

1954

State of Utah v. Russell E. Richards : Brief of Appellant

Utah Supreme Court

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Russell E. Richards; Defendant and Appellant;

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

STATE OF UTAH,

Respondent

- VS -

RUSSELL E. RICHARDS

Appellant.

:
:
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:
:
:
:

Case No.

8279

A P P E L L A N T ' S B R I E F

Appeal from the 7th Judicial District Court
Carbon County, Hon: John L. Sevey, Judge.

RUSSELL E. RICHARDS

Defendant and Appellant.
In Proper Person.

FILED

DEC 27 1954

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF
THE STATE OF UTAH

STATE OF UTAH,

Plaintiff and Respondent,

Case

-vs-

No.-----

RUSSELL E. RICHARDS,

Defendant and Appellant.

APPELLANT'S BRIEF

STATEMENT OF FACTS

An information charging RUSSELL E. RICHARDS with Attempt Grand Larceny on date of April 17, 1954 was duly filed April 20, 1954.

Preliminary hearing was set for May 7, 1954 and at that time defendant appeared with counsel and a Plea of NOT GUILTY entered.

Defendant was bound over to District Court and this matter came on for trial May

27,1954.

The jury was duly impanelled and sworn to try the case, and the State proceeded to offer testimony in support of the charge of Attempt Grand Larceny as alleged in the Information, To Wit:

'That the said defendant, on or about the 17th. day of April, 1954, at and within Carbon County, State of Utah, attempted to steal one sheep from Pierre Giraud, which sheep was the personal property of the said Pierre Giraud!'

Such testimony disclosed that on or about 9P.M. of April 17, 1954 Russell E. Richards was found to be within a stock enclosure on premises of Pierre Giraud.

That he was found there by Pierre Giraud and DeMar Hansen, a son in law of Pierre Giraud, is admittedly true.

The purpose, motive or intent, appears vague and will become more apparent as the testimony is analyzed.

The testimony of the first witness called by the State, Albert Passic, a deputy sheriff of the Carbon County sheriff's office, reveals that he knew the defendant off and on the last five or six years; that the defendant was in custody down in the Carbon County jail at the present time. That he also knew Mr. Giraud, of his home and stock yards, their location being Sixth East and Third South, Price Utah, and that he had been to these yards with defense counsel for the purpose of verifying measurement's of a detailed drawing of the stock yard and partitions, fences, and openings within the enclosure to be submitted as evidence, as exhibit A.

Testimony of second witness called by the State, DeMar Hansen, a son-in-law of Pierre Giraud, reveals that he lived at 310 South Third East, Price Utah, right across the road from the residence to the corral, Exhibit A, it was approximately 150 to 200 feet in distance.

On the night of April 17, 1954 he was home

with his wife, children and Mr. and Mrs. Giraud. That about 9 P.M. (Tr.P.38) Mrs. Giraud left the house to go home, but came back inside and stated she heard the sheep milling around and that we should investigate it, as she thought somebody or something was down there.

The following testimony of DeMar Hansen is injected at this point to show what happened and what was said; (Tr.P.38-39-40) and will be discussed later.

***"SO WE CAME OUT, WENT ACROSS THE ROAD, CLIMBED OVER THIS BOARD GATE THAT IS THERE ON THE WEST SIDE"

Q. WHO WAS WITH YOU, MR. HANSEN?

A. MR. GIRAUD WAS WITH ME.

Q. ALL RIGHT, PROCEED THEN.

A. WE CLIMBED OVER THIS GATE, LOOKING ALL THE TIME, WATCHING FOR SOME ONE OR SOMETHING, YOU KNOW. AND ALL THE SHEEP WAS PILED UP THERE AGAINST THE GATE. WE WALKED THROUGH THE CORRAL, I WALKED OVER TO THIS LITTLE, THIS PARTITION FENCE THAT IS IN THERE, LOOKED OVER THE FENCE

AND THERE LAYED THIS SHEEP. AND IT (continued on P.39) STRUGGLED TO GET UP AND IT COULDN'T GET UP SO I TOLD MR. GIRAUD THAT ~~WHERE~~ LAID A SHEEP RIGHT THERE. AND I SAYS IT CANT GET UP. SO I WALKED AROUND AND STOOD OVER BY THE LITTLE GATE THAT GOES DOWN INTO THE CORRAL. MR. GIRAUD FOLLOWED ME AROUND AND HE IMMEDIATELY WENT OVER AND, TO INVESTIGATE THE SHEEP.

Q. NOW YOU WENT OVER TO THIS GATE THAT LEADS OUT TO THE ORCHARD. DID YOU SEE ANY THING THERE?

A. NO.

Q. WHAT WAS YOUR PURPOSE IN GOING THERE?

A. WELL WHAT I HAD IN MY MIND WAS A DOG. THAT HAD ATTACKED THE SHEEP. AND I THOUGHT MABE IT HAD CRIPPLED IT SO IT COULDN'T GET UP, YOU KNOW. SO MR. GIRAUD HE WENT OVER THE THE SHEEP AND LEANED DOWN TO GET HOLD OF THE SHEEP TO LIFT IT UP TO SEE WHAT WAS THE MATTER WITH IT. THEN HE SAYS, WELL HE SAYS, "HERE HE IS RIGHT HERE". SO THEN I TURNED AROUND AND THIS, THIS GUY WAS LAYING RIGHT BY THIS BOARD FENCE.

Q. HOW WAS HE LYING?

A. LYING LENGTH WAYS EAST AND WEST.

IN THE SHADOWS OF THIS BOARD FENCE. SO MR. GIRAUD HE SAYS TO HIM, HE SAYS, "WHAT ARE YOU DOING IN MY CORRAL". THIS FELLOW DIDNT ANSWER FOR A LITTLE WHILE AND FINALLY HE SAYS, I BELIEVE HE SAID NOTHING. THEN MR. GIRAUD SAYS "HOW DID YOU GET IN HERE". WELL THIS FELLOW SAYS HE COME UP FROM WELLINGTON, CROSSED THROUGH THE FIELD AND GOT IN THE CORRAL. HE SAYS TO US, HE SAYS, "YOU MUST HAVE A MEAN BUCK IN THIS, IN THIS CORRAL", HE SAYS, "THIS BUCK MUST HAVE HIT ME", HE SAYS. IT KNOCKED HIM DOWN. AND THEN I NOTICED DRAG MARKS WHERE HE DRUG THE SHEEP AND I SAYS, "NO, I DONT THINK ANY BUCK KNOCKED YOU DOWN", I SAYS, "WHO DRUG THIS SHEEP THAT HAS BEEN DRUG OVER HERE, WHO DRUG THAT". WELL HE DIDN'T KNOW. HE DIDN'T KNOW (end P.39) WHO DRUG THAT SHEEP. HE DIDN'T DIDN'T KNOW ANY THING ABOUT IT. AND THEN ABOUT THAT TIME WHY WE DECIDED WE'D CALL THE POLICE DOWN AND LET THEM TAKE OVER. SO I YELLED AT MY WIFE ACROSS THE STREET AND TOLD HER TO CALL THE POLICE. AND SHE DID. WHEN THE GOT DOWN THERE, WELL THE SIREN WAS BLASTING, THEY HAD

the sheep were bunched up at the west end of the corral, that they appeared scared and did not want to leave this part of the corral.

On cross examination by defense counsel DeMar Hansen verified the previous testimony of Mr. Passic as to measurements and length of partition inside the corral, also re-affirming the position and distance where the sheep was found, the position and place the defendant was found. He further testified to his knowledge of sheep and at one place stated, ***"NONE OF THESE SHEEP WERE SHEARED AT THAT TIME"*** (Tr.P.45)

He further related his knowledge of sheep stampeds from fright and in answer to an inquiry, ***"AND YOU DONT KNOW BUT WHAT THIS PARTICULAR SHEEP WAS KNOCKED DOWN IN THIS STAMPEED AND RUSH WHEN THEY WERE FIRST FRIGHTENED, DO YOU ?

A. NO. I DONT KNOW ABOUT THAT.

Q. YOU DO KNOW, HOWEVER, AS SOON AS MR. GIRAUD PUT HIS HAND ON THE SHEEP IT GOT UP AND WALKED OFF ?

A. I DO KNOW THAT"*** (Tr. bottom of page 46 and

DeMar Hansen further testified that,

"IT WAS DARK, THE MOON WAS OUT BUT" (Tr. P.47)

That the police officers had flashlights,

***" THEY DID HAVE FLASHLIGHTS" *** (Tr.P.47)

And that he did not see the defendant at the time he went into the corral.

*** "I DIDN'T SEE THE DEFENDANT AT THE TIME I WENT IN THE CORRAL" *** (Tr.P.47)

Also that an experience he had in holding down a sheep, he was pretty near on top of the sheep.

Q. "YOU HAD TO BE RIGHT UP PRETTY NEAR ON TOP OF THE SHEEP, WASNT YOU" (Tr.P.49)

A. I WAS YES. (Tr.P.49)

The next witness called by the State was Pierre Giraud, He testified that he lived on Third South and Sixth East, Price Utah. That he had sheep in his corral on April 17, 1954 and that between 8:30 and 9:00 P.M. he and his wife were at the DeMar Hansen residence. That he and DeMar Hansen went over to the corral to

investigate the trouble, and upon reaching the corral, stood there for some time watching the sheep.

"WELL WE STAND THERE FOR A WHILE AND WE SEEN THE SHEEP AND THEY WERE STANDING BY THE CORRAL"

(Tr.P.51)

They then proceeded to go over the fence through the corral to see what was on the other side.

"AND WE WENT OVER THE FENCE AND WE WENT OUT THROUGH THE CORRAL TO SEE WHAT WAS GOING ON, ON THE OTHER SIDE"

And as they went through the corral they observed.

"WE SEE WHERE SOMEBODY HAD BEEN DRAGGING SOMETHING, A SHEEP!" (Tr.P.51)

Following the drag marks to the corner of the partition and fence he seen the sheep laying there and as he went down to investigate why the sheep was laying there, he saw the defendant lying there holding the sheep by a hind leg and the defendant they turned the sheep loose.

He then ask defendant what he was doing in his corral and the defendant said nothing.

*** "HE SAID NOTHING" *** (Tr.P.53)

He then ask him,*** "WHO DRAGGED THAT SHEEP DOWN HERE" *** (Tr.P.53)

Defendant said he didnt know.*** "HE SAID HE DIDN'T KNOW"*** (Tr.P.53)

The defendant told him he was coming from Wellington, crossed through the field and was going through the corral to avoid the mud.

There was no further conversation with the defendant until the police came.

DeMar called to his wife across the street to call the police and they stayed there watching defendant until police came.

When the police came they placed defendant under arrest and took him out to the police car.

Upon cross examination by defense counsel, Mr. Giraud testified he had 18 lambs, 6 grown sheep and one Buck. That they were not sheared at the time of incident, that this particular sheep had full growth of wool and

was fat.*** "FAT, YES SIR"*** (Tr.P.57) and a
heavy Ewe,*** "YES SIR"*** (Tr.P.57)
and approximated the weight of 200 lbs.as
*** "PRETTY CLOSE TO IT"*** (Tr.P.57)

Also that he saw no knife, no gun, no axe,
no rock, no club, nothing that could be used to
kill the sheep and no rope or string to tie it.
(Tr.P.58)

No car, wagon, pack horse, burro or wheelbarrow
to carry it away. (Tr.P.62)

He stated that mabe he could drag him
but didnt know how he intended to do it. (Tr.P.63)

Next witness called by the State was
Bob Williams, a police officer of Price Utah.
That on the night of April 17, 1954 he and
officer Frandsen received a call, and in
response to that call proceeded to Mr. Giraud's
place about 8:45 P.M.

He placed defendant under arrest and
led him to the patrol car. As they were going
to the car the defendant started to kick at
him and he hit defendant with a blackjack.
(Tr.P.66)

After placing him in the car they proceeded to the sheriff's office, on the way the defendant tried to leave the car and he hit him again with the blackjack.

He testified that the defendant was arrested on his presumption of stealing sheep, that he had no wire, knife, gun, axe, club or string. (Tr.P.69) also, no vehicle to carry a sheep in.

He stated he had not seen this particular sheep and that he presumed the marks were made by dragging a sheep (Tr.P.76)

Next witness called by the State was Ross G. Frandsen, companion police officer of Bob Williams. He testified that he never spoke a word to the defendant, did not see Bob Williams strike the defendant at any time, that the defendant had been drinking and that he booked the defendant on charge of attempt to steal a sheep.

The defendant took the stand in his own behalf and testified that he was a single man, 32 yrs. of age and weighed 140 lbs.

On the night of April 17, 1954 about 8:30 P.M. he had just returned from Wellington and

was on his way to town about 8:30 P.M. taking a short cut through the pasture land of Mr. Giraud and finding it muddy decided to go through the corral. As he jumped over the gate leading into the corral, the sheep bolted and he then sit down, remaining in that position until Mr. Giraud reached down, took hold of the sheep. That the sheep got up, ran over to the bunched sheep before Mr. Giraud saw him.

He further testified that at no time did he have hold of the sheep, that he had no intentions of stealing the sheep. That he did not attempt to steal a sheep. That he had no knife ropes, string, wire, axe, rock, or club and no means or conveyance to haul the sheep away.

Also that he was sober, had not been drinking, and when police arrived he was struck in the mouth with a flashlight while being pulled to his feet from the sitting position he was in when police arrived, that he did not resist arrest nor did he kick at them.

Upon being taken to the police station he was handcuffed and driven to a point near a

bottling company where the officers removed

STATEMENT OF POINT

the handcuffs and severely beat him, breaking

POINT 1.

his nose and blackening his eyes in an effort

THE EVIDENCE WAS INSUFFICIENT TO SECURE
to get him to leave town. Failing in this manner

A VERDICT OF GUILT ON THE CHARGE THAT
he was taken to the Sheriff's office and booked.

STATE HAS NOT PRESENTED SUFFICIENT EVIDENCE

CONSTITUTE A FURTHER DEFENSE OF ATTEMPT

LARCENY, THE PROBATION RECORDS, ETC., ETC.,

WHICH IS NECESSARY AS A DEFENSE OF LAY.

U.C.A. 1943, 107-7-10.

U.C.A. 1943, 107-21-1.

POINT 1.

THE EVIDENCE WAS INSUFFICIENT TO SECURE

THE VERDICT OF GUILT ON LAY.

U.C.A. 1943, 107-10-1.

STATEMENT OF POINTS

POINT I.

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A VERDICT OF GUILT ON THE GROUNDS THAT THE STATE HAS NOT PRESENTED SUFFICIENT FACTS TO CONSTITUTE A PUBLIC OFFENCE OF ATTEMPT LARCENY, THE ESSENTIAL ELEMENT BEING, INTENT, WHICH IS NECESSARY AS A MATTER OF LAW.

U.C.A.1943,103-1-19.

U.C.A.1943,103-36-1.

POINT II.

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT OF THE JURY.

U.C.A.1943,103-36-1.

As previous stated, Russell E. Richards was found to be within the stock enclosure on the premises of Pierre Giraud, and had the charge been that of TRESPASSING the problem is over, but too often, as is the case here the view or intent that the defendant had, must be ascertained from all statements and acts, which all too often are ambiguous and capable of diverse interpretations.

It is when dealing with such a situation that the problem becomes acute.

None of the evidence placed properly before the Court, taken separately or together could show that the defendant had any premeditation as to the taking of a sheep, that he had any specific intent to take the sheep, or that he had any malice aforethought.

Evidence on the essential element of the offence do not prove intent, and where intent has not been proven, there cannot be attempt.

A man is not presumed to have intent to that which is not the natural result of his act, and if there be no act there can be no crime.

A proper analysis of all testimony will also fail to show any motive to injure or benefit, therefore there is no crime committed if the mind of the person is innocent.

It is of necessity very difficult to determine what viewpoint or intent the defendant had other than taking a short-cut through the corral to avoid the muddy pasture, and therefore the following questions are present; Is there anything in the record which would give any indication of any view or intent to steal a sheep or to show that an attempt was made to steal a sheep.

It is these view points that must be determined to enable the Court to discover whether there was intent or attempt to steal a sheep.

Other than finding the defendant in the corral, the total sum of testimony given by DeMar Hansen when he stated***"WELL THEY CAME IN THE CORRAL AS FAR AS I REMEMBER(speaking of police officers) I TRIED TO SHOW THEM THIS DRAG MARK OF THIS SHEEP, I SAYS, "THERE'S YOUR EVIDENCE"

The question;What was the purpose of the drag marks? or,What do they indicate? provides but one answer,namely,"What" and can in no manner be construed as intent,since it is but a question that leads to the previous findings of defendant being found lying down by a sheep within the corral.

There is and was not sufficient evidence before the Court to sustain the verdict of the jury.

The conflicting testimony as to just what did occur in the corral before the police officers arrived is viewed as follows;

DeMar Hansen gave testimony in answer to the questions;

Q.***"YOU DO KNOW, HOWEVER AS SOON AS MR. GIRAUD PUT HIS HAND ON THE SHEEP IT GOT UP AND WALKED OFF?"*** (Tr. P. 47)

A.***"I DO KNOW THAT"*** (Tr. P. 47)

Mr. Giraud testified***"WELL I FIRST SEEN THE SHEEP IT WAS LAYING THERE. THEN I WENT DOWN TO LOCATE WHAT WAS GOING ON. WHAT HE WAS LAYING THERE FOR AND I SEEN THAT MAN WAS LAYING RIGHT AGAINST THE FENCE AND HE WAS HOLDING THE SHEEP BY THE HIND LEG"*** (Tr. P. 52)

Defendant stated;***"YES HE LET THE SHEEP UP AND THEN HE SAW ME"*** (Tr. P. 92)

Defendant also stated in answer to the question,***"DID YOU EVER HAVE HOLD OF THAT SHEEP?"*** (Tr. P. 92)

A.***"NO I DIDN'T"*** (Tr.P.92)

The testimony of DeMar Hansen and the defendant indicate that Mr.Giraud let the sheep up and that the defendant did not have hold of the sheep.

Testimony of police officers Bob Williams and Ross G.Frandsen indicate malice and hatred toward the defendant, having testified to striking him with a blackjack twice and since the State offered no re-buttal to defendants testimony that he was driven to a point near a bottling company and severly beaten only strengthens and indication of their prejudice toward the defendant.

The fact that this particular charge was placed against defendant adds malice toward defendant.

It will be noted that the prejudice which has resulted to the defendant in this case could have acted in no other way than to incite the passions and prejudice of the jury against the defendant by the inference of such testimony given by Mr.Giraud when he stated,

"WE SEE WHERE SOMEBODY HAD BEEN DRAGGING SOMETHING, A SHEEP" (Tr.P.51) and testimony of DeMar Hansen when he stated, ***"AND THEN I NOTICED DRAG MARKS WHERE HE DRUG THE SHEEP AND I SAYS,"*** (Tr.P.39)

The above statements having been made before defendant was known to be within the corral.

Defendant contends that inference and inference alone can and will not support a verdict of guilt, and since no sheep was removed from the property or the corral, it is inconceivable how a man weighing 140 lbs., sober or drunk, could possibly attempt to steal a sheep of approximately 200 lbs. without the aid of some kind of a vehicle for transporting it; some kind of rope, wire or string to tie it with or some kind of an instrument to kill and butcher it with.

CONCLUSION.

It is respectfully submitted that the evidence adduced at the trial of this case does not support the verdict; That the verdict is contrary to Law, and that the trial Court errēd in denying the defendant's motion for a directed verdict of 'Not Guilty' and to dismiss the defendant.

Therefore Appellant submits that the verdict in this case should be reversed, and Prays that this Honorable Court shall do so.

Respectfully Submitted

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