

2001

State of Utah v. William Stewart : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH, :

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Plaintiff-Respondent, :

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School
Case No.
13772

-vs-

WILLIAM STEWART, :

Defendant-Appellant. :

BRIEF OF RESPONDENT

APPEAL FROM A JURY TRIAL VERDICT AND JUDGMENT
RENDERED AGAINST THE DEFENDANT-APPELLANT IN
THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE
JOSEPH G. JEPSON, JUDGE, PRESIDING.

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FILED

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Plaintiff-Respondent, :
-vs- : Case No.
 : 13772
WILLIAM STEWART, :
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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

WILLIAM STEWART,

Defendant-Appellant.

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:
:

Case No.
13772

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged and tried for the crime of Unlawful Distribution of a Controlled Substance for Value. Appellant now appeals from a judgment and sentence entered against him pursuant to his conviction for the above crime.

DISPOSITION IN THE LOWER COURT

Appellant was tried by a jury before the Honorable Joseph G. Jeppson on June 19 and 20, 1974, and was found guilty

of the above mentioned offense .

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the jury verdict.

STATEMENT OF THE FACTS

Appellant was convicted of selling a controlled substance, marijuana, to Rodney Ward on November 10, 1973. On the day of November 10th, Mr. Ward met with Officer Brophy of the Salt Lake City Police Department, narcotics detail. Officer Brophy "strip" searched Mr. Ward to insure that Ward had no narcotics on his person (Tr. p.12, 11.21-29). After the search, Ward was given \$20 by Officer Brophy and then Brophy, Ward and Officer Millard drove to the appellant's neighborhood. Ward got out of the car, walked to appellant's residence, entered it and returned to the car. Ward was seen by the officers continuously except for the time he was in appellant's home. Upon returning to the car Ward gave Officer Brophy a package of a substance. Chemical analysis of this substance confirmed that it was marijuana.

Ward was wearing a listening device attached by the police while he was in appellant's residence. The device allowed Officers Brophy and Millard to hear Ward's conversations with appellant so that they could intervene if Ward needed protection. A tape recording was made of the transaction in appellant's home and was subsequently erased so that the tape could be used again.

During appellant's trial the defense attorney asked Mr. Ward several questions about his involvement with the Juvenile Court (Tr. pp. 32, 1. 17-35, 1.1). This questioning was allowed by the Court and was not challenged by the prosecuting attorney. Objection was made by the prosecution and sustained by the Court only to a question concerning Mr. Ward's "guilt" in a Juvenile Court proceeding (Tr. p.34, 11.17-21). After rewording his question, appellant's counsel was allowed to continue his questioning concerning Ward's involvement with the Juvenile Court (Tr. p.34, 11.22-30).

The jury found appellant guilty of selling marijuana to Rodney Ward. Appellant was sentenced to the Utah State Prison

and ordered committed as provided by the laws of Utah.

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ERR IN SUSTAINING PROSECUTION OBJECTIONS TO QUESTIONING CONCERNING THE STATE WITNESS'S (RODNEY WARD'S) GUILT IN JUVENILE COURT PROCEEDINGS.

The transcript (pp. 32-35) shows that appellant's counsel questioned Rodney Ward with considerable particularity concerning his involvement with the Juvenile Court. The prosecution had even delved into Rodney's Juvenile Court contacts on direct examination (Tr. p.6, ll.14-28). The prosecution's objection came when appellant's attorney specifically asked Ward if he had been found "guilty" of burglary in Juvenile Court. The trial court properly sustained the objection.

Utah Code Ann. § 55-10-105(1) (1953), states that "Proceedings in children's cases shall be regarded as civil proceedings. . . ." Subsection two indicates that "An adjudication by a juvenile court that a child is within its jurisdiction under section 55-10-77 shall not be deemed a

conviction of a crime. . . ." (Emphasis added.) The express language of the above quoted statute means that findings of "guilt" are not made in juvenile courts. On this ground alone the prosecution's objection in the present case was correctly sustained.

Utah Code Ann. § 55-10-105(3) (1953), as amended, states:

"(3) Neither the record in the juvenile court nor any evidence given in the juvenile court shall be admissible as evidence against the child in any proceedings in any other court, with the exception of cases involving traffic violations."

Similar statutory language in other jurisdictions has been interpreted to mean that questions about prior juvenile court adjudications could not be asked of state witnesses. In Smith v. Smith, 113 Tex.Crim.Rep. 124, 18 S.W.2d 1070 (1929), the Court held that a state witness could not be asked on cross-examination whether he was convicted some years earlier of being a juvenile delinquent. Malone v. State, 130 Ohio 443, 200 N.E. 473 (1936), reached a like conclusion concerning a juvenile defendant in a felony prosecution. The Court in Malone prohibited questions about prior juvenile

court proceedings involving the defendant. A like result was reached in Thomas v. United States, 74 App.D.C. 167, 121 F.2d 905 (1941).

The legislative intent motivating Utah Code Ann. § 55-10-105(3) (1953), as amended, is obvious. The legislature feels that it is vitally important that juvenile offenders be protected from embarrassing and counter-productive intrusions into their Juvenile Court records.

The trial court's decision in the present case to prevent questioning of Ward about his "guilt" in a prior Juvenile Court proceeding is consistent with legislative intent and case law from other jurisdictions.

The cases cited by appellant for the proposition that the objectionable question by defense counsel was incorrectly denied are not compelling.

Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105 (1974), is distinguished from the present case because there a pre-trial protective order excluded any reference to the state witness's juvenile court record. Justice Stewart in a concurring opinion

also emphasized that "the Court neither holds nor suggests that the Constitution confers a right in every case to impeach the general credibility of witness through cross-examination of his past adjudications or criminal convictions," 94 S.Ct. at 1112-1113.

The denial of effective confrontation of witnesses referred to in Brookhart v. Janis, 384 U.S. 1, 162 L.Ed.2d 314 (1966), is also distinguishable from the present case. In Janis a special Ohio procedural rule allowed a "prima facie" trial of the defendant. Defense counsel agreed to the trial and waived his right to cross-examine state witnesses. This waiver of all opportunity to cross-examine witnesses constituted a Sixth Amendment deprivation. Also in Janis the Court allowed the introduction of the confession from an out-of-court codefendant. Neither of these gross procedural improprieties is present in the instant case. The transcript shows, on the contrary, that effective confrontation of witnesses was allowed in the present case.

POINT II

ERASURE OF THE TAPE RECORDING MADE OF THE STATE WITNESS'S CONVERSATION WITH APPELLANT WHEN THE CRIME WAS COMMITTED WAS NOT A DENIAL OF DUE PROCESS CONSTITUTING A VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Officer Brophy testified that Mr. Ward wore a listening device when he purchased marijuana from appellant primarily for protective purposes (Tr. p. 81, 11.7-26). That a tape recording was made of transmissions from the device was really incidental to the major purpose for which the instruments were used. The erasure of the tape when its primary function had ended was logical and necessary because of the shortage of tapes. The officers acted in complete good faith. It was the prosecution which elicited information about the tape from Officer Brophy. These factors lead to the conclusion that the erasure of the tape was not a deliberate suppression of evidence by the police or the prosecution.

Appellant cites Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), in which the Supreme Court established the basic principle that suppression of material evidence by the prosecution which is favorable to an accused upon request violates due process. While respondent agrees with the fundamental premise of Brady, we do not believe that Brady or the other cases cited by appellant mandate a reversal of the jury verdict in this case.

Brady utters a broad due process statement but its facts show a deliberate, specific and self-serving suppression of evidence which was known to the prosecution and which clearly had a mitigating effect on the defendant's sentence. Brady's counsel, in a first-degree murder case, had requested the prosecution prior to trial to allow him to examine Brady's companion's, Boblit's, extrajudicial statements. Several of the statements were shown to defense counsel, but one in which Boblit admitted the actual homicide was consciously withheld by the prosecution. Such blatant bad faith by the prosecution encouraged the Court to emphasize that the purpose of its ruling was to avoid unfair and unjust trials. 373 U.S. at 87.

No unfairness is present in the instant case. No reference was made by either prosecution or defense to any conversation which Ward and appellant had while Ward was inside appellant's home. The testimony of Officer Brophy corroborated the testimony of Rodney Ward. The jury, being the trier of fact, heard the testimonies of both Ward and appellant and their decision as to appellant's guilt should not be lightly overturned. State v. Canfield, 18 Utah 2d 292, 422 P.2d 196 (1967); State v. Ward, 10 Utah 2d 34, 347 P.2d 865 (1959).

In Cheatwood v. People, 165 Col. 334, 435 P.2d 402 (1968), a finding of abuse of discretion by the trial court was based on a number of procedural improprieties not found in the present case. In Cheatwood the defendant, convicted of the felony of "confidence games," gained substantial new evidence after his trial which corroborated his testimony that he was innocent, but this evidence was not considered by the trial court in denying defendant's motion for a new trial. Also, the sheriff received a copy of an F.B.I. report which exculpated the defendant. The Colorado Supreme Court held, however, that

because the prosecution was unaware of the report, suppression of evidence was not shown. 435 P.2d at 405. Other procedural deficiencies such as a questionable identification of the defendant and failure to provide him with a transcript of the record for his appeal bolster the Colorado Court's decision. The content of the tape in the present case was unknown to all the parties and the trial court acted within its discretion in denying appellant's motion.

Seattle v. Fettiq, 10 Wash.App. 773, 519 P.2d 1002 (1974), deals with a case where a video tape of a man arrested for driving under the influence was destroyed by police. The Washington Supreme Court found a due process violation as a result of the destruction. In the case, however, the testimonies of the arresting officers were the only evidence against the defendant. Moreover, the video tape was made definitely for its probative value. In the case now before the Court, there was other incriminating evidence against appellant and the tape recording in question was made for a protection, not evidentiary, purpose.

In another case cited by appellant, Trimble v. State of New Mexico, 75 N.M. 183, 402 P.2d 162 (1965), the New Mexico Supreme Court found a due process violation because of the destruction of material evidence by the police. The decision is grounded on several procedural inadequacies, again not present in the instant case. In Trimble the police seized a letter and tapes from the defendant and either lost or destroyed them. The prosecution first denied having the letter and then said it would be produced later, even though knowing of its destruction. It should be noted that it was the defendant in Trimble who affirmatively claimed that the letter and tapes would corroborate his testimony while the appellant in the instant case has made no showing or allegation of the exculpatory character of the erased tapes.

People v. Hoffman, 32 Ill.2d 96, 203 N.E.2d 873 (1965), is another case cited by appellant where clothing of an obvious evidentiary nature was suppressed or destroyed by the police. The defendant made a specific and affirmative showing that the missing clothing would substantiate his testimony. No such

showing has been made in the present case. Without such a reasonable indication that the erased tape in question would act favorably for the appellant, the trial court correctly denied appellant's motion.

CONCLUSION

Appellant's counsel was allowed to effectively and thoroughly cross-examine the state's chief witness. Appellant was not denied due process because of the erasure of the tape recording made while Ward was buying marijuana from appellant. The trial court correctly ruled on the prosecution's objection to defense question of the state's witness concerning his Juvenile Court involvement and on appellant's motion to dismiss because of the erasure of the tape recording.

WHEREFORE, respondent respectfully submits that the jury verdict of guilty should be affirmed.

Respectfully submitted,

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