

1956

State of Utah v. Paul Buddy St. Clair : 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,
Plaintiff and Respondent,

vs.

PAUL BUDDY ST. CLAIR,
Defendant and Appellant.

Case No.

~~14962~~

8489

RESPONDENT'S BRIEF

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STATE OF UTAH,
Plaintiff and Respondent,

vs.

PAUL BUDDY ST. CLAIR,
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RESPONDENT'S BRIEF

STATEMENT OF FACTS

After a successful appeal to this Court from a prior conviction of first degree murder, your appellant was re-tried for the offense and once again found guilty of murder in the first degree.

There is no dispute to the fact that your appellant killed one Vesta Wittke; Your appellant does not contend it to be otherwise. Said the jury:

“We, the jurors impaneled in the above case, find the defendant guilty of the crime of Murder in the First Degree as charged in the Information” (Tr. 4).

It would serve no useful purpose to again recite the facts leading up to and culminating in the death of the victim, of the facts this court [having reviewed the case once before] is fully informed. Nor, do we find it necessary to seriously take issue with counsel's Statement of Facts as made in their Brief on this appeal. We shall make comment hereinafter on both evidence and testimony of the witnesses in responding to the issues raised by appellant as the case is now presented to this Honorable Court.

STATEMENT OF POINTS

POINT I.

INSTRUCTION NO. 15 AS GIVEN BY THE COURT WAS A CORRECT STATEMENT OF THE LAW FREE OF ERROR AND NON-PREJUDICIAL TO APPELLANT'S CAUSE.

POINT II.

THE COURT DID NOT ERR IN ADMITTING INTO EVIDENCE APPELLANT'S POCKET KNIFE AND THE PORTION OF THE SCREEN DOOR.

POINT III.

THE COURT DID NOT ERR IN NOT PERMITTING SHERIFF GILLETTE TO EXPRESS AN OPINION.

POINT IV.

THE EVIDENCE SUPPORTS THE VERDICT.

ARGUMENT

POINT I.

INSTRUCTION NO. 15 AS GIVEN BY THE COURT WAS A CORRECT STATEMENT OF THE LAW FREE OF ERROR AND NON-PREJUDICIAL TO APPELLANT'S CAUSE.

Appellant complains of the instruction to the jury on murder in the second degree, instruction No. 15, which was given by the court as follows:

“You are further instructed that before you can find the defendant guilty of murder in the second degree, you must believe from the evidence in this case and beyond a reasonable doubt the following:

“First, that on or about the 6th day of July, 1953, at Tooele County, State of Utah, the defendant killed Vesta Wittke.

“Second, that the killing was with malice aforethought.

“Third, that the defendant intended to kill Vesta Wittke but that he did not deliberate or pre-

meditate upon the killing, or that the defendant did not intend to kill Vesta Wittke but that he did intend to do great bodily harm to Vesta Wittke.

“Fourth, that the said killing was unlawful.

“Fifth, that the said killing was felonious.

“Sixth, that the said Vesta Wittke died within a year and a day after the cause of death was administered.

“You are further instructed that the burden is upon the State to prove to your satisfaction and beyond a reasonable doubt that all of the foregoing elements of the crime of murder in the second degree are present in this case; and if the State shall have failed to so satisfy your minds upon one or more of the aforesaid numbered elements, you cannot find the defendant guilty of murder in the second degree, and you should consider whether he is guilty of voluntary manslaughter” (R. 390).

It is appellant's contention that “second degree murder does not require premeditation, deliberation, or the specific intent to kill the person killed” and, that, “It is important to note that specific intent to kill the person killed is not necessary.” Also, appellant complains of the use of the words “deliberate” and “premeditate” in the above instruction. As authority for these propositions appellant relies upon *State v. Trujillo* (1950), 117 Utah 237, 214 P. 2d 626; *State v. Thompson*, (1946), 110 Utah 113, 170 P. 2d 153; and, *State v. Russell*, (1944), 106 Utah 116, 145 P. 2d 1003.

Of course each case must be decided upon its own and singular facts and it is now well recognized in this state

that an instruction on second degree murder need not be given when the facts of the case or the law itself would preclude the jury from such a finding. This Court has said:

“That it is not error for a court to refuse to instruct on second degree murder, where the charge is murder in the first degree, in cases where the evidence would support only a finding of first degree murder or acquittal, is the settled rule in this jurisdiction. See *State v. Condit*, 101 Utah 558, 125 P. 2d 801; *State v. Mewhinney*, 43 Utah 135, 134 P. 632, L. R. A. 1916D, 590; and *State v. Thorne*, 41 Utah 414, 126 P. 286. The foregoing are cases involving killings in the perpetration of a robbery. As to included offenses generally, see *State v. Angle*, 61 Utah 432, 215 P. 531.”

State v. Matteri, ... Utah ..., 235 P. 2d 325, 331.

However, we do not here contend that an instruction on second degree murder was not proper in this case against Paul Buddy St. Clair; we would contend that the instruction as given was required. In *State v. Matteri*, *supra*, this court also said:

“While intent to kill is not a necessary requisite to second degree murder, it may be an important element if there is absent other elements to raise the killing to first degree murder. Could the jury in the present case reasonably determine from the facts, that there existed an intent to kill and malice aforethought and yet be not convinced beyond a reasonable doubt that the state had made out deliberation and premeditation? If they could so reasonably decide upon the circumstantial evidence presented to them in this case, then there was prejudicial error in this case as in the *Trujillo* case, in

failing to include intent to kill as an element of second degree murder.”

It is readily apparent in the case at bar that there *could* have been an “intent to kill with malice aforethought” and at the same time the State *might not* have been able to “prove beyond a reasonable doubt that there was deliberation and premeditation.” Had such been the case a verdict of guilty of murder in the second degree would have been proper; your appellant was entitled to have this question resolved. See also *State v. Braasch*, . . . Utah . . . , 229 P. 2d 289, 294 wherein the court discusses *State v. Trujillo* and *State v. Matteri*, *supra*.

In the more recent case of *State v. Jensen* (Oct. 1951), . . . Utah . . . , 236 P. 2d 445, this court stated the rule to be:

“With respect to his intent: It is the established law of this state that in order to make the crime of second degree murder the defendant must have *intended* to either (a) kill, or (b) do great bodily harm, or (c) do an act which would naturally and probably cause death or great bodily harm to the deceased. *State v. Thompson*, 110 Utah 113, 170 P. 2d 153; *State v. Trujillo*, Utah, 214 P. 2d 626.” (Emphasis added.)

Appellant’s objection to the instruction as given fails in merit and even more particularly so when Instruction No. 13 is also considered.

“You are instructed that under the laws of the State of Utah murder is divided into two degrees, viz., murder in the first degree and murder in the second degree.

“So far as is applicable to this case, every killing of a human being which is wilful, deliberate, malicious, and premeditated is murder in the first degree.

“In order to make a case of murder in the first degree, there must not only be an intention to kill, but there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some appreciable space of time, but the time need not be long. It must be sufficient for some reflection and consideration upon the matter, for a choice to kill or not to kill, and for the formation of a definite purpose to kill; and when the time is sufficient for this, it matters not how brief it is; and whether a deliberate and premeditated design to kill was formed must be determined from all the circumstances of the case.

“Murder in the second degree is the unlawful killing of a human being with malice aforethought when death results in either of the following cases:

“1. When the killing is intentionally done, but is not deliberate or premeditated; or

“2. When the defendant did not intend to kill the deceased, but when he did intend to do great bodily harm to the deceased” (R. 388, 389).

This instruction made crystal clear to the jury the elements of difference between first and second degree murder.

POINT II.

THE COURT DID NOT ERR IN ADMITTING
INTO EVIDENCE APPELLANT'S POCKET

KNIFE AND THE PORTION OF THE SCREEN DOOR.

It was the State's theory of the case that your appellant gained entry into the victim's home by cutting through the screen of the locked back door and unlatching the screen door (R. 127). Appellant had a pocket knife on his person when he was taken into custody by the sheriff after the shooting (R. 247). Appellant admitted that the pocket knife [entered into evidence without objection, (R. 248)] was his knife and that he had had it for several years (R. 344). The State failed to conclusively prove and the defense failed to conclusively disprove that this knife was used to cut the screen on the door. Appellant here contends that there was no proper "connecting up" between the knife and the screen door so as to permit the knife to be put in evidence. Appellant cites no authority for this contention, but merely states that it was "prejudicial to defendant's rights *because the Court's comments on the evidence certainly misled the jury.*" (Emphasis ours.) We think appellant places the comment of the Court, to which they take exception, out of context.

Thus speaks the record:

"MR. FARR: Your Honor, one thing on the knife. May we have what the F. B. I. said about the knife read into the record, please? That is what we were stipulating to.

"THE COURT: Well, I thought you had agreed that he would say he had checked the knife and the screen, and there was no metal such as in the screen

to be found on the blades of the knife.

“MR. FARR: Excuse me. No sir.

“MR. ANDERSON: No identifying marks that can be traced from the knife to the screen, metal or otherwise.

“THE COURT: Well, you would hardly expect the harder blade of a knife to leave a part of its metal on soft copper wire. I would think you would look for the soft metal on the hard metal.

“MR. ANDERSON: Well—

“THE COURT: You can see—

“MR. FARR: May it please the Court, may we read what the F. B. I. would have said?

“THE COURT: Is that true?

“MR. FARR: I understood that was the stipulation. This paragraph of it.

“MR. ANDERSON: I have no objection to that, Your Honor.

“THE COURT: Then read it.

“MR. ANDERSON: This paragraph, if he wants it.

“THE COURT: Let Mr. Farr read it into the record then.

“MR. FARR: Reading now from a report of the F. B. I. Laboratory, Federal Bureau of Investigation, Washington, D. C., dated July 17, 1953, to Mr. Fay Gillette, Sheriff of Tooele County, Tooele, Utah, and quoting from one of the paragraphs in said letter, the following:

“ ‘No foreign deposits of metal or paint were found on the blades or in the blade recesses of the

pocket knife, specimen Q-7, which could be identified as having come from the section of screen, specimen K-2. None of the individual cut strands of wire in the screen contain tool markings suitable for identification purposes. It was not possible, therefore, to associate by tool marking comparisons the knife, Q-7, as the tool used to cut the submitted screen, K-2.'

"MR. ANDERSON: That's fine.

"MR. FARR: Thank you."

Counsel were attempting to stipulate to what the findings of the Federal Bureau of Investigation were, pertaining to the knife blade and the screen. Thereafter the report itself was read into evidence; the remark of the court added nothing to nor detracted nothing from the findings of the F. B. I. Those findings were simply that (a) no foreign deposits of metal or paint were found on the blades of the knife or in the blade recesses which could be identified as having come from the section of screen; (b) none of the cut strands of wire in the screen contained tool marks suitable for identification purposes. It was not possible, therefore, to associate by tool marking comparisons the knife as the tool used to cut the screen. How could these findings prejudice the appellant's case when it was his affirmative contention that he did not cut the screen but merely opened the door to gain entry (R. 333). The Court's remark *was not a comment on the evidence*, as might be inferred from appellant's statement in the brief, and the remark was made *before* the findings of the F. B. I. were placed in evidence, *not after*.

Appellant complains that the screen from the door was improperly admitted into evidence on two grounds:

“First, there was no evidence or testimony that the defendant’s knife was used to cut the screen door.

“Second, there was no testimony or evidence that would establish that the screen door was cut from the outside or that the defendant may have cut it.”

We would concede that there was no *direct* evidence adduced by the testimony to establish the fact that the screen door was cut by defendant’s knife. No witness testified to *seeing* the screen cut. There was testimony to the fact that the screen had been cut. Patricia Wittke said she hooked the latch on the screen just before she went to bed and that the screen was at that time undamaged; (R. 154-5) that she examined the screen door after the shooting and there was a cut in the screen door (R. 155). Dayton Wittke said there was no cut in the screen door on July 5, 1953 but that he observed such a cut at daylight of the next day (R. 188-9). The sheriff testified that there was a cut in the screen door; (R. 240-1-2) the sheriff investigated the doors and observed the cut shortly after his arrival at the Wittke home (R. 260); that the direction to which the wire was turned was toward the outside (R. 262). The appellant testified as follows:

“Q. Now, Mr. St. Clair, how did you get in that back door on the night or early morning of July 6, 1953?

“A. I just walked in.

"Q. Did you cut the screen?

"A. No sir.

"Q. Was the screen locked?

"A. No sir.

"Q. Did you hear Pat testify that she locked the screen?

"A. I did.

"Q. When she went to bed?

"A. I did.

"Q. Did you open the screen?

"A. With the handle, yes.

"Q. With the handle?

"A. Yes.

"Q. And you testify that it was open at the time you came there?

"A. It was unlocked. I didn't say it was open.

"Q. Well, all right, unlocked. It opened at your pull. Is that correct?

"A. Yes."

The evidence was conflicting as to how the appellant secured entrance to the Wittke home, it presented to the jury a question of fact; the weight and sufficiency thereof was for the jury, the Court did not err in admitting the screen in evidence. It was not such evidence as should be excluded under the rule stated in 22 C. J. S. Criminal Law, Sec. 600, page 922 as contended for by appellant, the opening sentence in said section, quoted by appellant, to the contrary notwithstanding.

POINT III.

THE COURT DID NOT ERR IN NOT PERMITTING SHERIFF GILLETTE TO EXPRESS AN OPINION.

The sheriff was called to the Wittke home on the night of July 3rd (R. 232) ; St. Clair had had an altercation with the deceased in the kitchen of her home and in which Dayton Wittke joined as a participant. St. Clair was struck with a poker and sustained injuries on and about the head including a laceration of the scalp. St. Clair told the sheriff that night that “he was going to get even with that little s-o-b Dayton and that there would be a pay day for Vesta” (R. 234). At this trial the following occurred during cross examination of the sheriff:

“Q. Was anything said about filing a complaint while you were at the home, the Wittke home?

“A. I don’t remember whether there was anything said there. There may—there was some angry words, and I don’t recall just what they were, but when he—on the way back I told him if he felt that he should have a complaint that he would talk to the county attorney.

“Q. Now, these words that you took as threats, did you consider them as threats at that time?

“A. Well, he was angry and hurt, apparently hurt, and intoxicated, so I just figured that maybe they would ease up later on. Sometimes they do.

“Q. Did you—*what did you take those words as meaning at the time when they were said?* (Emphasis added.)

“A. Well—

"THE COURT: I wonder—excuse me just a moment, Mr. Gillette. I wonder if that would help the jury as to what this witness took them to mean. I don't mean to make objections for you, but I am wondering if what he assumed it would mean would be of any help to the jury. Wouldn't it be for the jury to assume what was meant?

"MR. BAGLEY: I think Your Honor is right on that. *I withdraw that question.* (Emphasis added.)

"Q. These statements were made in the same conversation where he was talking about filing a complaint for assault and battery, were they not?

"A. I think they were made prior. I think that is the reason I told him that he could sign a complaint if this—

"Q. But it was all in the same general conversation?

"A. Yes, it was.

Appellant contends that the sheriff should have been permitted to tell the jury what he, the sheriff, took those words to mean at the time they were spoken—presumably the words—"he [St. Clair] was going to get even with that little s-o-b Dayton and that there would be a pay day for Vesta." Appellant says: "If the words conveyed the impression to Gillette that St. Clair was not serious about the 'threats,' then this would lessen the weight of other testimony given as to the premeditation and deliberation on the part of the accused." Possibly so, if the sheriff were to reply, "I think he was only fooling;" definitely not so if the sheriff had been permitted to reply "I took those words as meaning that St. Clair intended to get even with that

little s-o-b Dayton and then have a pay day for Vesta." In either event the witness would have been invading the province of the jury who are charged with the responsibility of determining the ultimate facts. The general rule is:

"It is a fundamental principle of the law of evidence, as administered by our courts, that testimony of witnesses upon matters within the scope of the common knowledge and experience of mankind, given upon the trial of a cause, must be confined to statements of concrete facts within the witness' own observation, knowledge, and recollection, that is, facts perceived by the use of his own senses, as distinguished from his opinions, inferences, impressions, or conclusions drawn from such facts. This, of course, governs the admissions of opinion evidence in homicide cases. * * *"

26 Am. Jur. Homicide, Sec. 432.

The rule is stated this way in C. J. S.:

"In the law of evidence, 'opinion' is an inference or conclusion drawn by a witness from facts, some of which are known to him and others assumed, or drawn from facts, which, although lending probability to the inference, do not evolve it by a process of absolutely necessary reasoning.

"Under ordinary circumstances a witness in testifying is to be restricted to facts within his personal knowledge, and his opinion or conclusion with respect to matters in issue or relevant to the issue may not be received in evidence. * * *"

32 C. J. S. Evidence, Sec. 438.

In a civil cause the Supreme Court of Utah had this to say, in 1921:

“* * * some of the witnesses were permitted merely to state their conclusions or inferences. This was also improper. It sometimes is not improper for a witness to give his conclusion from what he heard and saw and observed where he cannot fully explain all that he heard and saw because it involved more than merely verbal statements, provided he states all that he heard and saw and gives the circumstances fully. Under such circumstances the witness, although a layman, may sometimes and under certain circumstances state his conclusion or his impression. *This is permitted, however, only when there is no other method of arriving at the true situation or condition of things.*”

Rockefeller v. Industrial Commission, . . . U. . . , 197 P. 1038. (Emphasis added.)

It would be perfectly proper for the witness to state any facts known to him which would serve to throw light on the meaning of the words spoken, but it must be left to the jury to draw the inferences with the light afforded by such facts.

Appellant says, further, that: “In any event it was the duty of the district attorney to object and not the courts.” The rule as to the admissibility of opinion evidence is, as stated in 20 Am. Jur., Evidence, Sec. 771:

“The general rule excluding opinions of witnesses is simple in statement, but not so simple in application, for it is not always easy to distinguish in the testimony of a witness facts within his knowledge or observation from his opinions on facts. As

a general rule, a witness may testify directly to a composite fact, although in a sense his testimony may include his conclusion from other facts. In the multitudinous affairs of everyday life, it is extremely difficult to distinguish between 'opinion' on the one hand and 'fact' or 'knowledge' on the other. Moreover, objections that proposed testimony states a conclusion only are sometimes pushed to captious extremes. *The true solution seems to be that such questions are left for the practical discretion of the trial court.* * * * (Emphasis added.)

This Court has said:

"* * * whether there is sufficient foundation for the expression of an opinion by the lay witness or whether such opinion would be helpful to the jury rests almost altogether in the judicial discretion of the trial judge."

In re Hanson's Estate, 87 U. 580, 52 P. 2d 1103, 1116.

The Court properly exercised its judicial discretion here and in all probability avoided cause for reversible error had the witness been permitted to respond to the question.

POINT IV.

THE EVIDENCE SUPPORTS THE VERDICT.

The well established rule in this jurisdiction is that in capital cases the entire proceeding will be reviewed to determine whether there be error even though it be not assigned nor argued; *State v. Stenbeck*, 78 U. 350, 2 P. 2d 1050, 79 A. L. R. 878; *State v. Russell*, supra; *State v.*

Matteri, supra; *State v. St. Clair*, 3 U. 2d 230, 282 P. 2d 323. Therefore this Court will have the onerous task of reviewing the record of the proceeding in its entirety in this the second trial of Paul Buddy St. Clair for the murder of Vesta Wittke. The writer has carefully studied the record and proceedings and can only conclude therefrom that the irregularities found to have taken place in the previous trial of this cause were herein avoided and, in the writer's opinion, there appears no reversible error in the present record. We must so contend.

CONCLUSION

The verdict of the jury must be affirmed.

Respectfully submitted,

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