

2002

The State of Utah v. Blaine D. Casper : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, **20556** :
Docket :
Plaintiff-Respondent :

v. :

BLAINE D. CASPER, : Case No. 20556
Defendant-Appellant :

BRIEF OF APPELLANT

Appeal from a conviction and judgment for Aggravated Burglary, a Felony of the First Degree, and Aggravated Assault, a Felony of the Third Degree, 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

THE STATE OF UTAH, :
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 v. :
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STATEMENT OF ISSUE

(1) Did the trial court err in refusing to remand for a new preliminary hearing to be heard by a judge not sitting within the Fifth Circuit Court.

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
 :
 Plaintiff-Respondent :
 :
 v. :
 :
 BLAINE D. CASPER, : Case No. 20556
 :
 Defendant-Appellant :

BRIEF OF APPELLANT

STATEMENT OF THE CASE

The Appellant, Darrell Blaine Casper, [hereinafter referred to as the defendant] appeals from a conviction and judgment imposed for Aggravated Burglary, a felony of the first degree pursuant to Utah Code Ann. §76-6-203 (1953 as amended); and for Aggravated Assault, a Felony of the Third Degree, pursuant to Utah Code Ann. §76-5-103 (1953 as amended) in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Jay E. Banks, Judge, presiding.

STATEMENT OF FACTS

On December 10, 1984, the defendant went to the home of his former girlfriend, Connie Jo Ungricht [hereinafter referred to as the victim] to discuss the possibility of continuing their relationship. Upon being refused entry, the defendant, who had been drinking (T. 4) broke down a door and entered the home (R. 26-28).

An argument ensued, with the defendant repeatedly indicating he wished them to marry and move to Montana (T. 9). The victim's rejection, when combined with the defendant's upset emotional state, caused the defendant to unintentionally strike her with a single blow to the abdomen, using the butt of a rifle. At no time did the defendant aim the rifle at the victim and no shots were fired (T. 3-4).

The defendant subsequently remained with the victim and her young son for several hours. Concerned about the medical condition of the victim, the defendant drove her and her son to a local hospital for treatment (T. 9).

On December 13, 1984, Judge Grant transferred the defendant's file from Salt Lake City to West Valley for a preliminary hearing (T. 46, R. 4). The basis of the transferral was that the victim was a long-time employee of the Fifth Circuit Court and in court on a daily basis (T. 41). In addition, the victim was known personally by the prosecutor (T. 41).

On January 8, 1985, a preliminary hearing was conducted before Judge Tyrone Medley (T. 62, R. 4). Counsel for the defendant subsequently moved the District Court to remand for a new preliminary hearing (R. 41) (Addendum A). The basis of the motion was bias since the hearing was conducted before a judge of the same circuit in which the victim was employed (T. 44). The motion was denied (T. 64).

The defendant subsequently entered pleas of guilty as to Aggravated Burglary and Aggravated Assault in exchange for the dismissal of the kidnapping counts (T. 65). The defendant was sentenced five years to life for Aggravated Burglary and zero to five years for Aggravated Assault (T. 166), with the sentences running concurrently (T. 164).

SUMMARY OF ARGUMENT

The defendant submits that the court erred in refusing to remand the case for a new preliminary hearing before a judge not sitting on a Fifth Circuit bench. The bias associated with the hearing violated the defendant's right to a fair trial before an impartial magistrate.

ARGUMENT

FAILURE TO MOVE THE DEFENDANT'S PRELIMINARY HEARING OUTSIDE THE FIFTH CIRCUIT COURT DENIED HIS RIGHT TO A FAIR TRIAL BEFORE AN IMPARTIAL MAGISTRATE.

The right of a criminal defendant to a fair trial is the "foundation stone upon which our present judicial system rests." State v. Brown, 602 P.2d 478, 480 (Arizona 1979). This indispensable right to a trial presided over by a judge who is impartial and free of bias or prejudice is protected by the Constitution of the State of Utah, Article VIII, Section 13, which states that:

"Except by consent of all the parties, no judge of the Supreme or inferior courts shall preside in a trial of any cause where either of the parties shall be connected with him by affinity or consanguinity within the degree of first cousin, or in which he may have been of counsel, or in the trial of which he may have presided in any inferior court.

As a further protection of a defendant's right to a fair trial, Utah Code Ann. §77-35-29 (1953 as amended), provides that:

If the prosecution or a defendant in any criminal action or proceeding shall file an affidavit that the judge before whom such action or proceeding is to be tried or heard has a bias or prejudice, either against such party or his attorney or in favor of any opposing party to the suit, such judge shall proceed no further therein until the challenge is disposed of.

The general practice in the State of Utah has been for judges to disqualify themselves whenever an affidavit of bias and prejudice against them has been filed Haslam v. Morrison, 190 P.2d 520, 523 (Utah 1948). The Supreme Court has noted that such a disqualification is commendable since, "the purity and integrity of the judicial process ought to be protected against any taint of suspicion to the end that the public and litigants may have the highest confidence in the integrity and fairness of the courts." Id. While the mere filing of an affidavit of bias and prejudice does not disqualify a judge, this Court has concluded that,

". . . it is ordinarily better for a judge to disqualify himself even though he may be entirely free of bias and prejudice (since) next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness or integrity of the judge." Id.

At the trial below, the defendant submitted an affidavit requesting that the trial court remand the cause for a new preliminary hearing before a Circuit Court Judge other than one from the Fifth Circuit. The basis of the motion was that the victim was an employee of the Circuit Court and well known to the

other employees of the Court (R. 41-42). The trial judge denied the motion and the defendant claims error.

The rule generally followed throughout the United States is that the words "bias" and "prejudice" refer to the mental attitude or disposition of the judge toward a party to the litigation, and not to any views that he might entertain regarding the subject matter involved. State v. Foy, 607 P.2d 481 (Kansas 1980). "Bias" and "Prejudice" mean a hostile feeling or spirit of ill will against one of the litigants, or undue friendship or favoritism toward one. State ex rel. Mitchell v. Sage Stores Co., 143 P.2d 652, 655 (Kansas 1943). Thus, in determining whether or not a trial judge should be disqualified is not a question of "whether the trial judge believes the accused guilty, but whether the trial judge can give him (the defendant) a fair trial." State v. Hendrix, 363 P.2d 522, 523 (Kansas 1961); see also, Haslam v. Morrison, supra at 523, State v. Byington, 200 P.2d 723 (Utah 1948).

In the present case, there is clearly a possibility for bias among all the judges of the Fifth Circuit. The victim, as an employee of the Fifth Circuit, was in court on a daily basis. In addition, the victim was a friend of the prosecutor (T. 43-44) and the Salt Lake Legal Defender Association refused to represent the defendant because of familiarity with the victim (T. 45-46).

In Haslam v. Morrison, supra, this Court discussed the degree of bias or prejudice necessary to disqualify a judge from

hearing a case. After noting the importance of a fair trial the Court cautioned that

"even if the judge concludes that the affiant is sincere in his belief that he, the judge, is biased against him, it ordinarily is well for such judge not to try the case for the very reason that he may unconsciously lean toward such litigant to demonstrate that he is not biased toward him. And unless the judge is entirely insensitive to criticism and a revealed state of a litigant's mind, he may be rendering his judgment from a mind not entirely free from emotion." Id. at 524.

The trial court indicated concern for the timeliness of the filing of the motion (T. 48-49). While the motion for remand was submitted after the preliminary hearing, the reason was a mistake on the part of the trial attorney who believed the hearing was outside the Fifth Circuit¹ (T. 46-47). Such an error should not prejudice the defendant when such an important right is at stake.

Hawaii wisely allows an appeal such as in the present case when the defendant shows good cause. Hawaii Revised Stat. §601-7(b) (1980), requires that a judge shall be disqualified when a sufficient affidavit is filed before a hearing is held and, if not, when cause shall be shown. Yorta v. Okumoto, 643 P.2d 820, 824 (Hawaii 1982).

¹ It is important to note that the transfer of the preliminary hearing by the prosecutor indicates, at a minimum, that there existed a possibility of unfairness with regard to the defendant since the victim was a court employee.

Clearly, a mistake by an attorney as to potential prejudice should not thereby prevent a subsequent appeal when the issue is the fairness of the trial itself. As this Court has noted, "The purity and integrity of the judicial process ought to be protected against any taint of suspicion to the end that the public and litigants may have the highest confidence in the integrity and fairness of the courts. (Emphasis added) State v. Byington, supra at 726.

In the present case, the defendant was clearly prejudiced as a result of bias by the magistrate. The facts of the case, the breaking and entering with intent to commit an assault, indicate the defendant had no intention of committing a burglary (T. 8-10). Yet, the third degree assault was used to bootstrap three other charges, one for burglary and two for aggravated kidnapping (T. 11, R. 26-28), all of which are first degree felonies.

Additionally, the transcript reveals that the charge of aggravated kidnapping with regard to the boy (Count IV) was bound over even though there was no testimony supporting the charge (T. 48-49). Not only did the boy not testify, but all other testimony indicates the boy never even knew the assault on his mother was taking place (T. 49).

Such a situation clearly indicates the defendant was not treated with fairness at the preliminary hearing. A similar situation existed in Cline v. Sawyer, 600 P.2d 725 (Wyoming 1979). There the court considered the question of when suspected bias is sufficient to warrant a remand. They noted:

The "bias" which is a ground for disqualification of a judge must be personal, and it must be such a condition of mind which sways judgment and renders the judge unable to exercise his functions impartially in a given case or which is inconsistent with a state of mind fully open to the conviction which evidence might produce. Id. at 729.

After the charges were bound over to Third District Court defendant was left in the dubious position of going to trial on all charges, or entering into a plea arrangement and pursuing his appeal to this court. Given the lack of options defendant chose to enter the plea. That choice should in no way affect his petition to this court. The defendant's plea was entered after the error and was only a response to the unfair position directly caused by the magistrates bias.

The binding over of all four counts when there was clearly insufficient information denied the defendant a fair trial. At a minimum, the circumstances create a "suspicion" of bias sufficient to reverse and remand under this Court's rulings in Byington and Haslam.

CONCLUSION

Darrell Blaine Casper requests this Court to reverse his conviction and remand the cause for a new preliminary hearing before a magistrate not sitting as a judge from the Fifth Circuit. Since the victim is a well known employee of the Fifth Circuit, the remand is necessary to ensure the defendant of his right to a fair trial.

Respectfully submitted this ____ day of December, 1985.

JAMES C. BRADSHAW
Attorney for Appellant

CERTIFICATE OF SERVICE

I, JAMES C. BRADSHAW, hereby certify that four copies of the foregoing Appellant's Brief will be delivered to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Utah 84114, this ____ day of December, 1985.

JAMES C. BRADSHAW
Attorney for Appellant

DELIVERED by _____ this ____ day
of December, 1985.

ADDENDUM A

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FEB 23 1985

H. D. ...
by Pat Jones

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,)	
)	
Plaintiff,)	MOTION TO REMAND
)	
vs.)	
)	
BLAINE D. CASPER,)	CIVIL NO. CIR.CRT. 84FS2615
)	<i>Dist Ct CR 85-80</i>
Defendant.)	JUDGE JAY E. BANKS

COMES NOW, the Defendant by and through his attorney, JOHN B. ANDERSON, and moves to remand this cause for a new preliminary hearing before a Circuit Court Judge other than the Fifth Circuit on the grounds that the victim, Connie Ungricht is employed as a secretary by the Fifth Circuit Court and the Judge who heard the preliminary hearing, the Honorable Tyrone Medley is a Judge of the Fifth Circuit and because of bias, the Defendant was denied a fair hearing under his constitutional rights to due process and equal protection. The Prosecutor recognized this bias by having the Preliminary Hearing, in the West Valley Division rather than the Salt Lake Division of the Fifth Circuit Court. Nonetheless the Judge hearing the cause is still a Judge of the Fifth Circuit.

DATED this 13 day of February, 1985.



JOHN B. ANDERSON
Attorney for Defendant

CERTIFICATE OF DELIVERY

I hereby certify that on the 13th day of February, 1985,
the original of the foregoing Motion was delivered to the Court
with a true and correct copy hand delivered to David Walsh,
Deputy County Attorney.

