

1987

Utah v. William Silas Case : Brief in Opposition to Certiorari

Utah Supreme Court

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870178 IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH	:	
	:	
Petitioner,	:	
	:	
vs.	:	Case No. 870178
	:	
WILLIAM SILAS CASE	:	
	:	CATEGORY 2
Respondent.	:	

RESPONSE IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI TO THE
UTAH COURT OF APPEALS

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Case No. 870178

WILLIAM SILAS CASE

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QUESTIONS PRESENTED FOR REVIEW

Petitioner asserts that the decision, in the aboved referenced matter, and the opinion of the Utah Court of Appeals was contrary to the standards set by this court in determining whether a witness is unavailable and consequently, testimony, given at the preliminary hearing, may be introduced at trial.

The Utah Court of Appeals determined that the use of the Uniform Act to Compel the Attendance of Witnesses, under the circumstances of this case, was the proper procedure to employ and was a reasonable means to require the attendance of that witness. Because the prosecutor did not utilize that method to compel the attendance of witnesses, the Court determined that the witness was not unavailable.

The Court also directed that evidence obtained from defendants motel room, without a warrant, should have been suppressed because there were no exigent circumstances present that necessitated an entry without a search warrant.

STATEMENT OF FACTS

William Silas Case was convicted, in the Third Judicial District Court, County of Tooele, State of Utah, of the offense of Aggravated Assault, a felony of the third degree.

At his trial, the alleged victim, Suzzanne McPerrson, did not appear. The Court determined that she was unavailable and permitted the use of her taped testimony from the preliminary hearing to be introduced at trial.

In the early hours of February 6, 1986, the defendant and Ms. McPerrson, were in his motel room at a truck stop in Lakepoint Utah. Screams were heard from the motel room followed by the defendant informing the motel manager that there was a "crazy women" in his room and that the police should be contacted.

Ms. McPerrson appeared in the managers office bleeding from cuts. The alleged victim maintained that the defendant had tried to kill her. The defendant maintained that the alleged victim was attempting suicide and the struggle in the motel room was a result of his attempt to prevent her self destruction.

Ms. McPerrson was served a subpoena while she was in the hospital and she appeared at the preliminary hearing and gave testimony regarding the incident. She gave the county attorney an address and telephone number in Mobile, Alabama, where she was mailed a subpoena which she acknowledged by telephone.

On the morning of the trial, Ms. McPerrson telephoned to indicate that she would not be present for the trial.

A tape of her preliminary hearing was substituted for her testimony. It is unclear whether the jury took the tape into the jury room as part of their deliberations.

There was also evidence, which the police seized from the defendant's motel room, without a warrant, subsequently introduced at trial. The Utah Court of Appeals reversed the defendant's conviction and remanded the matter for a new trial. As a guidance for the new trial, the Court determined that the evidence had been improperly seized and directed that it should be suppressed.

ARGUMENT

Point I

THE UTAH COURT OF APPEALS OPINION FINDING THAT THE STATE'S WITNESS WAS NOT UNAVAILABLE WAS NOT IN CONFLICT WITH THIS COURT'S DECISION IN STATE V. CHAPMAN

This Court determined in State v. Chapman, 655 P.2d 1119 (Utah, 1982) that, "testimony of an unavailable witness given at

a preliminary hearing can be used at trial provided prosecutorial authorities have made a good faith effort to obtain his presence at trial." Chapman supra at Pg.1122.

In that case there were two witnesses, who did not appear at trial and whose testimony at preliminary hearing was used after a finding of unavailability. This Court recognized that the majority rule required the mandatory use of the Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings, Title 77, Chapter 21, Section 1 et. seq, Utah Code Annotated (1953 as amended) finding that, "we cannot affirm the admission of preliminary hearing testimony where the party's efforts to secure the witnesss' attendance are cursory, where the party had clear indications that the witness would not attend or where the party had obvious means of obtaining those indications but neglected to do so." Chapman supra at Pg.1122.

In the Chapman decision, the testimony of Donald Kearney could not be substituted by his taped testimony. However, the Court determined the second witness, Richard Scoville, was unavailable and the prosecutor had made reasonable and good faith efforts to secure his attendance.

The facts of the case show that Mr. Scoville was mailed a subpoena which he acknowledged by affixing his signature to that document. Every indication was that Mr. Scoville would appear for trial until he informed the county attorney that his employer would not allow his attendance. The prosecutor then attempted to

contact Scovilles employer, but was unsuccessful. This, apparently, left five days before trial to implement the Uniform Act. It also appeared that Mr. Scoville's testimony was more cumulative than crucial in the State's presentation of the case. It was Mr. Kearney who provided the more crucial facts in a case that had other witnesses to the offense.

This court recognized, in the Chapman case, that the determination of unavailability was a matter of case by case analysis. The circumstances of the Chapman case lead to the conclusion that witness Kearney was not unavailable although his testimony had sufficient indicia of reliability to permit its introduction. Witness Scoville was unavailable because there was sufficient compliance with this Court's two pronged test of unavailability.

The Court of Appeals, in rendering its decision in the William Silas Case matter, State v. Case, 55 Utah Adv. Rep. at P.63, (Ct. App. 1987), analyzed the matter in relation to this Court's decision in Chapman. There were four facts upon which the Court of Appeals determined that the witness was not unavailable.

First, although McPerrson had been mailed a subpoena and acknowledged the same by telephone, there was no formal acknowledgement. Scoville, in the Chapman case had returned a signed copy.

Secondly, the witness McPerrson was a very crucial witness.
The Court Appeals acknowledged,

"Defendant could only be found guilty through the victims testimony that he stabbed her and that she was not in the process of trying to end her life. The right of confrontation is most critical in a situation such as this. Two conflicting stories are told with little or no corroborative evidence available. The jury must decide whom to believe. It is vitally important that the witness be present and subject to cross-examination in the presence of the jury."

Case supra at Pg.64

Third, the record contained sufficient indication that the witness, McPerrson, was a transient and not in a position, financially, to assure the state that she could be present for the trial.

"Ms. McPerrson's life style and nomadic habits make it clear that she possessed the potential to disappear or refuse to appear for trial. The prosecutor was aware of the distance the victim would have to travel to be present. Her financial condition evidenced a distinct lack of funds with which to travel. On balance, the prosecutor should have been wary of this witness despite her telephone assurances."

Case, supra at Pg.64

Fourth, there was an indication, from the record, that the tape of the testimony of witness McPerrson was played again in the jury room. The Court noted, "if this tape was taken into the jury room and was played, there is an additional erroneous

deprivation of the right of confrontation and an over reliance on the testimony by the jury." Case, supra at Pg.64.

On these four basis the Court of Appeals determined that, although the prosecutor acted in good faith, his efforts to secure the witness were not reasonable and consequently the finding of unavailability was erroneous.

The reasonableness of the prosecutor's actions, in any given case, must be viewed under those particular circumstances. The Court of Appeals judged this matter in light of the Court's decision in Chapman and applied the principles and test as articulated therein.

Point II

THERE IS NO BASIS TO REVIEW THE COURT'S DECISION REGARDING THE SEARCH AND SEIZURE ISSUE.

In connection with defendant's arrest at his motel room, the police conducted a search and obtained evidence which was subsequently introduced at trial. On appeal, the issue was raised that the search was improperly conducted and consequently the evidence obtained therefrom should have been suppressed.

The Court of Appeals, having determined that the matter should be remanded for trial, decided the issue of suppression as guidance for the trial court. In relation to this Court's decision in State v. Harris, 671 P2nd 175 (Utah 1983) the Court reasoned that the evidence should have been suppressed because no

exigent circumstances were present that allowed the police to search the motel room without a search warrant.

The basis for this opinion was firmly grounded on principles concerning the need for search warrants before the police could have entered the motel room. Respondent does not appear to dispute those facts or even the logical basis upon which they were applied to the law. If this Court determines to review the unavailable witness question, then the further determination would need to be made as to whether the improper search, independant of that issue would mandate a reversal and a new trial.

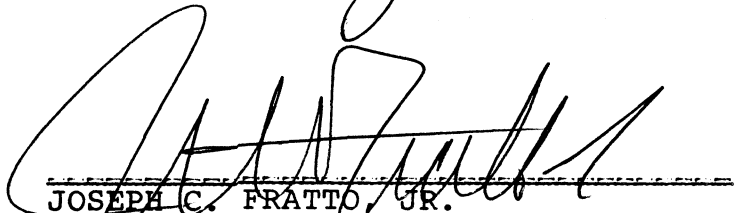
The Court of Appeals determined that a new trial was required because of the unavailable witness issue. But in light of their decision regarding the search and seizure question, a new trial may be also appropriate.

CONCLUSION

Because the Utah Court of Appeals properly applied the principles and tests of State v. Chapman, and there is no issue

regarding the search of the motel room, the State's Petition for Writ of Certiorari should be denied.

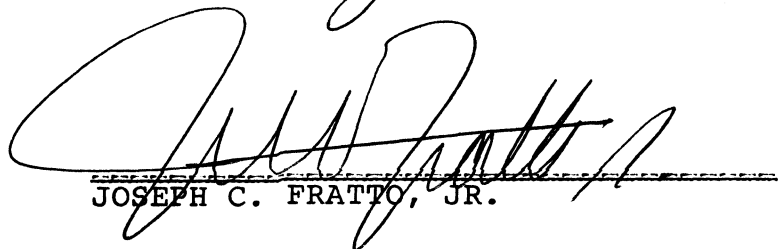
Respectfully submitted this 5th day of June, 1987.



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CERTIFICATE OF SERVICE

I hereby certify that four (4) true and correct copies of the foregoing Response in Opposition to Petition for Writ of Certiorari to the Utah Court of Appeals were delivered to the Office of the Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84111, this 5th day of June, 1987.



JOSEPH C. FRATTO, JR.