

1986

State of Utah v. Allen Tim Hefner : Brief of Appellant

Utah Court of Appeals

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IN THE SUPREME COURT OF

STATE OF UTAH, :
Plaintiff/Respondant, : Case No. 860355
vs :
ALLEN TIM HEFNER : Classification #2
Defendant/Appellant, :

BRIEF OF APPELLANT

Whether the evidence as presented at trial was insufficient
to support the conviction.

**UTAH COURT OF APPEALS
BRIEF**

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COURT OF APPEALS

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IN THE SUPREME COURT OF THE STATE

STATE OF UTAH, :
Plaintiff/Respondant, : Case No. 860355
v :
ALLEN TIM HEFNER :
Defendant/Appellant, :

BRIEF OF APPELLANT

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

Whether the evidence as presented at trial was insufficient to support the conviction.

STATEMENT OF THE CASE

The defendant was charged with the commission of a Second Degree Felony Theft, a Second Degree Felony Burglary, a Second Degree Felony Aggravated Arson and a Third Degree Felony Arson, all occurring on April 16, 1986 (R1-8). The defendant entered a not guilty plea and a trial was held before the Honorable Ronald O. Hyde, sitting with a jury on May 27 and 28, 1986. (R 37-41) The jury rendered a finding of guilty to the Second Degree Felony Burglary, Second Degree Felony Aggravated Arson and Third Degree Felony Arson and a finding of not guilty to the Second Degree Felony Theft. (R 41-43)

On June 13, 1986, the defendant was sentenced by the Honorable Ronald O. Hyde, to serve a term in the Utah State Prison of 1-15 years on the Second Degree Felonies and 0-5 years on the Third Degree Felony. The Judge ordered the sentencing to run concurrently. (R 77).

Defendant filed a notice of appeal on July 1, 1986.

STATEMENT OF FACTS

In the early morning hours of April 16, 1986, a fire engulfed a home and a garage located at approximately 1530 21st Street. (R

After the fire department was called to contain the blaze an investigation commenced. During that investigation, officer Joe Coxey talked to a Mr. Grant who is the occupant of the residence. (R.119) Mr. Robert Lee, the owner of the home approached Officer Coxey and stated that Allen Hefner was the one he believed had started the fire. (R.120)

Winston Sales, Ogden City Fire Department Investigator, testified that the fire was not an accidental fire, due to the fact that there were multiple points of origin, and because of the nature of the fire, it was his opinion that the fire was an arson caused fire. (r.144) The State's case rests primarily upon a purported confession made by the defendant to Officer Lucas, and a few other items of circumstantial evidence. (R.221) In the alleged confession, the defendant confessed to starting the fire and further confessed that he had started it with two bottles of MEK peroxide (R.221) This statement would be in direct contradiction to the State's witness, Robert Lee, the only real expert on MEK peroxide in the Courtroom, who said that MEK was not readily combustible by a small open flame such as a match or cigarette lighter. (R 190-191) Officer Lucas, the arresting officer, stated that prior to obtaining the alleged confession the police did not have enough evidence to arrest the defendant and that they needed evidence such as a confession in order to make an arrest and prosecute the case. (R.226) Furthermore, the confession was written by Officer Lucas and signed by Officer Lucas and the defendant signed his name on the statement in a place noted for "Witness Signature". (R. 232)

During the course of Mr. Lee's testimony, he testified that he has owned a fiberglass business since 1973. He also testified

that between 1973 and 1986 he had three places in which ne conducted his fiberglass business all of which burned down. The first of these fires occured before the time that he first knew the defendant. (R.185) The defendant then took the stand and testified that the statement that he had given Detective Lucas was not the statement that was written down and entered into evidence. (R. 255-260) The defendant further testified that he signed the statement as a witness but that the statement was not a correct statement of facts. (R.260) The defendant further denied setting the fire. (R. 263) The defendant then described in detail Mr. Lee's confessions to him concerning setting the prior two fires. (R. 265-267)

The jury found the defendant guilty of Aggravated Arson and Burglary and not guilty of a Second Degree Felony Theft. From that conviction, defendant appeals.

STATEMENT OF THE ARGUMENT

The defendant is appealing on the grounds that the jury was without evidence sufficient to support his conviction and therefore the conviction should be reversed.

ARGUMENT

Evidence presented at trial is insufficient to support a conviction of defendant in the present case. Counsel is mindful of this court's rather strict standards of review when, in fact, the court is asked to review the record to determine the sufficiency of a verdict. This view is expressed in State v Newbold, 581 P.2d 991 (Utah 1972), where this court held "to set aside a jury verdict, evidence must appear so inconclusive and unsatisfactory that reasonable minds acting fairly upon it must have entertained reasonable doubt the the defendant committe the crime." (Id at 972)

In addition, the court in State v Horne, 364 P.2d 109 (Utah 1961), utilized the following language, that a jury should have found the testimony of the only witness against the defendant "so inherently improbable as could be unworthy of belief and upon objective analysis it appears that reasonable minds could not believe beyond reasonable doubt that the defendant was guilty." (Id at 112)

The case at hand falls within the parameters the Utah Supreme Court set in both Newbold and Horne in that the evidence presented at trial is so inconclusive and unsatisfactory that a reasonable mind must have entertained reasonable doubt as to the defendant's guilt. In the present case, the only evidence presented at trial that could tie the defendant to the crime is a confession written by Detective Lucas. The evidence as to the stain on defendant's pants goes directly against the State's theory that the stain is part of the accelerant used to start the fire. Chief Fire Marshall Peek testified that the stain was fiberglass resin and not the MEK proxide that supposedly ignited the house. The testimony of Robert Lee is merely a compilation of bald acquisitions without any foundation and the bias throughout his testimony is clearly evident. Likewise, the testimony of Ronnie Williams, a recent parolee, is replete with contradictions and is illogical in that he claims that the defendant, after having been in the halfway house for one or two months suddenly has \$1000.00 in cash to hire someone to set a fire. Furthermore Williams testified that he did not notice the most noticeable item in the defendant's car which clearly indicated that he never had the conversation that he claims to have had. The jury therefore rested the entire decision upon the written statement which implicated the defendant in the crime,

which however, was merely witnessed by the defendant. The jury's reliance upon this confession is misplaced not only for the reason that the statement was actually written by Detective Lucas but also for the reason that the contents of this document were totally inconsistent with Fire Marshalls opinion of the casuation of the fire. The accelerant described in the alleged confession is a substance that would not, in all likelihood, catch and start a fire of this magnitude.

When taking the evidence as presented to the jury and even when looking at such evidence in a light most favorable to upholding the conviction as is the law under Newbold and Horne, this Court must recognize that the evidence is so inconclusive that a reasonable mind would, of necessity, have a reasonable doubt as to the guilt of the defendant in the instant case.

CONCLUSION

Based upon the foregoing arguments and a thorough review of the evidence, the defendant respectfully requests this court to reverse the conviction.

RESPECTFULLY SUBMITTED this ____ day of March, 1987.

KEVIN P. SULLIVAN
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of the above and foregoing brief to the Attorney General's Office 236 State Capitol Building, Salt Lake City, Utah 84414,

DATED this ____ day of March, 1987

Jolene Fason
Secretary