

1978

State of Utah v. Larry David Clemons : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *State v. Clemons*, No. 15686 (Utah Supreme Court, 1978).

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
	:	
Plaintiff-Respondent	:	
	:	
v.	:	
	:	
LARRY DAVID CLEMONS,	:	Case No. 15686
	:	
Defendant-Appellant	:	

BRIEF OF APPELLANT

Appeal from a judgment of the District Court of the
Third Judicial District in and for Salt Lake County, State of Utah,
the Honorable Dean E. Conder, presiding.

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FILED

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Larry David Clemons, appeals from a conviction of the crime of rape, a felony of the second degree, returned by the Honorable Dean E. Conder sitting without a jury on January 23, 1978.

DISPOSITION IN THE LOWER COURT

Appellant was tried and convicted by Judge Conder, sitting without a jury, of the crime of rape. Following his conviction, appellant was sentenced to the indeterminate term of 1 to 15 years in the Utah State Prison to run concurrently with the time the defendant was already serving at the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Appellant seeks remand of his case for a new trial.

STATEMENT OF FACTS

Lynette Allen testified that on the 20th of November, 1977 about 2:00 a.m. she was walking down the Avenues in Salt Lake City toward the apartment of her boyfriend when she was followed by a man she has identified as the appellant. After walking behind her for a period of time she testified that appellant grabbed her and pulled her into a garage and parking area where he proceeded to rape her. She testified she was not injured during the course of the assault, and was allowed to leave when the appellant had finished with her. She further testified that she ran to the door of the Ambassador Club on Fifth East in Salt Lake City and was able to summon help and call the police from that location. She further testified that when she spoke with the policeman on the phone she described her attacker as black with a brown leather jacket, clean shaven and with a puffy afro. She testified the police then took her in a patrol car somewhere on South Temple where they had a black man in custody. The girl did not identify the first black man that she saw but stated that her attacker had different hair and a different build. She was then taken approximately one block further where a second black man was being held by police. The defendant was positively identified at that time by the girl as her attacker.

Officer Jim Brown of the Salt Lake City Police Department testified that he contacted Lynette Allen about 3:30 a.m. at the Ambassador Club at 150 South on Fifth East. At that time he took her to an area near South Temple and 8th East where a black man had been stopped by police officers. He testified she stated that this was not the man who attacked her. He then took Ms. Allen to a second location at approximately L Street and South Temple where a second black man was in custody by police officers. At that time Ms. Allen positively identified the defendant as the man who had attacked her.

Officer William A. Shelton of the Salt Lake City Police Department testified that he first observed the defendant approximately 3:30 a.m. headed westbound on South Temple at 800 East on November 20, 1977. He stopped the defendant and observed that the defendant's brown leather type jacket was dirty and greasy on one sleeve. He further testified that the defendant's pants and shirt appeared to have been soiled.

Dr. Fred Langlund, an intern, testified that he examined the witness, Lynette Allen, on November 20, 1977 and observed that she had dirt and grime in contusions on elbows and knees. She further had a contusion at the posterior of her head. A pelvic examination showed that the vagina was inflamed and that there was debris in both the vagina and the rectum.


The defendant, Larry David Clemons, took the stand in his own defense. He testified that on November 20, 1977 he was technically an inmate of the Utah State Prison serving a ten year to life sentence for rape. He further testified that he had been placed in the Salt Lake Community Corrections Center approximately one week earlier. He testified that on November 19, 1977 he had been at work at Sambos Restaurant located at 2147 South State Street in Salt Lake City and had gotten off work about 6:00 p.m. He indicated that he returned to the Halfway House and left again about 10:00 that night. He stated that he went to the Elks Lodge on South Temple in Salt Lake and was there until it closed about 1:00 or 1:30. He stated that he then went to the Holiday Inn to get something to eat and get some coffee and left there about 2:30 a.m. on November 20, 1977. He then stated that he began walking toward the Halfway House but somehow became confused and began walking in the wrong direction. He indicated that the wind was blowing and it was snowing. He further identified the State's Exhibits as the clothes he was wearing on the night in question. He indicated that the dirt and grease got on his clothes when he fell down, but firmly denied he had ever seen Lynette Allen and stated he did not attack her.

REQUEST FOR WITHDRAWAL OF COUNSEL

Counsel for appellant was appointed to represent him pursuant to the contract of the Salt Lake Legal Defender Association with Salt Lake County and the State of Utah. It is counsel's opinion

that the issues presented in this appeal are without merit, and
[respectfully request permission to withdraw from this case.
Pursuant to Anders v. California, 386 U.S. 738 (1967), I have raised
all possible points in appellant's favor and have presented whatever
argument may be made to support them. Appellant should be allowed
additional time from filing of this brief to raise any other points
pro se.

Respectfully submitted,



LARRY R. KELLER
Attorney (for Appellant

ARGUMENT

POINT I

THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT AS A MATTER OF LAW TO ALLOW APPELLANT'S CONVICTION TO STAND.

The defendant would argue that the evidence against him was insufficient as a matter of law to support the verdict of guilty of the crime of rape. Although the victim, Lynette Allen, testified that it was the defendant who had attacked her, there was no corroboration whatsoever for her testimony and identification. In addition, she was walking down the street at approximately 2:30 or 3:00 in the morning after allegedly having a fight with her boyfriend. This shows that she was emotionally upset and unstable at the time of the incident. Further, she testified it was snowing and extremely cold while she was walking down the street. Appellant argues that with all of these factors taken into account, she could not possibly identify him as her assailant. Further, she testified that there were no lights inside of the parking garage where she was allegedly attacked, and therefore she could not have identified the defendant from that encounter. Further, when the defendant was arrested he was not taken to a hospital or a doctor to be checked in the genital area. Such a check could have determined whether or not he had recently had sexual intercourse, but since this was not done, he was denied a method of defending himself.

POINT II

THE IDENTIFICATION OF APPELLANT WITHOUT A FULL LINE-UP
WAS UNNECESSARILY SUGGESTIVE.

Appellant was identified in a one-on-one line-up situation without having his right to counsel or the right pursuant to United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967) to the procedural safeguards provided for in that case. In this case, the girl was merely asked whether or not the black defendant who was in the custody of police officers was in fact the man that had committed the crime. This was unduly suggestive and appellant contends that it resulted in a denial of his right to a fair trial.

CONCLUSION

Counsel for appellant has attempted to raise all issues which could conceivably be argued on behalf of appellant, however, I ask this Honorable Court to allow appellant himself to raise any additional issues pro se.

CERTIFICATE OF COMPLIANCE

I certify that in compliance with Anders v. California, supra, I have caused to be mailed a copy of the foregoing brief and request for withdrawal of counsel to Larry David Clemons, Utah State Prison, Box 250, Draper, Utah 84020 this 12 day of April, 1978.