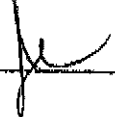


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FIFTH DISTRICT COURT
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WASHINGTON COUNTY

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FIFTH DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

v.

WARREN STEED JEFFS,

Defendant.

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STATE'S MEMO OPPOSING
MOTION TO QUASH BINDER

Criminal No. 061500526

The magistrate correctly ordered the defendant boundover to stand trial because the State produced believable evidence on all the elements of rape as an accomplice.

STANDARD OF REVIEW

“To bind a defendant over for trial, the State must show ‘probable cause’ at a preliminary hearing by presenting sufficient evidence to establish that the crime charged has been committed and that the defendant committed it.” *State v. Graham*, 2006 UT 43, ¶ 17 (citations omitted). In other words, “the prosecution must produce sufficient evidence to reasonably conclude that the requisite elements were satisfied and that the

defendant committed the crime." *Id.* "The magistrate must view all evidence in the light most favorable to the prosecution and must draw all reasonable inferences in favor of the prosecution." *State v. Clark*, 2001 UT 9, ¶ 10 (quotations and citations omitted); *see also State v. Virgin*, 2006 UT 29, ¶ 24. "The defendant should be bound over for trial unless the evidence is wholly lacking and incapable of reasonable inference to prove some issue or element of the crime." *State v. Schroyer*, 2002 UT 26, ¶ 10 (quotations and alteration marks omitted); *see also Virgin*, at ¶¶ 17-25.

ARGUMENT

The defendant is charged as an accomplice to rape. The rape statute provides:

A person commits rape when the actor has sexual intercourse with another person without the victim's consent.

Utah Code Ann. § 76-5-402(1) (1953, as amended). Following the preliminary hearing on December 14, 2006, the magistrate found that the State presented sufficient evidence on each element of rape, ordered the defendant boundover to stand trial, and issued detailed findings.

However, the defendant contends that evidence is lacking on the element of consent. First, the defense argues that the 14 year old victim did not put the defendant "on notice" by her words or conduct that she objected to sexual intercourse with her adult cousin under Utah Code Ann Section 76-5-406(1). Defense Memo¹, pp. 1-2. Second, the

¹ Defendant's Memorandum in Support of Motion to Quash Bindover (hereafter "Defense Memo").

defense argues that the victim's adult cousin did not occupy a position of special trust under Section 76-5-406(10). *Id.*

Because the state presented ample evidence on both of these points, the magistrate appropriately ordered the defendant bound over to stand trial on two counts of rape as an accomplice.

A. The State's Evidence Supports A Reasonable Conclusion That The Victim Expressed Her Lack of Consent Through Words Or Conduct

There is no consent to sexual intercourse when "the victim expresses lack of consent through words or conduct." Utah Code Ann. § 76-5-406(1).

Defendant argues that even though the fourteen-year-old victim clearly objected to marrying her adult cousin, her objections to the marriage do not equate to expressing lack of consent to sexual intercourse.

However, the victim's words and conduct clearly expressed that she did not even want *to touch* her purported husband –let alone engage in intimate sexual contact. The victim testified that during the ceremony the defendant said, "now, take each other by the hand. And I didn't want to hold Allen's hand. And I just kind of shook my head. And he said, Take Allen's hand." Tr. 133:11-14². Later, the defendant said, "You may kiss the bride. And I kind of turned my head away. And I shook my head. And he said --- and he said, Kiss Allen, Elissa. So I did." Tr. 134:22-24. Then, after the ceremony, "he took my hand and Allen's hand, because I had dropped Allen's hand. And he put them

² Preliminary Hearing, Reporter's Transcript of Proceedings November 21, 2006 (hereafter "Tr.").

together. And he said, now, go forth and multiply and replenish the earth with good priesthood children." Tr. 136:4-7.

The victim testified she did not know what sex was at the time of the ceremony. Tr. 137:2-7. Therefore, she lacked the experience and words to specifically articulate her objection to sexual intercourse. But, her words and conduct clearly expressed to the defendant that she did not want to touch or kiss her cousin. Thus, it is reasonable to conclude that her conduct communicated to the defendant that she would object to sexual intercourse if she knew what it was.

Moreover, testimony established that the defendant knew and intended that the victim and her cousin engage in sex. Specifically, the victim testified that when she complained to the defendant that her cousin was "touching me in private parts and doing things to me, doing things with his private parts," the defendant responded, "that's what happens. That's what - that's what men and women, that's what wives and husbands do." Tr. 259:3-19. "He is fulfilling his husbandly duty." Tr. 259:19. Moreover, there was testimony that married couples in the FLDS community are expected to begin having children immediately. Tr. 136:19-20.

Because there was evidence that the victim expressed her lack of consent to sexual intercourse through words and conduct, the magistrate correctly bound the defendant over on both counts of rape under subsection (1) of the consent statute.

B. The State's Evidence Supports a Reasonable Conclusion That The Victim's Adult Cousin Occupied a Position of Special Trust

Under Section 76-5-406 subsection 10, sexual intercourse occurs without consent if:

the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Subsection 76-5-404.1(4)(h).

Utah Code Ann. § 76-5-406(10). A "position of special trust" is defined as:

"that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and *includes, but is not limited to*, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, baby-sitter, adult scout leader, natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent."

Utah Code Annotated § 76-5-404(4)(h) (emphasis added).

The defense argues that the magistrate lacked evidence to conclude that the victim's adult cousin was able to exercise undue influence over the victim and therefore did not occupy a position of special trust. Defense Memo, p. 9.

However, there was direct testimony to support the magistrate's conclusion occupied such a position. For example, Rebecca Musser testified that the defendant:

would also teach how the girls, their duties as a young child, as young girl, every desire, every – every tie that they had was foremost to their father, who was their priesthood head, and as they grow up not to have any contact with any man, anyone of the opposite sex. And then when they were married, that they were to transfer all of their ties, all of their loyalties to their husband and to submit to him and have perfect obedience to that husband. And that husband was their lifeline

to God. They could not talk to God without, basically, going through their husband's priesthood power.

Tr. 18:19-25; 20:1-5. Moreover, the victim testified that the defendant told her:

Allen was my priesthood head and he knew what was right for me. And then he told me, went on to tell me that a woman's role is to be obedient without question to her husband. And that he was her priesthood head and that he would later lead her on to the celestial kingdom but only if he considered her a good priesthood, obedient, and submissive wife.

Tr. 148:8-14. The defendant followed up by telling the victim that if she wanted to talk to him in the future, her cousin needed to be there. Tr. 150:12-14 ("And I don't want you to come in here without him.").

The legislature deems a "parent" as one in a position of special trust. Utah Code Ann. § 76-5-404(4)(h). Similarly, the legislature deems a "religious leader" as one in a position of special trust. *Id.* In this case, the fourteen-year-old victim was required to transfer all ties, loyalty and obedience from her father to her cousin. Her cousin stepped into her father's shoes and became "her priesthood head." The defendant then ordered him to have children with the victim and she was commanded to obey him. Therefore, the victim's adult cousin possessed authority similar to both a religious leader and a parent. Thus, the magistrate had evidence that the victim's cousin and purported husband was able to exercise undue influence over the victim because of his position.

CONCLUSION

The magistrate correctly ordered the defendant to stand trial on both counts. The State established probable cause the victim expressed her lack of consent to sexual intercourse through both words and conduct. In addition, there was probable cause that the victim's cousin occupied a position of special trust.

Respectfully submitted this 22nd day of March 2007,

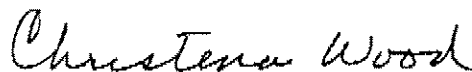

Brock R. Belnap
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CERTIFICATE OF DELIVERY

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