

1956

State of Utah v. Clyde Arnold Weldon : Brief of Respondent

Utah Supreme Court

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E. R. Callister; Walter L. Budge; Attorneys for Respondent;

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In the
Supreme Court of the State of Utah

FILED

SEP 27 1956

STATE OF UTAH,
Plaintiff and Respondent,

—vs.—

CLYDE ARNOLD WELDON,
Defendant and Appellant.

Clerk, Supreme Court, Utah

Case
No. 8561

UNIVERSITY UTAH

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BRIEF OF RESPONDENT

E. R. CALLISTER
Attorney General

WALTER L. BUDGE
Asst. Attorney General
Attorneys for Respondent.

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In the
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STATE OF UTAH,
Plaintiff and Respondent,

—vs.—

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Defendant and Appellant.

} Case
No. 8561

BRIEF OF RESPONDENT

STATEMENT OF FACTS

Late in the evening of the 15th day of May, 1956, some time after 11 P.M., Police Officer Jack F. Miller took into custody at the Cedars Hotel, Cedar City, Utah, one Harke and your appellant Weldon. Harke and Weldon were both lying on a bed, or beds, in Room 25 of the said hotel and there was a gun on the bed by Harke.

Weldon told the officer and a Mr. Robinson who had accompanied the policeman that his (Weldon's) gun was in his (Weldon's) jacket across the room on the back of a chair. The officer took possession of both guns at that time. The guns were revolvers and they were fully loaded except that there was no shell in the firing chamber of either weapon. The officers and their charges left the hotel and proceeded to the Cedar City police station.

It appears from the testimony of Officer Miller, sole witness for the prosecution, that an individual by the name of Beck had informed on the alleged culprits and so led to their apprehension. The witness Beck was not produced at the trial although felony warrants had issued for his arrest.

Harke and Weldon were questioned at the police station. Together at first, later appellant Weldon was questioned separately, and Weldon, after being informed that the officers knew "about the plans that had been made," confessed that he had planned, along with Beck and Harke, to pull an armed stickup of the Safeway market in Cedar City: they figured that the take would be from six to ten "grand" in cash.

An information was filed charging Harke and Weldon with an Indictable Misdemeanor, to wit, Criminal Conspiracy, alleging:

"The said Robert Clayton Harke and Clyde Arnold Weldon at Iron County, State of Utah, on or about the 15th day of May, 1956, did con-

spire to rob Robert Childs, the assistant manager of Safeway Store in Cedar City, Iron County, Utah, on or about the said 15th day of May, 1956.

Contrary to the form of the Statutes in such case made and provided and against the peace and dignity of the State of Utah.”

Thereafter, the courts minute entry of June 9, 1956, shows :

“An information having been filed herein charging the defendants Robert Clayton Harke and Clyde Arnold Weldon, with an Indictable Misdemeanor, to-wit, Criminal Conspiracy, and the trial of the matter as to the defendant Harke having been set for this time with the said defendant having waived right of trial by jury; the defendants were both in Court. Defendant Robert Clayton Harke being represented by his counsel Attorney Basil of Chicago, Illinois, the defendant Clyde Arnold Weldon’s counsel was not present at this time. Defendant Robert Clayton Harke was arraigned on the information, and served with a copy of same which was read to him in open Court, to which he entered a plea of Not Guilty. The State was represented by District Attorney Patrick H. Fenton who moved the Court for a continuance on the ground that they had been unable to find their principal witness. The court granted the State’s motion for leave to amend the information by substituting the name of Robert Childs, assistant Manager of Safeway Store in Cedar City for that of Lowell Sherratt, Manager of the same store. Defendant Robert Clayton Harke enters a plea of Not Guilty to the information as amended. The State’s Attorney again moves for a continuance on the same grounds as before, which motion was resisted

by defendant Harke's attorney. The motion for a continuance was denied by the Court and the District Attorney consents to a dismissal of the case as against Defendant Robert Clayton Harke and the case was dismissed as against him. District Attorney then moves for a dismissal of the case as against Defendant Clyde Arnold Weldon which motion was denied by the Court and the matter continued subject to the further order of the Court."

Thus the defendant Harke was disposed of and the informer Beck could not be had. Appellant Weldon was, on the 14th day of June, 1956, before the court, tried, convicted and sentenced; from whence this appeal comes.

STATEMENT OF POINTS

POINT I.

NO OVERT ACT IS NECESSARY TO CONSTITUTE THE OFFENSE OF CONSPIRACY TO COMMIT A FELONY UPON THE PERSON OF ANOTHER.

POINT II.

THE TRIAL COURT DID NOT ERR IN ADMITTING THE CONFESSION.

POINT III.

AS TO THE CORPUS DELICTI TO ESTABLISH THE OFFENSE.

ARGUMENT

POINT I.

NO OVERT ACT IS NECESSARY TO CONSTITUTE THE OFFENSE OF CONSPIRACY TO COMMIT A FELONY UPON THE PERSON OF ANOTHER.

The offense charged was a conspiracy (agreement) to rob one Robert Childs. Robbery is defined by the statute as:

76-51-1 “* * * Robbery is the felonious taking of personal property in the possession of another from his person, or immediate presence, against his will, accomplished by means of force or fear.” The Utah conspiracy statutes declare, in part:

76-12-1 * * * “If two or more persons conspire:

(1) “To commit a crime; * * * .”

76-12-3 * * * “No agreement, *except to commit a felony upon the person of another* * * * amounts to a conspiracy, unless some act, besides such agreement, is done * * *.” (Emphasis added.)

Robbery is a “felony upon the person” and the agreement so to do amounts to a conspiracy under Utah statutes without an accompanying overt act.

POINT II.

THE TRIAL COURT DID NOT ERR IN ADMITTING THE CONFESSION.

Appellant at no time during trial contended that his confession was obtained by force, threat or coercion, and in the absence thereof, a prima facie showing sufficient to authorize a finding that the confession was voluntary suffices for its admission. Had it been charged that the confession had been extracted through coercion, then the burden of proving that coercion weighs heavily

upon the defendant. *Stein v. New York*, 346 U.S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077.

This court has said:

“* * * when evidence of the defendant's confession is offered by the state, it * * * must introduce *some* evidence tending to show that the confession was voluntary; * * * when such showing has been made, and the court determines that it is a prima facie sufficient to authorize such a finding, then the court should admit the confession * * *.” (Emphasis ours.)

State v. Wells, 35 U. 400, 100 P. 681, 683.

Appellant contends that the state failed to make a prima facie showing that the confession was voluntary. The trial court appears to have been satisfied and it fully appears from the record that if the defendant (appellant) desired to attack the voluntariness of the confession that the trial court stood ready to require the state to produce additional witnesses for examination by appellant. Appellant declined to cross examine the one witness presented by the state or to go into the matter at all. A prima facie showing is made in a criminal case when the “prima facie evidence” is that which suffices for proof of a particular fact until contradicted and overcome by other evidence. *State v. Nielson*, 187 P. 639, 640, 57 Mont. 137. It has been said:

“A confession stating on its face that it was voluntarily given is “prima facie voluntary.” *State v. Bisanti*, 9 NW2 279, 281, 233 Iowa 748.

We would contend that there was sufficient "prima facie evidence," in the absence of rebuttal, to establish the voluntariness of the confession.

POINT III.

AS TO THE CORPUS DELICTI TO ESTABLISH THE OFFENSE.

Appellant contends that the facts fail to show the commission of any crime whatever. On behalf of respondent, State of Utah, we are inclined to agree, at least under the law as heretofore declared by this court:

"* * * We adhere to the general doctrine that there must be independent proof of the corpus delicti before the confession can be received * * *." *State v. Johnson*, 95 U. 572, 83 P2 1010, 1014.

"* * * In order to support a verdict, the State must prove the corpus delicti; that is, that a crime was committed. In this case it must be shown that there was such an agreement as was alleged in the indictment. between some of the defendants, and that one of the overt acts alleged has been committed, and this without the aid of the admissions of the defendants themselves. But it does not mean that such defendant must be connected with the crime; nor does it mean that such proof must be sufficient to satisfy a reasonable mind beyond a reasonable doubt. See 16 C.J. 771-773, Sections 1578 and 1582, and Section 994; 23 C.J.S., Criminal Law pp 916, 918, 22 C.J.S., Criminal Law, p 567; *State v. Sheffield*, 45 Utah 426, 146 P. 306. *State v. Erwin* 101 U. 365, 120 P2 285, 297.

“* * * An accused cannot be convicted on his confession alone. We believe and hold that in addition there must be independent, clear and convincing vidence of the corpus delicti, although we and the authorities generally do not require it to be convincing beyond a reasonable doubt.”
State v. Ferry, 2 U2 371, 275 P2 173.

These are the expressions of this court.

Perhaps insofar as the crime of conspiring to commit an offense is concerned the rule should be modified. For, where an offense is committed, the “corpus delicti” is the act itself; but where there is a conspiracy to commit such offense, the “corpus delicti” is the conspiracy to do the act. *State v. Whiteside*, 169 S.E. 711, 712, 204 N.C. 710. Therefore, where no overt act is required to effect a conspiracy and where there is no direct evidence of a conspiracy the hands of the law are tightly bound, for to establish the “corpus delicti” the guilt itself must be proven.

The question squarely presented here to be answered then becomes:

IS THE FACT THAT TWO ALLEGED CONSPIRATORS WERE TOGETHER IN A HOTEL ROOM, HAVING IN THEIR POSSESSION LOADED GUNS, SUFFICIENT TO ESTABLISH THE CORPUS DELICTI OF A CHARGED OFFENSE OF CONSPIRING TO COMMIT ROBBERY?

The answer, without the aid of appellant's confession, could only be conjecture: i.e., with no confession

and no further evidence, direct or circumstantial, it could as well be said that murder or simply target practice was the thought in mind.

An ounce of prevention is worth a pound of cure; however, to what extent the law will go to safeguard the rights of an accused remains another matter and that is for the courts to declare.

CONCLUSION

We submit the cause.

Respectfully,

E. R. CALLISTER
Attorney General

WALTER L. BUDGE
Asst. Attorney General
Attorneys for Respondent.