

1957

The State of Utah v. John Joseph Sullivan and Joseph Craven Washington : Petition for a Rehearing on Appeal

Utah Supreme Court

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John Joseph Sullivan;

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UNIVERSITY UTAH

OCT 31 1957

IN THE SUPREME COURT OF ~~LAW LIBRARY~~

THE STATE OF UTAH

~~FILED~~

MAR 12 1957

THE STATE OF UTAH,

Respondent,

)
Supreme Court, Utah

-vs-

Case No.

JOHN JOSEPH SULLIVAN and
JOSEPH CRAVEN WASHINGTON,)

8532.

Appellants.)

PETITION FOR A REHEARING ON APPEAL.

JOHN JOSEPH SULLIVAN,

Appellant, Pro Se.

Box 250, Draper, Utah.

IN THE SUPREME COURT
OF THE STATE OF UTAH

THE STATE OF UTAH

Respondent,

-VS-

Case No.

JOHN JOSEPH SULLIVAN and
JOSEPH CRAVEN WASHINGTON,

8552.

Appellants.

PETITION FOR A REHEARING ON APPEAL.

Comes now before this Honorable Supreme Court of the State of Utah, JOHN J. SULLIVAN, the Co-Appellant in the above entitled cause, and prays that he shall be given a Rehearing of his case on Appeal, for the reasons that: The Decision and Opinion of this Court of the 20th day of February, 1957, ignores the fact that as a matter of LAW, there is NO EVIDENCE WHATEVER to uphold the conviction of Appellant Sullivan of the burglary charged.

ARGUMENTS and AUTHORITIES.

The Opinion of this Court recognizes the fact that Mr. Sprague testified that the man he chased from his Motel room, got in the Driver's side of the car and drove it away (Rep. Trans. page 9, lines 7-8, 22-29.) Which rules out any assumption that the Appellant Sullivan was driving the getaway car for the Burglar.

Mr. Sprague testified that he saw another person in the car, but didn't know whether it was a man or a woman (Rep. Trans. page 11, lines 25 to 28.) therefore it could have been anyone, most likel sound asleep rather than an active partner, that Mr. Sprague saw, for it stands to reason that anyone who was with the burglar or knew of the burglary, would be active as a 'Lookout' and have the

Car moving when the burglar came running instead of the burglar himself having to get in, back it up, turn and drive it away by himself.

To merely assume, without any evidence, that it was Sullivan in the Burglar's car, or that he even knew of the burglary, is to spin conjecture upon conjecture to infinity; There is NO evidence whatever to place the Appellant Sullivan in the car used at the Motel burglary, and although he was afterwards arrested in Mesquite, Nevada, 60 miles away, with Washington in Washington's car, that does NOT prove that Sullivan was ever at the scene of the burglary, had anything to do with it, or even knew of it after.

In the First place, it is pure assumption, based on the flimsiest of evidence, that Washington committed the burglary; And Appellant Sullivan, against whom there is NO EVIDENCE, submits that a second assumption that he is also guilty, just because he was with Washington an Hour-and-a-half later after the crime, can have NO legality. See: STATE v. POTELLO(Utah) 119 Pac. 1023, at bottom right of page 10 28.

Admitting that Sullivan was arrested with Washington in Washington's car, 60 miles away and an hour-and-a-half after the burglary, and even supposing, but not conceding, that he was asleep in Washington's car when the Motel room of Mr. Sprague was burglarized, still it does NOT in any way cast an inference of guilt upon him (STATE v. LAUB (Utah 1942) 131 P. 2d 805, 809.

" Mere presence at the scene of the crime (in an automobile) standing alone is not sufficient to justify a finding of guilt. . either as an aider or abettor.

PEOPLE v. FOSTER, et al. (Cal. App. 1953)

253 P. 2d 50 , at 51;

UNITED STATES v. DIERRE (1948) 332 U. S.

581, at 593, 68 S. Ct. 222, at 223. ""

On cross-examination, Mr. Sprague testified:

" A. Afterwards I said one of those men could have fit the general description.

Q. And that was Washington?

A. Yes, sir. (Rep. Tr. p. 41, L. 8-12.) "

The Opinion of this Honorable Supreme Court is conspicuous by it's omission of any reference whatever to Appellant Sullivan, and the reason is obvious, there is NO EVIDENCE WHATSOEVER against him.

Perhaps this Honorable Court presumes that Sullivan had guilty knowledge because he stood Mute after arrest in Mesquite, Nevada, as advised by Deputy Sheriff Abbott, but Appellant Sullivan submits that mere refusal to answer questions under arrest is NOT a basis upon which to adjudge guilt.

See: MCCORMICK ON EVIDENCE (1954 Ed.) page 528, and Note (6) as follows:

" That silence or an equivocal reply is not always indicative of a consciousness of guilt cannot be gainsaid for the Scriptures bear witness that when Jesus stood under accusation before Pontius Pilate, the governor and was asked, ' Art thou the King of the Jews? he replied, " Thou sayest," and ' when he was accused of the chief priests and elders, he answered nothing. Then said Pilate unto him, 'Hearest thou not how many things they witness against thee? And he answered him never a word; inso-much that the governor marveled greatly.

(cont.)--

(cont.)--

" Matthew chap. 27, v. 11-14;

4 WIGMORE ON EVIDENCE, Sec. 1078,

pp. 84-85; "

PEOPLE v. JIMMIE, 28 Cal. 2d 699, 712,

172 P. 2d 18, 20.

IN UNITED STATES v. DI RE, 332 U. S. 581,
594-595, 68 S. Ct. 222, at 228, the

Supreme Court of the United States said:

" (7). . An inference of probable cause from a failure to engage in discussion of the merits of the charge with arresting officers is unwarranted. Probable cause cannot be found from submissiveness, and the presumption of innocence is not lost or impaired by neglect to argue with a policeman. "

Appellant Sullivan submits that in a case of this kind, where there is nothing against him but mere suspicion and bare conjecture, that under the presumption of innocence he was entitled to be acquitted, and the case should now be reversed as to him.

STATE v. LAUB (Utah 1942) 131 P. 2d 805,

807-808, 809.

IN CONCLUSION, Appellant Sullivan submits ^{possible} that any and all ~~inferences~~ based based on conjecture that the jury and this Court may consider, they are all equally in favor of innocence, that there is NO proof that he was even at the scene of the crime, and that even if he passed through St. George in Washington's car, there is NO evidence that Sullivan participated in or even knew of any burglary, that there is NO proof that when arrested he knew of any burglary in St. George, and there was NO evidence identifying him as a suspect in any way.

Therefore Appellant Sullivan prays that this Honorable Court shall order a Rehearing on his behalf, and reverse the case as to him.

Respectfully

Submitted.

By:


John Joseph Sullivan.

Co-Appellant, Pro Se.

Box 250, Draper, Utah.