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State of Utah v. James L. Hendricks : Brief of Appellant

Utah Supreme Court

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In the Supreme Court
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THE STATE OF UTAH,

Plaintiff,

vs.

JAMES L. HENDRICKS,

Defendant.

Clerk, Supreme Court, Utah.

Supreme Court, Utah.

Case No. 8008

BRIEF OF APPELLANT

GRANT MACFARLANE

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In the Supreme Court of the State of Utah

THE STATE OF UTAH,

Plaintiff,

vs.

Case No. 8008

JAMES L. HENDRICKS,

Defendant.

BRIEF OF APPELLANT

STATEMENT OF THE CASE

This is an appeal from an order of the Second Judicial District Court denying defendant's motion for a new trial. The facts essential to this appeal are as follows:

The defendant, James L. Hendricks, was charged in the Justice's Court of the North Salt Lake Precinct, before Ann C. Noble, Justice of the Peace, of the crime of involuntary manslaughter, as set out in the complaint made a part of the record of this appeal; that preliminary hearing on said charge was

had before said Justice on June 6, 1952; that upon the conclusion of the State's case, the Justice bound the defendant over to the District Court to answer to the charge of involuntary manslaughter. Thereafter Glenn W. Adams, District Attorney, issued an information charging the defendant with the crime of involuntary manslaughter committed as follows, to-wit: "That on the 16th day of May, 1952, the defendant did then and there wilfully, and unlawfully, while under the influence of intoxicating liquor but without malice, did kill the said Lula Blanche Jacobs, contrary to the provisions of Title 103, Chapter 28, Section 5, Utah Code Annotated 1943," to which information the defendant pleaded not guilty, and trial was had before a jury in the court of Judge Parley Norseth; that the Judge, at the conclusion of the evidence, instructed the jury as to the law governing said case. Among the instructions given were instructions No. 11 and No. 12, which read as follows:

"No. 11

"Mere negligence is not sufficient to justify a verdict of involuntary manslaughter. A driver of an automobile is not guilty of manslaughter just because his vehicle is an instrumentality by means of which some one is killed. Merely failing to see a person in time to avoid hitting him does not, by itself, show recklessness or marked disregard for the safety of others.

"So that, if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant was not driving his automobile recklessly or unlawfully or with a marked disregard for the safety of others, and that such manner of driving was not the proximate cause of the accident, then you will not be justified in bringing in a verdict of guilty in this case."

"No. 12

"You are instructed that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant was suddenly confronted with a situation of peril which he could not avoid, then you are instructed to bring in a verdict of not guilty."

Defendant's counsel took exception to the giving of said mentioned instructions 11 and 12, and each of them, on the ground that the same were contrary to law and shifted the burden of proof to the defendant to show beyond a reasonable doubt that he was not driving his automobile negligently and unlawfully and with a marked disregard for the safety of others, and that such manner of driving was not the proximate cause of the accident, and further shifted the burden upon the defendant to show beyond a reasonable doubt that he was suddenly confronted with a situation of peril which he could not avoid. The jury returned a verdict of guilty against said defendant upon the instructions given them by the trial court; that thereafter and within the period fixed by law, the defendant filed a motion for new trial on the ground that the court had misdirected the jury as a matter of law in giving each of the named instructions numbered 11 and 12, and on other grounds; that upon a hearing had on said motion, the court overruled defendant's motion and sentenced the defendant for a term of one year in the county jail. Thereafter the court signed a certificate of probable cause, and this appeal was instituted.

The defendant submits the question on the grounds raised in his motion for a new trial, on all grounds contained therein

except on the overruling of his motion relative to instructions 11 and 12.

STATEMENT OF POINTS RELIED UPON

I

THE TRIAL COURT ERRED IN GIVING INSTRUCTION NO. 11, WHICH SHIFTED THE BURDEN OF PROOF TO THE DEFENDANT TO SHOW BEYOND A REASONABLE DOUBT THAT HE WAS NOT DRIVING HIS AUTOMOBILE RECKLESSLY OR UNLAWFULLY OR WITH A MARKED DISREGARD FOR THE SAFETY OF OTHERS, AND SUCH ERROR IS PREJUDICIAL AND NOT CURED BY THE GENERAL INSTRUCTIONS OF THE COURT RELATING TO PRESUMPTIONS AND BURDEN OF PROOF.

II

THE TRIAL COURT ERRED IN GIVING INSTRUCTION NO. 12 WHICH SHIFTED THE BURDEN UPON THE DEFENDANT TO SHOW BEYOND A REASONABLE DOUBT THAT HE WAS CONFRONTED WITH A SITUATION OF PERIL WHICH HE COULD NOT AVOID.

APPELLANT'S ARGUMENTS

I

THE TRIAL COURT ERRED IN GIVING INSTRUCTION

TION NO. 11, WHICH SHIFTED THE BURDEN OF PROOF TO THE DEFENDANT TO SHOW BEYOND A REASONABLE DOUBT THAT HE WAS NOT DRIVING HIS AUTOMOBILE RECKLESSLY OR UNLAWFULLY OR WITH A MARKED DISREGARD FOR THE SAFETY OF OTHERS, AND SUCH ERROR IS PREJUDICIAL AND NOT CURED BY THE GENERAL INSTRUCTIONS OF THE COURT RELATING TO PRESUMPTIONS AND BURDEN OF PROOF.

It is the appellant's contention that this instruction is contrary to law and prejudicial to his cause. The proposition of law relied upon is firmly established. It is elementary that in criminal cases the state must assume the burden of proof of every essential element of the crime, and prove the same beyond a reasonable doubt. This burden rests upon the prosecution at all stages of the trial and never shifts. An instruction which has the effect of shifting the burden to the defendant to prove his innocence "by a preponderance of the evidence," or "beyond a reasonable doubt" is error.

Reid's Branson Instructions to Juries, Sec. 63
53 Am. Jur., Trial Sec. 677

Instruction No. 11 is complete, unambiguous and certain. In substance and effect it instructs the jury that the defendant must establish his innocence beyond a reasonable doubt. The inference is that if the jury has a reasonable doubt as to whether the defendant was driving his automobile either recklessly or unlawfully or with a marked disregard for the safety of others, then they should find the defendant guilty as charged.

It requires the defendant to assume the burden of proof. It is to be noted that reckless driving, or unlawful driving (which would include driving while intoxicated) or driving with a marked disregard for the safety of others are the very facts which the state must establish to show the commission of the crime. Here the jury is told that the defendant's evidence must be considered with the state's evidence and the issue of guilt resolved in favor of the defendant only if his evidence is sufficient to dispel a reasonable doubt of his innocence. The jury should have been instructed that if they had a reasonable doubt as to whether the defendant was driving recklessly, or unlawfully, or with a marked disregard for the safety of others, then defendant was entitled to a verdict of not guilty. It is hard to conceive of a more flagrant abuse of the principle that a defendant in criminal cases is presumed innocent until proven guilty.

The Utah court was faced with a similar problem in *State v. Laris*, 78 U. 183, 2 P (2d) 243 (1931). In the *Laris* case defendant's innocence turned upon the question whether he had received stolen heifers in good faith. He was convicted of larceny in the trial court, and among errors assigned for reversal was an instruction charging the jury that if they should find "from the evidence" that the defendant purchased and received the heifers in "good faith," then the verdict must be not guilty. Mr. Justice Hanson, in his opinion reversing the holding of the trial court, said (at page 249):

"This instruction . . . cast upon the defendant the burden of establishing the good faith of the purchase. As the burden of proof to establish the commission of a crime necessarily extends to every essential element

of the crime, the burden is, of course, with the state to overcome that presumption beyond a reasonable doubt."

In *Hudson v. Commonwealth*, 304 Ky. 220, 200 SW (2d) 462 (1947), appellant, a negro boy, was charged with and convicted of voluntary manslaughter. Deceased was a four-year-old girl and was killed when appellant last control of his speeding car and drove into a private yard where she was playing. The only defense submitted by the defendant was that the accelerator had stuck to the floorboard of his car. The trial court charged that if the jury believed from the evidence "to the exclusion of a reasonable doubt" that the killing resulted otherwise than as set forth in prior instructions, then they must find the defendant not guilty. The Kentucky court reversed the conviction. In a short opinion which discussed only this one assignment of error, the court said (at page 463):

"Objection is particularly directed at the expression 'to the exclusion of a reasonable doubt.' The pronouncements of this court have been so outstandingly explicit, unmistakable, and unambiguous about the use of such an expression in a defensive instruction that it is entirely unnecessary to discuss the matter at length."

The court then said, quoting with approval from *Jones v. Commonwealth*, 213 Ky. 356, 281 SW 164, 166:

" . . . Clearly in defensive instructions the jury are only required to believe the facts upon which the instruction is based, and are not required to believe such facts to the exclusion of a reasonable doubt, and it is prejudicial error to incorporate these words in such an instruction."

The use of the words "beyond a reasonable doubt," "by a preponderance of the evidence" and similar phrases in defensive instructions has almost universally been held in error.

- People v. Hardy, 33 Cal. 52, 198 P (2d) 865
People v. Settles, 29 Cal. App. 2d 781, 78 P (2d) 274
People v. Roberts, 122 Cal. 377, 55 P 137
State v. Floyd, 220 N.C. 530, 17 SE (2d) 658
Vigorito v. U. S. 54 S. Ct. 373, 290 U.S. 705, 78 L.Ed. 606
Drossos v. U. S. (CCA 8th Cir.) 2 F.2d 538
Collins v. Commonwealth, 309 Ky. 572, 218 SW (2d) 393
Brewer v. State, 143 Tex. Ct. App. 136, 157 SW (2d) 388
Lively v. State, 150 Tex. Ct. App. 485, 202 SW (2d) 850
Miner v. U.S. (CCA 10th Cir) 57 F. 2d 506
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The appellant concedes that where individual instructions are to be interpreted, they must be considered in the light of the whole context and that it is not proper to isolate one or two instructions. If other instructions are given which clarify an ambiguity, or supply an omission, or make certain an uncertainty, then the instruction may not be complained of as prejudicial. Thus in *State v. Green*, 86 U. 192, 40 P (2d) 961, the court held that a questionable instruction was cured. In the *Green* case defendant pleaded insanity to a charge of first degree murder. The trial court instructed that such a defense was proper and legitimate "if proved." In commenting upon the instruction, Mr. Chief Justice Hanson wrote (at page 964):

“The use of the words ‘if proved’ in that instruction is not free from objection, but, in light of the fact that in a number of other instructions the court repeatedly informed the jury that the defendant was entitled to an acquittal if the jury entertained a reasonable doubt as to his sanity at the time in question, we are unable to perceive how the jury could have been misled by the objectionable language.”

It is to be noted, however, that in the Green case the clarifying instructions were directed specifically to the subject matter of the erroneous instruction. The rule is not the same where a general instruction is relied upon to cure an erroneous one. It is a common rule of construction that where a general and a specific passage conflict, the more specific or particular passage should be followed. Hence, where the specific instruction is the erroneous one, it is not only impossible to tell which of the instructions, general or specific, the jury followed in their deliberations, but the presumption would be that the jury followed the erroneous specific instruction. In the first appeal of the Green case, *State v. Green*, 78 U. 580, 6 P (2d) 177 (1931), the Supreme Court remanded the case for a new trial. In explaining the rule with respect to conflicting instructions, the court quoted with approval from *Jensen v. Utah RR Co.*, 72 U. 366, 270 P 349, 355 (at page 183):

“ . . . where instructions are in irreconcilable conflict, or so conflicting as to confuse or mislead the jury, the rule requiring instructions to be read together has no application.”

and

“ . . . the giving of inconsistent instructions is error and sufficient ground for reversal of the judgment, because, after verdict, it cannot be told which instruc-

tion was followed by the jury, or what influence the erroneous instruction had on their deliberations . . .”

This same line of reasoning was employed in *State v. Waid*, 92 U. 297, 67 P (2d) 647, where the court gathered the controlling Utah cases on the question.

A case similar to the present one is *Drossos v. United States*, 2 F 2d 538 (CCA 8th Cir.) This was an appeal from a conviction in the Federal District Court of Utah. The district court charged the jury, “if you are convinced by the evidence introduced in behalf of the defendant, then you should acquit” The respondent relied upon a general instruction which properly charged the jury as to the presumption of innocence and burden of proof. In reversing the conviction, the court said (at page 539):

“It is of course also true, and well settled by the authorities, that a charge to a jury is to be considered as a whole, and that if the instructions as a series correctly state the law, then though one paragraph or one phrase standing alone may be defective, it will not constitute reversible error. But that is not the rule where two instructions are directly in conflict and one of them clearly erroneous and prejudicial, such as is presented here, for the jury will assume that the instructions are all correct and will as likely follow the incorrect as the correct instruction.” (Citing authorities).

This part of the opinion was cited with approval by our Utah Supreme Court in *State v. Laris*, 78 U. 183, 2 P (2d) 243, 249.

Perhaps the most recently reported case in point is *State*

v. Cummings, N.M., 253 P (2d) 321 (Jan. 28, 1953). In this case defendant was convicted of involuntary manslaughter. There was testimony to the effect that defendant at the time of the accident was driving at an excessive rate of speed and that he was intoxicated. The trial court instructed the jury that if they should find "after a fair preponderance of the evidence" that the defendant was driving at an excessive rate of speed and while drunk, then they would be warranted in finding a verdict of guilty. The Supreme Court ruled that this instruction was calculated to confuse and mislead the jury and was "hurtful" to the defendant. Judgment was reversed and the cause remanded for a new trial. The court said, at page 322, quoting from State v. Crosby, 26 N.M. 318, 191 P 1079, 1081:

"We believe the proper rule to be that error committed in giving an incorrect instruction is not cured or rendered harmless by the giving of a correct instruction on the same subject, and this rule should be applied in the present case, in which the erroneous instruction was complete, unambiguous, and certain."

A search has revealed no significant cases in which an instruction which shifts the burden of proof upon the defendant to prove beyond a reasonable doubt facts which if proved would negative guilt, has been cured by a general instruction of the court on the proper rule of burden of proof. See:

People v. Roe, 189 Cal. 548, 209 P 560;
People v. Hardy, 33 Cal. 2nd 52, 198 P (2d) 865;
Nicola v. United States, 72 F 2d 78 (CCA) 3rd Cir.);
State v. Floyd, 220 N.C. 530, 17 SE (2d) 658;
Orlando v. Commonwealth, 218 Ky. 836, 292 SW 497.

II

THE TRIAL COURT ERRED IN GIVING INSTRUCTION NO. 12 WHICH SHIFTED THE BURDEN UPON THE DEFENDANT TO SHOW BEYOND A REASONABLE DOUBT THAT HE WAS CONFRONTED WITH A SITUATION OF PERIL WHICH HE COULD NOT AVOID.

Appellant contends that this instruction was calculated to confuse and mislead the jury. The propositions of law elicited in the argument of Assignment of Error No. I render an instruction such as this not only erroneous and prejudicial, but contrary to a basic principle of American criminal law (i.e., the presumption of innocence attending the defendant at all stages of the trial).

It is submitted that evidence of weather conditions, mechanical condition of the windshield wiper of appellant's automobile, and the fact that apparently neither the deceased nor appellant saw each other in time to avoid the collision and that in fact no attempt was made to avoid such collision, may all have contributed to raising a reasonable doubt in the minds of the jury as to the defendant's guilt, in which case he should have been acquitted. The effect of Instruction No. 12 is to make it incumbent upon appellant to affirmatively show beyond a reasonable doubt that he was confronted with such a situation of peril. Here again the presumption as to defendant's innocence is improperly resolved in favor of the state.

CONCLUSION

It is clear that Instructions Nos. 11 and 12 given by the

trial court shifted the burden to the defendant to prove his innocence beyond a reasonable doubt. Such instructions were prejudicial to the defendant, and they were not cured by the general instructions given by the court on reasonable doubt. It is, therefore, respectfully submitted that the conviction should be set aside and the case remanded for a new trial.

Respectfully submitted,

GRANT MACFARLANE

Attorney for Appellant

Broad liberal education
law, world, people,

7-3951

