

1987

# City of Riverton v. Kaylin Robinson : Brief of Appellant

Utah Court of Appeals

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Kaylin Robinson; In Person.

David L. Church; Riverton City Attorney; Attorney for Respondent.

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UTAH COURT OF APPEALS  
BRIEF

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IN THE UTAH COURT OF APPEALS

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.A10 City of Riverton,  
Plaintiff/Respondent  
DOCKET NO. **870455-CA**

v.

Kaylin Robinson,  
Defendant/Appellant

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Court of Appeals No.  
870455-CA

BRIEF OF APPELLANT

Appeal from the order of  
The Fifth Circuit Court,  
State of Utah, County of  
Salt Lake, Judge Jones

David Church  
Riverton City Attorney  
Attorney for the plaintiff

Kaylin Robinson  
P.O. 213  
6000 West 13000 South  
Riveron, Utah  
In Person

PTA

JAN 2 1988

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STATEMENT OF JURISDICTION

This appeal is taken from the final judgement of the Fifth Circuit Court, State of Utah, County of Salt Lake. Judgement was rendered August 3, 1987, and sentencing was August 10, 1987, giving the Utah Court of Appeals jurisdiction to hear this case.

NATURE OF PROCEEDINGS

This case is a Class B misdemeanor, criminal Case.

STATEMENT OF ISSUES

1. Whether evidence illegally obtained is reliable evidence.
2. Whether evidence illegally kept should be allowed as reliable evidence.
3. Whether conflicting evidence from prosecution's witnesses is sufficient to convict.
4. Whether an alledged confession is evidence for conviction, where no solid evidence exists, and no confession was given by or agreed to by defendant during the course of this trial.

DETERMINATIVE PROVISIONS

U. S. CONSTITUTION

Amendment IV, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

UTAH STATE CODE

77-23-8. Safekeeping of property.

The officer seizing the property shall be responsible for its safekeeping and maintenance until the court otherwise orders.

77-24-1. Safekeeping by officer pending disposition-Records required.

When personal property comes into the possession of a peace officer either in execution of a search warrant, or pursuant to an arrest of a person with or without warrant, or is received or taken by him as evidence in connection with any public offense, he shall hold it in safe custody until it is received into evidence or, if it is not used as evidence, until it can be disposed of...While in custody of such peace officer a proper record shall be maintained reflecting the ownership of the property, if known, and the case or cases for which it was taken or received and is being held.

STATEMENT OF CASE

On or about February 27th, 1987, defendant was arrested, and cited for violating UC 76-6-404, Theft, a Class B misdemeanor. This was a warrantless arrest following a warrantless search, of vehicle, thought to belong to defendant. Defendant was not taken into custody, but was cited and released. Defendant appeared in Justice Court in Riverton City, where she plead "Not Guilty". She later appeared for trial and was found guilty. Defendant sought Trial deNovo, and on August 3, 1987 appeared before Judge

Jones. Defendant requested that evidence be suppress due to the illegality of it's seizure and sfekeeping, making it unreliable evidence. Motion was denied, and defendant was tried and found guilty. On August 10, 1987, Defendant was Sentenced to a fine of \$280.00 and 10 days in jail, Jail time and partial fine suspended on payment of \$20.00. Defendant filed Notice of Appeal on September 9, 1987.

SUMMARY OF ARGUEMENT

Point 1. Evidence, 2 magazines were taken from a car thought to be defendants car, which indeed was not. Defendant was no where near the car at the time, but in the store (where the defendant was working). Magazines were taken by a Civilian, (Store Supervisor), and a Salt Lake County Sherriff. At no time did either, seek permission to enter car, or tender search warrant.

Point 2. After taking magazines from car, Officer Van Zile of the Salt Lake County Sherriff's Dept. gave them to the Store manager. There was no proof of ownership, established, no record kept, nor any receipt given. Magazines brought forward in trial, were alleged to be the very same, yet there is no concrete evidence that this is true.

Point 3. During testimony, One of prosecution's witnesses testified that magazines taken were current, therefore on the shelf. Another witness first stated they were current, then testified that the new issues had been recieved, and that the old ones were supposed to have been sent back. The third witness testified that one issue had been pulled from the shelf and were in the box in the back room.

Point 4. Judge Jones stated that his decision was based upon an alleged confession by defendant, yet no such confession was given in court, or on paper to be submitted to the court. Testimony of Prosecution's witness was all that established this confession and it is in itself unclear. Defendant's unwillingness to testify CANNOT be assumed to be silent agreement, or proof of guilt.

#### DETAIL OF ARGUMENT

Point 1. The Fourth Amendment of the United States Constitution, guarantees the citizens protection from unreasonable searches and seizures. There was a deputy sherriff in attendance, who should be cognizant of individual rights. The only proof he had that magazines did not belong to defendant was that the Store Supervisor said they did not. If it was his feeling that the case against the defendant, warranted such a search, he could have easily sought permission to enter vehicle, or obtained a lawful search warrant. Defendant was not attempting to flee, nor was there any evidence of a life threatening emergency. To assume this is proper behavior, would lead one to believe, that at any time a citizen, can alledge theft, and have a police officer's assistance in entering private property, and taking whatever they wish from the same.

Point 2. UC 77-23-8, as well as UC 77-24-1, Clearly spells out what is to be done with property once confiscated. When these

rules are properly followed there can be no room to question any evidence. In this case, once again, the only reason the officer had to believe that these magazines did not belong to the owner of the car, or to the defendant, was that the store manager said they did not. At no time did the officer question the defendant. Further, by letting the store maintain said evidence, instead of following procedure proscribed by law, the unbroken chain of evidence, needed to convict, is certainly lacking. There was ample opportunity to change or rearrange evidence by one who could certainly be considered to be prejudged. To continue the earlier chain of thought, this action could lead one to believe, that once a citizen claims theft, and searches and siezes the alledgedly stolen articles, it is perfectly appropriate that the citizen claiming the theft should be allowed to keep whatever article he said was stolen. To protect citizens from this type of abuse, the Constitution, and the laws were written. Had Officer Van Zile, followed the proscribed procedure (which one would hope was taught to him in training) this question need never arise.

Point 3. In the transcripts of this case, on page 20, Mr. Jay Anjave, states that magazines, defendant was charged with stealing were current and therefore were on the shelf at the time of allegeded theft. On page 26 he states the same thing, yet agrees on page 27 that the next issues of these magazines had come in in two different deliveries. Later Mr. Bill Pacheco testified on page 33 and 34, that one of the issues had been pulled from the shelf to return, and were in a box in the back room, he had nothing to say about



the other issue, perhaps it wasn't even in the store? At no time was any witness able to identify those to magazines conclusively as property of Seven-11. Witnesses differed as to where these magazines were located, in the store, in fact left doubt as to whether or not they were even both in stock at that time. The only way that they were established to be the store property was that the receipt tape, did not show them purchased. Any store in the valley as well as other places could carry these magazines. If prosecution's own witnesses are unsure and unclear how could the impartial, justice be so sure?

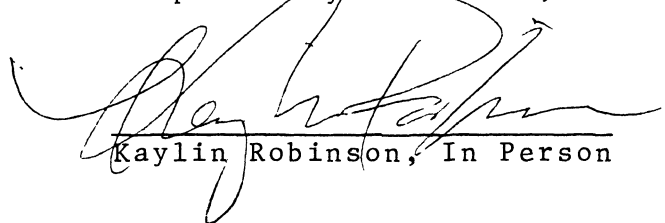
Point 4. On page 46 and 47 of the Court Transcripts, Judge Jones states that defendant's alleged "confession" is responsible for his decision. Defendant did not take the stand to rebut testimony, and this can not be considered to be silent agreement. Mr Kimbel Gessel, testified on page 8 that after some discussion, defendant admitted to taking magazines out tho her car, on Page 9 he states he does not remember the exact language of that admission. One must note hear that admitting that one put magazines in car, does not admit theft of those magazines, only the placing of them in a vehicle. Later on page 13, Mr. Gessel stated that the County Sherrif had told him the magazines belonged to the store. On page 19, Mr. Jay Anjave stated that the defendant said she borrowed the magazines, but never said from where they were borrowed. How can this evidence be constued as conclusive proof of Confession?

CONCLUSION

Here is a case which is very shaky from start to finish. We start with "evidence" illegally obtained. The maintenance of this "evidence" is so sloppy as to make one think that either no conviction was wanted, or none was possible. Even prosecutions own witnesses could not keep their own story straight, and defendant seeks to have this judgement overturned. Again there are methods of handling criminal investigations, proscribed by law, and recognized by the Constitution, which preclude these questions from arising. Therefore, defendant respectfully demands that the judgement against her be reversed.

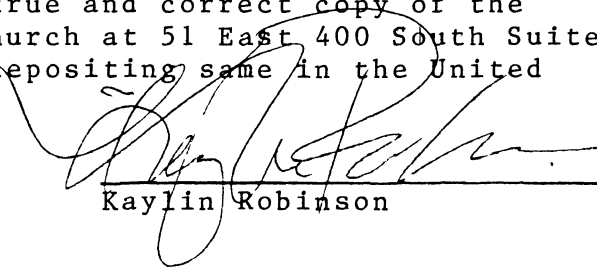
Dated this 20th day of January, 1988.

Respectfully submitted;

  
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Kaylin Robinson, In Person

CERTIFICATE OF MAILING

I, certify that I delivered a true and correct copy of the foregoing brief upon Mr. David Church at 51 East 400 South Suite 200, Salt Lake City, Utah 84111, By depositing same in the United States Mail, Postage Paid.

  
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Kaylin Robinson