Brigham Young University Law School
BYU Law Digital Commons

Utah Supreme Court Briefs (1965 –)

1981

The State of Utah v. Michael Jones : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the Law Commons

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errorsDavid Wilkinson; Attorney for Plaintiff-RespondentGinger L. Fletcher; Attorney for Defendant-Appellant

Recommended Citation
Brief of Appellant, *Utah v. Jones*, No. 17341 (Utah Supreme Court, 1981).
https://digitalcommons.law.byu.edu/uofu_sc2/2489

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

HE STATE OF UTAH, :

Plaintiff-Respondent, :

-v- :

ICHAEL JONES, :

Defendant-Appellant. : Case No. ~~17476~~ 17341

BRIEF OF APPELLANT

Appeal from a jury verdict of guilty of For
he Third Judicial District in and for Salt Lake Cou
f Utah, the Honorable Homer F. Wilkinson, presidin

GINGER L. FLETCHER
Salt Lake Legal Def
333 South Second
Salt Lake City, UT
Attorney for Def

AVID WILKINSON
ttorney General
36 State Capitol Building
alt Lake City, UT 84114
ttorney for Plaintiff-Respondent

F

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,

Plaintiff-Respondent,

-v-

MICHAEL JONES,

Defendant-Appellant.

Case No. 17476

BRIEF OF APPELLANT

Appeal from a jury verdict of guilty of Forgery in the Third Judicial District in and for Salt Lake County, State of Utah, the Honorable Homer F. Wilkinson, presiding.

GINGER L. FLETCHER
Salt Lake Legal Defender Association
333 South Second East
Salt Lake City, UT 84111
Attorney for Defendant-Appellant

DAVID WILKINSON
Attorney General
236 State Capitol Building
Salt Lake City, UT 84114
Attorney for Plaintiff-Respondent

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS

CASES CITED

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

CASES CITED (cont.)

AUTHORITIES CITED

FOOTNOTES CITED

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	
MICHAEL JONES,	:	Case No. 17476
Defendant-Appellant.	:	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, MICHAEL JONES, was convicted in a criminal proceeding of Forgery, a second degree felony, by the court in the Third Judicial District, Salt Lake County, State of Utah, the Honorable Homer F. Wilkinson, presiding.

DISPOSITION IN THE LOWER COURT

Michael Jones was tried and convicted by a jury of Forgery, a second degree felony. The appellant was sentenced for the indeterminate term of not less than one year, nor more than fifteen years in prison.

RELIEF SOUGHT ON APPEAL

Appellant seeks the reversal of the judgment rendered by the Court below and a new trial.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

STATEMENT OF THE FACTS

The State produced the following evidence to support a forgery conviction under U.C.A. §76-6-501, (1953 as amended).

Mr. Vargecko, the bank manager, testified that on Monday February 4, 1980, a teller alerted him that Helen Stokes was attempting to cash a $2,250.00 check drawn against the account of Angelo Fuoco, another bank official. He was familiar with Mr. Fuoco's signature and immediately recognized a problem with the check. He invited Ms. Stokes into his office where he questioned. While delaying, he was informed that the check was stolen and telephoned Mr. Fuoco. Mr. Vargecko testified that, during this time, he noticed the defendant sitting on a bench near the bank entrance. He saw the defendant enter the bank a few minutes later conduct a transaction at a window, and leave just as two policemen (Officer's English and Rickelman) were arriving. He spoke with the police and witnessed the subsequent arrest of Ms. Stokes and the defendant.

Mr. Fuoco testified that the check was one of eight that were missing from the glove compartment of his car. The car had been serviced the previous Friday, February 1, at the bank's parking terrace garage. He called the police to go to the bank on February 4 after being called by Mr. Vargecko.

Mr. Shephard, the garage manager testified that the defendant serviced and parked Mr. Fuoco's car on February 1, and that he noticed Ms. Stokes visiting the defendant that morning at his job-site, as she often did. On February 4, he was called to the bank and got there just as the two policemen were arriving

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

noticed the defendant outside the bank, identified Ms. Stokes inside the bank, and told the police that he thought they were together, thus causing the defendant to be apprehended and arrested.

Officer English testified that he and Rockelman entered the bank and found Ms. Stokes in Vargecko's custody. Rockelman left to locate the defendant, and English arrested Ms. Stokes. He also arrested the defendant when Rockelman returned with him. A search by Rockelman, witnessed by English produced money and a check on defendant's person. Officer English testified that defendant initially denied knowledge, then admitted that his girlfriend, Ms. Stokes had given him the check and cash, but denied any wrongdoing at the bank.

Officer Yontz testified that he assisted the other two officers by transporting Ms. Stokes to the Detention Center. As he and Ms. Stokes were leaving the bank area, they passed close by the defendant, who was in the custody of English and Rockelman. Officer Yontz testified that he overheard a conversation between Ms. Stokes and defendant where defendant said to Ms. Stokes, "I love you anyway, even if you screwed it up."

Defendant called Helen Stokes who testified that she took the checks from Fuoco's car on February 1 and filled them out without defendant's knowledge. She also placed one in his wallet. She did not inform him as to their true nature, nor the true nature of her business at the bank on February 4 until after they had been arrested. She testified that defendant told her to tell the truth and that he said "he loves me even though I did screw up." She admitted giving him the cash at noon prior to their going to the bank. She testified to being convicted in Juvenile Court and paying

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

restitution.

Mr. Fuoco was recalled and testified regarding the particulars of his car.

Officer English added testimony concerning statements by Ms. Stokes at the bank.

Officer Yontz testified that he heard Ms. Stokes say, "I tried to get it right."

ARGUMENT

POINT I

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT.

Appellant contends that the evidence was insufficient to support the verdict and that it would be unconscionable for this Court to refuse review of his conviction.

The authority of the reviewing Court to reverse a judgment on sufficiency of evidence is clear. The standard for determining sufficiency of evidence for a conviction is that:

It must appear that upon so viewing the evidence, reasonable minds must necesarily entertain a reasonable doubt that the defendant committed a crime. State v. Wilson, 565 P.2d 66, 67 (1977).

In. State v. Mills, 530 P.2d 1272 (1975), this court also discussed a challenge to the sufficiency of the evidence:

> For a defendant to prevail upon a challenge to the sufficiency of the evidence to sustain his conviction, it must appear that viewing the evidence and all inferences that may reasonably be drawn upon therefrom, in light most favorable to the verdict of the jury, reasonable minds could not believe him guilty beyond a reasonable doubt. 530 P.2d at 1272.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

In State v. Garcia, 114.2d 167, 335 P.2d 57 (1960), this court stated that:

> There is no jury question without substantial evidence indicating defendant's guilt beyond a reasonable doubt. This requires evidence from which a jury could reasonably find the defendant guilty of all material issues of fact beyond a reasonable doubt. 355 P.2d at 59.

In State v. Cooper, 114 Utah 531, 201 P.2d 764, (1949) the court said that:

> We do not ordinarily interfere with the rulings of the trial court in either granting or denying a new trial, and unless abuse of, or failure to exercise discretion on the part of the trial judge is quite clearly show, the ruling of the trial judge will be sustained. 201 P.2d at 770.

While in Appellants case there was no motion for a new trial, the above language would seem to indicate when this court will grant a new trial, even in the absence of such a motion. Clearly then, each case must turn upon its own facts as to whether a new trial is merited due to insufficiency of evidence.

In Appellants case, there is no substantial evidence that defendant participated in, nor had any knowledge of the forgery. There is no clear evidence that defendant took the checks from the car. There is no evidence that he wrote them out. He did not attempt to pass them. He entered the bank only to conduct a legitimate transaction. There is no evidence that he fled because the police arrived. He did not resist questioning by police. He admitted the cash and check came from Ms. Stokes as substantiated by her testimony. The confusion surrounding the apprehension and arrest of Ms. Stokes and the defendant made it improbable that the sequence of events were accurately reconstructed.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

The conversation overheard by Officer Yontz was not heard by an other State's witness even though some were very nearby. There is reasonable doubt as to the exact wording and interpretation to be given it.

The State was able to show only that both defendant and Stokes had access to Fuoco's car. The defendant was seen sitting outside the bank, then conducting legitimate business inside. Mrs. Stokes had passed bad checks previous to this effort. The State merely established that the defendant knew and associated with a forgerer who trusted him.

Defendant presented evidence that Helen Stokes was the person who took the checks and acted alone in forging them. Taking the totality of evidence including the testimony of Ms. Stokes, reasonable minds could differ as to whether defendant was guilty material issues of fact, as to whether defendant committed a crime

POINT II

THE COURT BELOW COMMITTED PREJUDICIAL ERROR IN ALLOWING THE PROSECUTOR TO EMPLOY AN IMPROPER METHOD DURING CLOSING ARGUMENT.

In Walker v. State of Utah, no. 16705 (Feb. 1981), this court reiterated the general policy that the State, while charged vigorously enforcing the laws:

> "Has a duty to not only secure appropriate convictions, but an even higher duty to see that justice is done. In his role as the State's representative in criminal matters, the prosecutor, therefore, must see that justice is done. Thus, while he should prosecute with earnestness and vigor, it is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. No. 16705 at 5.

During her closing argument, the prosecutor made the following remarks:

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library. Machine-generated OCR, may contain errors.

"Officer Yontz is sure of what he heard"...(Tr 123 line 25).

"Well it's a big mistake making a statement like that in front of any police officer, but it's an expecially big mistake to make a statement like that in front of Officer Yontz. Officer Yontz is a second year law student and he is trained to know the significance of statements like that. He in prints it in his mind, writes it down, and then he writes it down in his report exactly as it was said"... (Tr. 124, lines 4-11).

"She insinuated that Officer Yontz, a second year law student put something false in his report. She suggested that he would risk one to five years in prison" ... (Tr 141, line 8-10).

At this point defense counsel objected to the introduction of remarks about penalties for something which did not occur in court as being improper rebuttal argument. The Court remarked: "let's stay off of anything as far as the penalty is concerned." (Tr. 141, lines 15,16).

Appellant contends that the prosecutor's remarks were an improper bolstering of Officer Yontz's credibility and that the court failed to adequately correct the prejudicial error.

It is well settled that prejudice may result due to the impropriety of statements by counsel arguing a witnesses credibility from his official position or occupation or counsel's personal acquaintance with the witness for some stated duration of time. This is regularly construed as reversible error because it is tantamount to being unsworn testimony by counsel. 81 ALR 2d §1240-1253.

Here, Prosecutor Strachan and Officer Yontz are both members of the University of Utah's College of Law, she as a faculty member(then on sabbatical leave,) he as a student in his second year. The prosecutor used her official position and this

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

relationship to bolster Yontz's crucial testimony by suggesting that law students are extra perceptive and alert, more aware of significant statements than non-law student policemen, and possessing enhanced presence of mind for attending to minute details. This was tantamount to the prosecutor testifying as to what she believes to be the capacity of law-students from her occupation as a law professor.

The appellant urges this Court to grant a reversal based on the test set out in State v. Valdez, 30 U.2d 54,60, 513 P.2d 422, (1973). In Valdez this Court held that:

> The test of whether the remarks made by counsel are so objectionable as to merit reversal in a criminal case is, did the remarks call to the attention of the jurors matters which they would not be justified in considering in determining their verdict and were they, under the circumstances of the particular case probably influenced by those remarks. 513 P.2d at 426.

The first prong of the Valdez test, "calling to the attention of the jurors matters which they would not be justified in considering" was violated when the prosecutor suggested that Officer Yontz was extra-competent and perfectly correct, and would not risk a perjury conviction, due to his legal training.

The second prong of the Valdez test, "the jury was probably influenced by those remarks" is met inferentially since Yontz's testimony was crucial and distinguisable by the exacting nature of the conversation that he alone overheard. This indicated that the jury was probably influenced. This, taken with the prosecutor's clearly prejudicial remarks implore the finding that a different verdict might have been reached about the remarks.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

In State v. Eaton, 569 P.2d 1114 (1977) this court stated that:

> On appeal, where there is a reasonable doubt as to whether error was prejudicial, the doubt shall be resolved in favor of the defendant ... if there is a reasonable likelihood that in its absence there may have been a different result, then the error should not be regarded as harmless. 569 P.2d at 1116.

In State v. Pierre, 572 P.2d 1338 (1977) the court said that it:

> does not interfere with a jury verdict because of error or irregularity unless upon review of the entire record it is determined that prejudice occured in a substantial manner, i.e., the error must be such that there exists a reasonable probability or likelihood that there would have been a result more favorable to the defendant in absence of the error. 572 P.2d at 1352.

Established Utah law clearly directs that any reasonable doubt should favor the defendant. The potential effect of the prosecutor's prejudicial remarks in this case creates that reasonable doubt.

Consider these findings:

In McGhee v. State, 274 Ala. 373, 149 So. 2d 1. (1962) a statement by the prosecutor regarding the testimony of a clergyman warranted reversal of a robbery conviction. The prosecutor said that he knew this man of God told the truth, that he is on God's side, and God is on his side.

In Woodward v. Texas, 368 SW 2d 623 (1963) where the prosecutor was bolstering the credibility of a police officer witness during closing argument, arguing to the jury that if it could not believe the witness whose salary they were indirectly paying, who could it believe. Also that the prosecutor had a little better

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

faith in the police officer than that. The Court erred in permitting that argument over objection. That Court cited Womack v. State, 267 SW 2d 140, where the conviction was reversed because the prosecutor described the police officer witnesses as fine citizens and fine men. Also Brown v. State 309 SW 2d 452, where the conviction was reversed because the prosecutor argued that the officers were the most courteous and truthful men in the enforcement of the law.

In Ray v. State, 510 F2d 1395 (1973) the prosecutor argued that defendant's witnesses were not worthy of belief and stated that "if defendant is found not guilty by you now and later witnesses who have lied are charged with the crime of perjury and convicted; we can never come back and try this man again for this crime." The Court said the argument was highly improper and should have been stopped by the trial judge and the jury instrued to disregard it. The Court said that although counsel in closing arguments may comment upon the evidence in the case and logical inferences therefrom, he may not inject his personal opinion and beliefs, nor may he speculate as to future criminal proceedings, nor state that witnesses have committed perjury absent and judgment of perjury.

Appellant contends that the prosecutor committed a similar prejudicial act of misconduct. The prosecutor in effect testified that Officer Yontz was infallible. Those statements, coupled with the statement about Yontz not risking perjury were highly improper and the trial judge should have advised the jury to disregard them.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

POINT III

THE TRIAL COURT ERRED IN NOT SUBMITTING THE PROPER CAUTIONARY INSTRUCTION TO THE JURY

Appellant contends that the trial court erred when it submitted Instruction No. 20[1] without adding the proper cautionary language submitted in defense counsel's Instruction No. 4[2]. This omission was improper because the bulk of evidence against the defendant is circumstantial. The jury should be aware that a reasonable alternative explanation of the circumstances is sufficient to preclude the lack of reasonable doubt needed to convict on circumstantial evidence. Appellant has shown that a reasonable alternative explanation exists and that defense counsel Instruction No. 4 provided for that possibility.

CONCLUSION

For the reasons stated above, that the trial court erred in allowing an adverse judgment against the defendant based

---

1. You are instructed that the mere presence of the defendant at the scene of the crime is not evidence of his guilt in and of itself. In order to find the defendant guilty you must find, beyond a reasonable doubt, that the defendant has the appropriate mental state and acted in violation of the law.

2. You are instructed that the mere presence of the defendant at the scene of the crime is not evidence of his guilt in and of itself. In order to find the defendant guilty you must find, beyond a reasonable doubt, that the defendant, had the appropriate mental state, and acted in violation of the provisions of the law rather than merely being present or acquiesing in conduct or circumstances that might otherwise constitute a violation of the law.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

on insufficient evidence, prejudicial prosecutorial misconduct, and insufficient jury instructions, the defendant respectfully requests that the judgment should therefore be reversed.

DATED this 18th day of June, 1981.

Respectfully submitted,

G. L. FLETCHER
Attorney for Appellant

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing to the Attorney General's Office, 236 State Capitol Office Building, Salt Lake City, UT 84114 this ____ day of June, 1981.

_____

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.