

1980

# State of Utah v. Randolph Craig : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH, :  
Plaintiff-Respondent :  
v. : Case No. 16422  
RANDOLPH CRAIG, :  
Defendant-Appellant :

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BRIEF OF APPELLANT

Appellant, Randolph Craig, appeals from a conviction of Aggravated Robbery rendered in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Jay E. Banks, Judge presiding.

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Clerk, Supreme Court, Utah

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant, Randolph Craig, appeals from a conviction of Aggravated Robbery rendered in the Third Judicial District Court, in and for Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

Appellant seeks reversal of his conviction of Aggravated Robbery and the dismissal of those charges against him. Counsel on appeal, ANDREW A. VALDEZ, submits this brief in compliance with Anders v. California, 386 U.S. 738 (1967).

RELIEF SOUGHT ON APPEAL

Appellant seeks to have the lower court's conviction reversed and to have the case remanded to the Third Judicial District Court for a new trial, or in the alternative, to have the matter dismissed.

STATEMENT OF THE FACTS

Between 2:30 a.m. and 3:00 a.m. on July 6, 1978, the 7-Eleven Store at 9th South and Fifth East, in Salt Lake City,

Salt Lake County, Utah, was robbed of approximately \$150.00 (R.82)

by two black men alleged to be wearing tank tops. (R. 23) After producing money from the register, the assistant manager of the store, Robert Skelton, was injured by a blow to the head with a weapon. State's witness, Sargeant Allan B. Clark, testified that he was dispatched on July 6th in the early morning hours to look for two male blacks who were seen proceeding north on 400 East in the vicinity of Eighth to Seventh South. As Officer Clark crossed Sixth South southbound on 500 East he observed two individuals cross the intersection of Sixth South and Forth East. Officer Clark could not give a description of the two; he could only ascertain they were two male negroes. The officer made a U-turn, went west on Sixth South until he could see north on Fourth East, and did not see anybody. (R. 52, 53, 54, 55)

It was the testimony of Officer Charles Cockayne that at approximately 5:00 a.m. on July 6th he observed an object which looked like a form of a man in a field on Fourth East and Sixth South. Only one such subject was seen. (R. 57, 58) The officer ran towards the object and pointed the location to two other officers, who were moving towards the field, and told the suspect to freeze. Officer Cockayne further testified that one of the other officers then stated that another individual was leaving the area. Officer Cockayne did not observe anyone else leave the area. (R. 55, 59) After the suspect was apprehended Officer Cockayne and other officers conducted a yard to yard search of the area. (R. 60, 61)

Approximately one half hour to forty-five minutes after the initial observance of the apprehended individual, Officer Cockayne finds Randolph Craig crouching near a bush at an estimated distance of 150 yards away from the field. Mr. Craig was wearing a denim cap, a black leather jacket, shoes, and shirt. (R. 62, 63) Mr. Craig was not wearing a tank top, did not have any weapon, no evidence was found on Mr. Craig or in the area to connect him with the 7-11 robbery. (R. 69, 70)

At trial the 7-11 employee, Robert Skelton, testified that on the night of the robbery he gave the following description of Mr. Craig: A. six foot tall; B. wearing a black leather jacket; C. Negro race; D. Beret. (R. 97, 99) However, he further testified that the black leather jacket and hat found on Mr. Craig when arrested July 6th, were not the same leather jacket and hat the robber wore. Moreover, Mr. Skelton testified at trial that he saw Mr. Craig on three occasions on July 6th. First: Mr. Craig came in the 7-11 to purchase items with another black male. Mr. Skelton remembered each specific item purchased. Mr. Craig was there for five minutes. Second: Mr. Craig was near the phone booth in front of the store. Third: during the course of the robbery. Each time Mr. Craig, according to Mr. Skelton, was without a mask and wearing a black leather jacket, beret, and tank top. (R. 97, 98, 99) Further, Mr. Skelton admitted under oath that prior to Mr. Craig's preliminary hearing, a line-up



was held at the Metropolitan Hall of Justice in which Mr. Craig, with others, was brought face to face with Skelton to determine if Mr. Skelton could identify individuals who robbed the 7-11 store on July 6th. Mr. Skelton stated at the line-up there was nobody there (R. 100, 101, 103). Mr. Skelton further testified that because Mr. Craig is near the co-defendant in court, it helps to "jar" his memory and aids him to identify Mr. Craig. (R. 124, 125)

It was the testimony of Patrick Coco Williams, who had pled guilty to the charge of the lesser offense of Robbery of the 7-11 store (R. 18), that he did not know Mr. Craig on July 6, 1978.

Defendant Randolph Craig testified in his own behalf that he was hitchhiking from San Francisco to New York and arrived in Salt Lake on July 3, 1978. On July 5th, he was sitting in the Greyhound Bus Station with the intent to sleep there overnight and leave Salt Lake in the morning. At midnight Mr. Craig was asked to leave because he did not have a ticket and had spent the two nights before at the bus station. Mr. Craig then went to Howard Johnson's up the street for about one hour, and had coffee and a doughnut. He then went outside in front of the hotel and sat for awhile. Mr. Craig met an individual who was drinking beer and asked him for a beer and for a place to sleep. The individual and Mr. Craig drank some beer and rode around town for some time. The individual dropped Mr. Craig off at Liberty Park so Craig

July 6th. Mr. Craig testified that he remained in the park for a couple of hours and that he had left his luggage at the Continental Trailway Bus Depot in a locker. Craig further verified that defendant's Exhibit 16-D was the key found on him when arrested on July 6th, and belonged to the locker where he placed his luggage. Furthermore, Craig stated, at trial, he left the park at approximately 5:00 to 5:30 a.m. and was walking towards Continental Trailways when he observed several police cars zooming up and down the street. Mr. Craig wanted to avoid being hassled by them and so he stood and leaned by a house. He was subsequently discovered by the police and arrested. Randolph Craig further stated he did not know the co-defendant, was not in the vacant field where Mr. Williams was apprehended, and did not rob the 7-11 store on July 6th, 1978, at approximately 2:45 a.m. (R. 133-139)

Defense counsel moved to dismiss the case against the defendant or in the alternative for a direct verdict upon the state resting. Both motions were denied. (R. 129-131)

Upon the defense resting defense counsel renewed defendant's motion to dismiss and for a directed verdict. Judge Banks stated he had some doubt as to Mr. Craig's guilt, but again denied both motions. (R. 168, 169)

## ARGUMENT

### POINT I

THE TRIAL COURT ERRED IN DENYING  
APPELLANT'S MOTION FOR DISMISSAL AT  
THE CONCLUSION OF THE CASE AND IN  
SUBMITTING THE CASE TO THE JURY  
BECAUSE THERE WAS INSUFFICIENT  
EVIDENCE TO ESTABLISH THE DEFENDANT'S  
GUILT BEYOND A REASONABLE DOUBT.

This Court has on several occasions stated the rules concerning the granting of a new trial on the basis that the verdict was not supported by the evidence. In State v. Cooper, 114 Ut. 531, 201 P.2d 764, 770 (1949), this Court stated:

The question of granting or denying a motion for a new trial is a matter largely within the discretion of the trial court. This court cannot substitute its discretion for that of the trial court. We do not ordinarily interfere with the rulings of the trial court in either granting or denying a new trial, and unless abuse of, or failure to exercise, discretion on the part of the trial judge is quite clearly shown, the ruling of the trial court will be sustained.

It is apparent that this Court does have the power to order a new trial in appropriate cases. This Court has said that:

We are not unmindful of the settled rule that it is the province of the jury to weigh the testimony and determine the facts. Nevertheless, we cannot escape the responsibility of judgment upon whether under the evidence, a jury could, and with reason, conclude the defendant's guilt was proved beyond a reasonable doubt. State v. Williams, 111 Ut. 379, 180 P.2d 551, 555 (1947).

A criminal defendant's motion to dismiss must be granted by the trial court thereby keeping from the deliberation of the jury the question of the defendant's guilt unless the prosecution has introduced substantial evidence of the defendant's guilt. For a question of guilt to go to a jury, it is not enough that the State merely introduce substantial evidence that an Aggravated Robbery has been committed. The State must also show by substantial evidence that the defendant was the perpetrator of the crime.

The Utah Supreme Court in a least two cases, Seybold v. Union Pacific Railroad Company, 121 Utah 6, 239 P.2d 174, 177 (1951), and Continental Bank and Trust Company v. Stewart, 4 Utah 2d 228, 291 P.2d 890, 892, has cited the proper test for determining whether or not the State has born its burden.

The Seybold and Continental Bank cases both rely on the test developed by Wigmore, 9 Wigmore 3d Ed. Section 2494, to set the standard of proof which must be met by the prosecution. As cited in both cases:

"(The proposition) cannot be, is there evidence? . . . The proposition seems to me to be this: Are there facts in evidence which, if unanswered, would justify men of ordinary reason and fairness in affirming the question which the Plaintiff is bound to maintain."

In the criminal case of State v. Garcia, 11 Utah 2d 167, 355 P.2d 57 (1960), the Supreme Court also delineated the standard which should be utilized by the trial court in determining whether or not the prosecution has met its burden of introducing substantial evidence of a defendant's guilt.

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The opinion in Garcia states:

It is universally recognized that there is no jury question without substantial evidence indicating defendant's guilt beyond a reasonable doubt. This requires evidence from which the jury could reasonably find the defendant guilty of all material issues of fact beyond a reasonable doubt. Supra at 59.

In the instant case appellant contends that but for appellant being black and unfortunately cast to stand trial amongst two black co-defendants, no jury could have reasonably and fairly have found the appellant guilty given the insubstantial evidence presented by the prosecution.

The appellant asserts that the question of guilt rests on the identification by Robert Skelton. Mr. Skelton was not able to identify Mr. Craig when Mr. Craig was not present in a courtroom seated with two other black males who were also defendants in this matter. Furthermore, each time Mr. Craig was identified he and the other two black males were the only black people in the room. Moreover, Mr. Skelton at a line-up was more definite that there was nobody there he could recognize. Appellant was, in fact, in the line-up, he was not hidden behind others, he was taller than any others in the line-up, and looked sufficiently different from the rest.

Furthermore, appellant contends that taken in its entirety the State did not meet its burden of introducing substantial evidence of defendant's guilt. The State presented

no evidence other than the tainted identification and the presence of the defendant in an area where another suspect was apprehended. This in itself is not substantial evidence that the defendant was the perpetrator of the crime. In the instant case Mr. Craig's presence is contrasted by the conflict in police officers testimony as to whether there was anybody, in fact, who fled the area. Additional contrasts were: the clothing appellant was wearing and the clothing described by the victim, plus the inability of the victim to recognize the clothing as the same; no evidence to connect appellant with the robbery was found on appellant or in the area of his arrest; the appellant's own testimony that he had not been at the 7-11, but was hitchhiking through Salt Lake and was on his way to a bus depot where he had locked his luggage, plus the further corroboration of appellant's testimony, i.e. presentation to the Court of the key to the locker where his luggage was stored.

### CONCLUSION

Although the prosecution made a substantial showing that there had been an Aggravated Robbery at the 7-11 Store, the State failed to show by substantial evidence that the defendant was involved in the commission of that offense. Therefore, the trial court erred in denying defendant's motions to dismiss and submitting the case to the jury. Appellant

asserts that the conviction should be reversed or, in the alternative, appellant should be granted a new trial.

Respectfully submitted,

ANDREW A. VALDEZ  
Attorney for Appellant