

1977

State of Utah v. Michael Don Peterson : Brief of Appellant

Utah Supreme Court

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Defendant and Appellant.

BRIEF OF APPELLANT ON

Appeal From a Judgment and
Fourth Judicial District Court in
Honorable George E.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH

Plaintiff and
Respondent,

-vs-

MICHAEL DON PETERSON

Defendant and
Appellant.

PETITION FOR REHEARING

Case No. 14720

FILED

APR 12 1977

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Clerk, Supreme Court

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE
SUPREME COURT OF UTAH:

The Appellant Michael Don Peterson presents this petition for
rehearing of the above cause and, in support thereof, respectfully
shows:

1. On March 9, 1977, this Court rendered its decision in
favor of the Respondent and against the Appellant, affirming the
judgment of the Fourth District Court.
2. The Appellant seeks a rehearing upon the following grounds:
 - (a) The decision of this Court as to whether an arrest
was made before Defendant was taken into the Orem Police
Station for questioning, and whether evidence was legally
obtained from Defendant, was decided by this Court without
a full record of the proceedings.
 - (b) The Court erred in ruling that certain evidence of
Defendant's character was properly held inadmissible, under
Rule 47 U.R.E.
 - (c) If either of the above contentions is upheld, the
prosecutorial misconduct involved in attempting to elicit

information on prior convictions from Defendant's wife
can no longer be held as harmless error, and must be
an additional grounds for reversal.

For the foregoing reasons, it is urged that this petition
be granted.

DATED this 12th day of April, 1977.

W. Andrew McCullough
W. Andrew McCullough
Attorney for Defendant and Appellant

I hereby certify that the foregoing petition was submitted
in good faith and not for purposes of delay.

W. Andrew McCullough
W. Andrew McCullough
Attorney for Defendant and Appellant

I hereby certify that I served the foregoing Petition for
Rehearing by mailing a true and correct copy thereof, postage
prepaid, to Robert Hansen, Attorney General for the State of Utah,
State Capitol Building, Salt Lake City, Utah 84114, this 12th
day of April, 1977.

Holly Bird
Holly Bird, Secretary

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Defendant and
Appellant.

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Case No. 14,720

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On the 12th day of August, 1976 Appellant filed a Notice of Appeal from a finding of the Fourth District Court, the Honorable George E. Ballif presiding. That judgment was that the Appellant was guilty of forcible sexual abuse in violation of Utah Code Annotated §76-5-404 (1953), the crime having been committed on or about March 24, 1976 in Orem, Utah. Subsequently, briefs of Appellant and Respondent were filed, and this honorable Court affirmed the conviction in an opinion filed March 9, 1977.

Appellant contends that the decision of this Court was rendered without a full transcript of the various proceedings

in the case, and therefore without full knowledge of the facts. Appellant further contends that an error was made by this court in upholding the trial court's refusal to admit certain testimony offered by Defendant under Rule 47 U.R.C.P., purporting to be evidence of Defendant's character trait. Appellant therefore seeks reversal of his conviction for forcible sexual abuse and seeks to have the matter remanded to the Fourth Judicial District Court for a new trial.

ARGUMENT

POINT I

THE DECISION OF THIS COURT AS TO WHETHER AN ARREST WAS MADE BEFORE DEFENDANT WAS TAKEN INTO THE OREM POLICE STATION FOR QUESTIONING, AND WHETHER EVIDENCE WAS LEGALLY OBTAINED FROM DEFENDANT, WAS DECIDED BY THIS COURT WITHOUT A FULL RECORD OF THE PROCEEDINGS.

In Appellant's previous brief, it was urged (in Points I and II) that Defendant was illegally restrained of his liberty, and at such restraint constituted false arrest and that all evidence arising therefrom should be suppressed, as mandated in the case of Davis v. Mississippi, 349 U.S. 721 (1969). It was further urged, that Defendant's oral statement was illegally obtained, and should also be suppressed, under the rule enunciated in Miranda v. Arizona, 84 U.S. 436 (1966). The main argument before the trial court on those matters was made in the pre-trial hearing on suppression, heard on the

28th day of May, 1976. Defendant, because of time limitations, and because of lack of knowledge as to what was contained in the trial transcript, did not include a transcript of the pre-trial hearing with the original record on appeal. Defendant, however, did offer to produce a transcript, if the court felt it was relevant to its decision. The court, without requesting the additional transcript, decided that question based only on the information which had previously been supplied to it. The court stated, that because of a lack of a transcript of the suppression hearing, "We can only conclude the determination of the trial court was correct." (Decision page 2) In its footnote to that comment, the court quoted Brown v. Illinois, 422 U.S. 590 (1975) which indicated that if there were facts supporting the claim of an unlawful detention the fact that the Miranda warning was given would not be sufficient, in itself, to rule that the Defendant's statement was taken legally. It is obvious, therefore, that the facts surrounding the obtaining of the statement, as they were brought out in the suppression hearing, should be carefully examined before a final decision is made. The transcript of the suppression hearing has now been ordered, as is evidenced by the Request for Copy of Transcript, and the affidavit which are submitted to the court with this brief. It is Appellant's contention, that if all the facts are examined, it will clearly appear

that the restraint and the statement of Defendant obtained thereafter were illegal.

POINT II

THE COURT ERRED IN RULING THAT CERTAIN EVIDENCE OF DEFENDANT'S CHARACTER WAS PROPERLY HELD INADMISSABLE, UNDER RULE 47 U.R.E.

In his Brief of Appeal, Appellant argued that the trial court was wrong in refusing to admit proffered evidence as to traits of character. This court refused to accept that contention in a Brief Statement, which constituted only one-half page of a four page opinion. Appellant contends that the evidence which was excluded on the grounds of relevancy was indeed highly relevant, and should have been admitted.

A person who commits the kind of crime alleged in this case is not driven by the same needs that causes a person to murder someone who has been tormenting him for many years, or to steal enough money to alleviate the severe financial problems which may be haunting him. Instead, the sexual abuser is a person with a deep neuroses or psychoses, which is likely to have shown itself at other times. The evidence proposed by Defendant, and successfully objected to, was part of an attempt to show that no such symptoms had been previously observable. His wife had already testified that their sex life was a normal one, and that she had never

seen any evidence of sexual abnormality. The fact that others of his most closely related associates had also failed to see such symptoms, could only be highly relevant. While a man's parents might be expected to stick with him despite anything that he might have done, the wife and other female associates of that same man cannot be expected to overlook any possibility of such deviancy, in their own minds. The literature on deviant sexual behavior shows that the man who would do what is alleged in this instance, is likely to be suffering from a personality disorder, which should be noticeable to those in close contact, as his illustrated by this exert from a standard textbook of abnormal psychology:

"In a study of 250 sex offenders in New York City, offenses involving forcible rape were commonly found to be associated with antisocial personalities who had aggressive tendencies and past records of aggressive antisocial actions, though not always of a sexual nature (Apfelberg, 1944). Similarly Dunham (1951) found that almost half the offenders in cases of forcible rape in Michigan had previous police records. In a more recent psychological study of 100 rapists, Kopp (1962) again found a high incidence of antisocial personalities. He described them this way:

'This antisocial psychopath is a cold, seemingly unfeeling man who has always taken what he wanted from others without apparent concern for the feelings of his victims or for the consequences of his act. For him, rape is just another instance of aggressive taking, except that in this case he steals sexual satisfaction rather than money or property. When questioned about his offense, he often responds with callous sarcasm, completely devoid of guilt or concern. He may well simply respond with the statement, 'I wanted it so I took it.' The rape fits so well with his character structure and is so typical of his general behavior

pattern that he can see nothing wrong with the act, and often goes on to rationalize that his victim probably enjoyed it. He wants no part of therapy unless he sees it as a means of manipulating his way out of incarceration. Needless to say, he is just as difficult to treat as those psychopaths who commit nonsexual offenses.' (p.66)

Although antisocial personalities constitute the largest group of offenders, forcible rape may also be associated with other psychopathology. Kopp (1962) has described the overly compliant offender who appears to fit the description of a passive-aggressive personality. His aggressive antisocial behavior is apparently related to a build-up of hostility and tension, and afterwards he feels guilty and much concerned about the well-being of his victim. The lowering of inner controls in manic reactions, schizophrenia, and other psychoses may also lead to physical assault and occasionally to forcible rape.

In a study of the wives of rapists, Palm and Abrahamsen (1954) found that they tended to be sexually seductive but rejecting, duplicating the type of relationship many of the rapists had with their mothers. The deviate sexual act, then, could be interpreted as "a displaced attempt to force a seductive but rejecting mother into submission." Abnormal Psychology and Modern Life, 3rd Ed. by James C. Coleman; Scott, Foresman and Co. (Chicago, 1964) p. 388-389.

Refusing to hear the observations of those who know the Defendant best, is refusing evidence of a highly probative value.

POINT III

IF EITHER OF THE ABOVE CONTENTIONS IS UPHOLD, THE PROSECUTORIAL MISCONDUCT INVOLVED IN ATTEMPTING TO ELICIT INFORMATION ON PRIOR CONVICTIONS FROM DEFENDANT'S WIFE CAN NO LONGER BE HELD AS HARMLESS ERROR, AND MUST BE AN ADDITIONAL GROUNDS FOR REVERSAL.

In his previous brief, Defendant argued that the Utah

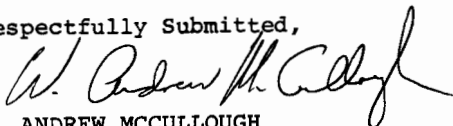
County Attorney was guilty of misconduct in attempting to elicit information as to a prior conviction of a felony from Defendant's wife. This court, on page 3 of its decision, accepted the Defendant's contention that the prosecutor acted wrongly in attempting to elicit such information. It was the court's decision, however, that the error so involved was not likely to have been sufficient to cause a result which would not have happened otherwise. It is the contention of Defendant, that in conjunction with the other reasons for reversal cited above, this error is now sufficient to call for a reversal and a new trial.

CONCLUSION

The judgment of the trial court should be reversed, and Defendant should be granted a new trial.

DATED this 12th day of April, 1977.

Respectfully Submitted,



W. ANDREW MCCULLOUGH
MULLINER & MCCULLOUGH
Attorneys for Defendant-
Appellant

I hereby certify that I served the foregoing Brief of Appellant on Rehearing by delivering a true and correct copy thereof, to the office of Robert Hansen, Attorney for Plaintiff, Utah State Capitol Building, Salt Lake City, Utah, this 12th day of April, 1977.

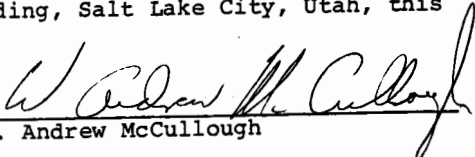

W. Andrew McCullough

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