

1968

State of Utah v. Raymond Strohm : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Vernon Romney; Attorney for Respondent David M. Brown; Attorney for Appellant

Recommended Citation

Brief of Appellant, *Utah v. Strohm*, No. 11166 (Utah Supreme Court, 1968).
https://digitalcommons.law.byu.edu/uofu_sc2/101

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

- vs. -

RAYMOND STROHM,

Defendant-Appellant.

Case No.

11166

BRIEF OF APPELLANT

Appeal from jury verdict of guilty in the
Third District Court in and for Salt Lake County,
the Honorable Merrill C. Faux, presiding,

DAVID M. BOWN
231 East 4th South
Salt Lake City, Utah

Attorney for Appellant

VERNON ROMNEY

Attorney General,
State of Utah

State Capitol Building
Salt Lake City, Utah

Attorney for Respondent

FILED

CLERK SUPREME COURT, UTAH

TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF THE CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF FACTS	2
ARGUMENT	4
POINT I. THE TRIAL COURT ERRED IN NOT RUL- ING ON THE VOLUNTARINESS OF THE APPEL- LANT'S CONFESSION BEFORE ALLOWING THE SAME TO BE HEARD BY THE JURY.	4
CONCLUSION	7

CASES CITED

Jackson v. Denno, 378 U.S. 368, 84 Sup. Ct. 1774, 12 L.Ed2d 908 (1964)	4, 5
State v. Ashdown, 5 U.2d 59, 296 P.2d 726 (1956)	6
State v. Braasch, 119 Utah 450, 229 P.2d 289 (1951)	6
State v. Crank, 105 Utah 332, 142 P.2d 178 (1943)	6
State v. Mares, 113 Utah 225, 192 P.2d 861 (1948)	6

TREATISES CITED

3 Wigmore, Evidence §861 (3rd ed. 1940)	6
---	---

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

- vs. -

RAYMOND STROHM,

Defendant-Appellant.

Case No.

11166

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a jury verdict of guilty to the crimes of Burglary in the Third Degree and Grand Larceny.

DISPOSITION IN LOWER COURT

The jury found the defendant guilty of Burglary in the Third Degree and Grand Larceny. He was sentenced to the Utah State Prison for the indeterminate term as provided by law.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the jury verdict rendered against him, or in the alternative, to grant him a

new trial with instructions in accordance with the point raised on appeal.

STATEMENT OF FACTS

The appellant was convicted of Burglary in the Third Degree and Grand Larceny after trial by jury. The victim of the alleged offense was Delivery Service and Transfer Company of Salt Lake City, Utah. (T-3)

The State's case rested upon the appellant's recent possession of an electric typewriter and postage meter taken from the victim's establishment (T-7) plus an alleged confession of the appellant. (T-21).

The appellant made an explanation of his possession of the items before the jury. (T-43) He testified that he took no part in the burglary of Transfer Service (T-43) but rather items in question had been brought to him by Mike Martinez and Ernie Gallegos. (T-40) He testified that he was asked by those two men to sell the typewriter for \$50.

During the trial, Nick Palukos, an investigating officer with the Salt Lake City Police Department was called to the stand. (T-21). He testified that he interviewed the appellant on July 13th or 14th in the Salt Lake County Jail (T-21), where the defendant was being held on another charge. (T-20)

After a technically incomplete Miranda warning, (T-19) the officer testified that he concluded that the defendant understood yet waived his rights (T-21). This was in spite of the fact that the defendant was visibly ill from narcotic withdrawal (T-22). He was so ill, in fact, that the officer stopped interrogating him after a short time and told him that he would return the next day (T-21). When Palukos returned, the defendant declined to talk further (T-21).

During the interrogation and before its termination because of the defendant's illness, the officer obtained a confession or admission from the defendant to the effect that he along with Michael Walker and Ursel Harris (not Martinez and Gallegos) had gone to the Delivery Service and Transfer building (T-23, 24). The defendant had stayed in the car while the other men entered the building. They returned with the property and placed it in the car and left the scene (T-23).

At trial, the above admission was admitted in evidence over an objection to its being involuntary. (T-22-23) The trial judge ruled that, "as to whether or not what he said was voluntary, is a question for the jury. Under the circumstances that this has developed here . . . whether voluntary or coerced will be a matter for the jury to determine." (T-23).

At trial, the appellant took the stand in his own behalf. (T-39). (T-42) The appellant recalls having a con-

versation with Officer Palukos in the jail but can't recall what he told him. He indicated that at the time, he was sick from narcotic withdrawal and felt that the officer was threatening him and putting words in his mouth. (T-43, 44). He further testified that he felt that Officer Palukos had the incident mixed up (T-47) with others under investigation.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN NOT RULING ON THE VOLUNTARINESS OF THE APPELLANT'S CONFESSION BEFORE ALLOWING THE SAME TO BE HEARD BY THE JURY.

It is submitted that the Trial Court committed prejudicial error requiring reversal in ruling that the question of the voluntariness of a confession is for the jury. In so ruling, the trial court violated not only the defendant's right to Due Process but also the procedural rules set down by this court.

In *Jackson v. Denno*, 378 U.S. 368, 84 Sup. Ct. 1774, 12 L. Ed 2d 908 (1964), the United State Supreme Court set down constitutional guidelines for the procedure relative to determining voluntariness of a confession. The Court held that the New York procedure for determining

voluntariness of a confession offered by the prosecution violated the Due Process clause of the 14th Amendment. The New York procedure that was struck down was as follows: the trial court excluded the confession if it could in no circumstance be deemed voluntary, but left to the jury the ultimate determination of its voluntary character, as well as its truthfulness, if the evidence presented a fair question as to its voluntariness. The underlying rationale of the decision was that a jury could not be assumed to have reliably found a confession voluntary where it also determines its truthfulness.

It is submitted that the trial judge's ruling creates a procedure that violates the underlying principle of the *Jackson v. Denno* decision in a manner far worse than the New York procedure struck down in that case.

Here the trial judge after hearing substantial evidence to the effect that the defendant's confession might have been involuntary and over objection of counsel, ruled that the question was solely for the jury. The Court thereby refused to have a full hearing on the question of the voluntariness of the confession and refused to rule whether the confession in no circumstance could be deemed voluntary. The unconstitutional New York procedure would at least have required that much. It is, therefore, submitted that this procedure denied the appellant Due Process of law as guaranteed by the 14th Amendment of the United States Constitution under *Jackson v. Denno*.

It is further argued that by the trial court's ruling, the appellant was denied procedural Due Process under the laws of the State of Utah.

The court long ago set forth the procedure to be followed by the lesser court of this state in determining the voluntariness of an admission or confession of a criminal defendant before submitting the same to a jury. In *State v. Crank*, 105 Utah 332, 142 P. 2d 178 (1943), the court, following what is known as the "Wigmore" or "Orthodox" rule, held that the trial judge is to hear all the evidence and then rule on the same for the purpose of admissibility of the confession. If further held that the jury is only to consider voluntariness as it affects, weight or credibility of the confession. This court has cited the rule with approval in *State v. Mares*, 113 Utah 225, 192 P. 2d 861 (1948); *State v. Braasch*, 119 Utah 450, 229 P. 2d 289 (1951) and *State v. Ashdown*, 5 U. 2d 59, 296 P. 2d 726 (1956).

It is patently evident from the record that the trial court did not follow the above procedure. Rather, by failing to rule on the voluntariness of the confession and submitting the same to the jury, the trial court violated the well established Utah procedure. This patent violation clearly requires this court to reverse the conviction of the appellant.

*See 3 Wigmore, Evidence §861, (3rd ed. 1940).

CONCLUSION

The record clearly indicated that the appellant's confession was erroneously allowed to be heard by the jury before ruling on the voluntariness of the same. This action was contrary to that required to justify due process of law under the 14th Amendment of the United States Constitution and the recognized Utah Procedure. This error clearly requires this court to reverse the action of the court below and grant the appellant the relief sought on appeal.

Respectfully submitted,

DAVID M. BOWN

231 East 4th South
Salt Lake City, Utah 84111

Attorney for Appellant