1982

State of Utah v. Charles L. Crick : Brief of Appellant

Utah Supreme Court

Stephen R. McCaughey; Attorney for Appellant;
Attorney General of Utah; Attorney for Respondent;

No. 25

IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff/Respondent, v. CHARLES L. CRICK, Defendant/Appellant.	Case No. 18080

BRIEF OF APPELLANT

AN APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH BEFORE THE HONORABLE PETER F. LEARY

STEPHEN R. McCAUGHEY
Attorney for Appellant
72 E 400 South - #330
Salt Lake City, Utah 84111

ATTORNEY GENERAL OF UTAH
Attorney for Respondent
State Capitol Building
Salt Lake City, Utah 84114

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is a criminal action brought by the State of Utah against Defendant/Appellant Charles L. Crick and others, alleging that said defendants did not unlawfully cause the death of another in violation of Utah Code Annotated (1953) as amended, §76-5-203, second degree murder, a felony of the first degree.

DISPOSITION IN THE LOWER COURT

Defendant/Appellant was found guilty of the charge after a trial by jury and was sentenced by the court to be confined in the Utah State Prison for the indefinite period of five years to life.

RELIEF SOUGHT ON APPEAL

Appellant seeks to have his conviction reversed based on the prejudicially erroneous failure of the trial court to give the properly requested jury instructions on the lesser included offense of MANSLAUGHTER, §76-5-205 U.C.A. (1953), or judgment entered for manslaughter.

STATEMENT OF THE FACTS

Appellant was charged with murder in the second degree for the death on March 15, 1981, of Samuel Taylor Beare, IV. His case was joined with that of Mary V. Holloway due to a concurrence of witnesses and the criminal episode. However, the action was not joined with that of Thomas Garcia.

A jury trial was held in the District Court of the Third Judicial District, Salt Lake County, from September 28, 1981, to October 1, 1981, the Honorable Peter F. Leary presiding. At trial, conflicting evidence was heard concerning the culpability of co-defendants and Mr. Garcia. Most testimony agreed that Mr. Garcia was chiefly responsible for the events of March 15th.

Due to the various evidence and circumstances that mitigated Appellant's culpability, counsel for Appellant submitted a proposed instruction on manslaughter (R-110). Upon rejection of this instruction, counsel made a timely objection (R-484). Whereupon the court submitted instead Instruction No. 27 to the jury (R-92),

directing that the verdict must be either guilty of criminal homicide, murder, second degree; or not guilty. No instruction was given as to any possible lesser included offense. After deliberating over eleven hours, the jury returned with a verdict of guilty (R-52).

ARGUMENT

FAILURE TO GIVE THE PROPERLY REQUESTED INSTRUCTION ON THE LESSER INCLUDED OFFENSE OF MANSLAUGHTER WAS PREJUDICIALLY ERRONEOUS.

Appellant urges that the present case is one in which the trial judge was bound by law to present to the jury the requested instructions. In short, Appellant contends that manslaughter is a lesser included offense of murder in the second degree, that the lower court was obligated to charge the jury on said included offense, and that the court's faulure to present the theory through an instruction to the jury, with timely objection, is reversible error.

Appellant's first point, that manslaughter is a lesser included offense of murder in the second degree seems incontrovertible. "The term 'homicide' is generic and embraces every mode by which the life of one person is taken by another." 40 Am. Jur. Homicide §1.

Beside this statement of the common law, Defendant's claim has been established by the courts and laws of the State of Utah. See, e.g. Farrow v. Smith, 541 P 2d. 1107, 1108(Utah 1975) citing

Clown Horse v. State, 170 Neb. 336, 102 N.W. 2d 625 1960 stating:

> " . . . where the defendant was charged with murder in the second degree but convicted of manslaughter, the conviction was proper, and the crime of manslaughter was an included offense."

See State v. Williams, 636 P. 2d 1092, 1097 (Utah 1981), citing State v. Gandee, 587 P. 2d 1064 (Utah 1978), where in discussing why carrying a loaded firearm in a vehicle was not a lesser offense of carrying a concealed dangerous weapon the court distinguished those crimes from the major crime of homicide, "with the various lesser degrees thereof."

The present statute defining murder in the second degree provides:

> "Murder in the second degree.--(1) Criminal homicide constitues murder in the second degree if the actor:
>
> "(a) Intentionally or knowingly causes the death of another; or
>
> "(b) Intending to cause serious bodily injury to another, he commits an act clearly dangerous to human life that causes the death of another; or
>
> "(c) Acting under circumstances evidencing a depraved indifference to human life, he recklessly engaged in conduct which creates a grave risk of death of another and thereby causes the death of another; or
>
> "(d) While in the commission, attempted commission, or immediate flight from the commission or attempted commission of aggravated robbery, robbery, rape, forcible sodomy, or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, causes the death of another person other than a party."

"(2) Murder in the second degree is a felony of the first degree."

Section 76-5-203 U.C.A. (1953), as amended.

While the statute defining manslaughter provides:

"76-5-205. Manslaughter.--(1) Criminal homicide constitutes manslaughter if the actor:

"(a) Recklessly causes the death of another; or

"(b) Causes the death of another under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse;

"(c) Causes the death of another under circumstances where the actor reasonably believes the circumstances provide a moral or legal justification or extenuation for his conduct although the conduct is not legally justifiable or excusable under the existing circumstances.

"(2) Manslaughter is a felony of the second degree."

The distinction between the degrees of homicide is the degree of malice.

"For many years the definition of second degree murder has been the unlawful killing of a human being with malice aforethought and that of mansalughter was the unlawful killing of a human being without malice. In our opinion the new criminal code has not changed those definitions." Farrow v. Smith, supra, 1109, interpreting the above statutes as set forth in the 1975 Pocket Supplement.

Given the above statutory definitions and judicial interpretations, Appellant's next point, that the court was obligated to give the requested manslaughter instruction, is found in the same statute that defines "lesser included offense."

Section 76-1-402(3), U.C.A., provides:

> "(3) A defendant may be convicted of an offense included in the offense charged but may not be convicted of both the offense charged and the included offense. An offense is so included when:
>
> "(a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or
>
> "(b) It constitutes an attempt, solicitation, conspiracy, or form of preparation to commit the offense charged or an offense otherwise included therein; or
>
> "(c) It is specifically designated by a statute as a lesser included offense."

Section 76-1-402(4) states:

> "(4) The court shall not be obligated to charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense."

A proper reading of the above section is that if there is a rational basis for the lesser included offense, then it is mandatory that the court charge the jury thereon.

Appellant pleaded and submitted sufficient evidence to justify submission of the manslaughter instruction to the jury. This court may now "survey the evidence and inferences which admit of rational deduction, to determine if there exists reasonable basis upon which a conviction of the lesser offense could rest." State v. Dougherty, 550 P. 2d 175, 176 (Utah 1976), interpreting §77-33-6, U.C.A., 1953, as amended, a precursor to §76-1-402. See also State

v. Gillian, 23 Utah 2d 372, 463 P. 2d 811 (1970).

In addition to Appellant's own testimony, the record is replete with evidence that could arguably exculpate or at least reduce his culpability. For example, there is the testimony of co-defendant Holloway (beginning R-422); the fact that hostile witnesses were friends of Tommy Garcia with bias (R-350); the fact that Tommy Garcia was covered with blood while Appellant was not (R-350; R-410; Exhibits D-43; D-44; D-45); the fact of diminished capacity through possible methadone usage or intoxication (R-429). (See People v. Mosher, 461 P. 2d 659, 82 Cal Rptr 379, 461 P. 2d 659 (1969); People v. Conley, 64 Cal. 2d 310, 49 Cal. Rptr 815, 411 P. 2d 911 (1966). There is also provocation in a racial slur (R-431); a fight in which Appellant was not originally involved but may have eventually participated in to protect his home or in self-defense, coupled with the victim's own bad acts (R-315; R-425, R-431). Finally, there is the expert medical testimony that the cause of death was multiple stab wounds (R-388) possibly inflicted by someone in a rage (R-394). Appellant had no particular reason to be in a "rage" and testified he did not hit or stab the victim (R-461).

Any of the above is sufficient to create a reasonable basis upon which a conviction for a lesser offense could rest. Taken as a totality, their effect is hardly nugatory. Admittedly a gruesome killing had occurred, but such killing was not conclusively established by the prosecution to be the result of Appellant's acts sufficient to convict on the greater offense. In determining the degree

of homicide Appellant was guilty of, the jury may consider not only the nature of the killing, but also the personal turpitude of the defendant.

In this case the jury was effectively precluded from considering Appellant's malice by the faulty omission of a manslaughter instruction. The jury could reasonably have concluded that Appellant acted within the parameters of any of the three statutory definitions of manslaughter. Section 76-5-205, U.C.A, supra.

When the lower court presumably chose not to believe Defendant's testimony or that evidence favorable to him, it overstepped its bounds. Questions of fact are for the jury. "It is the sole and exclusive province of the jury to determine the facts in all criminal cases, whether the evidence offered by the State is weak or strong, is in conflict or is not controverted."

Appellant would have been merely reckless in joining the pre-existing affray and causing injury; he could have been extremely disturbed by the events occurring in his home, either the fight going on or by finding the victim putting the "make" on his co-tenant (R-349).

Interestingly, there is some substantiation in the record that the lower court may have felt that Appellant acted "recklessly" See Instruction 11, (R-76), in which the definition of "recklessly" was left in by the court.

The fact that some of the evidence is testimony by Appellant himself does not per se destroy its credibility. See State of Utah v. Larry Elliott & Harrison Clayton, Nos. 17350, 17351, 17358 (Utah January 21, 1982), fn 14, in which the defendant's own testimony was used by the court to reverse a lower court conviction in which the jury did not receive lesser included offense instructions. When such evidence is received it has the same status as any other evidence, it is to be considered by the jury, it is their prerogative to give it any credibility they believe it entitled to. Their prerogative, in this case, was usurped through lack of proper instruction.

In interpreting the above information to determine if there was sufficient evidence to reduce the offense, it should be viewed in the light most favorable to Appellant. This court has declared:

> "If there be any evidence, however slight, on any reasonable theory of the case, under which defendant might be convicted of a lesser included offense, the trial court must, if requested, give an appropriate instruction." State v. Chestnut, 621 P. 2d 1228, 1232 (Utah 1980) (Emphasis is original) See also, Elliott, supra

It cannot be said that the above evidence is so inherently incredible as to preclude presentation of appellant's alternate theories or instructions on the lesser included offense to the jury. The length of time the jury was out alone leaves some doubt as to how well the elements of the greater offense were established. But given only the choice between the greater offense and acquittal, perhaps the

jury chose, erroneously, the lesser of two evils.

Nor can it be said that the grisly character of the death impedes a determination of manslaughter. Not only was Appellant probably not the perpetrator of the grosser acts, but in a similar case this court held that even after a pathologist had testified that the most serious wounds to the deceased were most likely caused by the weapon used by defendant on the chest cavity, the jury might have implied no intent to kill. State v. Gaxioca, 550 P.2d 1298 (Utah 1976). Surely it is not any more unreasonable to instruct a jury that similar wounds allegedly made by a defendant were inflicted under circumstances tantamount to manslaughter.

The Supreme Courts of both Utah and the United States have declared as a matter of policy and procedural safeguard the right of defendant to receive instructions on a lesser offense if such is supported by evidence or if there is some doubt as to elements of the greater offense.

> "In passing this point we desire to say that a trial court should, in every case where there is any direct or inferential evidence with respect to the different degrees of murder, charge the jury with regard to all the degrees, and this rule should be followed where there may be any doubt with regard to whether the higher degree is established or not. This is contemplated by our statute which divides crimes into degrees and which requires the jury to find in the lesser degree in case of doubt." State v. Mewhinney, 42 Utah 498, 134 P. 632, 639.

> "While we have never held that a defendant is entitled to a lesser included offense instruction as a matter of due process, the nearly universal acceptance of the rule in both state and federal courts establishes the value to the defendant of this procedural safeguard. That safeguard would seem to be especially important in a case such as this. For when the evidence unquestionably establishes that the defendant is guilty of a serious, violent offense -- but leaves some doubt with respect to an element that would justify conviction of a capital offense -- the failure to give the jury the 'third option' of convicting on a lesser included offense would seem inevitably to enhance the risk of an unwarranted conviction." Beck v. Alabama, 447 U.S. 675, 637 (1980).

While this is not a capital case, neither does Appellant rely solely on public policy, but also on case law and Utah statutes, supra.

Finally, it should be noted that Appellant's requested instructions and objections to the charge were timely, as required by Rule 19, Ut. R. Crim. Pro. (R-110; & beginning at R-478). Cf. Rule 51, U.R.C.P.

The result of the failure of the trial court to give the proper instruction is reversal.

> "The defendant in a criminal action has a right to a full statement of the law from the court; and a neglect to give such a full statement, where the jury consequently falls into error, is sufficient ground for reversal." 75 Am. Jur. 2d, Trial §617.

Since the evidence adduced at trial established a rational basis for a verdict of the lesser included offense of manslaughter, this court should reverse the conviction. See Elliott, supra.

CONCLUSION

Appellant presented sufficient evidence at trial to warrant presentation of his theories to the jury. This court should determine that failure to give the requestee instruction resulted in a reversible error.

Respectfully submitted this 24th day of March, 1982.

/s/
STEPHEN R. McCAUGHEY
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I certify that on the 24th day of March, 1982, two copies of the foregoing were placed for delivery by messenger to the Office of the Attorney General of Utah, State Capitol Building, Salt Lake City, Utah.

/s/