

1956

# The State of Utah v. John Joseph Sullivan and Joseph Craven Washington : Reply Brief of Appellants

Utah Supreme Court

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John Joseph Sullivan; Joseph Craven Washington;

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IN THE SUPREME COURT OF

THE STATE OF UTAH UNIVERSITY UTAH

OCT 31 1957

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THE STATE OF UTAH,

Respondent,

-vs-

JOHN JOSEPH SULLIVAN and  
JOSEPH CRAVEN WASHINGTON,

Appellants. )

Case No.

8532.

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R E P L Y   B R I E F   O F   A P P E L L A N T S

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JOHN JOSEPH SULLIVAN and  
JOSEPH CRAVEN WASHINGTON

In Propria Persona,  
Box 250, Draper, Utah.

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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THE STATE OF UTAH,

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JOHN JOSEPH SULLIVAN and  
JOSEPH CRAVEN WASHINGTON,

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REPLY BRIEF OF APPELLANTS

In his Brief, the Respondent Attorney General seems to be trying to refute the Record and lead this Honorable Court astray from the real facts of this case, for he indulges in quite a number of misstatements and deliberate prevarications in his Brief.

At top of page 3 of his Brief, Respondent speaking of Mr. Sprague, the complaining witness, states:

" . . . that the witness knooled on the ground in an attempt to get a view of the license number as the

And at mid page 8 of his Brief the  
Respondent states:

" When Sprague took these numbers,  
he was kneeling in the dark alongside  
the road and the car was speeding  
away from him. .

"

But Mr. Sprague's testimony shows that he  
came upon the car standing still and took  
the license number before it started away,  
as follows at Rep. Tr. P. 9, L.20, on:

" A The man that I chased, sir, went  
around the front of the car, and I  
went around the front  
went around the front of the car.

Q. And you said that he got into the  
driver's side of the car?

A. Yes, sir, he did.

Q. All right, now, what happened after  
he got into the driver's side of  
the car, do you remember?

A. As he got into the driver's side of  
the car, as I said before, sir, the  
lights were on, and he backed out of

" the driveway, at which time I knelt as the car backed out on to the shoulder and headed toward Nevada, I knelt and then got the license number of the vehicle. "

Continuing Mr. Sprague's testimony at Rep. Trans. P. 10, L. 28, he stated:

" Q. Now, was there a light over the license plate--

A. Yes, sir.

Q. So you could observe this license plate?

A. Yes, sir. "

Furthermore, Mr. Sprague testified that he knelt down and got the license number of the car that he saw at the Motel, that he saw it clearly and repeated it several times to memorize it, in good light, within about ten feet, as follows, at Rep. Tr. page 39, L. 18, to Page 41, L. 4. :

Q. How far away when you observed this number on the car?

A. Ten to fifteen feet, sir.

Q. You could see it very distinctly, couldn't you?

A. To the best of my knowledge.

Q. Well, you did run it over two or three times in your mind?

A. Yes, I did, sir, to memorize that number.

Q. Yes. And that was the number you memorized, was it?

A. Yes, sir.

Q. 4N62175 .

A. Yes.

Q. And the number on the car that you observed on Mosquite was 4N62126, is that right?

A. Yes, sir.

Q. The number you gave the officer was 4N62175 , wasn't it?

A. Yes, sir.

\*\*\*

One thing all these foregoing quotes <sup>Mr. Sprague's</sup> from ~~the~~ testimony make certain, and that is, that regardless of the fact that he could NOT obtain a good description of the burglar, what he did make absolutely certain of was the license number of their car, which was number 4 N 6 2 1 2 5, which he then reported to the officers, whereas the license number of the appellant's car was - 4 N 6 2 1 2 6.

And near the bottom of page 3 of his Brief, Respondent <sup>again</sup> states, in regards to Mr. Sprague:

" A few minutes after reporting the theft, he accompanied the law enforcement officers to Mesquite, Nevada, "

But the Rep. Trans. at page 49, L. 22-23, shows that Mr. Sprague testified :

" Q. And then after that you went to Mesquite?

A. About an hour and a half later, sir. "

No doubt, Respondent wishes to convey the thought that Mr. Sprague and the Officers

left in 'Hot Pursuit' of the burglars, a few minutes after the burglary, but the facts as shown by the Transcript show that NO ONE, including Mr. Sprague went in pursuit of the burglars, and it was not until after the appellants had been arrested in Mesquite for speeding, that the St. George Officers and Mr. Sprague left an hour and a half after the burglary to take a look at them because they had a car that somewhat resembled that used by the burglars.

At top of page 4 of his Brief Respondent states:

" The witness identified the car in which the appellants were apprehended as the same car he saw in St. George. "

Whereas Mr. Sprague testified, at Rep. Trans. page 21, L. 2 - 4, as follows :

" A. The vehicle that I saw in Mesquite, sir, was the same vehicle that I saw in St. George, IN SO FAR AS IT WAS A FOUR\* DOOR SEDAN, DARK, AND A '47 OR '48 MODEL



Appellants have emphasis~~d~~ the foregoing quote from Mr. Sprague's testimony to show that his purported identification of their car was STRICTLY LIMITED, that it was the same ONLY:

" IN SO FAR AS IT WAS A FOUR-DOOR SEDAN, DARK, AND A '47 or '48 MODEL. "

Appellants submit that just because two cars happen to be the same in that they are Four<sup>2</sup>-door Sedans, of dark color, and '47 or '48 Models, does NOT mean that they are the same car, for this description by Mr. Sprague, by which Respondent sets so much store, would fit ~~many~~ millions of cars on American roads.

Further at Rep. Trans. page 53, L. 8- 13, Mr. Sprague testified that he told the Officers that the car that he saw at the Motel in St. George that morning was a PONTIAC or CHRYSLER, whereas Appellant's car is a HONDA.

Respondent at the bottom of page 5 of his Brief, states:

" The intruder\* fled with a companion in a dark colored four-door 1947 or 1948 model sedan with a TURTLE BACK."

And again at bottom of page 7 and top of page 8 of his Brief Respondent states:

" The burglar's car had a TURTLE BACK; the appellant's car had a TURBLE BACK. "

Whereas Mr. Sprague, testified, as shown at Rep. Trans. page 7, L. 13 to 17, described the car that he saw at the Motel that morning at the time of the burglary as follows:

"  
A, The car that I saw parked opposite the office was a four-door/<sup>car,</sup>~~sedan~~ which I would judge to be a '47 or '48 model, and it was dark. It was a sedan and it was dark, AND THE BACK WAS NOT A TURTLE BACK, it was an INVERTED BACK CAR. . . "

And Mr. Sprague again testified to this same effect at Tr. page 8, L. 28, to page 8, line 3.

Hear the bottom of page 6 of Respondent's Brief, he states:

"

We readily acknowledge that SPRAGUE'S identification of the appellants is TENUOUS and adds <sup>but</sup> little weight to the State's evidence. "

WEBSTER'S New International, 2nd Edition, gives the following definition:

"

TENUOUS. - . .

5. Unsubstantial; Insignificant; Flimsy.

4. Having slight support or basis. "

Appellants submit that if their identification by Mr. Sprague, the only man who saw the alleged burglar, is merely TENUOUS, that it is flimsy and unsubstantial as shown by the Record, then there is a Total failure of proof in this case, as the money was NOT identified in any way, and there was NO identification of their car; In fact at Rep. Trans, page 57, lines 7 to 17, Mr. Sprague testified that there were lots of other cars on the road the same as RECORD it's, and lots

of other cars the same as the one that he saw at the Motel, of the same general color and shape, and at lines 18 to 23 at page 57 Rep. Tr. Mr. Sprague testified:

"

Q. When you got to Mesquite and checked the license plate upon the car that was there, upon this Nash car, you found that the license was 4N62126?

A. Yes, sir.

Q. But you remmebered as 75-- 75 being the last two numbers?

A. The number that I turned in, sir, contained 75.

""

At the bottom of page 7 of his Brief, the Respondent claims that appellants had other clothes in their car and could have changed to confuse anyone who saw them.

But the Transcript at page 116, L. 26 to page 117, L. 23, Deputy ABBOTT testifying, shows that they had nothing in the car but an old shirt, that they had NO OTHER CLOTHES.

At upper mid page 8 of his Brief the Respondent claims that there is a noticeable similarity between the numbers " 26 " and " 75 ", and that by slight changes either can be converted into the other.

Appellants fail to see any similarity, and as to any changes, perhaps the Respondent has been reading the 'Dick Tracy Comic Section' too much, and believes that appellants had some gadget to change their license numbers while traveling; But regardless of what he thinks they ' could do', the fact remains that there is NO EVIDENCE that their license plates or the numbers thereon had been changed or tampered with in any way, therefore the appellants submit that such conjecture on the part of Respondent is not even basis for suspicion.

At the bottom of page 8 of his Brief, the Respondent makes much of the fact that Appellants did not quote all of the citation from Wignore in the Crowder case, but perhaps

this Honorable Court will notice that the Respondent did not quote it all either, in particular those portions which hold that it is necessary to make some showing of sudden acquisition, or obtaining of money under odd circumstances, in order to make any assumption that it was stolen.

At mid page 9 of his Brief, Respondent says:

" Calculated mathematically, the chances that these appellants are not the men who committed the offense are non-existent. "

Respondent has admitted that their identification is TENUOUS, there were no clothes identified and no showing of changes; As to their car, Mr. Sprague testified that there are lots of cars on the road the same as that of appellants, and lots of cars on the road the same as that he saw at his Motel.

Further appellants believe that this Court may take Judicial Notice of the fact that Automobile license plates are numbered in ~~xx~~ series, that in a series with the first five

out of seven numbers being- 4N621\_\_,  
there are between the numbers 4N621100 and  
4N62199, One Hundred ( 100 ) numbers in that  
particular series, that therefore upon a  
search being made for a car with license No.,  
4N621 75, taken down and reported by Mr.  
Sprague, the chances calculated mathematically  
~~of it being the wanted car~~  
of any car picked up bearing the first  
five numbers of the series, that is 4N621\_\_,  
of being the wanted car are 99 to 1 against  
it being the one, that is 99 to 1 in the  
appellant's favor. And due to the fact that  
appellants were arrested on a busy highway  
and no effort was made by the State to ascer-  
tain if there were any other cars with license  
series in the locality, and no effort was  
made to trace number 4N62175, the first  
thing a Policeman should do upon receiving a  
report that a certain license number was  
involved in a crime, it becomes obvious that  
there is something 'Fisby' in this case.

At the bottom of page 9 of his Brief, Respondent claims that appellants carried between them currency "which in quantity and denomination was the same as that taken from Sprague's room", but the facts remain that other than the fact that Appellants had some money of the same denominations as that stolen among the much larger amount that they possessed, there is nothing ~~whatever~~ to even suggest that it was the same money;

In view of the fact that Mr. Sprague, who is an Insurance man, and testified he was in the habit of counting his money and sorting it out, and had done so that evening (Rep. Tr. P. 12 to P. B , L. 16.) it seems to be of significance to appellants that he could NOT identify one single number, mark or smudge on any of the money, and appellants submit that a man who was as careful of his money as Mr. Sprague, would be bound, as a human being, to notice any such peculiarities in any money he handled, or to mark it himself in the process of counting and sorting it.



At top of page 10 of his Brief, the Respondent indulges in some wild speculation, basing several unproven assumptions upon other unproven assumptions; And then states in regards to Appellant Sullivan:

" His deportment, especially his failure to protest to statements made after his arrest , is ~~in~~consistent only with his guilt.

""

Just what Respondent means by 'Deportment' is not clear, and appellants submit that it does not render anyone guilty of a crime; As for Sullivan's failure to protest to statements, if any, made after his arrest, the Rep. Trans. at page 83, lines 17 to 23, shows that Deputy ABBOTT advised them that it was their Constitutional Right not to say anything if they didn't want to, and they took his advice; Furthermore this Honorable Court Held in the case of- STATE v. HILBESTROM, 46 Utah 341, 150 Pac. 935, that :

" The refusal of defendant to answer questions asked by an officer or to

cont--

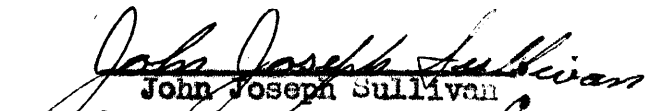
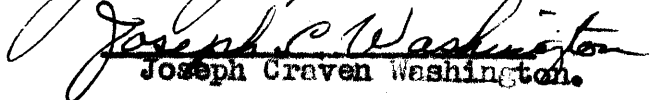
- 2 make any statements, cannot be construed as an admission of guilt, even though the fact is brought out by defendant himself in cross examination of the officer. ""

This and other cases to like effect are cited in the Footnotes in 16 CORPUS JURIS (Criminal Law) page 633, Par. 1259 (a).-  
SILENCE UNDER ARREST.

Appellants believe that they have covered the most pertinent portions of Respondent's Brief, and due to limitations of time must close, but respectfully refer this Honorable Court back to their Appellant's Brief for a fuller coverage of their contentions.

Upon the facts as shown by the Record, Appellants submits that their case should be reversed.

Very Respectfully submitted by:

  
John Joseph Sullivan  
  
Joseph Craven Washington.