

1967

# The State of Utah v. Verl Farnsworth : Brief of Respondent

Utah Supreme Court

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# In The Supreme Court of the State of Utah

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STATE OF UTAH,

Plaintiff-Respondent,

-vs-

STEVEN A. IRELAND,

Defendant-Appellant.

} Case No.  
11127

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## BRIEF OF RESPONDENT

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Appeal from a judgment in the Third District Court,  
Salt Lake County, State of Utah,  
Honorable Merrill C. Faux, presiding.

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STATE OF UTAH,

Plaintiff-Respondent,

-vs-

STEVEN A. IRELAND,

Defendant-Appellant.

} Case No.  
11127

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## BRIEF OF RESPONDENT

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### STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a jury verdict of guilty to assault by a convict upon another convict with a deadly weapon, without malice aforethought, as a lesser included offense in the crime of assault by a convict upon another convict with a deadly weapon with malice aforethought.

### DISPOSITION IN THE LOWER COURT

The jury found the appellant guilty of assault by a convict upon another convict, with a deadly weapon without malice aforethought, in violation of U.C.A. 76-7-11 (Supp. 1967). He was sentenced to

a further indeterminate term in the Utah State Prison, as provided by law.

## RELIEF SOUGHT ON APPEAL

Respondent requests that the judgment of the trial court be affirmed.

## STATEMENT OF FACTS

Respondent accepts the facts as stated in appellant's brief with the following exceptions and additions.

Drue Hunt Ross, a medical examiner at the Utah State Prison, testified that he examined prison guard Jay Jones immediately after the altercation and that in his opinion the wound on Jones' neck was caused by a sharp instrument and that the injury could have been caused by a safety razor (T. 77).

Glen M. Gardiner testified that while on duty at the Utah State Prison as a custodial officer, he was called on an emergency at approximately 11:30 a.m., April 1, 1967. In response to the question, "When you got to the cell block, will you tell us what occurred?" Mr. Gardiner testified (while referring to a diagram of the prison area involved):

I started to open this door, and Ireland stated, "Don't come in this corridor, or I will kill him."

Q. Now, where was this is Officer Jones, you say?

A. Officer Jones.

Q. And they were approximately mid-way area; is that correct?

A. Approximately, right in this area.

Q. And how was he holding him?

A. He had his left arm around his waist and his right arm around his right shoulder holding an object to the left side of his throat.

Q. Did you see that object?

A. I asked Ireland what he would like to do, and he said to go down, send one officer through the corridor to open this door and he would go into his cell and turn Officer Jones loose (T. 90).

\* \* \* \* \*

Q. Okay, when you walked down the corridor, did you observe anything?

A. I observed a razor in Ireland's hands.

Q. And where did he have that razor or where was his hand located?

A. His hand was around his right shoulder, and he was holding the razor to the left side of his throat (T. 91).

Mr. Gardiner concluded by testifying that Ireland took guard Jones to inmate Jones' cell where inmate Jones held him until Ireland could get back to his cell (T. 91).

## ARGUMENT

## POINT I

THE EVIDENCE WAS SUFFICIENT FOR THE JURY TO FIND THAT THE APPELLANT COMMITTED ASSAULT WITH A DEADLY WEAPON UPON A GUARD WITHOUT MALICE AFORETHOUGHT.

The testimony of Glen M. Gardiner established evidence from which the jury could find that the appellant did, in fact, hold a razor blade to the throat of Joy Jones.

Instruction No. 1 (R. 42) charged the defendant, Steven A. Ireland, as follows:

That on or about the 1st day of April, 1967, at the County of Salt Lake, State of Utah, the said Mike Patrick Jones and Steven A. Ireland, being convicts in the Utah State Prison, with malice aforethought, committed an assault upon Jay Jones, guard at said prison, with deadly weapon, **particularly a razor blade.** (Emphasis added.)

In instruction No. 10 (R. 48) the jury was told:

A "deadly weapon" or "instrument" is an object, instrument, or weapon, which used in the manner in which it appears to have been used, is capable of producing, and is likely to produce death or great bodily injury.

A "deadly weapon" is such a weapon or instrument as is made and designed for offensive or defensive purposes, or for the destruction of life or the inflicting of injury. **Acers v. United States**, 164 U.S. 388 (1895)



It is one likely to produce death or great bodily harm. **People v. Fisher**, 44 Cal.Rptr. 302, 234 C.A.2d 189 (1965); **Solitto v. State**, Fla.App., 165 So.2d 223 (1964)

A deadly weapon is one which from the manner used is calculated or likely to produce death or serious bodily injury. **People v. Tophia**, 167 C.A.2d 39, 334 P.2d 133 (1959)

It is any weapon dangerous to life, or with which death may be easily and readily produced from the manner in which it is used. **Williams v. State**, 251 Ala. 397, 39 So.2d 37 (1948); **Armijo v. People**, 134 Colo. 344, 304 P.2d 633 (1956).

A razor has been defined as:

An article of common domestic use, and while no one could be held guilty of the offense of carrying a dangerous and deadly weapon concealed about his person, simply because he so carried a razor, yet if surrounding circumstances would tend to show that he carried it as a weapon of offense, he might become liable to the charge, because a razor, when thus used, is notoriously a weapon dangerous to life. Ballentine, Law Dictionary with Pronunciations, P. 1088, (2nd ed. 1948); citing **Brown v. State**, 105 Misc. 367, 62 So. 353 (1913).

In **Williams v. Commonwealth**, 304 Ky 761, 202 S.W. 2d 408 (1947) the defendant was accused of carrying a razor concealed on his person. The court held that a razor is a "deadly weapon" within the meaning of the statute against carrying a concealed deadly weapon.

In **People v. Richardson**, 176, C.A.2d 163, 1 Cal. Rptr. 306 (1959), the defendant was accused of cutting an fellow prisoner with a razor blade. The court held that a razor blade, depending on the circumstances of its use, may be a deadly weapon.

It is submitted that while a razor blade is not a deadly weapon per se, **see French v. State**, 73 Okla.Cr. 141, 118 P.2d 664 (1941), it becomes a deadly weapon when used in a manner likely to produce death or great bodily injury.

Respondent further submits that a razor blade held to a prison guard's throat is a deadly weapon within the meaning of Utah Code Ann. §§76-7-11 and 76-7-12 (Supp. 1967).

The apparent conflict between the appellant's brief and the respondent's brief is over the issue of whether or not there was evidence of the appellant holding a razor blade to Officer Jones' throat. The appellant contends that there was no direct evidence establishing that a razor had been in fact used on Officer Jones. (Appellant's brief pp. 4-5.)

Respondent submits that there was evidence presented from which the jury could find that the appellant held a razor blade to Officer Jones' throat.

Although the record shows that the prosecution moved the court to amend the charge substituting the phrase, "with intent to do great bodily injury" for "with a deadly weapon particularly a razor blade" (T. 84) the motion was withdrawn (T. 93) and the complaint as read to the jury charged the ap-

pellant with assault by a convict with malice aforethought upon a prison guard with a deadly weapon, particularly a razor blade. (R. 42)

## CONCLUSION

The information charges the appellant with assault by a convict with malice aforethought on guard with a deadly weapon, particularly a razor blade. Instruction No. 1 advised the jury that the appellant was charged with assault on a prison guard with malice aforethought by a convict with a deadly weapon, particularly a razor blade. There was sufficient testimony to establish that the appellant held a razor blade to the guard's throat. Respondent submits that the judgment of the trial court should be affirmed.

Respectfully submitted,

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