

1982

The State of Utah v. David Allen Patterson : Appellant's Brief

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Utah v. Patterson*, No. 17610 (Utah Supreme Court, 1982).
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IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH, :
Plaintiff/Respondent, :
vs. : Case No. 17610
DAVID ALLEN PATTERSON, :
Defendant/Appellant. :

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APPELLANT'S BRIEF

--ooo0ooo--

Appeal from Judgment of Guilt Found
Against Defendant by a Jury in the
Fourth Judicial District Court
In and For Utah County, State of Utah
Honorable Allen B. Sorensen, Judge, Presiding

--ooo0ooo--

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FILED

MAR 30 1982

Clk., Supreme Court, Utah

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APPELLANT'S BRIEF

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STATEMENT OF THE CASE

The appellant, David Allen Patterson, appeals his conviction of uttering a forged check under the provisions of Section 76-6-501(b), UCA, 1977. The case was tried before a jury in the Fourth Judicial District Court for Utah County, State of Utah, before the Honorable Allen B. Sorensen.

DISPOSITION IN THE LOWER COURT

Upon the conclusion of the evidence, the jury returned a verdict of guilty. The court sustained the verdict and the defendant was convicted for uttering a forged check, a second degree felony. The defendant was later sentenced to one to 15 years in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of his conviction for uttering a forged check, or that failing, a new trial.

STATEMENT OF FACTS

On November 20, 1980, the defendant, David Allen Patterson, and James Anthony Mathoes, originally a co-defendant in this case, rented an automobile from Morris Motors in Provo, Utah. Mathoes had originally attempted to rent the automobile using his license but the office worker refused to rent the automobile to him because there was some question about his Virginia license. Patterson then proceeded to rent the automobile using the license of Micah Roy Woodward. Woodward had previously lived across the street from Mathoes. One of the office workers at Morris Motors testified the automobile was checked out at approximately 10:20 a.m. and another office worker testified the automobile was checked in at approximately 1:30 p.m. Patterson and Mathoes both testified that the automobile was checked in and checked out at different times from those indicated by the employees of Morris Motors. There was conflicting testimony about whether Mathoes returned the automobile by himself or accompanied by Patterson. Anne Morris Boatman, an employee, Blair T. Reese, a salesman, and Mathoes testified that Patterson was with Mathoes when the automobile was returned to the car lot. Patterson testified that Mathoes returned the automobile unaccompanied by Patterson. Patterson's version of not being with Mathoes when the automobile was returned was substantiated by his brother Carl Patterson.

Patterson testified that after renting the automobile he went to his parents' home to work on his truck. He was at his parents' home until approximately 11:00 to 11:30 when he left with his brother to pick up a paycheck, which Patterson was owed by a

person in Spanish Fork. The proceeds from the check were needed to pay for a part needed to repair his truck.

Patterson and his brother stopped at a fast food restaurant in Spanish Fork and could not restart the car. Patterson and his brother were attempting to locate the problem with the automobile when Mathoes drove up in the rental car. Mathoes gave Patterson a ride to a place Patterson thought he could pick up his paycheck. He wasn't able to pick up his paycheck and Mathoes returned him to the fast food restaurant. During the time they were gone, Patterson's brother diagnosed the problem as being a broken battery terminal. Mathoes then offered to give Patterson and his brother a ride to the home of Patterson's fiance in Pleasant Grove.

On the way to Pleasant Grove, Mathoes asked Patterson to cash a check for him. He said the check belonged to his friend who was laid up in bed. Patterson went into the bank to cash the check and was told by the bank teller that he would have to speak to the manager because the signature on the check was irregular and there was an insufficient amount of money in the account to pay the check. Patterson gave the bank manager the telephone number and address of Mathoes. When asked, Patterson gave the bank manager his name and never represented that he was Roy Woodward, the payee on the check. Patterson left the bank and told Mathoes what had transpired.

Mathoes gave Patterson and his brother a ride to the residence of Judy Stubbs, Patterson's fiance, where Patterson and his brother remained until Stubbs returned home from work at approximately 3:30.

Carl Patterson testified that he was with his brother from 8:30 a.m. until they returned to the Stubbs' residence at approximately 3:30. Carl's testimony substantiated his brother's testimony about meeting Mathoes at the fast food restaurant in Spanish Fork and the conversations concerning the check.

Kay Lue Patterson, David Patterson's mother, testified that David arrived at her house at approximately 8:30 a.m. and left with his brother Carl at 11:00 a.m.

Judy Stubbs testified that when she returned home at 3:30, David Patterson and his mother and Carl were there.

Mathoes, an accomplice turned state witness, testified that after renting the 9:00 to 9:30 he drove with Patterson to the Springville/Spanish Fork area, then stopped at the residence of Leon Swenson and when Swenson unexpectedly returned home, Patterson spoke with him.

Patterson and Mathoes left the Swenson residence and drove to the Stanley Burningham residence. Patterson went into the Burningham residence and returned with a packet of checks and savings bonds.

Patterson and Mathoes drove to First Security Bank in Springville. While sitting in the automobile, Mathoes filled out one of the blank checks and made it payable to Roy Woodward in an amount of \$2,666.00. He also forged the signature of Stanley Burningham. Patterson endorsed Ray Woodward's name and went into the bank to cash the check. Patterson returned to the automobile and explained what happened inside the bank and they went to "a little hamburger stand someplace in the area and threw the checkbook away."

The next day when confronted with the crime, Mathoes disclosed the location of the checkbook which was retrieved from a trash dumpster by Detective Fox of the Utah County Sheriff's Office.

Leon Swenson testified at approximately 10:45 or 11:00 a.m. on November 20, 1980, he returned hom to find the rental car from Morris Motors parked in his driveway. He had a conversation with Patterson who told him he thought it was someone else's residence.

Roger Williams, the bank manager of First Security Bank in Springville, testified that Patterson represented that he was Roy Woodward. Leslee Hanson, a teller at First Security Bank in Springville, also testified that Patterson represented himself to be Roy Woodward.

Stanley Burningham testified that checks and some savings bonds had been taken from his residence.

ARGUMENT

POINT I

THE TRIAL COURT UNDULY RESTRICTED THE DEFENDANT'S CONSTITUTIONAL RIGHT OF CROSS-EXAMINATION.

During the cross-examination of James Mathoes, originally a co-defendant in this case, the following colloquy was engaged in by Mathoes and Shelden R Carter, the appellant's counsel:

MR. CARTER: Have you ever been convicted of a felony, Mr. Mathoes?

MR. MATHOES: Yes, sir.

MR. CARTER: Where at?

MR. MATHOES: Virginia.

MR. WATSON: I will object.

THE COURT: Sustained.

MR. CARTER: What was the nature of the accusation you were convicted of?

MR. WATSON: I object.

THE COURT: Sustained. His answer to the first question may remain.

MR. CARTER: How many felonies have you been convicted of?

MR. WATSON: I object. (Record at 77).

THE COURT: Sustained.

MR. CARTER: Tell me about your deal you made with Mr. Watson.

MR. MATHOES: He just -- when I first got pulled over at American Fork I went down. They asked me, you know, about everything that went on and I wouldn't say nothing. And then I come out and told them everything I knew.

MR. CARTER: How many burglaries is he going to dismiss for your testimony?

MR. WATSON: Your Honor, I object.

THE COURT: Sustained. I will have to give you a caution, Mr. Carter.

MR. CARTER: Your Honor, I would like to make a proffer at this point. (Record at 78).

The right of confrontation of witnesses is guaranteed by Article 1, Section 12, Constitution of Utah, and the Sixth Amendment to the Constitution of the United States.

The Utah Supreme Court and the United States Supreme Court have stated that wide latitude should be allowed in the area of bias and motive for testifying. State v. Maestas, 564 P.2d 1386 (Utah 1977); State v. Curtis, 542 P.2d 744 (Utah 1975); Davis v. Alaska, 415 U.S. 1005 (1974).

It was error for the trial court to refuse to allow the appellant's attorney to question Mathoes on the "nature of the accusations he was convicted of" and the "number of felonies he had been convicted of." A case on point is State v. Kazda, 14 Utah 2d 266, 382 P.2d 407 (1963). In that case an accused took the stand voluntarily as his own witness. The court stated on cross-examination he may be asked whether or not he has ever been convicted of a felony. If he answers in the affirmative he may be asked the nature of the felony. Furthermore, he may be asked if he has been convicted of more than one felony, and if so, the type or nature thereof. These are the exact questions asked defense counsel in the above quoted trial transcript and the trial court refused to permit an answer to those questions.

The trial court further didn't allow an inquiry into the number of burglary charges the state was going to dismiss as a result of the plea bargaining agreement that Mathoes had entered into with the State of Utah. As this court stated in State v. Chesnut, 621 P.2d 1228, 1233 (Utah 1980):

A trial court should be particularly solicitous of cross-examination intended to disclose bias or prejudice; e.g., a broad opportunity for examination should be allowed if its objective is to establish that an adverse witness in a criminal matter is giving his testimony in anticipation of favorable personal treatment, such as, police leniency by the state . . .

Certainly, Mathoes bias or prejudice for testifying would be different in this case where the state had dismissed ten burglary charges against him in addition to allowing him to plead to a lesser included offense than in a case where the state simply allowed the co-defendant to plead guilty to a lesser included

offense in exchange for his testimony. The fact ten burglary charges were dismissed against Mathoes should have been disclosed to the jury. Mathoes was a key witness and prosecution's case largely dependent upon the credibility of his testimony.

CONCLUSION

The trial court's restriction upon defense counsel's cross-examination and exploration of bias, prejudice, and examination of previous felony convictions of the state's key witness denied the defendant's right to confrontation and presentation of evidence indicating bias; thereby requiring reversal.

RESPECTFULLY SUBMITTED this 24 day of March, 1982.


SHELDEN R CARTER
Attorney for Appellant

I HEREBY CERTIFY that I mailed a copy of the foregoing to Utah State Attorney General, State Capitol Building, Room 236, Salt Lake City, Utah 84114, postage prepaid, this _____ day of March, 1982.