

1978

State of Utah v. Kelvin Taylor : Appellant's Reply Brief

Utah Supreme Court

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THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

v.

KELVIN TAYLOR,

Defendant-Appellant.

Case Number 15674

APPELLANT'S REPLY BRIEF

Appeal from the Judgment of the
District Court of Utah County
Honorable J. Robert Bullock, Judge

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CASES CITED:

STATE v. JOHNSON, 244 NW 2d 809 (Iowa 1975).....
STATE v. KASAI, 27 UT 2d 326, 495 Pac 2d 1265 (1972).....
STATE v. MASATO KARUMAI, 101 UT 592, 126 Pac. 2d 1047 (1942) ..

THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

v.

Case Number 15674

KELVIN TAYLOR,

Defendant-Appellant.

APPELLANT'S REPLY BRIEF

STATEMENT OF THE NATURE OF THE CASE

Defendant was charged with theft of a firearm in violation of Utah Code Annotated, Section 76-6-404 (Supp. 1977), a felony of the second degree, Utah Code Annotated, Section 76-6-412 (Supp. 1977).

DISPOSITION IN THE LOWER COURT

The jury returned a verdict of guilty, and the Honorable J. Robert Bullock sentenced the defendant to a term in the Utah State Prison of not less than one nor more than fifteen years.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of his conviction, or failing that, a new trial.

STATEMENT OF THE FACTS

The Respondent erroneously stated that the defendant

was a runaway from the "Halfway House". (Brief of Respondent, p.2). The defendant was not a runaway in any sense of the word but in fact was on probation.

At paragraph 4, page 20 of the official Court Transcript of Trial, Mark Meyers testified as follows:

"--I used the name Mike Murdock, because when I was in Payson City I was talking to the police department and they told me that, "yes, we have a warrant out for Kelvin's arrest for escape from the Halfway House," and I was the one that was escaped from Halfway House, and I got scared."

In addition, an affidavit, sworn to by Officer Frank Wall, is attached hereto and marked Exhibit A.

Further, Officer Wall while relating the conversation he had had with the defendant, stated:

"A. Well, he agreed to, you know, if we could help him out in any way on any of the charges that he would provide us with some information as to the whereabouts of Mark Meyers, the runaway from the Halfway House.

Q Did you agree to go with him then at some time to find this Mr. Myers?

A Yes, we did." (Page 48, Line 14-20)

At page 48, Line 6, Officer Wall further stated:

"A Yes. I asked him, I said, "Kelvin, you realized that this would violate you, being in possession and doing this with the firearm?" And he said, "Yes." I asked him if his probation officer had been notified, and he said, "No." So at that time

we called his probation officer and talked with him."

POINT I

RESPONDENT'S ARGUMENT (RESPONDENT'S BRIEF, POINT I, C) IS TOTALLY WITHOUT MERIT AS IT IS BASED ON THE RESPONDENT'S ERRONEOUSLY PERCEIVED FACT THAT THE DEFENDANT WAS AN ESCAPEE.

At page 9 of Respondent's Brief, the Respondent went to great lengths to show that the defendant's supposed escape from the "Halfway House" and his flight to a mountain campsite to elude authorities were properly admitted to establish motive for the theft. The Respondent cited State v. Kasai, 27 UT 2d 326, 495 Pac 2d 1265, (1972), and stated:

"If the jury had not heard evidence of defendant's escape, his actions would seem unconnected and inexplicable. The court below ruled that "it is necessary for you (the Jury) to have an understanding of how the situation developed so that you can decide the ultimate question..." (T.13)

Respondent submits that this ruling is correct because:

"the seemingly unrelated other offenses are, in reality, bound together by the single transaction of defendant's attempt to escape and elude capture. This attempt to escape provided the motive for defendant's theft; the charge in issue." (Respondent's Brief, P. 10)

The true fact remains that the defendant was not an

escapee but was on probation. Thus, the argument presented by the Respondent above is completely without merit.

POINT II

THE DEFENDANT'S STATEMENT THAT, "WELL, I GUESS THIS WILL PUT ME BACK IN PRISON." (T.30) IS NOT AN ADMISSION. ADMITTING THE STATEMENT UNDER UTAH RULES OF EVIDENCE, 63 (6) WAS IN ERROR.

At page 7 of the Respondent's Brief, the Respondent argues that the above-mentioned statement made by the defendant, constitutes an admission and as such is admissible to prove guilty knowledge. Under Utah Rules of Evidence, 55, the Appellant takes issue with the Respondent's argument and cites State v. Masato Karumai, 101 UT 592, 126 Pac. 2d 1047 (1942) as authority, wherein the Court stated:

"An admission merely admits some fact which connects or tends to connect the defendant with the offense but not with all of the elements of the crime."
(Emphasis Added) 126 P. 2d at 1052

In the case at bar, the above-mentioned statement made by the defendant that, "Well, I guess this will put me back in prison.", (T.30), is not an admission since it admits no fact and thus it was improperly admitted. Further, the above-mentioned statement by the defendant was erroneously admitted contrary to the general rule of law that evidence showing the commission of crimes other than the one with

which the defendant is charged, is inadmissible. A case directly on point is State v. Johnson, 244 NW 2d 809 (Iowa, 1975). In Johnson, (supra) the trial court admitted the arresting officer's testimony that the defendant "spent time up in Anamosa (prison)". On appeal to the Supreme Court of Iowa, the Court again reiterated the general rule that evidence showing the commission of crimes other than the one with which the defendant is charged is inadmissible. The Court stated:

"Taken in context, the information the defendant "spent time up in Anamosa" would clearly convey to the jury that defendant had been incarcerated following conviction of a prior crime. This irrelevant and prejudicial information was a violation of our above stated general rule." (at 811)

In the case at bar, the defendant's statement, "Well, I guess this will put me back in prison", is clearly inadmissible since it showed the commission of a crime other than the one to which the defendant was charged.

In addition, the testimony by Mark Myers that he met the defendant in the Utah State Penitentiary also falls under the exclusionary rule as stated by the Court in State v. Johnson, (supra), and the numerous other cases cited by the Appellant in his brief.

POINT III

INADMISSABLE AND PREJUDICIAL INFORMATION WAS

INTRODUCED SPECIFICALLY BY THE RESPONDENT'S
ATTORNEY.

Respondent would have the Court believe that the above-mentioned offensive and prejudicial evidence was introduced not by "any improper question" but was "volunteered by an over-zealous or non-responsive witness". (Respondent's Brief, p. 12). The Appellant would draw the Court's attention to page 4, Line 22 of the official Court Transcript, wherein the respondent's attorney, Mr. Gary Weight, in making his opening statement to the Jury, stated:

"On the 6th day of September, or about that day, Mr. Myers, who knew the defendant because they had been together in that Half-way House facility at a time prior, and had met there..."

(Emphasis Added)

The attorney for defendant, Mr. Sheldon R Carter, properly objected to the statements made by Mr. Weight and made a Motion for a Mistrial, due to the prejudicial effect of such statements on his client. It is the contention of the Appellant that the Motion should have been granted and a mistrial declared.

CONCLUSION

The Respondent has erroneously stated a significant fact, in that, the defendant was not an escapee from the

Halfway House facility, but was on probation from the Utah State Prison. In addition, numerous prejudicial statements were admitted into evidence contrary to generally accepted rules of evidence.

For further authority in support of Defendant's position, the Defendant would draw the Court's attention to the Appellant's Brief filed previously in the above-entitled matter.

RESPECTFULLY SUBMITTED this 7th day of August, 1978.



SHELDEN R CARTER
Attorney for Defendant-Appellant

EXHIBIT A

STATE OF UTAH)
 : ss
COUNTY OF UTAH)

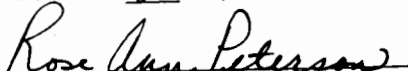
I, Frank Wall, after being duly sworn according to law, deposes and states:

- 1). That I am a police officer employed by the Utah County Sheriff's Department.
- 2). That I was involved in the investigation of an alleged theft of a rifle by Kelvin Taylor.
- 3). That my investigation uncovered the fact that Mark Myers had escaped from the Halfway House and a warrant for his arrest had been issued.
- 4). Although Kelvin Taylor had assisted Mr. Myers in his evasion of police officers, Mr. Taylor himself, had not escaped from the Utah State Prison nor any department thereof, including the Halfway House.

Dated this 18 day of August, 1978.


FRANK WALL - Affiant

Subscribed and Sworn to before me this 18th day of August, 1978.


NOTARY PUBLIC