1977

State of Utah v. Ricky Joe Archuletta : Brief of Defendant and Appellant

Utah Supreme Court

Rodney S. Page; Robert B. Hansen; Attorneys for Plaintiff and Respondent;
Lyle J. Barnes; Attorney for Defendant and Appellant;

IN THE SUPREME COURT

OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff and Respondent, District Court No. 2433

vs.

RICKY JOE ARCHULETTA, Supreme Court No. 14636

Defendant and Appellant,

BRIEF OF DEFENDANT AND APPELLANT, RICKY JOE ARCHULETTA

LYLE J. BARNES
Villager Professional Bldg.
47 North Main Suite #1
Kaysville, Utah 84037
Attorney for Defendant and Appellant

RODNEY S. PAGE
Davis County Attorney's Office
Courthouse
Farmington, Utah 84025
Attorney for Plaintiff and Respondent

ROBERT B. HANSEN
Attorney General
State Capitol
Salt Lake City, Utah 84114
Attorney for Plaintiff and Respondent

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

CASES CITED

CONSTITUTION OF UTAH

LEGAL ENCYCLOPEDIAS

UTAH CODE ANNOTATED

UTAH RULES OF EVIDENCE

IN THE SUPREME COURT

OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff and Respondent,

vs.

RICKY JOE ARCHULETTA,

Defendant and Appellant,

District Court No. 2433

Supreme Court No. 14636

BRIEF OF DEFENDANT AND APPELLANT, RICKY JOE ARCHULETTA

STATEMENT OF THE NATURE OF THE CASE

This is a case in which defendant-appellant seeks a reversal of the Second Judicial District Court's denial of defendant's Motion to Dismiss, Motion for Suppression of Evidence and Motion for a New Trial.

DISPOSITION IN THE LOWER COURT

The defendant was arraigned before the Second Judicial District Court of Davis County, State of Utah on March 30, 1976, at which time, trial was set for April 30, 1976 at 9:00 a.m. which trial setting was vacated and rescheduled for June 9, 1976. Defendant filed his Motion for an Earlier Trial Date on the 3rd day of May, 1976 and when

said trial date was not given at an earlier date, a Motion to Dismiss was filed on June 3, 1976 but due to the date of the filing of said Motion and its having been filed less than a week prior to trial, no hearing was held upon the said Motion until the trial of June 9, 1976.Because there had been no hearing prior to trial, the Court denied defendant's Motion for dismissal.

On April 19, 1976, defendant-appellant filed his Motion to Suppress Evidence on the grounds that he had signed a statement which constituted a confession and admission when, in fact, he could not read or write the English language and further basing said Motion upon the fact that he was intoxicated and drunk from alcoholic beverages at the time of the signing of the said confession. Said Motion was again made at the time of trial and reserved during the continuance of the trial and later denied by the Court.

During the course of the trial, defendant's mother, Mrs. Priscilla Flores, testified under cross-examination by the State, stating that the defendant had been in prison and based upon that, the defendant moved for a new trial. No decision order issued as a result of that motion and the defendant was sentenced to the Utah State Prison for a period of one to fifteen years. Counsel for the defendant, who has been appointed by the Court, filed a Notice of Appeal

on the 17th day of June, 1976 and then filed his Notice of Withdrawal. The defendant himself filed a Notice of Appeal in his own handwriting on the 7th of July, 1976 and it is pursuant to those Notices of Appeal that this matter is brought before the Supreme Court of the State of Utah. Concurrent with the filing of the Notice of Appearance by counsel was the filing of a Designation of Record on Appeal which, in part, asked for a transcript to be prepared at County expense on behalf of defendant-appellant which was resisted by the County so that due to the failure of the County to appoint an attorney or otherwise provide representation and the delays associated with defense counsel's attempt to enforce the provision for the defendant of a transcript, defendant has been in prison since June 9, 1976 to the present time and had not received a transcript of the trial itself until October 3, 1977. For this reason, a Complaint for Writ of Habeas Corpus accompanies the brief herein.

RELIEF SOUGHT ON APPEAL

Defendant-appellant asks that the judgments of the lower Court be reversed with respect to the Motion to Dismiss, the Motion to Suppress Evidence and the Motion for a New Trial and further that defendant be granted the relief sought in his

Complaint for Writ of Habeas Corpus.

STATEMENT OF FACTS

March 30, 1976, defendant was arraigned on a charge of burglary and trial was scheduled for April 30, 1976, for which notice was mailed to counsel. (R 10, 11) Thereafter, the trial was continued from April 30, 1976 to June 9, 1976 and notice thereon filed May 4, 1976. (R 15). Defendant's counsel learned that the matter would be continued and filed the motion for the defendant for an earlier trial date on May 3, 1976, making the said demands under U.C.A. 77-1-8(6)(1953) claiming a constitutional right to a speedy trial under Article 1, Section 12 of the Utah State Constitution. (R 14) Notwithstanding the said Notice and Motion for an Earlier Trial Date, June 9, 1976 continued to be the scheduled time of defendant's trial. June 3, 1976, defendant filed his Motion to Dismiss the Complaint against him; said Motion filed with Memorandum in Support thereof. (R 16, 18) The Motion was again made before the Court on the day of trial at the beginning thereof but the Court did not make any decisions thereon until later on in the trial but reserving to the plaintiff the right to make any motions that he desired later on in the trial.

On April 19, 1976, the month following the arraignment of the defendant, defendant filed a Motion to Suppress Evidence (R 12)

basing said Motion upon the fact that the defendant had at the time of the investigation of the matter, while he was drunk from alcoholic beverages had given a statement of confession to the crime, but more importantly, the confession admissions were reduced to writing and the defendant had signed the said confession notwithstanding the fact that he could not read or write anything but his own name.

During the course of trial, defendant's mother, Priscilla Flores, was called to the witness stand and during her testimony, while she was being cross-examined by the State, stated that the defendant had been in prison. (Tr. 117, ln. 24-25) Because of that statement, the defendant filed a Motion for a New Trial on the 18th day of June, 1976. (R 59) Defendant's Notice of Appeal was timely filed and at the same time, defense counsel's Notice of Withdrawal. (R 56, 58 & 63). Plaintiff awaited in prison from June 17, 1976 until March 3, 1977 for the appointment of another attorney and subsequent to the appointment of Lyle J. Barnes, Esq. as counsel by the Supreme Court of the State of Utah who then filed a Designation of Record on Appeal. (R 68) Defendant waited from March 3, 1976 until October 3, 1976 for the transcript of record which was a time during which counsel for the defendant and the Court and counsel for the State, together with Mr. Loren Martin, negotiated the question of transcript and whether or not said transcript should be

prepared and made available without cost to the defendant.

ARGUMENT

POINT I

A DEFENDANT IN A CRIMINAL PROCEEDING WHO IS HELD OR INCARCERATED IN JAIL AWAITING TRIAL AND HAS BEEN HELD BEYOND THIRTY DAYS IN SAID CONFINEMENT FOLLOWING ARRAIGNMENT AND FOLLOWING HIS DEMAND FOR AN EARLIER TRIAL DATE, MAY NOT BE TRIED AND CONVICTED.

The controling law governing the disposition of plaintiff's Motion to Dismiss is Article 1, Section 12 of the Constitution of Utah which reads:

> In criminal prosecution, the accused shall have the right to...have a speedy public trial by an impartial jury of the County or District in which the offense is alleged to have been committed...

Also controling is U.C.A. 77-1-8(6):

> Rights of the Defendant. In criminal prosecutions, the defendant is entitled: (6) to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; and every defendant in a criminal action unable to get bail shall be entitled to a trial within thirty (30) days after arraignment, if the court is then in session in such county, otherwise, the trial of such defendant shall be called on the next day of the next succeeding session of the court.

These legal requirements have been qualified so that a defendant must request for trial in order to take advantage of the guarantee of the trial within thirty days. State vs. Bohn, 47 UT. 362, 248 P. 19. On the other hand,

the defendant is entitled to a dismissal if, in fact, he makes the request and is not tried within thirty days as required by the statutes. State vs. Lozano, 23 UT. 2d, 312, 462 P.2d 710.

POINT II

WHERE THE DEFENDANT-APPELLANT WAS UNABLE TO READ OR WRITE THE ENGLISH LANGUAGE AND WAS OTHERWISE UNABLE TO FULLY UNDERSTAND WHAT HE WAS DOING ANY CONFESSION OR ADMISSION TRANSCRIBED OR ORALLY SHOULD HAVE BEEN SUPPRESSED.

Early in the proceedings on April 19, 1976, plaintiff filed his Motion to Suppress Evidence relating to a certain transcribed oral confession or admission given by the defendant-appellant to the police officers are Clearfield on the 8th day of February, 1976. At that time, a statement was extracted, On page 2 of the transcript of his statement, we read:

Q: This was after you had returned to the Delgado residence to burglarize it and gone back to town?
A. Yes.

In that statement, the defendant-appellant was asked information regarding burglary of which he is not legally capable or competent to understand and this, together with the fact that he was, in fact, a Spanish-American speaking poor English and unable to read and write the English language was a rather prejudicial statement and may have been one in which

he himself was unable to understand or effectively evaluate at the time he answered in the affirmative. There was evidence before the Court that he has been drinking that day. The direct testimony of Angelo Cabrero, who was with the defendant at the time that he was taken to the police station on the day of the admissions as indicated herein, testified as follows:

Q. On the 17th day of February, 1976, did you have occasion to transport Mr. Ricky Archuletta to the Farmington Sheriff's Office?
A. Yes, sir.
Q. And who's car did you come in?
A. My car.
Q. Who was present with you?
A. Jose Flores, Ricky and myself.
Q. Now, at the time that you took him to the police station, could you explain anything unusual about his demeanor or his character at that time?
A. Yes, sir. That morning I got up there early, and I went down next door and we bought a case of beer and sat drinking. two o'clock, he told me he had to go some place and he needed a ride. I said, "Okay" so we kept drinking, and then about 1:30 we left. And I left with Ricky, and we came early, and I left him there at the police station. We waited there for awhile, for an hour, you know like from 2:00 until about 4:30, then they told us we could go. Ricky wasn't going to go, Ricky was not going to go with us no more.
Q. When you got to the Sheriff's Office, what effect if any, did the drinking have upon Mr. Archuletta.
A. Well, he went straight and sit down. And then he would stand up again, and looking for somebody. Then he just wait, and then sit down for awhile. Then five minutes later, you know, a policeman came in and took him in.
Q. Was he drunk when you got there?
A. To my knowledge, he was pretty, you know, pretty affected.

Q. Well, what did the liquor have to do with it, --how did he feel from that, anything?
A. Oh, I don't know how he feels, I know how he looked.
Q. How did he look?
A. Like--I couldn't explain. When you drink about-- I don't know how to explain it. Awful. Not awful, but I mean--
Q. Are you having a rough time speaking the language?
A. Yes, I do.

***

Q. Is it your testimony that he was drunk when you got there?
A. Yes, sir. (T. pgs. 58-59)

From the testimony of Jose Flores who also accompanied him on that trip to the police station, we read:

Q. Were you present at any time during any consumption of alcoholic beverage or--
A. Yah. They were drinking in front of my porch.
Q. Did you then later--how long did that occur. How long did that take place. That drinking.
A. How long?
Q. Yes.
A. For a few hours.
Q. Then were you with them when they went to the Clearfield Police Department?
A. Yes.
Q. Is this the last time you saw Ricky as far as until later, when you went to the preliminary hearing.
A. Yah.
Q. As you got to the Clearfield Police Department, what was his condition? Could you describe that?
A. Drunk.

The second defect in admitting the statement of the defendant which was transcribed and signed by the defendant is the fact that the officers knew at the time that the statement was extracted that the defendant was unable to read and write the English language. On vore dire examination, Officer Paul De Ryke testified as follows:

Q. A few more questions about this: You indicated that he had some problem being able to understand statements being put to him. Is that what you said earlier?

A. We felt he might have.
Q. And its your testimony that he could not read.
A. That's correct. That's what he stated to us.

The above evidences indicate that defendant-appellant was unable to make a valid statement. First, because he could not understand the meaning of burglarize and answered in the affirmative. It was his testimony and that of others, that he was merely picking up items which had previously been given to Mr. Archuletta, the defendant-appellant for the purposes of paying a fine. Mr. Delgado, however, upon learning later that a Ralph Gomez, a companion of Mr. Archuletta was also benefiting from the items, then reneged on the deal and wanted to charge the individuals Ralph Gomez and Mr. Archuletta with burglary. It is obvious that if Mr. Archuletta was unable to understand the word burglary or "burglarizing" and attached to that, the meaning only that he picked up the items from his relative, Mr. Delgado, who now reneged on the offer and himself being willing to cooperate with Delgado, the statement given by himself as Spanish-American unable to read and write and further to fully understand the English language would be a highly prejudicial statement

and could be interpreted by the jury as being an admission of the part of the defendant-appeallant when, in fact, it was not. Nevertheless, as this Motion to Suppress was brought up during trial, the Court overruled the Motion and admitted the sworn statement. (R-53)

Under the circumstances, there is a considerable question as to whether or not defendant-appellant gave a voluntary statement. In the case of State vs. Revera, 94 Ariz. 45, 381 P.2d 584 (1963) there is a demonstration of what should be done in order to make certain that a defendant-appeallant, such as Mr. Archuletta, fully understands the statement that he is giving. In that case, the defendant was unable to read, speak or understand the English language and a Spanish translator was brought in who then provided the translation so that there would be no question but what each word given in the statement would be understood. Because of the caution that was exercised in that case, the Court held that the written statement taken was admissible although the weight thereof could be effected by the fact that the English language had to be translated. In the case at bar, there were complicated words which no-one could be certain that Mr. Archuletta understood said words. One could reasonably assume from the circumstances

that Mr. Archuletta did not consider his act to have been a crime but merely a possession and sale of goods that the giver now has reneged on, unless of course, Mr. Archuletta could understand the word "burlarized."

POINT III

WHERE THE PROSECUTION ON CROSS-EXAMINATION ELICITED FROM DEFENDANT-APPELLANT'S MOTHER, PRICILLA FLORES, THE STATEMENT THAT THE DEFENDANT-APPELLANT HAD BEEN IN PRISON, SAID STATEMENT WAS PREJUDICIAL AND GROUNDS FOR A NEW TRIAL.

During trial, the defendant's mother, Pricilla Flores, was called to the witness stand and testified as follows:

> Q. I see now, Ricky is over thirty years of age. Has he worked at all during this period of time?
> A. Yah. Not too much, because he was, he was in prison.

This statement was made before a jury and would have the effect of tainting the the character of the defendant-appellant, securing a conviction against him. Under the rules of evidence, the prosecution was successful in creating character evidence which is proscribed unless character is, in fact, an issue created by the defendant-appellant and constitutes a reversible error on the part of the prosecution. Rule 47 of the Rules of Evidence adopted effective July 1, 1971 reads as follows:

> Subject to Rule 48, when a trait of a person's character

> is relevant as tending to prove his conduct on a specified occasion, such trait may be proved in the same manner as provided by Rule 46, except that...(b) any criminal action evidence of a trait of an accused character as tending to prove his guilt or innocence of the offense charged, (i) may not be excluded by a Judge under Rule 45 if offered by the accused to prove his innocence, and (ii) if offered by the prosecution to prove his guilt, may be admitted only after the accused has introduced evidence of his good charater.

No objection was made at the time because to do so would only further dramatize the situation and would leave no question in the minds of the jury what was said. As it was, there was hope that maybe the jury did not hear it. The most that an objection could have accomplished would have been for the Court to say in essence that that should be stricken from the record and from the minds of the jury which anyone would know would be an impossibility. Nevertheless, said evidence was made part of the trial and the defendant's character was brought into question and tainted by the prosecution and this could constitute grounds for a new trial.

POINT IV

> THERE ARE TWO ARGUMENTS IN FAVOR OF THE DEFENDANT, RICKY JOE ARCHULETTA BEING GRANTED A WRIT OF HABEAS CORPUS AT THIS TIME. (1) BECAUSE THE COURT DID NOT BRING HIM TO TRIAL WITHIN THE TIME PRESCRIBED BY STATUTE AND IN SO DOING, HAD NO JURISDICTION TO HAVE TRIED THE DEFENDANT IN THE FIRST PLACE. (2) DEFENDANT SUFFERED AS A RESULT OF HIS INABILITY TO PAY FOR A TRANSCRIPT OF TRIAL UNTIL THE COURT WAS FINALLY PERSUADED TO GRANT THE TRANSCRIPT OF THE TRIAL WHICH FORCED THE DEFENDANT TO AWAIT IN PRISON FOR ANY ACTION AT ALL UPON HIS CASE.

(1) Failure to Bring the Case to Trial Within the Time Prescribed by Law

Article 1, secion 12 of the Constitution of Utah requires that an accused will have a "speedy public trial by an impartial jury. U.C.A. 77-1-8 (6) requires that any defendant who is unable to get bail is entitled to a trial within thirty days after arraignment. As indicated above, in the State vs. Bond case 67 Ut. 362, 248 P.19 has modified that stating that the application of the above statute is made only where request is made and trial is not granted within thirty days. See also State vs. Lozano, 23 Ut. 2d 312, 462 P.2d 710.

One of the remedies available to the defendant is a Writ of Habeas Corpus issuing from this Supreme Court. In 39 Am. Jur. 2d, Habeas Corpus, Section 51, we read:

> Subject to some authority to the contrary, and to some difference of opinion as to where the application for the Writ should be made, Habeas Corpus lies for relief of one who is entitled to be discharged because of failure to bring the case to trial within the time prescribed by law.

Again, defendant was arraigned March 30. (R 10) The first trial setting was April 30 (R 11). Counsel was told a few days before at the trial that the trial would not be held on April 30, at which time, plaintiff filed a new motion on May 30, 1976 for a New Trial Date. (R 14) Notwithstanding this demand, a trial setting issued May 4 for June 9, 1976 which continued to be the trial date through to June 3, 1976 when plaintiff, by and through his attorney, Lyle J. Barnes,

filed a Motion to Dismiss (R 16) with the Memorandum in Support thereof. (R 18) A Motion to Dismiss was taken up on the 9th day of June at the time of trial and denied by the Court on the grounds that it was not noticed up for hearing before the Court. (R 53)

It is obvious that the defect could have been cured any time after the filing of a Motion for an Earlier Trial Date which was in effect a demand for an earlier trial date and plaintiff's Motion to Dismiss because of that failure to provide an earlier trial date was filed June 3 and this was less than one week prior to trial.

Prior to the time of trial, Judge Swan's Clerk, Jane Johnson, had had telephone conversations with defense counsel and was aware of the fact that the delayed trial date was unacceptable. While there was some question about an earlier date having been offered which counsel had no recall of one having been made, said offer was for the 3rd of June, which would have been in excess of thirty days even so. See Tr. pgs. 89-90. It is clear that in either event, a trial was not provided within thirty days as required by the statute notwithstanding the fact that a demand had been made.

In all cases, a Writ of Habeas Corpus must follow prior motions in the trial court for discharge. 58 ALR 1514. See

also People vs. Wilson, 60 Cal. 2d 139, 32 Cal Rp. 44, 383 P.2d 452; Raider vs. People, 138 Colo. 397, 334, P.2d 437. The convicted defendant, however, has the choice or option to proceed immediately by habeas corpus after a denial of his Motion to Dismiss or to reserve the question as one of the grounds of appeal if convicted. Ex parte, Meadows, 71 Okla. Crim. 353, 112 P2d 419; 21 Am. Jur 2d Crim. Law Section 256, p.295 note 8.

(2) Delay in Acquiring Transcript of Record

> Differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution, and therefore, Habeas Corpus is available to enforce the right of an indigent defendant to transcripts of the proceedings, so as to enable him effectively to defend himself. 39 Am. Jur. 2d Habeas Corpus, Section 50.

The Designation of Record on Appeal was filed March 3, 1977, nine months following the trial herein, together with the Notice of Appearance of Counsel, together with Defendant's Affidavit of Impecuniosity. (R. 67, 68, 71)

At that time, it became necessary for counsel to file a Motion for Extension of Time for Filing Desigation of Record on Appeal (R 72) because under the rules, defendant would be deprived of his right to appeal because of having failed to prosecute said appeal which was signed by Order of the Court filed July 21, 1977. (R 73) Counsel was appointed

by the Supreme Court of the State of Utah because the Davis County refused or otherwise neglected to do so. The Designation of Record on Appeal included a request for transcript of the trial. In the Order which was submitted (R 73) pursuant to the Motion for Extension of Time, item #2 thereon required a transcript for trial in the matter be provided defense counsel. Said Order, dated the 15th day of March 1977, was not filed until July 21, 1977, approximately two days prior to a hearing called by Court, at which time, the Court granted a transcript requiring counsel for the defendant to advise the reporter of the portion of the transcript that is needed. Thereafter, on August 5, 1977 counsel for the defendant filed a Designation of Transcript (R 75) which was finally completed and billed for against the County on September 27, 1977. From the foregoing, it is apparent that there was a great deal of resistance both as to the calling of an attorney and to the preparation and providing of a transcript for the defendant and the defendant waited from June 17, 1976 until September 26, 1977, a period of a year and three months, just to proceed with his appeal because of the fact that he, as an indigent, was unable to pay his way as some other person would have under similar circumstances.

The Supreme Court in the case of Roberts vs. LaVallee, 389 U. S. 40, 19 Law Ed. 2d 41, 88 S.Ct. 194 (1967) issued the following rule:

> "Our decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution... but to interpose any financial consideration between an indigent prisoner of the State and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws. We have no doubt that the New York statute struck down by the New York Court of Appeals in Montgomery, as applied to deny a free transcript to an indigent, could not meet the test of our prior decisions."

While the transcript was finally provided by the District Court, it was after much delay, both as to the providing of an attorney on appeal and as to providing the free transcript and for a period of time, constituting a year and three months, the defendant languished in prison with no recourse at all and now should be given his freedom because he has been unconstitutionally denied equal protection of the law.

CONCLUSION

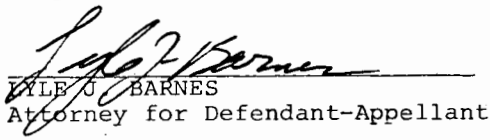
Under Article 1, Section 12 of the Constitution of Utah and U.C.A. 77-1-8 (6), the District Court of Davis County, State of Utah lost jurisdiction over the defendant and did not, in fact, have the right to proceed in trial

but should have dismissed the matter against the defendant-appellant and the plaintiff in Complaint for Writ of Habeas Corpus on file herewith. Having failed in that, the Supreme Court of the State of Utah should reverse the decision denying appellant's Motion to Dismiss issued on the 9th day of June, 1976 and that failing, the Supreme Court should issue a Writ of Habeas Corpus for the same reason.

At trial, the use of the appellant's statement at the Clearfield Police Department which was written and signed by appellant when said appellant was at the time under the influence of intoxicating liquor and a Spanish-American unable to read, write and speak the English language or fully understand its terms and meanings (especially with respect to "burglarizing") and the use of said statements before the Court notwithstanding those facts constituted reversible error and the use of testimony by Mrs. Flores elicited by the prosecution as to character evidence describing defendant having been incarcerated in prison, all constitutes reasons for a new trial which was denied the plaintiff on June 9 during trial.

DATED this 15th day of November, 1977.

Respectfully submitted,



LYLE J. BARNES
Attorney for Defendant-Appellant