

1980

The State of Utah v. Melvin James Workman : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff-Respondent, :
-v- :
MELVIN JAMES WORKMAN, :
Defendant-Appellant. : Case No. 16922

BRIEF OF APPELLANT

Appeal from a jury verdict of guilty of Rape and
Burglary in the Third Judicial District in and for Salt Lake
County, State of Utah, the Honorable Ernest F. Baldwin, presiding.

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TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE.	1
DISPOSITION IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL.	2
STATEMENT OF THE FACTS	2
ARGUMENT	

<u>POINT I: THE PROSECUTION'S INTENTIONAL FAILURE TO DISCLOSE STATEMENTS ALLEGEDLY MADE BY APPELLANT DEPRIVED HIM OF A FAIR TRIAL AND THEREFORE THE TRIAL COURT ERRED BY DENYING HIS MOTION FOR A MISTRIAL</u>	4
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CASES CITED

<u>State v. Anderson</u> , 612 P.2d 778 (Utah 1980).	4
<u>Brady v. Maryland</u> , 373 U.S. 83 (1963).	5, 6, 15
<u>Mooney v. Hoolohan</u> , 294 U.S. 103 (1935).	6
<u>Pyle v. Kansas</u> , 317 U.S. 213 (1942).	6
<u>Napue v. Illinois</u> , 360 U.S. 264 (1959).	7, 12
<u>Giglio v. United States</u> , 405 U.S. 150 (1972)	7
<u>United States v. Pascual</u> , 606 F.2d 561 (5th Cir. 1979) .	8, 9
<u>State v. Hiteshaw</u> , 476 P.2d 935 (Ore. 1970).	10
<u>State v. Brown</u> , 98 Idaho 209, 560 P.2d 880 (1977). . . .	11, 12
<u>State v. Agurs</u> , 427 U.S. 97 (1963)	12, 15
<u>State v. Stewart</u> , 544 P.2d 477 (Utah 1975)	13
<u>Codianna v. Morris</u> , 594 P.2d (Utah 1979)	13
<u>State v. Jarrell</u> , 608 P.2d 218 (Utah 1980)	14, 15

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff-Respondent, :
-v- :
MELVIN JAMES WORKMAN, :
Defendant-Appellant. : Case No. 16922

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant, MELVIN JAMES WORKMAN, appeals from a conviction of Rape, a Second Degree Felony and Burglary, a Second Degree Felony, in the Third Judicial District Court, in and for Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

The appellant, MELVIN JAMES WORKMAN, was found guilty of Rape and Burglary by a jury. The trial was heard by the Honorable Ernest F. Baldwin. Appellant was sentenced to serve an indeterminate term of not less than one year nor more than fifteen years for both offenses to run consecutively at the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction and a new trial.

STATEMENT OF THE FACTS

Deana English testified that on the 19th day of February, 1979, at approximately 1:00 a.m. a man entered her apartment at 3378 South Fifth East (TR 11,14,15). She was awakened when the man put his hand over her mouth, turned her over on her stomach, put a pillow over her head, and raped her. She further testified that he informed her that he had a gun and instructed her not to scream. (TR 18). A brown leather wallet was found by a police officer who investigated the case. (TR 27). The prosecutor introduced statements made by appellant which are tantamount to a confession. Through direct examination of Connie Riley, the following testimony was elicited by the prosecutor:

Q: Tell--use the words he used as best you can recall. What did [Melvin Workman] say?

A: I am going to sit here and wait, the cops know-- have my wallet. There is nothing you can do, I raped the girl. There is no need for you to go looking for my wallet, the cops have it, I know I left it at her place. (TR 90).

Defense counsel made continuous objections to this line of questioning and finally moved for a mistrial. The basis of

the motion was that the prosecution had knowingly and intentionally failed to disclose the defendant's incriminating statements made to Connie Riley in the face of a specific request for that evidence at the preliminary hearing.

At the preliminary hearing, defense counsel and Officer Virgil Johnson participated in the following colloquy:

[Defense counsel] Q: What statements did Mr. Workman make?

A: That he entered the apartment--

Q: Who did he make these to?

A: To Connie Riley. He entered the apartment and took \$80.00 cash out of a wallet that was located in the front room. And that he put the wallet underneath a t.v. pillow in the front room area. And prior to leaving, dropped his wallet, some way or another.
(Preliminary hearing transcript 79)

Officer Johnson failed to disclose the most incriminating aspect of the statement--that the appellant raped the woman in the apartment. A search of the preliminary hearing transcript discloses that Deputy County Attorney J. Campbell never acted to correct this false testimony.

Quite apart from the prosecutorial misconduct involving the aforementioned false testimony, defense counsel asked the prosecutor on numerous occasions during the pre-trial phase of the case whether he had shared with defense counsel all the information he had on the case. During the pre-trial and

trial stages of the case Deputy County Attorney Lynn Payne appeared on behalf of the State. Mr. Payne assured defense counsel on every such occassion that he had done so. (TR 137).

Defense counsel made conscious and deliberate strategic decisions based on the information given to him by Officer Johnson at the preliminary hearing and the prosecutor during the pre-trial stage of the case. Specifically, the appellant waived his right to a jury trial at the urging of his counsel (TR 2-4 and TR 139); the appellant refused a plea negotiation upon the advise of counsel (reference TR 149); and the appellant presented no rebuttal to the surprise testimony of Connie Riley. (TR 148-149 and TR 177).

ARGUMENT

POINT I

THE PROSECUTION'S INTENTIONAL FAILURE TO DISCLOSE STATEMENTS ALLEGEDLY MADE BY APPELLANT DEPRIVED HIM OF A FAIR TRIAL AND THEREFORE THE TRIAL COURT ERRED BY DENYING HIS MOTION FOR A MISTRIAL.

In State v. Anderson, 612 P.2d 778 (Utah 1980), this Court observed that an ancillary purpose of the preliminary hearing is that it serves as a discovery device enabling the defendant to be informed of the nature of the State's case against him. In the case at bar, defense counsel availed himself of this

opportunity and pursued discovery in his case by questioning police officers concerning any incriminating statements made by the defendant. Additionally, defense counsel relied on the verbal assurances of the Deputy County Attorney assigned to the case that he (defense counsel) had all the information regarding the case. (TR 137). The combined effect of Officer Johnson's misrepresentation and Deputy County Attorney Jerry Campbell's silence followed by Deputy County Attorney Lynn Payne's continued suppression of material evidence acted to deny the appellant a fair trial.

The appellant's request at his preliminary hearing for the disclosure of evidence in the possession of the prosecution was founded on the State's obligation to provide him with a fundamentally fair trial. The Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 7 of the Utah Constitution mandate that defendants receive fair trials. A fair trial embraces the right to expect and demand truthful responses to questions put to police officers under oath concerning the existence of inculpatory statements made by the defendant. Since the seminal case of Brady v. Maryland, 373 U.S. 83 (1963), courts have repeatedly held that the prosecution's suppression of material evidence violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

In Brady v. Maryland, supra, the defendant was convicted of first degree murder and sentenced to death. After the conviction, he learned of an extrajudicial confession made by his accomplice, who was later tried and convicted of the same crime, wherein the latter admitted the actual homicide. In spite of a request by defense counsel to examine any statements made by the accomplice, the prosecution refused to disclose the exculpatory evidence. The United States Supreme Court affirmed the Third Circuit's determination that suppression of the evidence was error, and concluded that the withholding of the confession was prejudicial. The Brady court also held that suppression of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87.

In the case at bar, where a specific request was made for the evidence, there can be no conclusion other than that the suppression of the evidence by both Officer Johnson and Deputy County Attorney Jerry Campbell was done in bad faith. In Mooney v. Hoolohan, 294 U.S. 103 (1935), the undisclosed evidence showed that the conviction was obtained by the knowing use of perjured testimony. In Mooney the United States Supreme Court made clear that deliberate deception of a court and jurors by the presentation of known false testimony was incompatible with "rudimentary demands of justice." This holding was reaffirmed in Pyle v. Kansas, 317 U.S. 213 (1942).

Regardless of whether Mr. Campbell acted in good faith or bad faith, the conclusion that the appellant was denied fundamental fairness is compelling. In Napue v. Illinois, 360 U.S. 264 (1959), the court stated, "the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." 360 U.S. at 269.

The fact that a different prosecutor failed to correct the false testimony from the one who tried the case does not alter the conclusion that the appellant was denied fundamental fairness. In Giglio v. United States, 405 U.S. 150 (1972), defense counsel discovered subsequent to trial that the Government had promised a key witness immunity from prosecutor if he testified for the Government. During trial however, the informant flatly denied that any such agreement was made. Despite the Government's contention that a different prosecution promised immunity from the one who tried the case, the Supreme Court held that the suppression of material evidence, regardless of whether it was done in good or bad faith, required a new trial:

Moreover, whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the government. Id. at 154.

The expansion of criminal discovery to facilitate a fundamentally fair trial for the defendant is embodied in the

Federal Rules of Criminal Procedure, notably Rule 16. In United States v. Pascual, 606 F.2d 561 (5th Cir. 1979), a magistrate entered a standing discovery order which directed the Government to permit the defendant to inspect documents, objects, photographs, etc., which would be material to the defense or intended for use by the Government in their case-in-chief. Although defense counsel was permitted to examine the prosecution's file, he never saw a letter from the defendant to an unindicted co-conspirator which exposed the defendant's plan to manufacture and distribute methaqualone. The Government asserted that the letter was in the file, and the failure of the defense to review it was the result of its own negligence. In spite of the Government's contention that the letter was in the file, the court ruled that the document should have been produced under Rule 16 (a)(1)(c) of the Federal Rules of Criminal Procedure:

The prosecution knew it had the letter and also knew that as to Pascual it amounted virtually to a signed plea of guilty... Under the order to produce, it should have made certain that the letter was made available to the defendants in such a manner as would have eliminated any plausible dispute about it.

606 F.2d at 565.

Similarly, in the case at bar the prosecutor at the preliminary hearing knew that Officer Johnson was concealing the most damaging statement they attributed to the defendant from him and counsel in the face of a specific request for the disclosure of the evidence.

Although Pascual is distinguishable from the instant matter because there a magistrate entered a standing discovery order, the instant matter is nonetheless analagous where the committing magistrate ordered Officer Johnson to answer defense counsel's inquiries about any statemnts made by the appellant.

In Pascual, the court noted that failure to comply with Rule 16(a) was not reversible without a showing of some prejudice. However, the court pointed out that the prejudice was abundantly manifest:

It would be hard to make an argument with any degree of plausibility that the use of this letter without prior production did not seriously prejudice the defendants in exercising their option to plead not guilty and in their preparation for trial.

In short, it was a written plea of guilty to the allegations contained in the indictment.

606 F.2d at 565-566.

Certainly the prejudice is just as clearly present in the case at bar.

It is interesting to note that the Fifth Circuit pointed out that reversal in Pascual was necessary in order to enforce Rule 16:

A new trial with this nail in the coffin lid, now fully disclosed, may likely result in another verdict of guilty. Nevertheless, the vindiction of Rule 16 and notice to Plaintiff's in this Circuit that they must effectively comply with it, leaves no choice but to reverse these convictions and remand

for a new trial.

606 F.2d at 566.

Similarly, in the case at bar, reversal is mandated to insure that the prosecution is not permitted to profit from its own wrongdoing.

In State v. Hiteshaw, 476 P.2d 935 (Ore. 1970), the Oregon court refused to countenance the type of prosecutorial misconduct which inheres in the case at bar. In Hiteshaw, the court ruled that the defendant was entitled to a new trial where the prosecutor, in defiance of a court order, failed to disclose a police report which included a statement attributed to the defendant:

It seems evident that the prosecution sought to conceal the most damaging admission they attributed to defendant from him and counsel prior to trial, in defiance of the court's order. These tactics were unfair.

560 P.2d t 936.

The ratio decidendi of the Hiteshaw court applies with the same compelling logic in the case at bar. Moreover, the intentional suppression of the appellant's statements by the prosecution is all the more egregious in light of the guidelines set by the American Bar Association's project on standards for criminal justice. Section 2.1 of Standards Relating to Discovery and Procedure Before Trial sets out the prosecutor's obligations with respect to what must be disclosed to an accused:

...[T]he prosecuting attorney shall disclose to defense counsel the following material and information within his possession or control:

...[ii] any written or recorded statements and the substance of any oral statements made by the accused...[Emphasis Supplied]

The ~~committee~~ described the reasons it used in setting this standard in the accompanying commentary. With respect to Section 2.1 the committee stated:

The basis for providing an accused a copy of his own statements has usually been the notion of fundamental fairness, coupled with the absence of any compelling reason to withhold disclosure, at least in the case of a statement during the prosecution's case.¹
[Emphasis Supplied]

The statements of an accused obviously are of quintessential importance to defense counsel in the preparation of his case. However, in State v. Brown, 98 Idaho 209, 560 P.2d 880 (1977), the court vacated the defendant's sentence and remanded the case for an evidentiary hearing where the failure to disclose concerned the statement of a potential alibi witness requested for the first time by defense counsel during the trial. In Brown, the defendant's attorney learned during trial that a sheriff's

1. Also see the A.B.A Code of Professional Responsibility Ethical Consideration 7-13: "The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice not merely to convict."

deputy had taken a statement from a potential alibi witness. Notwithstanding the inconvenient timing of the defense attorney's request for disclosure and the failure of the defense attorney to pursue formal discovery, the Idaho Supreme court ruled that the trial judge erred by not granting the defense's request and ordering disclosure. Because defense attorney had specifically requested the information, the Idaho court pointed out that a stricter rule was triggered as to the prosecution's duty to disclose. Quoting from United States v. Agurs, 427 U.S. 97 (1963), the Brown court stated:

Although there is, of course, no duty to provide defense counsel with unlimited discovery of everything known by the prosecutor, if the subject matter of such a request is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable to require the prosecutor to respond either by furnishing the information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable.

427 U.S. at 106.
560 P.2d at 883-884.

Applying Brown to the instant matter, defense counsel requested disclosure of material evidence at the preliminary hearing - the defendant's statements. The State's failure to disclose these statements should not be excused. As the United States Supreme Court observed in Napue v. Illinois, 360 U.S. 264, 269 (1959), a conviction must fall "when the State, although not

soliciting false evidence, allows it to go uncorrected when it appears."

The Utah Supreme Court has commented that a conviction obtained after the prosecution's suppression of evidence material to guilt or innocence is incompatible with the interests of justice. In State v. Stewart, 544 P.2d 477 (Utah 1975), the defendant contended that the erasure of a tape which recorded a conversation between the defendant and an informant during a drug buy amounted to a suppression of evidence. The court disagreed but did point out that:

[A] deliberate suppression or destruction of evidence by those charged with the prosecution, including police officers, constitutes a denial of due process if the evidence is material to the guilt or innocence of the defendant in a criminal case...Id at 479.

Clearly the suppression of evidence in the instant case was both deliberate and material to the defendant's guilt.

In Codianna v. Morris, 594 P.2d 824 (Utah 1979), the Utah Supreme Court was confronted with a Petition for Post-Conviction Relief, alleging that evidence was withheld by the prosecution which would have been favorable to the defense. Defense counsel, upon learning that exculpatory evidence did exist, filed a Petition for Habeas Corpus on the defendant's behalf, and was shortly thereafter handed copies of depositions which would

have assisted in the preparation and presentation of the defense. On the basis of this evidence, and due to the gravity of the matter, the Supreme Court remanded to the district court for a hearing to determine whether the disclosure of the evidence would have produced a different result. The court continued:

It is fundamental that the State, in vigorously enforcing the laws, has a duty not only to secure appropriate convictions but perhaps an even higher duty to see that justice is done, even if that means disclosing to defense counsel in a criminal case evidence which is exculpatory. Id. at 3.

Most recently in State v. Jarrell, 608 P.2d 218 (Utah 1980), the Utah Supreme Court examined in depth the defendant's contention that the prosecution illegally suppressed certain evidence. The defendant was convicted of attempted criminal homicide, and claimed that two police reports withheld by the prosecution would have tended to discredit the victim's ability to accurately perceive the critical events of the attack, they were also inconsistent with the reporting officer's testimony. It was conceded by the appellant that there was no effort made prior to trial to obtain copies of the reports. The factor which the court relied upon most heavily in rejecting the appellant's contention was that at trial, the appellant had not requested any of the reports. The reasons for this ruling were that it would place too great of a burden on the prosecution to anticipate what evidence would be useful to defense counsel, and secondly, defense

counsel would be able to go to trial, lose, then demand a new trial based on the prosecutor's failure to divulge exculpatory evidence.

In the case at bar, defense counsel specifically requested the disclosure of the statement which Officer Johnson failed to reveal. Consequently, the appellant's claim does not suffer from the flaw which inhered in Jarrell.

United State v. Agurs, 427 U.S. 97 (1976), sets out the standard to be applied in assessing the appellant's claim of error. The proper test to be applied in cases where a specific request is made is whether or not the failure to disclose has denied the defendant "...evidence [which] might have affected the outcome of the trial." 427 U.S. at 104. In the instant case, the fact that the statement amounted to a full confession made it sufficiently material to "have affected the outcome of the trial." Id. The failure of the prosecution to disclose the statement when specifically requested frustrates the interests of justice.

Brady v. Maryland, *supra*, and its progeny have sought to insure that the accused avoids an unfair trial: "Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." Id. at 87.

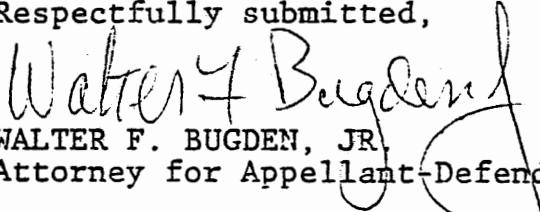
In the instant matter the appellant has been treated unfairly. Relying on the veracity of Officer Johnson's sworn

testimony, Mr. Van Sciver advised his client to waive his right to trial by jury. Because Mr. Van Sciver was surprised at trial by the confession, he was completely unprepared to discredit the witness or rebut her testimony. Clearly Mr. Van Sciver's trial strategy would have been significantly different had he been privileged to the most damaging admission attributed to the appellant, but intentionally concealed by the prosecution.

For the reasons stated, the appellant respectfully asks this court to reverse his conviction and grant him a new trial.

DATED this 23 day of December, 1980.

Respectfully submitted,


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Attorney for Appellant-Defendant