1987

Salt Lake City v. Roger Griffin : Brief of Respondent

Utah Court of Appeals

Bruce R. Baird; Assistant City Attorney; Attorney for Respondent.
Robert Macri; Attorney for Appellant.

IN THE UTAH COURT OF APPEALS

SALT LAKE CITY, Plaintiff and Respondent, vs. ROGER GRIFFIN, Defendant and Appellant.	BRIEF OF RESPONDENT No. 870194-CA Priority Classification 2

Appeal from a Conviction for Destruction of Property, Creating a Disturbance and Disturbing the Peace in the Fifth Circuit Court for Salt Lake City
Robert Gibson, Judge

BRUCE R. BAIRD
Assistant City Attorney
324 South State, Suite 510
Salt Lake City, Utah 84111
Telephone: (801) 535-7788

Attorney for Respondent on Appeal

ROBERT MACRI
738 South 600 East
Salt Lake City, Utah 84102
Telephone: (801) 364-3018

Attorney for Appellant

IN THE UTAH COURT OF APPEALS

SALT LAKE CITY,	)	
	)	BRIEF OF RESPONDENT
Plaintiff and Respondent,	)	
	)	No. 870194-CA
vs.	)	Priority Classification 2
	)	
ROGER GRIFFIN,	)	
	)	
Defendant and Appellant.	)	

Appeal from a Conviction for Destruction of Property, Creating a Disturbance and Disturbing the Peace in the Fifth Circuit Court for Salt Lake City
Robert Gibson, Judge

BRUCE R. BAIRD
Assistant City Attorney
324 South State, Suite 510
Salt Lake City, Utah 84111
Telephone: (801) 535-7788

Attorney for Respondent on Appeal

ROBERT MACRI
738 South 600 East
Salt Lake City, Utah 84102
Telephone: (801) 364-3018

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE NATURE OF THE PROCEEDINGS AND APPELLATE AUTHORITY

This is an appeal from a criminal conviction after a jury trial in the Fifth Circuit Court for Salt Lake City, the Honorable Robert Gibson, Judge, presiding, on the charges of destruction of property and disturbing the peace. Authority for this appeal is provided in Section 78-2a-3, Utah Code Annotated.

ISSUES PRESENTED

1. Whether defendant Griffin established that his Sixth Amendment constitutional right to a jury trial was violated by lack of minorities on the jury venire?

2. Whether counsel for defendant/appellant Griffin violated Rule 11, of the Utah Rules of Civil Procedure by filing a brief not well grounded in fact and directly contrary to existing law?

GOVERNING CONSTITUTIONAL PROVISIONS AND RULES

UNITED STATES CONSTITUTION, AMENDMENT SIX

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .."

RULE 11, U.R.C.P.

> . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension,

modification, or reversal of existing law, and that it is not interposed for any improper purpose, such to harass or to cause unnecessary delay or needless increase in the cost of litigation.

STATEMENT OF THE CASE[1]

Defendant Griffin was charged by information with violating Section 32-3-4, Revised Ordinances of Salt Lake City, for unlawfully destroying property of Salt Lake City Corporation by damaging doors at the City's Water Department. (Record on Appeal p. 1.)

Prior to swearing a jury the defendant's counsel raised an objection to exclusion of minorities from the venire which was overruled.[2] (Calendar-log sheet, R. 40.)

At the conclusion of trial the jury returned a verdict of guilty on the destruction of property charge and on a charge of disturbing the peace in violation of Section 32-1-11, Revised Ordinances of Salt Lake City. (R. 34 & 35.)

SUMMARY OF ARGUMENT

The United States Supreme Court and the Supreme Court of Utah have both unequivocally and recently held that the

---

[1] Defendant Griffin's brief fails to comply with Rule 24 of the Rules of the Utah Court of Appeals by not citing at all to the record.

[2] Of course since defendant Griffin did not designate a copy of the transcript it is impossible to tell from the record whether or not the jury contained any minority members at all. Matters outside the record should not be considered on appeal. First Federal Savings & Loan Ass'n of Salt Lake City v. Schamanek, 684 P.2d 1257 (Utah 1984).

constitutional rights of defendants are not violated merely by the lack of any minority members on a jury venire. Rather, both the United States Supreme Court and the Utah Supreme Court have required proof of invidious exclusion before any constitutional challenge can be raised.

The case law is so unequivocal that defendant's brief constitutes a violation of Rule 11 in that it could not have been filed in good faith.

ARGUMENT

POINT I

DEFENDANT GRIFFIN FAILED TO MEET THE BURDEN REQUIRED TO DEMONSTRATE THAT HIS TRIAL WAS AN UNCONSTITUTIONAL VIOLATION OF THE SIXTH AMENDMENT.

The United States Supreme Court has twice set out the standard for determining whether a particular group's absence on a jury venire denies a criminal defendant his Sixth Amendment rights. In Taylor v. Louisiana, 419 U.S. 522, 538, 42 L.Ed.2d 690, 95 S.Ct. 692 (1975) the United States Supreme Court held that:

> [P]etit juries must be drawn from a source fairly representative of the community . . . [J]ury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof.

The Court in Taylor further explained that this requirement of a fair pool does not mean "that petit juries actually chosen must mirror the community," Taylor, supra at 538.

In Duren v. Missouri, 439 U.S. 357, 364, 58 L.Ed.2d 579, 99 S.Ct. 664 (1979) the United States Supreme Court explicitly set out a three part test to determine whether or not a particular venire selection process violated the defendant's constitutional rights:

> In order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury selection process.

With respect to the three-prong Duren test it is clear that defendant Griffin has totally failed to meet his burden in this case. With respect to the first two prongs of a distinctive group's underrepresentation there is simply no evidence before this Court to establish that the two tests have been met. With respect to the third prong regarding exclusion, there is not even a claim in defendant Griffin's brief that minorities were systematically excluded.

Instead, defendant Griffin relies on a totally unsubstantiated allegation implying that since no minorities were on the panel they must have been excluded. While this enthymeme may make logical sense to defendant's counsel it certainly does not meet the Duren requirement and is totally unsupported by the virtually non-existent record before this Court.

The Duren and Taylor tests have been explicitly accepted by the Utah Supreme Court. In State v. Bankhead, 727 P.2d 216, 217 (Utah 1986) the Utah Supreme Court held:

> In any event, the sixth amendment insures only that a particular segment of the community will not be systematically excluded from the jury venire. Juries actually chosen need not "mirror the community and reflect the various distinctive groups in the population." (Emphasis added, citations omitted).

The clear language of Bankhead, Duren and Taylor is not weakened in any way by the recent Utah Supreme Court Minute Entry in State v. Malin, Utah Supreme Court No. 86-0571 (Minute Entry April 30, 1987). All that the minute entry in Malin does is to use the Court's rule-making power to provide for a new, additional source of names for jury venires. There is no suggestion in the Malin Minute Entry that the Supreme Court intended to rule that all panels not chosen from a driver's license list or which fail to contain a minority, violate the Sixth Amendment. Such a suggestion is patently absurd. The Minute Entry is simply a prospective change with no intended or actual retroactive due process implication.

Given the absolute total lack of record before this Court and the "quality" of the argument in defendant Griffin's brief it is impossible for this Court to find that defendant Griffin's trial in any way violated his constitutional rights.

POINT II

DEFENDANT'S COUNSEL VIOLATED RULE 11 IN FILING A BRIEF WHICH HAS ABSOLUTELY NO GOOD FAITH CHANCE OF PREVAILING.

Both the United States Supreme Court and the Supreme Court of the State of Utah have ruled on the responsibility of criminal defense counsel for filing appellate briefs in cases where they know the appeal is "wholly frivolous". The standard procedure is set out in Anders v. California, 386 U.S. 738, 18 L.Ed.2d 493, 87 S.Ct. 1396 (1967) which was adopted by the Utah Supreme Court in State v. Clayton, 639 P.2d 168 (Utah 1981). In essence both of these cases preclude defense counsel from filing "wholly frivolous" appeals with certain restrictions to protect the client.

The Anders/Clayton procedures are not followed by defendant Griffin's counsel in this case. In light of the clear, unequivocal and recent case law on this subject provided by Taylor, Duren and Bankhead, cited in Point I above it is simply not conceivable that defendant's counsel can be filing this brief in good faith as required by Rule 11, Utah Rules of Civil Procedure.[3] Accordingly, the City is entitled to sanctions, in an amount to be determined by the Court, against defendant's counsel personally for the time and expense involved in responding to defendant's brief.

---

[3] Defendant Griffin's brief also fails to comply with Rule 24 of the Rules of the Utah Court of Appeals as noted in footnote 1, supra.

CONCLUSION

Defendant Griffin's appeal is directly contrary to recent decisions of the United States Supreme Court and the Supreme Court of the State of Utah and must be dismissed. Further, the brief is in such bad faith that defendant's counsel should be personally sanctioned pursuant to Rule 11, Utah Rules of Civil Procedure.

DATED this 24th day of November, 1987.

BRUCE R. BAIRD
Assistant City Attorney
Attorney for Respondent

BRB:cc