1976

State of Utah v. Harry Maestas : Brief of Appellant

Utah Supreme Court

Larry R. Keller; Attorney for Appellant;
Vernon B. Romney; Attorney for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent	:	
vs.	:	
HARRY MAESTAS,	:	Case No. 14585
Defendant-Appellant	:	

BRIEF OF APPELLANT

Appeal from a jury verdict of guilty of the crime of assault by a prisoner, a felony of the third degree, in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, the Honorable Peter F. Leary, presiding.

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OTHER AUTHORITIES

Utah Code Ann. §76-2-402(1) (as amended 1973)

IN THE SUPREME COURT OF THE STATE OF UTAH

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vs.	:	
HARRY MAESTAS, Defendant-Appellant	:	Case No. 14585

STATEMENT OF THE NATURE OF THE CASE

This case is an appeal from the Third District Court, in which defendant was convicted of the crime of assault by a prisoner, a felony of the third degree.

DISPOSITION IN LOWER COURT

Appellant was tried on a two count information alleging that he committed the crimes of aggravated sexual assault and assault by a prisoner. The jury acquitted him of aggravated sexual assault but convicted him of assault by a prisoner.

RELIEF SOUGHT ON APPEAL

Appellant seeks an order from this Court reversing his conviction and either vacating the conviction entirely or remanding the case for a new trial.

STATEMENT OF FACTS

At the trial, Michael William Hart, convicted of first degree arson and second degree murder (T.13), testified that on January 15, 1976 while incarcerated in "C" Section of the maximum security facility at the Utah State Prison, he was struck in the face by appellant's fist. (T.17) Hart testified he thought the assault was in response to his requests for money owed him by appellant (T.19). He further testified that the appellant forced him to submit to a sexual assault (T.24). This part of the witnesses' testimony was not believed by the jury, at least not beyond a reasonable doubt, for the jury acquitted the appellant of this charge (T.321).

Although several other persons testified at the trial, most testified to facts revolving around the sexual assault charge. Germain to this appeal, however, is the testimony of appellant himself.

Appellant testified that during the month of January, 1976 he had reason to be "jumpy" because he believed someone was trying to harm him. He testified that at the time of the alleged assault on January 15, 1976 he was sitting in "C" Section of the maximum security facility. Edward L. Cornish, another inmate was sitting behind appellant and appellant heard Cornish yell "watch out". Appellant had had earphones on watching T.V.; he felt someone strike him in the shoulder simultaneously with Cornish's warning.

Appellant testified that because the individual came up behind his back, he feared he was in danger and struck out hitting the person, who turned out to be the alleged victim Michael William Hart. Appellant further testified he struck Hart because he thought he might be stabbed. (T. 213-247)

Edward Cornish was called by appellant and confirmed appellant's version of the alleged assault. (T.191-209)

ARGUMENT

POINT I

THE TRIAL COURT'S REFUSAL TO ALLOW DEFENSE COUNSEL TO CROSS-EXAMINE THE WITNESS HART CONCERNING AGREEMENTS WITH THE STATE IN RETURN FOR HIS TESTIMONY DENIED APPELLANT HIS RIGHT TO DUE PROCESS OF LAW.

The State's chief witness in this case was Michael Hart. During cross-examination of Mr. Hart by defense counsel, the following colloguy took place:

Mr. Keller: And as a result of your testimony in this case the State has agreed to not send you back to the Utah State Prison, haven't they?

Mr. Stott: I'm going to object.

Court: Sustained.

Mr. Keller: Your Honor.

Court: Objection is sustained.

Mr. Keller: I would like to argue that point, Your Honor, may we do so outside the presence of the jury?

Court: Ask your next question.

Mr. Keller: May we at least approach the bench on it?

Court: Ask your next question counsel, please.

Mr. Keller: What other agreement did you make with the State of Utah for your testimony, Mr.--

Mr. Stott: I'm going to object to that, there isn't any evidence, he is assuming things.

Court: Objection is sustained.

Mr. Keller: Your Honor, we are entitled to know what agreeme have been made with this man in return for his testimony against the defendant. There is a long line of case law that allows us to do that.

Court: Ask your next question counsel.

(T.60-61)

Appellant maintains that this refusal by the trial court to allow defense counsel to bring out the nature of the State's agreeme with the witness in return for his testimony was a denial of his right under the Sixth Amendment of the United States Constitution to be confronted by the witnesses against him and to be allowed full and complete cross-examination of such witnesses. It was, also a denial of appellant's right to Due Process of Law pursuant to the Fifth and Fourteenth Amendments to the United States Constitutio and Article I Section 7 of the Constitution of Utah.

The precept that Due Process of Law requires full and complet cross-examination of witnesses is so axiomatic that it seems unneces to provide documentation. Cross-examination is fundamental to preserve the right of confrontation of witnesses. Although numerous

cases and quotations could be cited, the statement by Mr. Justice Burger in the majority opinion in Davis v. Alaska, 415 U.S. 308, 39 L. Ed. 2d 347, 94 S. Ct. 1105 (1974) best documents the point:

> Cross examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e. discredit the witness. . . . A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is "always relevant as discrediting the witness and affecting the weight of his testimony." 3AJ. Wigmore Evidence §940,p775 (Chadbourn rev 1970). We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. [415 US 317] Greene v. McElroy, 360 US 474, 496, 3 L.Ed 2d 1377, 79 S. Ct. 1400 (1959)

The Utah Supreme Court has long recognized this important Constitutional concept. In State v. Cerar, 60 Utah 208, 207 P. 597 (1922) the Court said:

> "The interest of a witness in any particular case in which he becomes a witness may always be shown, and the effect, if any, of such interest upon the weight of the testimony is always a question for the jury." 207 P.at 602.

In perhaps its most recent pronouncement on the issue, this Court held it was error for a trial judge to have refused to permit defense counsel to cross-examine a witness as to his interest and bias after the witness disclosed that a year jail sentence was to be shortened in return for his testimony against another in a criminal case. State v. Smelser, 23 Ut. 2d 347, 463 P.2d 562 (1970).

Although the Court held this error to be non-prejudicial because it involved testimony which was merely corroborative,[1] the Court seemed to say that a defendant has a right to pursue the effect of an agreement with the state upon his testimony and it is error not to allow him to do so. But even more important, the decision seemed clear that the defendant was entitled to bring out the witnesses' agreement or hoped for reduction in sentence as a possible reason for his not testifying fairly. The Court held that the trial court's refusal to allow counsel to go into the subject more deeply was error, but not prejudicial.

In the instant case, counsel was not even allowed to inquire into the witnesses' agreement with the State in return for his testimony, or even into what the witness hoped to gain through his testimony. Based on the Smelser case, this action by the trial judge constituted error and furthermore this error was prejudicial to appellant as it was not merely a question of how deeply counsel could question concerning the witnesses' bias, but whether counsel could question him at all with regard to that possible bias.

The United States Supreme Court addressed this very issue in Giglio v. United States, 465 U.S. 150, 31 L. Ed. 2d 104, 92 S. Ct. 763 (1972). In that case, a witness for the government testified falsely that he had received no consideration in return for his testimony against the defendant Giglio. It was later revealed that

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1. 463 P.2d at 564.

unbeknownst to the prosecutor actually trying the case, another prosecutor had agreed not to prosecute the witness in another matter in return for his testimony. The Court reversed Giglios' conviction on the grounds that the perjured testimony and the government's failure to inform the jury of its agreement with the witness denied Giglio due process of law. Writing for the majority, Mr. Chief Justice Burger stated:

> "Taliento's credibility as a witness was therefore an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it." 31 L. Ed. 2d at 109.

The Court in Giglio quoted from an earlier case, Napue v. Illinois, 360 U.S. 264, 3 L. Ed. 2d 1217, 79 S. Ct. 1173 (1959) in which a murder conviction was reversed because a government witness denied he would receive any consideration for his testimony, when in fact he had been promised consideration. The Supreme Court held in Napue that the due process cause of the Fourteenth Amendment is violated where a witness testifies falsley as to the government's promises for his testimony. Mr. Chief Justice Warren, writing for a unanimous Court stated:

> ". . . The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." 2 L.Ed. 2d at 1221

Most important to the Utah Supreme Court's inquiry in the instant case, however, is the fact that the United States Supreme Court has, in at least two major cases, held that a jury is entitled to know what consideration, if any, is promised to a witness in

a criminal case in return for his testimony; and that if that witne testifies falsely in that regard, the defendant has been denied due process of law. But what jumps out as essential to that principle is the fact that due process of law requires that the jur be apprised of any consideration the witness is to receive for his testimony. If a trial judge is allowed to prevent a defendant fron even inquiring into the subject in the first place, isn't that a clear denial of Due Process of law? And isn't that what happened i the instant case? Appellant asks this Court to establish clearly t in Utah, as in the rest of the country, due process of law requires a trial judge allow defense counsel in a criminal case to inquire o a witness what consideration he has been promised in return for his testimony; and to do so by reversing this case and granting appella a new trial.

POINT II

THE TRIAL COURT'S REFUSAL TO INSTRUCT THE JURY WITH REGARD TO SELF-DEFENSE DENIED APPELLANT HIS RIGHT TO DUE PROCESS OF LAW.

After both sides had rested and at the proper time appellant counsel requested the following instruction

> "A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such force is necessary to defend himself or a third person against such other's imminent use of unlawful force."

This requested instruction copies verbatim the first sentenc from Utah Code Ann. §76-2-402 (1953 as amended [1973]). After hearing

extensive argument on the matter (T.249-263), the trial court refused to allow this instruction to be given to the jury (T.263). Appellant argues that the Court effectively denied him his right to due process of law by not allowing him to argue, nor instructing the jury upon, his theory of the case: to-wit that appellant struck Hart in self-defense.

There was no argument concerning the accuracy of the language (taken directly from the statute) in the requested instruction (T.249-263). The Court seemed to deny the requested instruction because it did not believe that unlawful force was used against appellant (T.250, 251). Appellant believes that the Court was in error concerning both the evidence and the law on this matter and by refusing to give the requested instruction the Court effectively took over the function of the jury, i.e. finding the facts of the case.

A.

THE EVIDENCE

The witness Thomas Gurule (incorrectly spelled in the Trial Transcript as Rulae or Grulae, see T. 164-170) testified that during mid-January of 1976 that appellant was "jumpy" (T.168). Appellant himself testified that during the month of January, 1976 he was "jumpy" and concerned about his personal safety due to an incident which occurred in the maximum security kitchen (T.214-215).

Edward Cornish testified that on the date and at the time in question, he was in the common area of "C" section watching television with appellant; that he was sitting behind appellant who had earphones on, when Michael Hart walked in and into his (Hart's) cell; that Hart came back out of his cell with a faster pace toward where appellant was sitting with his back to him; that he yelled, "lookout Harry !" and that appellant turned and apparently hit Hart. (T.194-196)

Appellant confirmed Cornish's version of the events on the day in question. He testified that he was sitting watching T.V. with earphones on one ear and that he was struck on the shoulder from behind with some commisary slips contemporaneous with Cornish's warning of "Watch out!" He further testified that he struck Cornish because "he was on me so fast I didn't know why he was there" (T.218) Appellant stated that he had been stabbed in the back before in prison and that the combination of events caused him to strike Hart in self-defense (T.218-220).

The sum total of this evidence then was that (a) Appellant was in a unique environment, prison, where one has to be more conce for his own personal safety than in any normal environment; (b) tha he had been stabbed before in prison; (c) that Hart came up behind his back, struck him with some papers, however lightly, just as fellow inmate Edward Cornish yelled "Lookout Harry" or "Watch out!"; (d) that he instinctively struck the man in self-defense.

Now it may very well be that the jury would not have believe any or all of the above listed items acted as a justification for

appellant's assault on Hart, but this evidence clearly shows that the trial court was incorrect when it noted on the requested self-defense instruction:

> "Refused-no substantive evidence to warrant giving the instruction." (R.74 1/2).

Since the jury was never instructed as to self-defense it was never able to consider the full meaning of this evidence.

B.

THE LAW

As early as 1943, the Utah Supreme Court held that each party is entitled to have his theory of the case, if supported by competent evidence, submitted to the jury by appropriate instructions. In State v. Newton, 105 Ut. 561, 144 P.2d 290 (1943) the court said:

> "We have held that each party is entitled to have his theory of the case which is supported by competent evidence, submitted to the jury by appropriate instructions; and that the failure to present for the jury's consideration a party's theory by appropriate instructions constitutes reversible error."
> 144 P.2d at 292.

The Court reaffirmed that principle in State v. Johnson, 112 Ut. 130, 185 P.2d 738 (1947); State v. Castillo, 23 Ut. 2d 70, 457 P.2d 618 (1969); and State v. Gillan, 23 Ut. 2d 372, 463 P.2d 811 (1970). The Castillo case is especially important for our inquiry here. In that case, this Court reaffirmed the now-axiomatic principle that a defendant in a criminal case is entitled to have the jury instructed on his theory of the case by saying:

"Both the State and defendant agree that a defendant is entitled to have a jury instructed on his theory of the case, if there be any substantial evidence to justify giving such an instruction." 457 P.2d at 620.

In Castillo, this Court was called upon to review a case in which the defense had requested a self-defense jury instruction in an assault with a deadly weapon case; which request was refused by the trial court. Although the Court did not precisely rule on that issue, it held that:

". . . we are unable to conclude that the result of this case would have been different had the jury been instructed on the question of self-defense . . ." 457 P.2d at 620.

Despite that holding, the Court enunciated clearly when a self-defense instruction should be given by a trial court:

"If the defendant's evidence, although in material conflict with the State's proof, be such that the jury may entertain a reasonable doubt as to whether or not he acted in self-defe he is entitled to have the jury instructed fully and clearly on the law of self-defense. Conversely, if all reasonable men must conclude that the evidence is so slight as to be incapable of raising a reasonable doubt in the jury's mind as to whether a defendant accused of a crime acted in self-defense, tendered instructions thereon are properly refused." 457 P.2d at 620

It is helpful to see what facts the Court relied on to affirm the judgement in that case:

"Defendant admits that he barged into his victim's dwelling, a victim whom he had previously beaten. He came armed with a knife in anticipation of trouble, although his sole ground for apprehension was his observation of a stick under a couch cushion on a prior occasion. He claims that he has absolutely no recollection of his victim being stabbed but merely hypothesizes that apparently she sustained wounds to two diverse parts of her body while he was legitimately exercising his right of self-defense." 457 P.2d at 620.

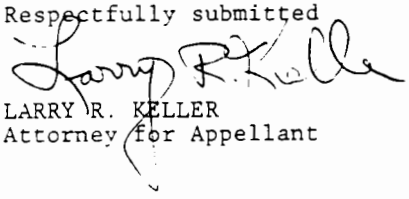
It seems clear that the facts in that case differ significantly from the instant case where the appellant and the victim shared a common outside cell area; appellant was not armed "in anticipation of trouble"; and the alleged assault was not by a man with a weapon upon a woman. It seems clear from Castillo's facts that a self-defense instruction was not proper, but those facts are far removed from the facts in the instant case.

It is clear that appellant was entitled to have the jury instructed on his theory of the case and the facts discussed in Part A of this Point outlined a situation in which a trier of fact could reasonably have believed appellant struck Hart, in self-defense. The trial court's refusal to instruct on self-defense constituted prejudicial error and appellant believes he should be entitled to a new trial.

CONCLUSION

For the reasons previously presented, appellant urges this Court to reverse his conviction and grant him a new trial.

Respectfully submitted



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