

1978

State of Utah v. Ronald G. Bacon : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH)	
In the interest of)	
)	
RONALD G. BACON)	Case No.
)	
)	15932
)	
A person under eighteen years)	
of age.)	

APPELLANT'S BRIEF

Appeal from the verdict of the Second
Juvenile Court for Salt Lake County
State of Utah
The Honorable John Farr Larson, Judge

GAYLEN S. YOUNG, JR.
2188 Highland Drive
Salt Lake City, Utah 84106

ATTORNEY FOR APPELLANT

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3522 South 700 West
Salt Lake City, Utah 84119

FILED

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TABLE OF CONTENTS

	Page
NATURE OF THE CASE -----	1
DISPOSITION IN LOWER COURT -----	1
RELIEF SOUGHT ON APPEAL -----	2
STATEMENT OF FACTS -----	2
ARGUMENT -----	6

POINT I.

THE TRIAL JUDGE ERRED IN FINDING DEFENDANT GUILTY IN VIEW OF THE TESTIMONY OF TERRI LIUM, THE COMPLAINING WITNESS, AS TO THE CLOTHES WORN BY THE ROBBER AND AS TO THE TIME OF THE ROBBERY, AND IN VIEW OF THE "REASONABLE DOUBT" THAT WAS APPARENT FROM THE EVIDENCE-----	6
---	---

POINT II.

THE STATE FAILED TO SUSTAIN THE BURDEN OF PROOF AGAINST DEFENDANT FOR THE OFFENSE CHARGED AND DEFENDANT WAS ENTITLED TO AN ACQUITTAL -----	20
---	----

CONCLUSION -----	21
------------------	----

AUTHORITIES CITED

47 AM Jur 2nd, Section 47, Page 1023-----	7
30 AM JUR 2nd Section 1171, Pages 351-2 -----	17

(Table of Contents Continued)

	Page
29 AM JUR 2nd Section 125, Page 156 -----	7, 21
29 AM JUR 2nd Section 151, Page 183 -----	12
30 AM JUR 2nd Section 1170, Page 349 -----	19

STATUTES CITED

U.C.A. 1953, as amended 1973, 76-6-302 (1) (A) -----	1, 3, 20
--	----------

CASES CITED

State v. Williamsen 22 Utah 248; 62 P. 1022-----	17, 18
Hopt v. Utah 120 US 430, 30 L Ed. 708; 7 S. Ct. 614-----	17
State vs. Taylor 21 Utah 2nd 425; 446 P 2nd 954 -----	19

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
In the interest of

RONALD G. BACON

Case No.

15932

A person under eighteen years of age.

APPELLANT'S BRIEF

NATURE OF THE CASE

Ronald G. Bacon, a 14 year old boy, was charged under Title 76 Chapter 6, Section 302 (1)(A), with aggravated robbery with the use of a weapon of Cheryl's Gift Shop in the Olympus Hills Shopping Center, wherein the sum of \$120.00 was taken from Terri L. Lium, an employee, on or about March 9, 1978.

DISPOSITION IN LOWER COURT

The case was heard on June 16, 1978, before the Honorable Judge, John Farr Larson, Second District Juvenile Court for Salt Lake County, who sat without a jury and who reached a verdict of Guilty of the allegations and

offense charged under the provisions of Section 78-3A-16 Utah Code annotated as amended.

RELIEF SOUGHT ON APPEAL

Ronald G. Bacon claims he is innocent of the charges made, believes the judge erred in finding him guilty from the evidence presented, and seeks a reversal and an acquittal of the offense charged, under the circumstances.

STATEMENT OF FACTS

Cheryl's Gift Shop, located on Wasatch Boulevard in the Olympus Hills Shopping Center, Salt Lake City, Utah was reported to have been robbed on or about March 9, 1978. Terri Lynn Lium, a twenty year old employee of the gift shop, called the police and claimed that a young man, about 15-17 years old had come into the shop and by means of a gun had taken \$140.00 in cash, together with the shop keys, sometime after 8:00 p.m. Later the same evening, Miss Lium reported to the police that she had picked out of the Churchill Jr. High year books the picture of the apparent suspect. The picture was that of Ronald G. Bacon, a 14 year old boy who resided with his parents at 4526 Jupiter Drive, Salt Lake City, Utah, which home was located about 10 blocks away from the shopping center in the Mount Olympus area. The police, therefore, went to the Bacon residence just before midnight, and after searching the grounds and Ronald Bacon's room and taking some clothes into custody.

Ronald's (Exhibits 1-4), the Bacon boy was arrested and taken to the Juvenile Detention Home.

On March 21, 1978, Ronald G. Bacon was charged with the offense of "Aggravated Robbery" in a Petition filed in the Juvenile Court (R-133). The Petition alleged as follows:

"On or about March 9, 1978, Salt Lake County, State of Utah, in violation of Title 76, Chapter 6, Section 302 (1)(A), UCA 1953 as amended 1973, said child, while in the course of unlawfully and intentionally taking personal property, to-wit: \$140.00 in cash, in the possession of Terri L. Lium from her person or immediate presence against her will, accomplished by means of fear, did use a deadly weapon"

At the trial of this case on June 16, 1978, before Juvenile Court Judge, John Farr Larson, sitting without a jury, the State's Chief witness, Terri Lium testified that it was on Friday, March 10, 1978, not March 9, 1978, that a young man came in and out of the gift shop 3 times. It was quarter to eight in the evening when she first noticed him and she was certain of the time (R-3,22-23). She became suspicious of him. He asked about the cost of a poster (Exhibit 5) he had picked up. Then on the third time in the shop, he placed a white paper bag on the counter and said "Put all the money in there" (R-9). Terri went to the cash register and placed some money in the bag. She noticed what appeared to be a handle of a gun (R-21), stuffed down in his pants. His jacket was open and his hands were at his side (R-9). The suspect didn't say anything about a

gun nor did he use or handle a gun (R-21). Terri testified further that the suspect asked for the store keys, which she gave him and then he told her to "move to the back of the room" where he left her. The suspect went out of the store and locked the door (R-10-11). Terri then stated she went out the alley door and used the phone over at Fernwoods to call the police. She noticed the clock at Fernwoods, and it was quarter after eight as she called (R-28).

Terri Lium further testified that of the clothes (exhibit 1-4) taken into custody by the police, as having been worn by Ronald Bacon the day and night of the robbery (R-68-69, 101, 108), the Levi pants and the blue denim Levi shirt were not the pants and shirt worn by the robber, and she was sure about that (R-6-7, 19-20).

Terri also stated that she had seen Ronald Bacon in the area before (R-14), and that it was possible he was not the one in the hold up, as she was checking through school year books (R-19).

Ronald G. Bacon testified in his own defense and emphatically declared his innocence. He admitted being at the Olympus Hills Shopping Center on the evening of March 10, 1978, but arrived back home about 8:10 p.m. He, along with his parents, stated that the clothes taken into custody by the police were in fact the clothes worn by Ronald that day (R-68-69, 101, 108).

Ronald Bacon, furthermore, had never had or used a gun, had been in no trouble before, had worked in the school

office and for his father handling considerable money in the past and never had there been any shortages or problems (R-70, 72-73). He was a good boy, no problems in school, an average student, no need for money, no keys, no white paper bag, although a methodical search of Ronald Bacon's room and the premises was made by the police officers the night of the robbery (R-49).

Ronald Bacon further testified he had been in Cheryl's Gift Shop on occasions, the last time being Wednesday, March 8, 1978, when he was looking for a birthday card and he had seen and handled the poster shown as Exhibit 5 at the time (R-70).

Ronald Bacon and a friend, Jeff Butler, who had seen Ronald Bacon in Smiths Food King the night of March 10, 1978, testified of many of his school friends wearing red parkas, Levis, and denim shirts just like Ronald's (R-70,96), and Mr. Bacon, Ronald's father, testified he had counted some 43 kids, going to Churchill Jr. High School the Monday morning following the robbery, who had red parkas, blue jeans and were blond, similar to his son Ronald (R-109).

Officer Richard Summers testified on behalf of the prosecution about Ronald Bacon's fingerprint being found on the poster, Exhibit 5. He stated that he lifted 6 or 7 latent prints from the poster, but only checked against Ronald Bacon (R-37). Ronald Bacon's fingerprints were not

found in any other areas of the gift shop (R-60).

Ronald Bacon's parents and his attorney have asked and encouraged the truth from Ronald and he has continually maintained his innocence (R-74, 117).

ARGUMENT

POINT I

THE TRIAL JUDGE ERRED IN FINDING DEFENDANT GUILTY IN VIEW OF THE TESTIMONY OF TERRILUM, THE COMPLAINING WITNESS, AS TO THE CLOTHES WORN BY THE ROBBER AND AS TO THE TIME OF THE ROBBERY, AND IN VIEW OF THE "REASONABLE DOUBT" THAT WAS APPARENT FROM THE EVIDENCE.

Ronald G. Bacon, a 14 year old boy, being charged with the offense of "Aggravated Robbery," a felony of the first degree under 76-6-302 (1)(A), was entitled to all the benefits and safeguards of the constitution in criminal cases, even though he was tried in Juvenile Court before a judge and without a jury. It seems to counsel that there is a tendency in this type of case with juveniles, where the judge is also the jury and where the prosecution virtually presumes guilt (R-114, line 12), to have the defendant show his innocence or to shift the burden of proof.

There is merit to the argument that a right to a jury should be allowed in such a case as is inferred in 47 Am Jur 2nd Section 47, Page 1023:

"Some cases have held that where the Juvenile was charged with the commission of a specific crime as contrasted with a charge of delinquency, he had a constitutional right to have his guilt or innocence determined by a jury."

It also seems apparent that with a minor, as much or even greater pains should be taken to preserve THE PRESUMPTION OF INNOCENCE OF THE ACCUSED and THE PROSECUTION MAINTAINING THE BURDEN OF PROOF THROUGHOUT THE CASE, as with an adult.

The law is clear on this matter as stated in 29 Am Jur 2nd Section 125, Page 156:

"In criminal cases the accused is presumed to be innocent until his guilt is established, and the burden of proof is upon the prosecution to establish, beyond all reasonable doubt, every element of the offense charged in the indictment or information; otherwise, the accused must be acquitted. This burden of proof does not shift from the prosecution to the defense. It rests upon the prosecution throughout the case."

In Ronald G. Bacon's case there are at least six different areas where the prosecution failed in its burden of proof or where reasonable doubts were clearly evident: 1. The clothes issue; 2. The time element; 3. The identity question; 4. No fruits of the crime found (gun, money, white bag, keys.); 5. The corroborating testimony (Jeff Butler, Mr. & Mrs. Bacon.); 6. No purpose, motive, or reason for the crime.

The evidence on the clothes worn by the suspect was of itself sufficient to raise a clear "reasonable doubt" in the mind of the judge to require an acquittal in this case.

Terri Lium, the complaining witness, herself testified that the shirt and pants worn by the robber were not in fact the same shirt and pants taken by the police officers from Ronald Bacon the night of the crime, as having been worn by him the day and night of the incident. On direct examination by the prosecution Terri Lium testified as follows (R-6-7):

Mr. Johansson: "What are those?"

Ms. Lium: "These are Levis."

Mr. Johansson: "and looking at those Terri, do they represent a fair facsimile, or in fact the same kind of pants, or pants that the juvenile wore?"

Ms. Lium: "They are a fair facsimile, they didn't have the red stripe but they were Levis like this."

Mr. Johansson: "Would you please tell us what that

Ms. Lium: "It is a light blue denim Levi shirt

Mr. Johansson: "And does that fairly represent the item or facsimile thereof that he wore that evening?"

Ms. Lium: "It represents its not exactly the same shirt that he had on, it was a little darker blue."

Mr. Johansson: "As best you recall it was a little darker blue than that?"

Mrs. Lium: "It didn't have pockets like this"

Again, on cross examination, Terri Lium further testified as follows (R-19-20):

- Mr. Young: "May I see your (the) trousers? You've described the parka, the color, the pants and yet you did not describe the red around the pockets on that occasion, is that correct?"
- Ms. Lium: "Right."
- Mr. Young: "Now is it because you didn't see them, see the red or notice it, or do you think that these are not the trousers?"
- Ms. Lium: "Those are not the trousers, there were, there was no red whatsoever."
- Mr. Young: "You also made mention of the fact that the shirt here was a darker blue than you saw that night, is that not correct?"
- Ms. Lium: "Yes."
- Mr. Young: "And that this then is not the shirt."
- Ms. Lium: "No."

There is absolutely no question then that the pants and shirt produced at the trial as Exhibits #4 and #2 were not the pants and shirt worn by the person who committed the crime in front of Terri Lium. This fact should certainly raise a "reasonable doubt" in the mind of the trier of the facts as to whether Ronald Bacon was that person who committed the robbery, especially in view of the further testimony, by the police officers, by Ronald Bacon himself,

as well as the positive identity and testimony of his parents, that the pants and shirt taken by the police officers (R-47,5) from the Bacon home the night of the crime, were in fact the pants and shirt worn by Ronald Bacon all during that day and evening. (R-68-69, 101, 108).

We submit, that the Judge was in error in not finding a "reasonable doubt" in view of this testimony. He apparently ignored this evidence, or had to be convinced in his mind that all three individuals, Ronald Bacon, Dionne Bacon and John Bacon (the parents) were lying and intentionally trying to pass off a different set of clothes (pants and shirt) to the police and the Court than what was in fact worn by Ronald on March 10th.

The Bacons, both the parents and the son, had no way of knowing when they turned over to the police the night of March 10 the clothes that had been worn by Ronald Bacon that day, just what the complaining witness, Terri Lium, would testify to as to that clothing. It seems a little ridiculous that the Bacons would turn over to the police the parka and gloves worn that day and then turn over a different pair of trousers and a different shirt than that worn by Ronald, especially in view of the fact that the Bacon and counsel were at all times trying to get to the truth of the matter and (R-74,117) the Bacons even insisted that the police conduct a methodical search of Ronald's room and the

premises (R-49). No other clothing (pants or shirt) were found or picked up that were similar or a reasonable facsimile.

The question of the time element with respect to the issue of whether or not Ronald Bacon could have been present at the precise time and place of the robbery is another area where the Court should have had a "reasonable doubt."

Terri Lium, the only witness to the crime, said she was sure of the time when she first noticed the suspect in the store. She had looked at her watch and found it to be quarter to eight (R-22-23). She then stated that the suspect stayed in the shop two or three minutes before he ran out (R-25). It was about four minutes that passed before the suspect came in a second time (R-25), and he browsed and stayed around about five minutes on this occasion (R-25). Terri Lium further testified that the suspect remained away from the shop about four or five minutes before he came in again the third time (R-25), and that after another five to six minutes had passed, she states that the robbery took place (R-25).

This testimony of Terri Lium accounts for about 23 minutes before the robbery took place, which places the time when the robbery commenced at about 8 minutes after eight P.M. (R-27-28). Then the time for the suspect to obtain the money and the keys and force Miss Lium to the back

of the store, looking into rooms and checking out the various doors, and finally going back out the front of the store and locking the door, etc. (R-10-11) must have taken another few minutes. If it took about 4 minutes for the robbery events to take place, this would make the time about 8:12 p.m., and be consistent with Terri Lium's further testimony that shortly after the robber left her in the back of the store she went out the alley door and ran over to Fernwood's store, next door, and used their phone to call the police (R-11), at which moment she noticed the clock showed 8:15 (R-28).

This time sequence places the suspect still in the vicinity of the gift shop and Olympus Hills Shopping area at about 12 minutes past 8:00 p.m., and it would have been impossible for Ronald Bacon to have been at home, more than a mile away - uphill- by 8:10 p.m. or 8:15 p.m., which was clear from the evidence, and also have committed this robbery (R-68,72,99,110).

In 29 Am. Jur. 2nd Sec 151, Page 183 we find:

"The burden of proof rests upon the prosecution in a criminal case to establish beyond a reasonable doubt all elements of the offense charged, including, when that is essential to his guilt, the defendants' presence at the place of the crime at the time of its commission. Where the defendants' presence at the time and place of the commission of the crime is essential to his conviction, the states' evidence necessarily must show his presence at the precise place at the precise time. Where that fact is thus essential and the evidence, taken as a whole, whether adduced

by the Prosecution or by the accused, is sufficient to raise in the minds of the jury a reasonable doubt as to his presence at the scene of the crime, he is entitled to an acquittal."

We submit that Judge Larson should have had a reasonable doubt as to Ronald Bacon's presence at the scene of the crime, based upon this "time element."

As to the identity question," Terri Lium did pick Ronald Bacon out of the year books, described the red parka, gloves, levis and shirt, that the suspect was blond and between 15-17 years of age. However, Ms. Lium further testified, as shown in the record on page 14, lines 14-17:

"The next thing I thought I had seen him in the area before I don't know why, I don't know if he had been in the shop before but I did recall his face somehow..."

Terri Lium also testified on cross examination as shown from the record at page 18, lines 25-31 and page 19 lines 1-8 as follows:

Ms. Lium: "He looked familiar to me somehow, I don't know if it was from the shop or from me shopping at Skaggs or whatever but he looked familiar to me."

Mr. Young: "Couldn't it be that because you were concerned that night, Terri, with your suspicions and you had seen this person hanging around that night and shoved this paper bag in front of you and asked you for this, that at that moment when you looked in the year books and the trying to determine this individual that the reflection of someone that had been around there from time to time would have come to your view, not necessarily the one that held you up?"

Ms. Lium: "No Sir."

Mr. Young: "Isn't that possible?"

Ms. Lium: "It's possible."

Thus, it appears from the evidence some probable confusion on the part of the complaining witness as to Ronald Bacon being the true suspect. This evidence, together with the evidence on the reluctance of the police officers to arrest Ronald Bacon on the strength of the identification issue (R-47, 109-110) and the evidence of other young men in the area that looked very much like Ronald (R-95-95), and the numerous students (at least 43) attending the same junior high school that had the same type red parkas, blue jeans and that were blond (R-109), raises a very real question of "reasonable doubt."

It should also be argued here that Terri Lium said the suspect was between 15-17 years of age, and the fact that she picked out of a 1976 year book (R-48) a picture of Ronald Bacon, who was only 12 years of age at the time, would make one wonder whether she had really identified the true suspect or one that just resembled him.

It was also clear from the evidence that no "fruits of the crime" were found to connect Ronald Bacon with the robbery. Terri Lium testified that she gave to the suspect \$120.00, the keys to the store, that a white paper bag was used to hold the money, and that the suspect had a gun

stuffed down in his pants. Yet when the police officers came to the Bacon home within a relatively short time after the robbery took place and methodically searched the room and premises of Ronald Bacon they found no gun, no money, no keys, and no white paper bag (R-48). There is some evidence that the officers found a brown paper bag out in the yard (R-50), but that would only be consistent with Ronald Bacon's testimony that he had purchased a magazine and used a brown paper sack that had blown away in the yard at the time when Ronald arrived home the evening of March 10th (R-73). Had Ronald Bacon in fact committed this robbery, in view of his young age and inexperience, never having been in any trouble before, and never having owned or used a gun nor ever having any weapons around the home at all (R-101,103), it would seem likely and very probable that the police would have found something in Ronald's room or about the home to connect him with the crime that night, other than the clothes he was wearing.

During the trial of this case, Ronald Bacon testified on his own behalf and underwent rigorous cross examination by the Prosecution, and yet he emphatically continued to maintain his innocence of the crime (R-73-74, 90-91). He testified further that he had been at Smith's Food King store at quarter to eight the night of March 10th where he was playing some games (R-84) and while

there he ran into an acquaintance of his, Jeff Butler, who wanted to borrow a dollar (R-66). This testimony was corroborated by Jeff Butler at the trial (R-95).

The testimony of Ronald Bacon as to the clothes he was wearing on March 10th (R-68), the time when he arrived home, about 8:10 p.m. that night (R-68), the fact that he had not been in any trouble before (R-70), had no gun and didn't know how to use one (R-70), was all corroborated by the testimony of his parents, Mr. and Mrs. Bacon (R-101,103,106,108,110), who were anxious and interested in getting to the truth of the matter (R-74,111).

Also, it is apparent in this case that Ronald Bacon had no reason, purpose or motive in robbing the gift shop. He comes from a good home, no problems to speak of, honest and sincere boy, even tempered, sufficient money, a good student, and he has worked around and been entrusted with money in his young experience. (R-101, 106-107, 110-111). It also goes without saying that this 14 year old boy was not feeding any drug, alcohol, or tobacco habit.

We therefore submit that there was a "reasonable doubt" raised in each one of the six areas herein discussed, and when all of the facts and evidence coupled together are considered, Judge Larson, as the Trier of the Facts, should have had such a doubt based upon reason

and common sense that he could not say that he had an
abiding conviction to a moral certainty of Ronald Bacon's
guilt.

In 30 Am Jur 2nd, Sec 1171, pages 351-2 the
meaning of "reasonable doubt" is discussed:

"a reasonable doubt which will justify an
acquittal is not a mere imaginary, captious, or
possible doubt, but a fair doubt, based upon
reason and common sense, and growing out of the
testimony in the case."

"In some cases the term reasonable doubt
is defined as such doubt as will leave the jurors
minds, after careful examination of all the
evidence, in such condition that they cannot say
that they have an abiding conviction, to a moral
certainty, of the defendant's guilt." (See the
Utah case of State vs Williamsen, 22 Utah 248;
62 P 1022, which follows this definition.)

"Another definition which has earned
judicial approval asserts that a reasonable
doubt is one arising from a candid and impartial
investigation of all the evidence, and such as,
in the ordinary transactions of life, would
cause a reasonable and prudent man to hesitate
and pause, (See also, Hopt vs. Utah, 120 US 430,
30L ed. 708; 7 S ct 614), and that it need not,
in order to be reasonable, be such a doubt as
would control a person.

The Prosecution argues in this case that it was
the "Two year books with his picture being identified,
it is not a question of a shirt and a pair of pants, it
is the face that you look at..." (R-120). The Prosecution
seems to imply that Terri Lium made a mistake about the
pants and the shirt identification, but it was the "face"
that was important to be considered. It appears to
counsel that if Terri Lium could have made a mistake

about the pants and shirt, she could also have made a mistake about the face of the suspect, especially when she was sure she had seen Ronald Bacon in the area before.

The Prosecution also argues that the finger print of Ronald Bacon on the poster puts him there at the time of the robbery (R-116), and Judge Larson seemed to base his verdict upon the poster (R-121), and apparently ignored or discounted all the other evidence. However, in view of all the other facts and evidence herein discussed, and in view of the statement and explanation of Ronald Bacon that he had in fact been in the gift shop on March 8th, 2 days earlier, and had handled the poster in question (R-71, 90); and the fact that Terri Lium also stated that it was a popular poster and many boys came in and picked it up and handled it (R-13); and further, the fact that there were 6 or 7 latent finger prints on the poster (R-32), no other prints of Ronald Bacon were found on door knobs or other places in the shop (R-60), and the fact that finger prints may last a considerable time depending upon many factors (R-59-60), it appears clear to counsel that in the light of all the evidence and testimony there were "reasonable doubts"; that one could not say that there was an "abiding conviction to a moral certainty" of guilt here, that it would not "cause a reasonable and prudent man to hesitate and pause."

Judge Larson in discounting or ignoring all this evidence appears to go on the weight of evidence or suspicion or statistical problem (R-121), and in this, we submit the Court has erred.

In 30 Am Jur 2nd Section 1170, Page 349 it states:

"Prosecution must establish beyond a reasonable doubt that the accused is guilty of that crime, and in the absence of such a degree of proof of the defendant's guilt, he is entitled to an acquittal, regardless of whether his character is good or bad. It is not sufficient that the preponderance or the weight of the evidence point to the guilt of the accused, nor can the accused be convicted on general principles or on mere suspicion."

In the 1968 Utah case of State vs Taylor, (446 P 2nd 954; 21 Ut 2nd 425) this Court reversed Judge John Farr Larson on the "reasonable doubt" question on his conviction in Juvenile Court of a man charged with contributing to the delinquency of a minor. In that case, as in the Utah case of State vs Williamsen, cited herein, this Court relied on the definition of "reasonable doubt" as "A fair doubt, based upon reason and common sense" and "such doubt as will leave the jurors minds, after a careful examination of all the evidence, in such condition that they cannot say that they have an abiding conviction, to a moral certainty, of the defendant's guilt."

We believe that Judge Larson, in the instant case, did not apply that definition and those principles in finding Ronald Bacon guilty, and his guilty verdict should, therefore, be reversed and the accused acquitted under the circumstances.

POINT II

THE STATE FAILED TO SUSTAIN THE BURDEN OF PROOF AGAINST DEFENDANT FOR THE OFFENSE CHARGED AND DEFENDANT WAS ENTITLED TO AN ACQUITTAL.

Ronald Bacon was charged with the crime of aggravated robbery in a petition filed in Juvenile Court setting forth the charge as follows:

"On or about March 9, 1978, Salt Lake County, State of Utah, in violation of Title 76, Chapter 6, Section 302 (1) (A), UCA 1953 as amended 1973, said child, while in the course of unlawfully and intentionally taking personal property, to wit: \$140.00 in cash, in the possession of Terri L. Lium from her person or immediate presence against her will, accomplished by means of fear, did use a deadly weapon."

We submit to this Court that the Prosecution not only failed in sustaining its burden of proof that Ronald Bacon was in fact the person who committed the robbery at Cheryl's Gift Shop on March 10, 1978, as set forth in Point I herein, but the Prosecution failed to sustain the burden of proof on the actual charges filed.

There is no evidence that the alleged crime took place on March 9, 1978. There is no evidence of an intentional taking of \$140.00 in cash, nor that it was in Terri Lium's possession or from her person - nor against her will. There is also no evidence of fear, nor the use of a deadly weapon.

Terri Lium did testify that the suspect's coat was open and that she thought he had a gun stuffed down in his pants, although she could only see what appeared to be a handle, but no barrel at all. She "assumed that it was a gun," but the suspect said nothing about a gun, nor did he comment in any way about a gun, nor did he handle or brandish a gun, and his hands were at his side, nothing in them except a white paper sack. (R-9, 20-21). Furthermore, no gun was found, and as far as Ronald Bacon was concerned, the evidence shows that he had never owned a gun, nor did he know how to use one, and no guns had been around his home, as more fully discussed in Point I.

The law is clear that a man cannot be convicted and punished without sufficient evidence of his guilt to support a conviction of the crime charged.

As previously stated, in 29 Am Jur 2nd Section 125,
Page 156:

"---the burden of proof is upon the prosecution to establish beyond all reasonable doubt, every element of the offense charged --- otherwise, the accused must be acquitted."

We submit that the Prosecution failed to sustain this burden on the offense charged and Ronald Bacon should, therefore, have been acquitted.

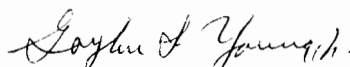
CONCLUSION

In view of all the evidence in this case, the state failed to sustain the burden of proof against Ronald Bacon for

aggravated robbery, and furthermore, because of the "reasonable doubts" raised under the circumstances, the Trial Judge was in error in rendering a guilty verdict.

Ronald Bacon has continually maintained his innocence of this crime, and it would be a great travesty of justice and extremely damaging to this boy for years to come if he is in fact innocent of this felony. The doubts should certainly be weighed in this boy's favor, and we respectfully petition this Court to reverse the finding of guilty of the Trial Judge.

Respectfully Submitted,



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CERTIFICATE OF MAILING

I hereby certify that on the 21st day of November, 1978, two true and correct copies of the foregoing Brief of Appellant were mailed, postage prepaid to Mr. Olof Johansson, Deputy County Attorney, at 3522 South 700 West, Salt Lake City, Utah 84119,.

