrived to assist Officer Lucas, stated that the Defendant was glaring at Officer Lucas, was “puffed up,” had his fists clenched and looked “pissed off.” (R. 103 pp. 50). After getting out of the van this time the Defendant appeared to realize that there were several officers present and “deflated.” (R. 103 pp. 24, 50-51).

The jury heard this evidence and returned a guilty verdict on the charge of Assault Against a Peace Officer. (R. 103 pp. 82).

SUMMARY OF THE ARGUMENT

The Defendant is guilty of Assault Against a Peace Officer. The jury heard the evidence and reached the reasonable conclusion that the Defendant intended to assault Officer Lucas. The evidence showed that the Defendant forcibly opened his vehicle door into the police officer, and then charged at the police officer breathing hard with his fists clenched. The jury heard this evidence from Officer Lucas who informed the jury of the Defendant’s words and actions. Another

police officer also testified to what he observed and corroborated Officer Lucas. In many cases the issue of intent has to be inferred by the Defendant's words and actions, and it is appropriate for the jury to hear the evidence and conclude what the Defendant intended. *State v. Clowell*, 994 P.2d 177, 185-86 (Utah 2000). The jury heard the evidence and returned a guilty verdict against the Defendant. This verdict is supported by the evidence and should be upheld.

ARGUMENT

THERE IS SUFFICIENT EVIDENCE SHOWING THAT THE DEFENDANT INTENDED TO ASSAULT OFFICER LUCAS.

There was sufficient evidence presented by the State to show that the Defendant had the requisite intent to assault Officer Lucas.

The jury convicted the Defendant of Assaulting a Peace Officer. A jury should only be overturned if “the evidence presented at trial is so insufficient that reasonable minds could not have reached the verdict.” *Clowell*, 994 P.2d at 185-86 (Upholding a conviction for attempted aggravated murder challenged based on sufficiency of the evidence related to intent). The evidence is reviewed, “in a light most favorable to the verdict.” *Id.*

Intent is often difficult to prove with direct evidence, and “may be inferred from the actions of the defendant or from surrounding circumstances.” *Id.*

(Citations omitted). The Utah Supreme Court explained in *State v. James*:

It is well established that intent can be proven by circumstantial evidence. Indeed, unless a confession is made by the defendant concerning intent, or unless the court is somehow able to open the mind of the defendant to

examine his motivations, intent is of necessity proven by circumstantial evidence.

819 P.2d 781, 789 (Utah 1991).

In this case, the State presented evidence showing, beyond a reasonable doubt, that the Defendant intentionally assaulted Officer Lucas.

The Defendant first assaulted Officer Lucas when he opened his van door. The Defendant started to open the door to exit his vehicle and Officer Lucas put his hand against the door closing it and asked the Defendant to remain in the vehicle. Instead of complying with the command, the Defendant shoved the door open while Officer Lucas still had his hand against the door. By shoving the door open the Defendant caused the police officer to lose his balance. In this interaction between the Defendant and the police officer the jury could infer from the Defendant's action that he knew the police officer still had his hand against the door, and that by opening the door with more force the Defendant was intentionally taking an action, with unlawful force or violence, that caused or created a substantial risk of bodily injury to another. The police officer was at substantial risk of bodily injury; he could have fallen to the ground, or could have been pushed into the street where there is the danger of moving traffic. Because Officer Lucas is trained on how to step if being pushed off balance, he did not suffer injury, but that does not change the fact that he was at substantial risk of bodily injury. The statute does not require that injury occur, only that there is a risk of injury. The evidence showed that the Defendant intentionally committed

an act, opening the door the way he did, that created a substantial risk of injury to Officer Lucas.

After exiting the vehicle, the Defendant continued to assault Officer Lucas. The Defendant is a much larger individual than Officer Lucas, and approached Officer Lucas breathing hard, with his fists clenched, and gritting his teeth. The effect of this posturing was obvious because it caused Officer Lucas to retreat, and remove his taser from its holster. Officer Lucas told the Defendant to get back in the vehicle and informed the Defendant he was asking him to get back into the vehicle, "for your safety and mine." (R. 103:20). Officer Lucas informed the Defendant by his words and his actions that there was a safety concern and the Defendant continued his threatening behavior. The jury could very reasonably infer from the situation that the Defendant was intentionally threatening Officer Lucas with an immediate show of force by walking aggressively at Officer Lucas with his fists clenched. Even assuming that the Defendant did not initially intend to threaten Officer Lucas, by continuing his aggressive behavior after Officer Lucas made it clear, through words and actions, that there was a perceived threat, the Defendant intentionally threatened the police officer. It is obvious from Officer Lucas' reaction that he felt threatened, and it is reasonable for the jury to determine that the Defendant was intentionally threatening Officer Lucas with a show of immediate force.

The Defendant intentionally assaulted Officer Lucas with the way he exited from his van, and then continued to intentionally assault Officer Lucas, by

threatening with an immediate show of force, in the way he walked aggressively at Officer Lucas with his fists clenched and teeth gritted.

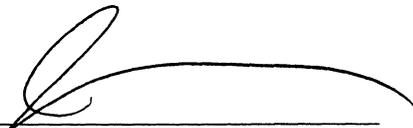
CONCLUSION

The court should uphold the jury's verdict because sufficient evidence was presented at trial for the jury to infer that the Defendant intentionally assaulted a police officer. The actions of the Defendant were such that a reasonable jury could infer that the Defendant was acting intentionally. For these reasons stated in the brief, the State respectfully asks this court to uphold the jury verdict that the Defendant intentionally assaulted a police officer on March 19, 2005.

STATEMENT REGARDING ADDENDUM

Pursuant to Utah R. App. P. 24(b)(2), no addendum is required, and the addendum of the Brief of Appellant is incorporated herein by reference.

Respectfully submitted this 30th day of April, 2007.

By 
IVAN W. LEPENDU
Deputy Washington County Attorney

Certificate of Service

I hereby certify that two true and correct copies of the foregoing Brief of

Appellee were served to:

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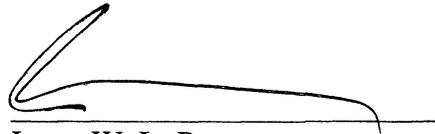
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A handwritten signature in black ink, consisting of a large, stylized initial 'I' followed by a long, horizontal stroke that tapers to the right.

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