1986

State of Utah v. Cecil Loe : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

DOCKET NO. ____

STATE OF UTAH,	:	
Plaintiff,/Respondent.	:	Case No. 20789
vs.	:	priority #2
CECIL LOE,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLANT

Appeal from a conviction rendered by the Honorable David E. Roth, sitting with a jury on April 9th, 11th, 12th and 15th, 1986.

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BRIEF OF APPELLANT

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

1. The statements made by Defendant were not voluntary and should be suppressed, as they were taken in violation of the Defendant's Constitutional Rights.

2. The evidence is insufficient to sustain a conviction against the Defendant of a Criminal Homicide, Murder in the Second Degree.

STATEMENT OF THE CASE

This is a criminal action in which the Defendant was charged, pursuant Section 76-5-203 of the Utah Code Annotated, 1953 (as amended), with Second Degree Murder. The matter came on for trial before the Honorable David E. Roth, sitting with a jury, on the 9th, 11th, 12th and 15th day of April, 1985. The jury convicted Defendant of Second Degree Murder, a First Degree Felony, and the Defendant was sentenced on the 1st day of May, 1985 to from five years to life in the Utah State Penitentiary.

The Defendant appealed that conviction to this Court on the 24th day of May, 1985.

STATEMENT OF THE FACTS

On January 28, 1985, the defendant, Cecil Loe, and his friend, George Nielson, spent the day together drinking and talking. (R.651) Later that day, at approximately 8:00 p.m., the two went to the liquor store for more rum. (R. 652, 232) On the way back to defendant's house, the two stopped to pick up Donald Duffy (R. 652) who then returned with them and spent the remainder of the night with them drinking. Once they had returned to the defendant's residence, they drank for some period of time and talked. (R. 654) The discussions included comments about an overweight girlfriend of Donald Duffy's who apparently Mr. Nielson did not care for. (R. 652) At some point, the defendant asked them to stop arguing about this girl. (R. 656) At some time between 11:00 and midnight, the defendant's girlfriend, Sheila, went to bed and a short time later George Nielson's girlfriend, Robyn, went to sleep on the sofa. (R. 655) The three men then remained in the kitchen of the apartment playing cards and drinking until approximately 3:30 a.m. when some arguing broke out between the men. (R. 655) George Nielson got up and woke up his girlfriend, Robyn, and the arguing continued. (R. 657) Defendant then went into the bedroom returning with his revolver. (R. 659) Robyn Anderson got up and went into the bathroom. (R. 254) Some minute or two later, shots

were fired and George Nielson fell to the ground, mortally wounded. (R. 659) Robyn Anderson returned to the livingroom and saw George laying on the floor. (R. 255) She went to him and then went outside to call for help. (R. 259) She did not notice who in the room was holding the gun. (R. 256) The defendant's girlfriend, Sheila Tyler, then came out into the livingroom and saw the defendant standing in the livingroom by George but she did not see the gun. (R. 373) She noticed Don in the kitchen looking into the livingroom but she did not see the gun in Don's possession either. (R. 373) She then went outside after Robyn to assist in getting necessary help. (R. 376) The girls went downstairs to an apartment and telephoned the police. (R. 376)

Shortly thereafter, Don Duffy came down to the lower apartment carrying a gun and he set it on the coffee table. (R. 426, 378, 379) Two of the witnesses in the apartment claimed that Don made the statement, "I am going to tell them that I did it." (R. 425, 450)

When the police arrived, everyone pointed to the defendant, Cecil Loe, as the individual who had shot George, although none of them claimed to have seen the shooting other than Don Duffy. (R. 672) The police officer that took the defendant to jail claimed that the defendant told him that the defendant shot George Nielson. (R. 593) At trial, Don Duffy testified that he saw the defendant shoot George Nielson (R. 528) and defendant testified that he saw Don Duffy shoot George Nielson. (R. 666)

The jury found the defendant guilty of second degree murder. From that conviction, defendant appeals.

SUMMARY OF THE ARGUMENT

The Defendant contends that the admission into evidence of a statement made in the presence of Officer Breen was improperly admitted into evidence on the basis that it was involuntary and therefore, taken in violation of the Defendant's rights under the Fifth Amendment to the Constitution of the State of Utah.

The Defendant further contends that the State failed to prove, beyond a reasonable doubt, that the Defendant was the individual that committed the murder in this case and that Defendant had the requisite intent necessary to convict him of a Second Degree Homicide.

ARGUMENT

POINT I

THE STATEMENTS MADE BY DEFENDANT WERE INVOLUNTARY AND THEREFORE, IN VIOLATION OF HIS RIGHTS UNDER THE UTAH AND UNITED STATES CONSTITUTION

The Fifth Amendment to the United States Constitution and Article 1 Section 12 of the Constitution of the State of Utah, provide that an individual in a prosecution has a right against self-incrimination. This right has evolved through a number of decisions by the United States Supreme Court and the Utah Supreme Court to a point where a criminal Defendant is afforded a definite and specific right not to be required to give evidence against himself.

The most note worthy case, embodying the Court's position under these provisions of the Constitution, is that of Miranda v. Arizona, 384 U.S. 436 16 LED.2d 694 86 SCT. 1602 (1966). In this case, the Court prohibited not only the traditional police interrogation tactics involving violence, threats or force of coercion, but also prohibited common police tactics which involved psychological coercion resulting in a confession against the Defendant's interest.

Numerous cases have been decided since the Miranda decision which further delineate a Defendant's rights under the Constitution and furthermore, describe the inherent unreliability of an involuntary confession. The Miranda decision invoked the Fifth Amendment protections to criminal Defendants in custodial interrogation situations, reasoning that the psychological and physical coercions, once a Defendant has been taken into custody, render subsequent confessions or statements against the Defendant's interest suspect.

The case at hand presents the Court with a situation that is less aggravated than the Miranda situation, but is nevertheless, tainted with unreliable, involuntary statements. Here, the Defendant is stopped by police, taken into custody, while still in or about the Defendant's premises and preliminarily questioned concerning the events of the evening. At this point, the Defendant was cognizant of the fact that an individual had been shot and killed. The police actions, including taking the

Defendant into custody, made it obvious to the Defendant that he was the prime suspect in the shooting and the promptings of the police officers elicited a statement from the Defendant which, under the Miranda's decision should be suppressed. The scenario in this case was further exacerbated by the fact that the Defendant was in an extremely intoxicated condition at the time of the statement and the very nature of the statement made by the Defendant is a valid indication of the involuntary nature of such statements since a reasonable person in such a situation would not make an incriminating statement as was alleged here.

In addition, Defendant denies that he made the statements indicated by the officer. In the officer's police report, by the most amazing of coincidences, these alleged statements are not included. The officer called this a typographical error but it stretches the credulity of a reasonable man to imagine that of all the information contained in the report, these statements, which make up the more damaging part of the State's case against the Defendant, are the ones left out of the report.

POINT II

THE EVIDENCE, AS PRESENTED AT TRIAL, IS INSUFFICIENT TO PROVE THE DEFENDANT GUILTY BEYOND REASONABLE DOUBT OR CRIMINAL HOMICIDE MURDER IN THE SECOND DEGREE

Section 76-1-501 Utah Code Annotated, 1953 (as amended), places a burden of proof upon the State of beyond a reasonable doubt and in the absence of such proof, requires the Defendant be acquitted.

Counsel is mindful of this Court's rather strict standards of review when, in fact, the Court is asked to review the record to determine the sufficiency of a verdict. This view is expressed in State v. Newbold, 581 P.2d 991 (Utah 1972), where this Court hold "to set aside a jury verdict, evidence must appear so inconclusive and unsatisfactory that reasonable minds acting fairly upon it must have entertained reasonable doubt that the Defendant committed the crime." (Id. at 972)

In addition, the Court in State v. Horne, 364 P.2d 109 (Utah 1961), utilized the following language, that a jury should have found the testimony of the only witness against the Defendant "so inherently unprobable as to be unworthy of belief and upon objective analysis it appears that reasonable minds could not believe beyond a reasonable doubt that the Defendant was guilty." (Id. at 112)

In applying this standard of review to the present case, the jury was faced with a fact situation which showed only two individuals who were actually present and watching at the time of the victim's shooting. One of those individuals was Don Duffy who testified at the trial, the other individual was the Defendant. There was evidence that the Defendant had made incriminating statements against his best interest and there were statements and testimony to the fact that Donald Duffy had also made incriminating statements which were against his best interest. There was evidence presented at trial that showed that

Donald Duffy's description of the events as he claimed to have seen them were not consistent with the testimony of the other witnesses who were at the scene at various times. The defendant's testimony as to what events took place when George Nielson was shot do not conflict with testimony given by the other collateral witnesses. The testimony shows that the argument that had taken place through most of the night involved George Nielson, and Donald Duffy, not the defendant Cecil Loe which tends to substantiate the defendant's description of what transpired. When the police officers arrived at the scene the collateral witnesses reported to the police that Cecil Loe, the defendant, had the weapon and shot George Nielson. At trial, however, these witnesses state that although they did see Cecil Loe bring the gun out from his bedroom, they were not present at the time of the shooting and do not know who had the weapon either during the shooting or after the shooting. It is understandable, therefore, that having seen Cecil Loe bring the gun from the bedroom that their impression would be that he had used the weapon against George Neilson and although they did not see the shooting this explains their responses to the police officers when they arrived at the scene. The only person seen with the gun after the shooting is Donald Duffy. That fact combined with the statements he made when he brought the gun down to the lower apartment show him to be as likely a suspect as the defendant himself. Therefore, the evidence shows that a person

with a reasonable mind and acting fairly in response to the evidence must have entertained a reasonable doubt that the defendant actually committed the crime as required in the case of State v. Newbold. The evidence is no more conclusive that the defendant Cecil Loe perpetrated this offense against Mr. Neilson than it is that Donald Duffy actually pulled the trigger. Therefore, a reasonable mind would be forced to have a reasonable doubt as to the defendant's guilt.

CONCLUSION

Based upon the foregoing arguments and a thorough review of the evidence, the Defendant respectfully requests this Court to grant him a new trial.

RESPECTFULLY SUBMITTED this 15 day of August, 1986.

BERNARD L. ALLEN
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed four (4) true and correct copies of the above and foregoing brief to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Utah 84114, postage prepaid, this 18 day of August, 1986.

BERNARD L. ALLEN