2001

State of Utah v. Joseph Morgan : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH,	)	
Plaintiff-Appellant,	)	Case No.
vs.	)	13451
JOSEPH MORGAN,	)	
Defendant-Respondent.	)	

BRIEF OF RESPONDENT

APPEAL FROM THE ORDER RESENTENCING RESPONDENT IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE STEWART M. HANSON, JUDGE, PRESIDING.

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IN THE SUPREME COURT

OF THE STATE OF UTAH

STATE OF UTAH,	)	
Plaintiff-Appellant,	)	Case No. 13451
vs.	)	
JOSEPH MORGAN,	)	
Defendant-Respondent.	)	

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The State of Utah, appellant, appeals the resentencing of respondent, Joseph Morgan, by the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable Stewart M. Hanson, Judge, presiding.

DISPOSITION IN THE LOWER COURT

Joseph Morgan was resentenced on August 3, 1973, to the crime of simple possession of a controlled substance with a term of six months in the Salt Lake County Jail by the Honorable Stewart M. Hanson, Judge.

RELIEF SOUGHT ON APPEAL

Respondent seeks an affirmance of Judge Hanson's decision in the lower court.

STATEMENT OF FACTS

Respondent accepts the statement of facts as set forth in Appellant's Brief.

ARGUMENT

POINT I

WHEN A PERSON IS FOUND GUILTY OF AIDING AND ABETTING A CRIME, WHICH IS LATER ESTABLISHED NOT TO HAVE OCCURRED, SUCH CONVICTION MUST BE SET ASIDE.

At the outset it should be noted that the defendant is in agreement with the general

statement made by the appellant to the effect that there need not be an actual conviction of a principal to a crime in order for another person to be found guilty of that same crime on the theory that he aided and abetted. However, this statement is manifestly opposite of defendant's position that in order for a conviction of aiding and abetting a crime to stand, that crime must have in fact been committed.

In our fact situation the crime with which defendant was charged with, aiding and abetting, was unlawful possession of a controlled substance with intent to distribute for value. The only person who could be the principal was the defendant's wife, Mrs. Morgan who was arrested with the controlled substance She is the only person who could have committed that crime. However, she was found not guilty of the crime charged; but guilty of possession only. As the Colorado Supreme Court stated in Britto v. People, 497 P. 2d 325 (1972) (cited

in appellant's brief)

> "to successfully convict a defendant of being an accessory there must be sufficient evidence presented to show that there was, in fact, a principal who was guilty of the crime charged. (Emphasis added.)

If it has been determined that Mrs. Morgan did not commit the crime of possession with intent to distribute for value, there can be no guilty principal.

A similar situation was addressed by the U. S. Court of Appeals for the Fourth Circuit in U. S. v. Prince, 430 F. 2d 1324 (1970). In that case, Prince was charged with aiding and abetting the taking of a bird while a boat was being operated by a motor. The evidence was that while Prince operated the boat, his companion stood in the bow and shot the bird. Prince was found guilty and appealed. While the appeal was in progress, his companion was tried and acquitted. His acquittal established that no crime had been committed. The court said:

> "Since only the two men were in the boat, Prince could have been aiding and abetting no other person. In Meredith v. U. S. 238 F. 2d 535, 542 (1956), in considering the guilt of an aider and abetter we said, 'It need only be established that the act constituting the offense was in fact committed by someone.' (Citations ommitted). Here, since it has been established that the act constituting the offense was not committed, Prince's conviction as an aider and abetter must be set aside." at 1325.

Since in the present case the court found that Mrs. Morgan had no intent to distribute for value, Mr. Morgan could not be found guilty of aiding and abetting an offense which never occurred.

Further support for defendant's position is found in Shuttlesworth v. City of Birmingham, 373 U. S. 262, 83 S. Ct. 1130, 10 L. Ed 2d 335 (1963). In that case, the petitioners were convicted for aiding and abetting a violator of the city trespass ordinance. The conviction of the principals of the trespass violation was set aside. The Supreme Court in setting aside the conviction of the aiders

and abetters said:

> ". . . Since the convictions in Gabel v. Birmingham (the principals) have been set aside, it follows that the present petitioners did not incite, or aid and abet any crime, and that, therefore, their own convictions must be set aside." at 265.

The appellant cites State v. Spillman, 468 P. 2d 376 in support of its position. That case can be distinguished from the present one. In Spillman the court said:

> ". . . What is required at the trial of the aider and abetter is proof, complete and convincing of the guilt of the principal. Justice demands that the principal crime be fully proved, since the guilt of the aider and abetter depends on the commission of the principal crime." at 378.

In Spillman the crime charged was rape. Under the court's ruling quoted above, the State would be forced to prove that (1) the crime of rape was committed and (2) committed by a person whom the defendant aided and abette If a person charged as the principal was later acquitted, it means that that person did not commit the rape. However, it does not mean

that no rape was committed. Someone else raped the woman and the defendant in Spillman can be found guilty of aiding and abetting that person.

In the present case there is no question that the principal and only the principal was in possession of the controlled substance. Thus, she was the only one who could commit the crime. However, in order to be guilty of the principal crime, she had to have a specific intent, i.e. to distribute for value. It was found that she did not have that specific inter and thus unlike Spillman, supra, no principal crime was committed. Therefore, even under the law of the Spillman case, Mr. Morgan could not be found guilty of aiding and abetting a crime which was not committed.

POINT II

THE RESENTENCING COURT HAD JURISDICTION TO RESENTENCE THE RESPONDENT.

At the time Mr. Morgan file his appeal the issue he presented to Judge Hanson was not

present. The issue did not become ripe until Mrs. Morgan was acquitted. The issue now bein presented was not a "claimed error or defect" which occurred at trial, but was a defect which arose after trial and went to the very essence of the judgment. An amended brief would have done no good whatsoever, because the issue which would have been raised by such a brief would not have been one of the points which were on appeal.

Judge Hanson did not act as a reviewing court but merely corrected what he felt was a wrongly entered judgment, based on an event which occurred subsequent to trial.

If the filing of an appeal by Mr. Morgan vested jurisdiction in the Supreme Court, it is defendant's position that the District Cour retained the power to act as it did, because its actions did not affect or touch any of the issues appealed to the Utah Supreme Court.

4A C.J.S. 607 states the following rule:

"the perfection of an appellate proceeding does not, however deprive the trial court of power to act with reference to matters not relating to the subject matter of, or affecting the proceeding." at 397.

The ruling of Judge Hanson neither delt with the subject matter of the appeal, i.e. errors occurring at trial, nor did it affect the proceeding.

CONCLUSION

Defendant urges that in light of the arguments presented above that the Decision of Judge Hanson be affirmed.

Respectfully submitted,

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Respondent