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The State of Utah v. John Joseph Sullivan and Joseph Craven Washington : Brief of Respondent

Utah Supreme Court

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IN the
Supreme Court of the State of Utah

UNIVERSITY OF UTAH
NOV 28 1957

FILED

DEC 20 1956

VS LIBRARY

Perk. Supreme Court, Utah

STATE OF UTAH,

Plaintiff and Respondent,

vs.

JOHN JOSEPH SULLIVAN, and JO-
SEPH CRAVEN WASHINGTON,

Defendants and Appellants.

Case No.
8532

BRIEF OF RESPONDENT

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} Case No.
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BRIEF OF RESPONDENT

STATEMENT OF FACTS

Respondent adopts the first two paragraphs of the appellants' Statement of Facts.

PRELIMINARY STATEMENT

Aside from the allegation that the attorneys for the State misbehaved at the trial of this case, the appellants'

argument may be reduced to the contention that the evidence is insufficient to sustain the verdict. The respondent's brief is directed primarily toward this point.

STATEMENT OF POINTS

POINT I.

THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE VERDICT.

POINT II.

THERE WAS NO MISCONDUCT ON THE PART OF THE ATTORNEYS FOR THE STATE.

ARGUMENT

POINT I.

THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE VERDICT.

E. R. Sprague, the complaining witness, testified that he and his wife retired shortly after 11:00 P. M. in their St. George motel room on September 27, 1955; that he was awakened during the night by the movements of someone in the room and that he shouted at the intruder; that the man fled from the room and that Sprague chased him across the motel courtyard to a waiting car (R. 4, 5); that he was of a medium build and about 5' 8" or 5' 10" in height (R. 6); that he entered a dark colored four-door 1947 or

1948 model car with a slanted back and a strip of chrome along the hood above the fender (R. 7) ; that the man got into the driver's side of the car and that there was another person in the passenger side of the front seat ; that the car backed out of the driveway and headed West out of St. George at a high rate of speed (R. 9, 27) ; that the witness kneeled on the ground in an attempt to get a view of the license number as the car sped away and that he noted the number and later wrote it down (R. 10) ; that the car carried 1955 California license plate No. 4N 62175 ; that he was at about a 45° angle from the face of the license plate as he viewed it ; and that the car drove off toward Nevada (R. 11, 65).

He further testified that upon his return to the motel he found his wallet missing ; that it had contained four \$20 bills, three \$5 bills and three \$1 bills (R. 12, 13) ; and that he awakened the motel proprietor and notified the local police (R. 49). He did not test his motel door before retiring but as far as he knew, it was locked. He described the intruder's clothing as brown or dark green trousers and a light colored jacket. A few minutes after reporting the theft, he accompanied the law enforcement officers to Mesquite, Nevada, where the two appellants, sitting in a cafe, were pointed out to him. His initial reaction was that they were not the men (T. 15), but he later testified that after seeing the appellant Washington in a standing position he was able to state that Washington was of the same height and build as the man who burglarized his motel room (R. 30). He stated that in Mesquite the appellant Washington was dressed in a casual jacket and trousers.

ers and that the trousers were darker in color than the jacket (R. 17, 18). The witness identified the car in which the appellants were apprehended as the same car he saw in St. George, and described it as a dark colored 1947 or 1948 model four-door sedan with a slanted back, carrying 1955 California license plate No. 4N 62126 (R. 20, 21, 24). Mr. Sprague further testified that the appellant Washington admitted being in St. George at 3:00 o'clock that morning, that the car described was his car and that he had been driving it (R. 22, 23).

Roy Renouf, Washington County Sheriff, testified that shortly after the burglary he went to the Freezer Cafe in Mesquite, Nevada, where the appellants were being held by the Nevada law enforcement officers (R. 75, 76); that he inspected the car in which the appellants were apprehended; that the car was a 1947 or 1948 dark blue Nash with license No. 4N 62126 (R. 75, 139, 141); that there were some tools in the back of the car (R. 74); that \$62.00 was taken from one appellant and \$65.00 from the other; that Mr. Sprague upon first seeing the appellants, stated that they weren't the men; that he later said the appellant Washington was of the same general build; and that the jacket worn by Washington was darker than his trousers (R. 136, 137).

Oscar Abbott, Deputy Sheriff of Clark County, Nevada, upon examination stated that he apprehended the appellants as they drove through Mesquite, Nevada; that they were traveling in a dark blue 1947 four-door Nash sedan with California license No. 4N 62126; that he had, by a telephone call from St. George, been asked to pick up a car carrying California License No. 4N 62175; that the ap-

pellants' car was traveling west at a high rate of speed (R. 81); that he took them into custody and held them at the Freezer Cafe; that appellant Washington, in answer to the witness' question, stated they had been in St. George earlier that morning; that when Mr. Sprague first saw the appellants they were sitting on stools in the cafe; that Sprague said he couldn't positively identify the appellants but that "the taller one" filled the description in stature. He stated he examined the wallets of each appellant; that he took \$65.00 from Washington, \$62.00 from Sullivan and left a small amount with them for spending money; and that between them the appellants had four \$20.00 bills, four \$5.00 bills, one \$10.00 bill and two or three \$1.00 bills. On cross examination Deputy Sheriff Abbott testified that while in the cafe, appellant Washington asked Mr. Sprague to say whether or not he and Sullivan were the men who burglarized his room and that Sprague answered that he couldn't positively identify them, that "apparently he had a different coat on"; and that there was a jacket or shirt of some description in the appellants' car. His recollection of Washington's clothing was that he wore a tan coat and darker pants (R. 114).

In summary the testimony shows that the motel room occupied by Mr. Sprague and his wife was burglarized in the early morning hours on September 28, 1955, and \$98.00 in denominations of twenty, five and one dollar bills was taken. The intruder fled with a companion in a dark colored four-door 1947 or 1948 model sedan with a turtle back and a chrome strip along the side of the hood and bearing 1955 California license plate, thought to be numbered

4N 62175. The get-away car sped west out of St. George toward Nevada.

The appellants were arrested in Mesquite, Nevada, some fifty miles from the scene of burglary between forty-five minutes and one hour later. They were traveling west at between sixty-five and seventy miles per hour in a thirty-five mile zone. The car was a 1947 Nash four-door sedan, dark blue in color with a turtle back and a chrome strip along the hood just above the fender. It bore 1955 California license plate 4N 62126. The appellants had in their wallets the approximate sum of \$130.00 made up partially of four \$20.00 bills, four \$5.00 bills, one \$10.00 bill and three or more \$1.00 bills. Appellant Washington's stature corresponded generally with that of the burglar. Washington stated that the two appellants had been in St. George at the approximate time of the burglary. Appellant Sullivan was traveling with Washington and made no denial of past association with him.

Appellants, in their brief, emphasize that the victim, Mr. Sprague, was unable to make positive identification of either of them upon first seeing them in the Freezer Cafe at Mesquite. We readily acknowledge that Sprague's identification of the appellants is tenuous and adds but little weight to the State's evidence. He caught only brief glimpses of the burglar during the chase from the motel room to the get-away car and that was in a running posture. When he first saw the appellants they were in a sitting position in the cafe and his initial impression was that they were not the men. Later, after he saw appellant Washington in a standing position, he stated that Washington could

have been the man (R. 86) and at another point he testified that Washington was the same height (R. 29, 30). That Sprague earlier had guessed the burglar's height at around 5' 10" and Washington was apparently an inch or two taller than that, is of no significance. The discrepancy is not large and we admit that Sprague was not able to put a tape on the fleeing culprit. Sprague later stated on cross examination that the man could have been more than 5' 10" (R. 40).

Appellants also argue that they were, when arrested, not wearing, and did not have any clothing similar to that worn by the burglar. On the contrary, Sprague described the intruder as wearing dark pants and a light colored jacket (R. 14) and stated that appellant Washington wore the same sort of trousers and jacket when seen by Sprague in the cafe (R. 18). Deputy Sheriff Abbott, gave the same description of Washington's clothing (R. 114). Sprague's description of the burglar's jacket was the same as Washington's jacket, although his initial impression at Mesquite apparently was that the jacket worn by Washington was not the same one. The appellants did have other clothes in the car when arrested (R. 114, 117) and could have made changes which would confuse anyone who saw them only as fleetingly as had the victim.

The appellants claim there was no identification of their car. If they are right, then they are deprived of their liberty by some remarkable coincidences. The burglars' car was a dark color four-door sedan; the appellants were arrested in a dark blue four-door sedan. The burglars' car was a 1947 or 1948 model; the appellants' car was a 1947 model. The burglars' car had a turtle back; the appellants'

car had a turtle back. The burglars' car had a chrome strip along the side of the hood just above the fender; so did the appellants' car. And most singular of all is the almost exact identity between the license plate of the burglars' car and that of the appellants'. The plates reported by Sprague were 1955 California No. 4N 62175; the plates carried by appellants' car were 1955 California No. 4N 62126. There is noticeable similarity between the combinations of "26" and "75", and by slight changes either can be converted into the other. When Sprague took these numbers, he was kneeling in the dark along side the road and the car was speeding away from him. It is noteworthy that the numbers and letters which correspond exactly are those he would read first and that the discrepancy occurs between those at the right-hand side of the plate where the numbers would be farther from him as the car sped away. In addition, he had nothing on which to write and was required to trust his memory until he could return to his motel room and write the number down.

Appellants raise objection to the admission into evidence of the currency taken from them and among other authorities they quote from the case of *State v. Crowder*, (Utah, 1948) 197 P. 2d 917, to support their claim of error. The difficulty is, they don't quote far enough. In addition to the language found on page 26 of appellants' brief, this court, following Wigmore, said further:

"Where the denominations of the money found and the money taken correspond in a fairly close way, the fact of the finding of that specific money would have probative value and be relevant, because the money found is fairly marked as identical with

the money taken.'” (Wigmore, 3rd Edition, sec. 154.)

With regard to the sufficiency, we acknowledge that the sum found in the possession of appellants was about one-third again as much as that taken from Sprague, but it is of some probative weight in the State's case that the number and denomination of bills taken from him could be accounted for in the bills taken from their person. The admission of the bills cannot in any event be claimed as error because defense counsel stipulated to their admission (R. 142, 143). They were, therefore, properly before the jury for what they were worth.

We submit that the foregoing testimony fully supports the jury's verdict of guilty beyond a reasonable doubt. Calculated mathematically, the chances that these appellants are not the men who committed the offense are non-existent. They admittedly were in St. George at the time of the burglary; were fleeing west from the scene at a high rate of speed; were in a car which fit perfectly the description of the thieves' car and had a license plate whose first five numbers or letters corresponded exactly with the numbers on the thieves' car. Add to that evidence the fact that appellant Washington is of the same stature as the man who was chased from Sprague's room; that the clothing corresponded generally to that of the burglar, and that between them the appellants carried currency which in quantity and denomination was the same as that taken from Sprague's room, and the total picture is one of clear guilt on the part of appellants.

Appellants' brief suggests that there is no evidence against Sullivan, but the record shows otherwise (R. 110, 125, 126). The identity of the car used in the burglary, with that in which the appellants were apprehended leaves no doubt that Sullivan was in the car when Sprague's room was entered by Washington. His deportment, especially his failure to protest to statements made after his arrest, is consistent only with his guilt. The court instructed the jury "that a person who wrongfully and willfully aids or assists or encourages another person to commit a crime is jointly guilty as a principal with the one who directly does the act constituting the crime" and this statement of the law of principals accords with our statutory and case law on the point. Utah Code annotated 1953, Section 75-1-44, *State v. Laub*, (Utah, 1942) 131 P. 2d 805.

POINT II.

THERE WAS NO MISCONDUCT ON THE PART OF THE ATTORNEYS FOR THE STATE.

The record does not reflect on the part of the District Attorney any feigned righteousness or conduct calculated to convince the jury that the appellants were clever blackguards. Any information the appellants may have upon this point which is not in the record cannot be made the basis of argument on appeal.

The appellants were represented by competent counsel who overlooked nothing in putting the State to its proof. Further, the court itself was diligent in safeguarding the

appellants' rights as evidenced by the number of rulings in the record sustaining the objections of defense counsel, cited in appellants' brief.

Appellants complain of references to tools found in their car. It was defense counsel who first touched on the means of entry into Sprague's room (R. 43), not the attorneys for the State, and the court carefully screened from the jury any reference to the tools (R. 74, 91). As far as the jury were concerned, the testimony from Sheriff Renouf to "some tools in the back" could have referred to a wrench and a screwdriver. The only testimony in the presence of the jury suggesting otherwise, was elicited by defense counsel, not by the State (R. 102). Of this the appellants have no standing to complain.

CONCLUSION

The jury saw and heard the witnesses and are the proper judge of their accuracy and credibility. The evidence placed before them is such as would convince reasonable men beyond a reasonable doubt and is sufficient to sustain their verdict. The judgment below should be affirmed.

Respectfully submitted,

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