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State of Utah v. Clarence E. Bridge : Brief of Respondent

Utah Supreme Court

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E. R. Callister; Walter L. Budge; Attorneys for Respondent;

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In the Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff and Respondent,

vs.

CLARENCE E. BRIDGE,

Defendant and Appellant.

Case No.
8314

BRIEF OF RESPONDENT

E. R. CALLISTER, *Supreme Court, Utah*
Attorney General,

WALTER L. BUDGE,
Assistant Attorney General,
Attorneys for Respondent.

TABLE OF CONTENTS

	Page
STATEMENT OF FACTS	1
STATEMENT OF POINTS	3
ARGUMENT	4
POINT I. THE ADMISSION IN EVIDENCE OF APPELLANT'S CONFESSION WAS NOT VIOLATIVE OF THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THE PROVISIONS OF ARTICLE I, SECTION 12, OF THE CONSTITUTION OF UTAH, NOR TITLE 77, CHAPTER 15, SEC- TION 1, UTAH CODE ANNOTATED, 1953	4
POINT II. THE APPELLANT WAS NOT CON- VICTED SOLELY UPON THE UNCORROB- ORATED TESTIMONY OF AN ACCOMPLICE AND THE CORROBORATIVE EVIDENCE WAS SUFFICIENT TO SUSTAIN THE VER- DICT OF THE JURY	6
CONCLUSION	10

AUTHORITIES CITED

25 A. L. R. 886	7
87 A. L. R. 767	7
Wharton on "Criminal Evidence," 11th Ed., Vol. 2, Sec. 752, 753, 748, 746 and 754, p. 1257 to 1273 incl.	7

CASES CITED

Betts v. Brady, 316 U. S. 455, 462; 86 L. Ed. 1595, 1601; 62 S. Ct. 1252	5
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TABLE OF CONTENTS—Continued

	Page
Massey v. Moore, Warden (1954) Advanced Reports of S. Ct. of the United States, Lawyers' Ed., Vol. 99, No. 3, p. 117	5
People v. Derenzo, 46 Cal. App. 2d 411, 115 P. 2d 858 ..	7
People v. Negra, 208 Cal. 64, 280 P. 354	7
State v. Braasch, ... Utah ..., 229 P. 2d 289	5
State v. Caroles, 74 Utah 94, 277 P. 203	7
State v. Cox, 74 Utah 149, 277 P. 972	7
State v. Erwin, 101 Utah 365, 120 P. 2d 285	7
State v. Hall, 112 Utah 272, 186 P. 2d 970	8
State v. Laris, 78 Utah 183, 2 P. 2d 243	7
State v. Vigil, ... Utah ..., 260 P. 2d 539	8
State v. Wade, 66 Utah 276, 241 P. 838	7

STATUTES CITED

Constitution of the United States, 14th Amendment ..	3, 4, 5
Constitution of Utah, Article I, Sec. 12	3, 4, 5
Utah Code Annotated, 1953, Section 77-15-1	3, 4, 5
Utah Code Annotated, 1953, Section 77-31-8	3

In the
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STATE OF UTAH,
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CLARENCE E. BRIDGE,
Defendant and Appellant.

Case No.
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BRIEF OF RESPONDENT

STATEMENT OF FACTS

Appellant, Clarence E. Bridge, was, by a jury, found guilty of robbery. The verdict returned on October 28th, 1954, and sentence five years to life, imposed on November 13th, 1954.

The fact that a robbery took place at the Claud Ann Apartment at 23 North 1st West in Salt Lake City, Utah, at approximately 11 p. m. on the night of April 19th, 1954,

was established by the testimony of the victim, Mrs. Edna Brennan, age seventy, (R. 21-26) and by the testimony of D. J. McDonough, an eye witness to the crime (R. 26-28). Neither of these witnesses placed the appellant at the scene of the crime. However, the witness, Brennan, had a ten year acquaintanceship with the appellant and testified that he, appellant, knew where the safe was in her residence and knew that she had a brown purse (R. 25). This witness testified further that a cash box was taken from the safe; (R. 23) that currency and checks were taken from pigeon holes in the safe (R. 23). *The witness, McDonough, testified that Milton B. Head, an accomplice, asked the victim, "where her brown purse was?"* (R. 27).

The accomplice, Milton B. Head, testified that he had been told about the brown purse; (R. 43) that appellant, Bridge, told him it was supposed to contain the money inside the safe (R. 43).

Salt Lake Police Officer Don B. Pearson testified that he investigated the robbery; (R. 29) that he took a statement from appellant; (R. 29) that he informed appellant of his rights in connection with the making of such statement; (R. 30) that he obtained the statement without threat or force; (R. 30) that he promised appellant no reward; (R. 30) that appellant signed the statement (R. 31). Counsel for appellant objected to the admission of this statement (confession) in evidence "on constitutional grounds on which I will lay a foundation at a later time" (R. 31). The objection was overruled. This police officer further testified that the appellant told him that the cash box taken from the Claud Ann Apartment, from the victim, was in

a culvert on 6th South and 2nd West (R. 32). On cross-examination Officer Pearson said that appellant had made requests for an attorney; (R. 33, 35, 36) that appellant was told to make his request to the jailer (R. 33).

Police Officer Dean Anderson, called as a witness for the State, testified that he recovered the cash box under the culvert just east of 2nd West on 6th South, at 260 West 6th South (R. 39).

Appellant moved for dismissal of the cause; (R. 55) for judgment non obstante verdicto (R. 58). Both motions were denied.

The court did not instruct the jury that the testimony of an accomplice need be corroborated by other evidence before a conviction can be had on such testimony standing alone. (Sec. 77-31-8, U. C. A. 1953.) *The appellant joined with the State in taking no exception to the court's instructions.*

STATEMENT OF POINTS

POINT I

THE ADMISSION IN EVIDENCE OF APPELLANT'S CONFESSION WAS NOT VIOLATIVE OF THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THE PROVISIONS OF ARTICLE I, SECTION 12, OF THE CONSTITUTION OF UTAH, NOR TITLE 77, CHAPTER 15, SECTION 1, UTAH CODE ANNOTATED, 1953.

POINT II

THE APPELLANT WAS NOT CONVICTED SOLELY UPON THE UNCORROBORATED TESTIMONY OF AN ACCOMPLICE AND THE CORROBORATIVE EVIDENCE WAS SUFFICIENT TO SUSTAIN THE VERDICT OF THE JURY.

ARGUMENT

POINT I

THE ADMISSION IN EVIDENCE OF APPELLANT'S CONFESSION WAS NOT VIOLATIVE OF THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THE PROVISIONS OF ARTICLE I, SECTION 12, OF THE CONSTITUTION OF UTAH, NOR TITLE 77, CHAPTER 15, SECTION 1, UTAH CODE ANNOTATED, 1953.

There is nothing in the record in this cause to indicate that the confession of the defendant was not voluntarily given. There is nothing in the record that said confession was obtained by force, fear, coercion or promise of immunity or benefit. The record does not show that there was any objection to the admission in evidence of the confession except "on constitutional grounds." This objection was properly overruled. The record clearly shows, as does the confession itself, that appellant was fully advised as to his rights before making the statement.

Appellant here complains of a violation of due process of law as guaranteed by the 14th Amendment of the Constitution of the United States, and Article I, Section 12, of the Constitution of Utah; the latter as augmented by the Utah Code of Civil Procedure, Section 77-15-1, 1953. Specifically, *in that appellant was denied counsel.*

The requirement of the 14th Amendment is for a fair trial. *Massey v. Moore, Warden* (1954), Advance Reports of the Supreme Court of the United States, Lawyers' Edition, Vol. 99, No. 3, page 117; citing *Betts v. Brady*, 316 U. S. 455, 462, 86 L. Ed. 1595, 1601, 62 S. Ct. 1252.

As to the statutory and constitutional provisions of the State of Utah, above set forth and relied upon by appellant, this Court has considered and resolved the question as to the right to counsel before a defendant may be questioned by police officers. The Court said:

“We have found no case which holds that a confession is not admissible in evidence merely because the defendant was immature and without the advise of counsel, friends or relatives [as appellant here argues] when it was made and *Mares v. Hill*, supra, considered this very problem and held that those facts did not make the confession inadmissible in evidence.” (Comment added.)

And,

“* * * the mere fact that a confession is made while the accused is in the custody of the police officers does not render it inadmissible.”

State v. Braasch, . . . Utah . . . , 229 P. 2d 289.

Appellant does not contend that the confession was not voluntarily given and claims no error in this respect.

POINT II

THE APPELLANT WAS NOT CONVICTED SOLELY UPON THE UNCORROBORATED TESTIMONY OF AN ACCOMPLICE AND THE CORROBORATIVE EVIDENCE WAS SUFFICIENT TO SUSTAIN THE VERDICT OF THE JURY.

Appellant says:

“It is the contention of defendant that Section 77-31-18, Utah Code Ann. (1953), which is the general statute as to testimony of accomplices and the need for corroboration of such testimony in order to support a conviction is applicable in the instant case.”

The State joins in this contention. The State also concedes that the witnesses, Brennan, McDonough, Officer Anderson and Officer Pearson, were not able to independently place the appellant at the scene of the crime. However, the testimony of the accomplice, Head, shows that appellant drove the car to the Claud Ann Apartments, where the offense was consummated, and drove the car away when the perpetrators of the crime fled. The part played by appellant in the robbery was that of driver of the get-away car. This witness also testified that he had knowledge of a *brown purse* which was supposed to contain the money and that he received this information from the appellant (R. 43). This testimony was *corroborated* by that of the witness, McDonough, who said that he heard this accomplice ask the victim “*where her brown purse was.*” The question of what amounts to sufficient corroboration has been many

times before this Court. In the case of *State v. Erwin*, 101 Utah 365, 120 P. 2d 285, this Court held:

“This Court has held this corroboration need not go to all the material facts testified to by the accomplice (*State v. Stewart*, 57 Ut. 224, 193 P. 855); that the corroborative evidence need not be sufficient in itself to support a conviction; it may be slight and entitled to little consideration. *People v. Lee*, 2 Utah 441; *State v. Spender*, 15 Utah 149, 49 P. 302. * * *

“On the other hand, the corroborating evidence must implicate the defendant in the offense and be consistent with his guilt and inconsistent with his innocence, and must do more than cast a grave suspicion on him, and all of this must be without the aid of the testimony of the accomplice. *State v. Lay*, 38 Utah 143, 110 P. 986; *State v. Butterfield*, 70 Utah 529, 261 P. 804; *State v. Park*, 44 Utah 360, 140 P. 768; *State v. Kimball*, 45 Utah 443, 146 P. 313; *State v. Powell*, 45 Utah 193, 143 P. 588; *State v. Bridwell*, 48 Utah 97, 158 P. 710; *State v. Baum*, 47 Utah 7, 151 P. 518; *State v. Frisby*, 49 Utah 227, 162 P. 616; *State v. Elmer*, 49 Utah 6, 161 P. 167; *State v. Gardner*, 83 Utah 145, 27 P. 2d 51.

“The corroborative evidence of an accomplice, unlike proof of corpus delicti, may consist in the admissions of the accused. * * *”

See Wharton on Criminal Evidence, 11th Edition, Volume 2, Section 752, 753, 748, 746 and 754, pages 1257 to 1273 inclusive. See also 25 A. L. R. 886; 87 A. L. R. 767; *State v. Wade*, 66 Utah 276, 241 P. 838; *State v. Laris*, 78 Utah 183, 2 P. 2d 243; *State v. Caroles*, 74 Utah 94, 277 P. 203; *State v. Cox*, 74 Utah 149, 277 P. 972; *People v. Derenzo*, 46 Cal. App. 2d 411, 115 P. 2d 858; and *People v. Negra*,

208 Cal. 64, 280 P. 354. In the recent case of *State v. Vigil*, ... Utah ..., 260 P. 2d 539, the Court stated the rule thusly:

“* * * the corroborating evidence must connect the defendant with the commission of the offense, *State v. Lay*, 38 Utah 143, 110 P. 986; and be consistent with his guilt and inconsistent with his innocence, *State v. Butterfield*, 70 Utah 529, 261 P. 804. The corroborating evidence must do more than cast a grave suspicion on the defendant and it must do all of these things without the aid of the testimony of the accomplice.”

In the case at bar, the corroborating evidence connects the appellant with the commission of the offense, is consistent with his guilt and inconsistent with his innocence and casts upon him more than a grave suspicion.

We are aware of the fact that the court did not instruct the jury that an accomplice's testimony must be corroborated. This was not prejudicial error. In *State v. Hall*, 112 Utah 272, 186 P. 2d 970, in an unanimous opinion, Mr. Justice Wolfe, concurring specially and directly on this issue, the Court said:

“Now as to the failure of the court to instruct on the law applicable to the testimony of an accomplice. Our Code, section 105-32-18, U. C. A. 1943, prohibits the finding of an accused guilty upon the evidence of an accomplice unless that evidence is corroborated. It reads:

‘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.'

* * * Counsel * * * submitted no requests for instructions nor did he take any exceptions to any instructions given by the lower court, nor to the court's refusal or failure to give any particular kind of an instruction.

"Under the circumstances there is nothing for us to do but affirm the judgment of the lower court."

Mr. Justice Wolfe in his concurring opinion went on to say:

"* * * Counsel, as an officer of the court, has the duty as a specialist on the case, which he should be, to point out a failure by the court to instruct on a salient material proposition of law. He is a back-stop in that regard. If he does not do so his client cannot afterward complain that the instructions were insufficient or incomplete.

"However, I have a doubt as to whether the provisions of Sec. 105-32-18, U. C. A. 1943, should be brought to the attention of the jury. It certainly is for the court to say, in the first instance, whether there is corroborating evidence. If there is, the court will overrule a motion for nonsuit, or for a directed verdict. But whether after that the court should instruct the jury, and thus place on it the sometimes difficult task of differentiating corroborating testimony from other testimony, presents to me a serious question. * * * *I need only signify my doubt as to the other point in order that it will not be assumed that it escaped notice and, more important, that it will not be hereafter argued that by*

implication this court held that an instruction as to the necessity for corroborating evidence was necessary.” (Emphasis added.)

CONCLUSION

The verdict and the sentence of the court below should be affirmed.

Respectfully submitted,

. E. R. CALLISTER,
Attorney General,

WALTER L. BUDGE,
Assistant Attorney General,

Attorneys for Respondent.