

1954

State of Utah v. Hal J. Lane : Brief of Respondent

Utah Supreme Court

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Recommended Citation

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In the
Supreme Court of the State of Utah

STATE OF UTAH,

vs.

HAL J. LANE,

Respondent,

Appellant.

Case No.
8210

BRIEF OF RESPONDENT

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FILE
OCT - 7 1954

Clerk, Supreme Court, Utah

ARROW PRESS, SALT LAKE

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In the Supreme Court of the State of Utah

STATE OF UTAH,

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HAL J. LANE,

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} Case No.
8210

BRIEF OF RESPONDENT

STATEMENT OF FACTS

The respondent is in substantial agreement as to the material facts set forth by the appellant in the statement contained in his brief. These facts will be further discussed in connection with the argument of the respondent in support of the points contained herein.

STATEMENT OF POINTS

POINT I.

THE COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO DISMISS MADE ON THE GROUNDS THAT THE EVIDENCE AD-

DUCTED BY THE STATE AS CORROBORATION OF THE TESTIMONY OF THE ACCOMPLICES WAS INSUFFICIENT AS A MATTER OF LAW.

POINT II.

THE COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO DISMISS MADE ON THE GROUNDS THAT THE FACTS ADDUCED BY THE STATE DO NOT CONSTITUTE AN OFFENSE UNDER 76-27-7, U. C. A. 1953, AND DO NOT CONSTITUTE A FICTITIOUS CHECK WITHIN THE MEANING OF THE LAW.

POINT III.

THE COURT DID NOT ERR IN GIVING INSTRUCTION NUMBER 6 TO THE JURY WHEREIN THE JURY WAS ADVISED AS TO ITS FUNCTION IN DETERMINING THE NECESSITY AND EXTENT OF TESTIMONY IN CORROBORATION OF ACCOMPLICES.

ARGUMENT

POINT I.

THE COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO DISMISS MADE ON THE GROUNDS THAT THE EVIDENCE ADDUCED BY THE STATE AS CORROBORATION OF THE TESTIMONY OF THE ACCOM-

PLICES WAS INSUFFICIENT AS A MATTER OF LAW.

The conviction of the defendant as a principal for the offense charged in the information and indictment is based upon the provisions of 76-1-44, U. C. A. 1953, which provides in part:

“All persons concerned in the commission of a crime, either felony or misdemeanor, whether they directly commit the act constituting the offense or aid and abet in its commission or, not being present, have advised and encouraged its commission, * * * are principals in any crime so committed.”

The evidence adduced by the State showed the commission of the crime of issuing a fraudulent paper. In addition to a showing that such a crime had been committed, there was conclusively established the fact that the defendant was a party to the offense and, in fact, the primary instigator. The evidence disclosed the testimony of two accomplices together with sufficient corroborative evidence to support the conviction obtained in the lower court. The accomplices, Hanley and Clouse, testified in substantially the same manner as to the existence of a plan or scheme whereby certain fictitious instruments had been made and uttered.

The type and amount of corroborative evidence required to support the conviction is set forth in 77-31-18, U. C. A. 1953:

“A conviction shall not be had on the testimony of an accomplice, unless he is corroborated by other evidence, which in itself and without the aid of the testimony of the accomplice *tends to connect the defendant with the commission of the offense*; and the

corroboration shall not be sufficient, if it merely shows the commission of the offense or the circumstances thereof." (Emphasis added.)

We particularly direct the court's attention to the language emphasized. An examination of the transcript discloses that sufficient evidence was adduced tending to connect the defendant with the commission of the crime of making and uttering a fraudulent paper. The defendant is charged with making and uttering the instrument designated in the transcript as Exhibit 2, this instrument having been passed at a Safeway Store in Sugar House, Salt Lake City, Utah. The testimony of the accomplices disclosed that pursuant to the plan and scheme entered into between themselves and the defendant they did make and utter Exhibit 2, together with certain other instruments. The details of the plan and scheme developed as follows: Hanley opened the bank account in a fictitious name. Thereupon he, with the help and assistance of Clouse and the defendant Lane, and under the immediate direction of Lane, prepared the instruments with the felonious intent of defrauding third persons. The actual typing and signing of the instruments was done by the defendant. It was shown that one check was passed at Safeway Stores and that in connection therewith groceries were purchased. A second check was passed at the Paris Company and in connection with this there was purchased a wallet. The testimony of the accomplices was to the effect that the acts were done and the purchases made under express instructions from the defendant.

As corroboration of the accomplices' testimony it was shown that a wallet found in the possession of the defen-

dant during his confinement in jail was one which had been identified by the accomplice as the same piece of merchandise as the accomplice had himself purchased at the request of the defendant and in connection with the passing of the fraudulent instrument. It would appear that where an accomplice states affirmatively that he purchased certain merchandise with a fraudulent instrument at the instruction of another (the defendant) and that thereafter the merchandise was found to be in the possession of the other, such possession serves to corroborate the accomplice's testimony.

An examination of the signature card of the bank, Exhibit 1, shows that it has a different signature, dissimilar in every respect from that appearing on the fraudulent instrument (Exhibit 2). Thus it is apparent that the applicant for the bank account (Hanley) did not alone make the check. This being the case, the finger of guilt must point to another person, as it does by reason of the testimony of the accomplice as corroborated by the other witnesses for the State. The appellant takes the position that the Paris Company incident can be shown only for the purpose of showing a course of action, scheme or plan, and that it is available for this purpose only upon the further showing that it was false or fraudulent. In support of this position appellant cites the case of *People v. Nitzberg*, 287 N. Y. 183, 38 N. E. 2d 490, 40 N. E. 2d 40. In this same case, however, the court set forth a wide and variable rule. In the language of the court:

“There is a principle—not so much a rule of evidence as a presupposition involved in the very

conception of a rational system of evidence * * *
—which forbids receiving anything irrelevant, not
logically probative.” Thayer, *Preliminary Treatise
on Evidence*, 264, 265.

“It is not the law which furnishes the test of
relevancy, but logic. Probative value, or capability
of supporting an inference, is a matter of reasoning
* * * and the rules of relevancy aim only to de-
termine whether a given fact is of sufficient pro-
bative value to be admissible at all.” 1 Greenleaf on
The Law of Evidence, Wigmore’s 16th Ed., § 14.

“For the purposes of the present case it is
enough in the way of a definition of relevancy to
say that a fact is relevant to another fact when the
existence of the one renders the existence of the
other highly probable, according to the common
course of events.” See Sir James Stephen, *Digest of
the Law of Evidence*, Chase’s 2d Ed., Introduction
XVIII. Cf. *Platner v. Platner*, 78 N. Y. 90, 94.

While respondent does not dispute that the established rule
of evidence to the effect that evidence of one crime may not
be shown in corroboration of a separate offense, we feel
that the rule may be more broadly stated. Evidence of one
crime may not be shown to corroborate a second crime
unless it may do so independently of the criminal elements
contained in the separate offense. In other words, if the
first crime is corroborative of facts adduced, regardless of
whether or not such evidence is itself a separate offense,
it should be admissible.

As further evidence in support of the conviction of the
defendant the state brought forth testimony of the arrest-
ing officer to the effect that at the time the defendant was

arrested there was found within the automobile, of which he was the sole occupant, several other checks (Exhibit 3). A comparison of these checks with the one subject of this prosecution discloses that all were similar in nature and were signed in the same hand. It is significant that just shortly before the arrest, the Safeway check was passed and, in connection therewith, as herein noted, groceries were purchased. Miscellaneous groceries were found in the automobile where the arrest was made. A third aspect to consider in determining whether or not there existed sufficient corroboration is the testimony of the Mr. Andrus relating the fervent denial of any acquaintance by the defendant with the accomplices (Tr. 98) and the subsequent contradiction wherein he admitted such an acquaintance (Tr. 99). This, too, would serve to strengthen the inference of guilt.

The question of what type and how much corroboration is necessary has been discussed by our Utah courts on many occasions. It has been said that the statute does not require corroboration in respect to every material fact but only in respect to such of the material facts as constitute the necessary element of the crime charged. The corroborated evidence need not be sufficient of itself to establish the guilt of the defendant but it must, in some degree, tend to implicate him in and connect him with the commission of the offense charged. *State v. Spencer*, 15 Utah 149, 49 Utah 302; *State v. Collett*, 20 Utah 290, 58 P. 684. It has been held that it is not essential that the corroborative evidence be sufficient of itself to support the verdict of guilt nor is it essential that the testimony of the accomplice

be corroborated on every material point. But it is sufficient if the testimony of the accomplice is corroborated as to some material fact and the corroborative evidence, in and of itself, and without the aid of the testimony of accomplices, tends to connect the defendant with the commission of the offense. *State v. Lay*, 38 U. 143, 110 P. 986; *State v. Stewart*, 57 U. 224, 193 P. 855; *State v. Cox*, 74 U. 149, 277 P. 972, and cases cited were followed and approved in *State v. Bruner*, 106 U. 49, 145 P. 2d 302. The facts and circumstances of the case, if sufficiently cogent, may constitute corroboration. *State v. Park*, 44 Utah 360, 140 P. 768. See also *State v. Frisby*, 49 U. 227, 162 P. 616; *State v. Erwin*, 101 U. 365, 120 P. 2d 285, and cases cited; *State v. Petralia*, . . . U. . . ., 221 P. 2d 873.

POINT II.

THE COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO DISMISS MADE ON THE GROUNDS THAT THE FACTS ADDUCED BY THE STATE DO NOT CONSTITUTE AN OFFENSE UNDER 76-27-7, U. C. A. 1953, AND DO NOT CONSTITUTE A FICTITIOUS CHECK WITHIN THE MEANING OF THE LAW.

The defendant Lane was properly charged with the commission of the crime of issuing a fraudulent instrument. The facts adduced did properly set forth the necessary elements of the offense as prescribed by statute. The statute under which the defendant is accused provides:

“Every person who makes, passes, utters, or publishes, with intention to defraud any other per-

son, or who, with like intention, attempts to pass, utter or publish, or who has in his possession, with like intent to utter, pass or publish, any fictitious bill, note or check, purporting to be the bill, note, check or other instrument in writing for the payment of money or property of some bank, corporation, partnership or individual when in fact there is no such bank, corporation, partnership or individual in existence, knowing the bill, note, check or instrument in writing to be fictitious, is punishable by imprisonment in the state prison for not less than one nor more than ten years.”

The position of the appellant is to the effect that he was not guilty of issuing a fraudulent paper but, in fact, and ironically enough, was merely doing business with an assumed name. Such a position is not founded in fact nor in logic. We do not deny that Kevin Hanley assumed the name Walter Stevenson, but we submit that he did so under the direction of the defendant and with a pre-conceived intent to defraud. Hanley’s testimony (Tr. 48 & 49) was as follows:

“Q. What name, if any, did Mr. Lane tell you the account should be opened in?

“A. Right at that time there wasn’t any name.

“Q. Did you subsequently open such an account, you, yourself?

“A. Yes, I did.

“Q. Did Mr. Lane say anything to you with respect to how you were to open it, and in what name you were to open it?

“A. Yes, he told me to open it in a business account, in the bank, in the name of Walter Stevenson.

"Q. Did you know anybody by the name of Walter Stevenson?

"A. No.

"Q. Had you ever used the name Walter Stevenson before?

"A. No sir.

"Q. Have you used it since?

"A. No sir.

"Q. Do you consider yourself as Walter Stevenson?

"A. No sir."

The accomplice, Hanley, by his own admission, assumed the name for the express purpose of defrauding third persons. The name selected was fictitious in the mind of the accomplice and by inference must necessarily have been so in the mind of the defendant. Contrary to the position of the appellant, Walter Stevenson was a non-existent individual. He was not present in the courtroom nor was he known to exist by any of the principals. The name Walter Stevenson was selected for the admitted purpose of committing a fraud. Appellant argues that a person may freely assume any name or such names as suit his desires or fancy. Such a rule is in every instance subject to the reservation that no person may assume such a name with the intent to defraud others. Sec. 38 Am. Jur. 601.

POINT III.

THE COURT DID NOT ERR IN GIVING INSTRUCTION NUMBER 6 TO THE JURY WHEREIN THE JURY WAS ADVISED AS TO ITS FUNCTION IN DETERMINING THE NE-

CESSITY AND EXTENT OF TESTIMONY IN CORROBORATION OF ACCOMPLICES.

The appellant takes exception to that part of the court's instruction number 6 which follows:

“Under the law of this State a principal accused of crime cannot be convicted of such crime on the uncorroborated testimony of an accomplice. Therefore, if you find in this case from the evidence that the witness Hanley was an accomplice in the commission of the crime charged in the information, if you find from the evidence and beyond a reasonable doubt that such crime was committed, then you are instructed that you cannot convict the defendant on the testimony of Hanley, unless you further find that his testimony is corroborated by other evidence which in itself and without the aid of the testimony of said Hanley tends to connect the defendant with the commission of the offense.”

In addition, the appellant assigns as error the failure of the court to grant defendant's requested instructions number 1 and 2. The basis of their objection is that there exists by necessary implication the right of the jury to determine whether or not the witness Clouse and Hanley were accomplices. In effect, appellant's position is that the jury could determine, if they saw fit, that Hanley and Clouse were not accomplices and therefore could give undue weight to the witnesses' testimony without supporting corroborative evidence.

We submit that appellant's position is not sound and, in support thereof, direct the court's attention to instruction number 10, as follows:

“These instructions are to be considered altogether as a whole, and not as if each instruction

were a complete statement of the law by itself. And even though a rule, direction or thought is stated in different ways and repeated in more than one instruction you should not give it undue importance. You should not single out any one sentence, point or instruction and give it undue emphasis and ignore others. But you should consider all of the instructions as a whole and apply them all to the evidence in the light of all of the instructions.”

By this instruction the jury was charged with the obligation of considering all instructions given by the court in their proper light, weighing each one together and not as separate dis-organized statements of law. Having the foregoing instruction in mind, the jury was further charged in instruction 6 as follows:

“You are instructed that all persons concerned in the commission of a crime, whether they directly commit the act constituting the offense or aid and abet in its commission, are principals in any crime so committed and are equally guilty of the commission of such crime. Likewise all persons concerned in the commission of a crime, whether they directly commit the act constituting the offense or aid and abet in its commission, are accomplices, each to the other or others so engaged therein, and where two persons acting with a common intent jointly engage in the same undertaking and jointly commit an unlawful act each is an accomplice of the other in the commission of such unlawful act.”

The court then proceeded in the same instruction to instruct the jury in the language herein assigned as error.

The jury properly performed their function as charged. It considered all of the instructions together as a body and

not as if each instruction were a complete statement by itself. The jury was properly advised as to what considerations should be given to the status of the witnesses. The jury had heard the evidence and the admissions of the witnesses. This knowledge, as it was interpreted by the instruction number 6, should and undoubtedly did sufficiently advise the jury of the law. The fact that the court used the language "if you find in this case from the evidence that the witnesses Hanley and Clouse were accomplices" does not open the door to prejudicial error. The jury had been advised as to what constituted an accomplice. They had heard the testimony of the witnesses and were in an informed position to determine for themselves that the witnesses were accomplices. The requested instructions were granted in substance, if not in the entirety. Such being the case no prejudice resulted to the defendant from the instruction given or from the failure of the court to give the instructions requested. See *Patterson v. State*, 279 P. 356, 44 Cr. 64.

CONCLUSION

It is respectfully submitted that the evidence adduced in this case does support the verdict rendered, that the verdict is in full compliance with law, and that no error prejudicial to the defendant was committed by the court. The verdict should be affirmed.

Respectfully submitted,

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