1980

State of Utah v. Randolph Craig : Brief of Respondent

Utah Supreme Court

IN THE SUPREME COURT OF THE

STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

RANDOLPH CRAIG,

Defendant-Appellant.

Case No. 16422

BRIEF OF RESPONDENT

APPEAL 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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IN THE SUPREME COURT OF THE

STATE OF UTAH

STATE OF UTAH,	:	
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RANDOLPH CRAIG,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with aggravated robbery, in violation of Utah Code Ann. § 76-6-302 (1953), as amended.

DISPOSITION IN THE LOWER COURT

Appellant was tried before a jury and found guilty of one count of aggravated robbery on September 20 and 21, 1978, in the Third Judicial Court, in and for Salt Lake County, State of Utah, the Honorable Jay E. Banks, presiding. On October 20, 1978, appellant was committed to the custody of the Division of Corrections for a ninety day evaluation pursuant to Utah Code Ann. § 76-3-404 (1953), as amended. On January 22, 1979, appellant was again committed to the custody

of the Division of Corrections for another such ninety day evaluation. On April 3, 1979, appellant was sentenced to the Utah State Prison for the indeterminate term of not less than five years to life.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the verdict and judgment of the lower court.

STATEMENT OF THE FACTS

At about 2:50 a.m. on July 6, 1978, Robert Skelton, assistant manager of the 7-11 store at Ninth South and Fifth East in Salt Lake City, Salt Lake County, Utah was robbed at gunpoint of approximately one hundred and fifty dollars by two black men (Tr. 82, 83). The men told Mr. Skelton to give them the money from the till. Mr. Skelton put currency from the till into a paper sack. One of the assailants reached into the till and put what coins he could reach from the till into the paper bag. Mr. Skelton gave the bag to one of the assailants and was in the process of climbing over the counter when he was struck by the shotgun wielded by one of the men, later identified by Mr. Skelton at trial as Kendal Lee Poole (Tr. 83, 86, 121).

The two black men were in the store for approximately five minutes, and the store was well lighted at the time of the robbery (Tr. 87). Robert Skelton was in a position to

vehicle sped up and almost immediately made a right turn to go westbound on Downington Avenue (Tr. 24). Sergeant Brown followed the suspect automobile and saw it stopped at the north curb of the street. He observed two individuals running from the car northward up a driveway of a house on the street (Tr. 26).

Sergeant Brown approached the car and saw a third individual who had gotten out and who was walking away from the car. Sergeant Brown ordered the individual to stop, detained him, and later had him arrested (Tr. 26-29). Sergeant Brown identified defendant Poole at trial as the individual arrested at that time (Tr. 27).

Sergeant Brown observed a shotgun in plain sight on the rear floor of the vehicle which matched the description of the weapon used in the robbery that had been given by the police dispatcher (Tr. 28, 29). By that time, Officers Pless and Adams had arrived at the scene, pursuant to communication from Sergeant Brown. Officer Pless entered the car, searched it, and seized evidence (Tr. 29). Sergeant Brown and Officer Pless made a search of the area for suspects while Officer Adams placed defendant Poole under arrest. The searching officers were unable to locate the suspects (Tr. 30). In addition, other police officers called into the area were

unable to locate the suspects as there were only two or three officers searching on foot at any one time (Tr. 41).

Officer Michael Pless testified that he seized several evidentiary items from the suspect vehicle, including a shotgun, some currency and coins in a sock, cigarettes, and food items. Pless testified that he recovered one hundred thirty-four dollars in currency and twenty-five dollars and two cents in coins (Tr. 49).

Sergeant Allen Clark was in the vicinity of Fifth East and Sixth South in the early morning hours of July 6, 1978, engaged in his patrol activities and specifically looking for two individuals suspected of the robbery of the 7-11 store. The suspects had been described by the initial police investigator on the scene and by later police radio broadcast (Tr. 52). Some time after the robbery, the police dispatcher broadcast additional information that the two suspects who were still loose had been seen proceeding north on Fourth East in the vicinity of Eighth to Seventh South. At the time of the broadcast, Sergeant Clark saw two black male individuals cross the intersection of Sixth South and Fourth East northbound. Clark broadcast this information immediately, then made a "U" turn after passing the intersection of Fifth East and Sixth South southbound, went west on Sixth South to where he could see north on Fourth East, and saw

nobody (Tr. 52-54).

Officer Charles Cockayne was in the vicinity of Sixth South and Fourth East at approximately 5:00 a.m. on July 6, 1978, looking for suspects of the robbery of the 7-11 store. Cockayne testified that while at that location he saw in a field an object which he perceived to have the form of a man. It was still dark at that time, and the field was covered with dry weeds standing three to four feet high. Officer Cockayne stared at the object for a moment, saw that it moved, and alerted other police officers by radio that he had "possible suspects in the field." (Tr. 57-58). Cockayne got out of his car, ran toward the field looking at the suspect and pointed out the location of the suspect to Officers Rackley and Adair, who had arrived at the scene. These other officers approached the field from another direction and one of them stated that another individual was fleeing through the field (Tr. 59). The suspect seen by Cockayne was subsequently arrested, and the officers in the vicinity cordoned off the area and began a yard to yard search of the area (Tr. 60). After searching for approximately one half-hour to forty-five minutes, Officer Cockayne climbed over a six-foot high fence behind a house to check some bushes located in front of a business

building (Tr. 61, 62). Cockayne found appellant in a sitting position in the bush. Appellant's cap was about the same level as the bushes and he was wearing a black leather jacket, shoes, shirt, levis, and a denim cap.

It was the testimony of Officer Russell Adair that he saw appellant run from the field which Adair had entered, jump a fence and disappear into a yard (Tr. 73, 74). Officer Adair testified further that appellant had on a dark jacket and some type of hat (Tr. 74).

Robert Skelton, the victim of the robbery, testified that he had seen appellant three times on the night of the robbery. First, appellant and another black man had come into the store to purchase several items. Second, Skelton saw appellant near the phone booth in front of the store. Third, Skelton saw appellant during the course of the robbery (Tr. 98, 99). Skelton failed to identify appellant during the course of a lineup prior to appellant's preliminary hearing, but explained at trial:

> As far as I can remember, I was told at the time of the lineup to put down a person's number in a block and what that person played their role in the robbery [sic] if I was positive that was the person. In my own mind I am not going to point a finger at somebody and say that is the person if I in my own mind at that time was not positive that that is the person, and that is why I said I did not recognize anybody at the time. (Tr. 127).

At trial Mr. Skelton testified that there was no chance that he could be mistaken about the identification of appellant as a participant in the robbery of the 7-11 store (Tr. 121,122). Mr. Skelton further testified that he was positive about the identification of appellant as one of the perpetrators of the robbery (Tr. 127).

Appellant testified in his own behalf at trial that he was in Salt Lake on the night of the robbery, and had been in Salt Lake for two days previous. Appellant had less than twenty dollars with him when he arrived in Salt Lake (Tr. 141). He did not try to stay at the Salvation Army or other organization that puts transients up, and he testified that he did not know such places were open all night even though he testified that he had hitchhiked through most of the States of the Union (Tr. 141, 144, 145). According to appellant's testimony, he had gotten a ride from a long-haired individual in the early morning hours of July 6, 1978 to Liberty Park where appellant spent the night (Tr. 135, 136). Though appellant had been drinking a lot of beer and had not had any sleep for two days, he testified that he could not sleep in the park (Tr. 144). Appellant further testified that he left the park and started to walk in the direction he thought would lead him to the Continental Trailways Bus Station where he had left some

luggage. Appellant testified that he saw police cars with their spotlights and flashing lights on, leaned up against a house until the cars passed by, climbed over a fence in a backyard and hid in the bushes until he was found by Officer Cockayne (Tr. 144-146).

At trial, appellant's motions to dismiss the case against him, or in the alternative, for a directed verdict upon the State resting were denied by Judge Banks (Tr. 129-131). Appellant's motions to dismiss and for a directed verdict were renewed upon the defense resting and were again denied by Judge Banks (Tr. 168, 169).

POINT I

THE TRIAL COURT DID NOT COMMIT ERROR IN DENYING APPELLANT'S MOTION FOR DISMISSAL AT THE CONCLUSION OF THE CASE SINCE THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT AND JUDGMENT OF GUILT.

In proceedings before Judge Banks and out of the presence of the jury, appellant moved for dismissal of the case against him, or in the alternative, for a directed verdict, at the conclusion of the respondent's case-in-chief on the grounds that there was a reasonable doubt as to Robert Skelton's identification of appellant and that there was conflict between the testimony of Officer Cockayne and Officer Adair as to whether appellant was in the field where defendant Williams was found (Tr. 131). Judge Banks denied both motions. Appellant again moved for dismissal or in the alternative for a directed verdict upon defense resting, and the motions were again denied by Judge Banks on the grounds that since there was direct testimony that appellant was the man that robbed Skelton, the question of appellant's guilt was a question for the trier of fact, the jury, to determine (Tr. 168, 169).

This Court, in State v. Penderville, 2 Utah 2d 281, 272 P.2d 195 (1954) upheld a conviction of second degree murder in spite of a challenge to the trial court's failure

to direct acquittal. The Court there wrote:

> It has been repeatedly held by this court that upon a motion to dismiss or to direct a verdict of not guilty for lack of evidence that the trial court does not consider the weight of the evidence or credibility of the witnesses, but determines the naked legal proposition of law, whether there is any substantial evidence of the guilt of the accused, and all reasonable inferences are to be taken in favor of the State . . .[I]f there is before the Court evidence upon which reasonable men might differ as to whether the defendant is or is not guilty, he may deny the motion (emphasis added).

272 P.2d 195, 198.

See also State v. Rivenburgh, 11 Utah 2d 95, 355 P.2d 689 (1960); State v. Woodall, 6 Utah 2d 8, 305 P.2d 473 (1956); and State v. Garcia, 11 Utah 2d 67, 355 P.2d 57 (1960).

In the instant case, there was direct testimony of the victim of the robbery, Robert Skelton, that appellant was one of the persons who committed the robbery at the 7-11 store. Appellant testified that he did not rob Mr. Skelton. Such conflicting testimony satisfies the Penderville, supra, provision that the court may deny the motion to dismiss if the Court has before it evidence upon which reasonable men might differ as to whether the defendant is or is not guilty.

In the case of State v. Romero, 554 P.2d 216 (Utah 1976), this Court established the burden which the prosecution

must bear to establish a prima facie case:

> In order to submit a question to the jury it is necessary that the prosecution establish a prima facie case. That is, it is necessary to present some evidence of every element needed to make out a cause of action, and it has long been established that such may be proven by direct and by circumstantial evidence. But the evidence required need only be that which is sufficient to conform to the statutory definition of the crime charged, and the "element of each offense" is defined as (a) conduct, attendant circumstances, or results of conduct; and (b) the requisite mental state.

At the trial of this case, the State introduced direct testimony that established that an Aggravated Robbery was committed by an armed individual at the time and place in question The State introduced further direct testimony that a second individual assisted in the robbery. This second individual is clearly guilty of Aggravated Robbery under the provisions of Utah Code Ann. § 76-2-202 which provides that:

> Every person . . . who directly commits the offense . . . or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct

The State produced direct evidence that established appellant's identity as the second individual involved in the robbery. Robert Skelton, the victim of the robbery testified as follows at trial:

Q. Mr. Skelton, is there any chance that you're mistaken about the identification of Mr. Craig?

A. No, sir.

Q. Are you certain that Mr. Craig was the individual that you observed with Mr. Poole at the time you were robbed?

A. Yes, sir. . .

Q. Is there any question in your mind that your identification is wrong?

A. No, sir.

Q. You have no doubt whatsoever?

A. No doubt.

(Tr. 121, 122).

It is a well-settled axiom of criminal law in this State that the jury is the sole judge of the credibility of witnesses. (State v. Sullivan, 6 Utah 2d 110, 307 P.2d 212 (1957); State v. Estrada, 119 Utah 339, 227 P.2d 247 (1951); State v. Moore, 111 Utah 458, 183 P.2d 973 (1947); State v. Mills, 530 P.2d 1272 (Utah 1975); State v. Romero, supra; and State v. Wilson, 565 P.2d 66 (Utah 1977)).

The more narrow question here involves the credibility of the victim of the crime, Robert Skelton, who gave uncorroborated testimony at trial of the events of the robbery (Tr. 90-127). The recent case of State v. Middelstadt, 579 P.2d

908 (Utah 1978), sets out the basis on which a reviewing court must deal with uncorroborated evidence.

> In general, the common law supports the contention that a conviction may be sustained upon the uncorroborated testimony of the victim, and that such evidence is not insubstantial simply because the testimony is conflicting in some respects. As to the quality of the testimony given, it is settled that it must be so improbable that it is completely unbelievable before it is insufficient to uphold a conviction. We do not find that to be the case here (emphasis added).

579 P.2d at 911.

Appellant does not claim that Skelton's testimony is so improbable that it is completely unbelievable. Respond submits that Skelton's testimony is not "completely unbeliev as witnessed by the jury's one hour deliberation and verdict of guilty after a two-day trial.

In State v. Romero, supra, the Utah Court ruled, w regard to a reviewing Court's weighing the evidence, that:

> This Court has long upheld the standard that on an appeal from conviction the Court cannot weigh the evidence. . . Further, this Court has maintained that its function is not to determine guilt or innocence, the weight to give conflicting evidence, the credibility of witnesses, or the weight to be given defendant's testimony . . . 'We are concerned only with the question of the sufficiency of the evidence to sustain the convictions by showing that the jury would have found beyond a reasonable doubt that defendants were guilty.

554 P.2d at 218.

This jury role was echoed in State v. Mills, supra, where this Court said:

> It is the prerogative of the jury to judge the weight of the evidence, the credibility of witnesses, and the facts to be found therefrom.

530 P.2d at 1272.

As to the specific evidentiary matter of uncorroborated testimony, State v. Middelstadt, supra, holds:

> . . . there is no rule governing how many witnesses are needed or that the testimony need be corroborated by other evidence before the trier of fact can decide how to determine the weight of the testimony.

579 P.2d at 911.

The jurors were not abligated to accept appellant's explanation of his involvement or non-involvement in the crime, as was decided in State v. Schoenfeld, 545 P.2d 193 (Utah 1976):

> In regard to defendant's contention that the evidence is not sufficient to justify his conviction, these observations are pertinent: The jury were not obligated to accept as true defendant's won version of the evidence nor his self-exculpating statements as to his intentions and his conduct. They were entitled to use their own judgment as to what evidence they would believe and to draw any reasonable inferences therefrom (emphasis added).

545 P.2d at 195.

The Schoenfeld rule is most applicable in the present matter. After the State had presented its evidence, and appellant had testified as to his non-involvement in the robbery, the jury was given the matter resolution. At that point, the jurors may properly "use their own judgment" in arriving at the verdict. Their deliberations must be given great deference in order for them to determine "what evidence they would believe and to draw any reasonable inferences therefrom." Id.

The standard a reviewing Court must apply in determining whether to reverse a conviction or an " insufficiency of the evidence" claim is set out succinctly in State v. Romero, supra:

> This Court has set the standard for determining sufficiency of evidence to require that it be so inconclusive or so inherently improbable that reasonable minds could not reasonably believe defendant had committed a crime. Unless there is a clear showing of lack of evidence, the jury verdict will be upheld.

554 P.2d at 219.

Respondent submits that in viewing the evidence in its entirety, as the jury did, it is not "so inconclusive or so inherently improbable that reasonable minds" could not convict appellant. On the contrary, respondent contends that

the evidence was sufficient and substantial and that, therefore, the jury verdict should be upheld.

Finally, respondent would offer the relevant language of State v. John, 586 P.2d 410 (Utah 1978) as a dispositive statement in resolving this appeal:

> The cautionary rule just referred to [the reasonable hypothesis rule] is but a specific application of the most basic principle in our criminal law: that an accused is presumed to be innocent until his guilt is proved beyond a reasonable doubt. Consequently, if there is any reasonable view of the credible evidence which is reconcilable with the defendant's innocence, it would naturally follow that there would be a reasonable doubt as to his guilt. But we emphasize that this does not mean just any view of any of the evidence, however unsubstantial or incredible, which a party to such a controversy may dream up.
>
> * * *
>
> The proper application of that rule requires that it be based upon what the jury regards as substantial and credible evidence. This is necessarily true because in performing their duty as finders of the fact they are the exclusive judges of the credibility of the evidence. In so doing, they may consider all of the facts affirmatively shown, as well as any unexplained areas, and draw whatever inferences may fairly and reasonably be drawn therefrom in the light of their own experience and judgment. In considering what happened in this case in accordance with the reasoning discussed above, the jurors could fairly and reasonably conclude that it was the defendant who [committed the crime.]

586 P.2d at 412 (emphasis added).

Respondent suggests that the same reasoning is applicable to the present case and resolves the appeal in favor of the respondent.

POINT II

ON APPEAL, EVIDENCE SHOULD BE VIEWED IN THE LIGHT MOST FAVORABLE TO THE VERDICT OF CONVICTION.

At trial, the finder of fact, in this case the jury, found appellant guilty of Aggravated Robbery. On appeal, the evidence should be viewed in the light most favorable to the verdict of conviction. State v. Ward, 10 Utah 2d 34, 341 P.2d 865 (1959); State v. Berchtold, 11 Utah 2d 208, 357 P.2d 183 (1960). The finder of fact, here the jury, was in the best position to observe the facial expressions, mannerisms and tone of voice of witnesses and thus was in the best position to weigh the evidence. Those kinds of judgments are difficult, if not impossible, to make on appeal. By examining the evidence, however, it is obvious that the jury's verdict is heavily supported by the evidence. The verdict will not be overturned on appeal unless it appears that the evidence was so inconclusive or unsatisfactory that reasonable minds must have entertained reasonable doubts that the crime was committed. State v. Sullivan, supra; State v. Danks, 19 Utah 2d 102, 350 P.2d 146 (1960).

Further, the Utah Court has determined that on appeal from conviction, the Supreme Court must assume that the jury believed those aspects of evidence and drew inferences that reasonably could be drawn therefrom in the light favorable to the verdict. State v. Erickson, 568 P.2d 750 (Utah 1977); State v. Gandee, 587 P.2d 1064 (Utah 1978). And where the defendant's version of what occurred is sharply different in vital aspects from the State's evidence, the Supreme Court is obliged to assume on appeal from a conviction that the jury believed that which supports their verdict, State v. Reddish, 550 P.2d 728 (Utah 1976). In other words, the strong presumption is the trial verdict is correct. Appellant, tor prevail, has the burden to prove that the verdict was unreasonalbe, and this he has failed to do.

The testimony of appellant is highly improbable and amounts to nothing more than self-serving protestations of innocence. This Court has pointed out that:

> A finder of fact is not necessarily bound to accept as conclusive a testimony of a witness. His credibility may be impeached by self-interest or improbability so that it would be entirely within the realm of reason to discount or to entirely discredit it.

Nichol v. Wall, 122 Utah 589, 253 P.2d 355, 356 (1953).

Surveying the evidence and the reasonable inferences to be drawn therefrom in the light most favorable to the jury's

verdict, it cannot be said that a reasonable jury would necessarily entertain some substantial doubt of appellant's guilt. The jury's verdict was amply supported by the evidence and on appeal, the evidence should be viewed in the light most favorable to the verdict of conviction.

CONCLUSION

Claims on appeal of insufficiency of the evidence must be reviewed in light of the total evidentiary picture. The uncorroborated testimony of Robert Skelton is not per se a dificient form of evidence and can only be determined insufficient where the Court finds the testimony to be completely unbelievable. The jury's verdict which relied on Skelton's testimony is therefore a proper one since a careful review of the trial transcript shows that the testimony was sufficiently believable.

On the basis of the above authority and the evidence against appellant shown at trial, respondent prays that the verdict and sentence be affirmed.

Respectfully submitted,

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