1982

State of Utah v. Thomas Garcia : Brief of Respondent

Utah Supreme Court

John W. Ebert; Attorney for Appellant;
David Wilkinson; Attorney for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 18126
THOMAS GARCIA,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

Appeal from a conviction of Criminal Homicide, Murder in the Second Degree, a First-Degree Felony, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Peter F. Leary, Judge, presiding.

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BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Thomas Garcia, was charged with second-degree murder, a first-degree felony, in violation of Utah Code Ann., § 76-5-203 (1973), as amended, and was tried before a jury in the Third Judicial District Court in and for Salt Lake County, the Honorable Peter F. Leary presiding.

DISPOSITION IN THE LOWER COURT

The jury found appellant guilty of second-degree murder, and the trial court sentenced him to an indeterminate term in the Utah State Prison of not less than five years, and which may be for life.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of appellant's conviction and sentence.

STATEMENT OF THE FACTS

Ryan Nielsen, a University of Utah police officer, finished his work shift at 2:00 a.m. on March 15, 1981 (T. 2, 3). Driving home in his personal car, Officer Nielsen proceeded westbound along Sunnyside Avenue to 1400 East where he noticed a yellow vehicle parked on the south side of the street underneath a street light (T. 3, 4). As he passed the car, Officer Nielsen noticed three persons standing nearby, one of whom was not wearing a shirt (T. 4). Becoming suspicious, Officer Nielsen executed a U-turn and proceeded eastbound along Sunnyside Avenue whereupon he saw the appellant, whose hands were covered with blood, dragging a body from the car (T. 5, 6). The officer again executed a U-turn, and as he proceeded westbound, passing the yellow car a third time, he observed appellant placing the body on the ground (T. 6, 7).

Officer Nielsen then drove to a 7-11 store located at 800 South and 1300 East where he encountered the store manager as he was sweeping the parking lot (T. 11). Not leaving his car, the officer told the manager that he needed help and asked him to call the police (T. 11). At this instant the yellow car containing appellant drove by the 7-11 store headed westbound along 800 South, and Officer Nielsen left the parking lot and followed the car from a distance of 100 feet (T. 11, 12). The car stopped at about 500 East and

800 south and all three occupants got out (T. 12). Officer Nielsen then left his car, approached the three occupants, identified himself as a police officer and ordered them to lie on the ground (T. 11, 12). All three complied with the order, but moments later appellant jumped up and ran off (T. 13). Officer Nielsen gave chase, apprehending the appellant two blocks away following a brief struggle (T. 13).

Evidence adduced at trial indicates that the victim, Samuel Beare, was a temporary guest at an apartment located at 269 Kelsey Avenue that was currently occupied by Mary Holloway and Charles Crick (T. 139, 140). On the evening of March 14, 1981, Mary Holloway, Charles Crick, the victim and the appellant were present at the Kelsey Avenue apartment. Apparently angered by the victim's mistreatment of a dog in the apartment, the appellant threatened the victim, and when the mistreatment continued, he hit the victim, knocking him to the floor (T. 117). In this position, the appellant continued his assault, joined by Mary Holloway and Charles Crick, that resulted in the victim's death (T. 116-118).

At trial, Dr. Guery Flores, a forensic pathologist, testified that the victim's face had sustained numerous contusions and lacerations (T. 61). In addition, he found fifteen stab wounds on the victim's body, thirteen wounds to the thorax and two wounds to the abdomen (T. 61, 62). Each wound was about six inches deep and each wound could have caused death (T. 62, 66).

ARGUMENT

POINT I

RESPONDENT PRESENTED SUFFICIENT EVIDENCE AT TRIAL TO SUPPORT APPELLANT'S CONVICTION.

Appellant argues that no evidence exists linking him to the victim's death, and thus his guilty verdict for second-degree murder is supported by a quantum of evidence that is insufficient as a matter of law. Therefore, the appellant concludes, a reversal of his conviction is mandated.

When faced with an insufficiency of evidence claim, this Court accords great deference to conclusions reached by the jury in matters solely within its province:

> It is the exclusive function of the jury to weigh the evidence and to determine the credibility of the witnesses, and it is not within the prerogative of this Court to substitute its judgment for that of the factfinder. This Court should only interfere when the evidence is so lacking and insubstantial that reasonable men could not possibly have reached a verdict beyond a reasonable doubt.

State v. Lamm, Utah, 606 P.2d 229, 231 (1980) (emphasis added). Thus, this Court's function is not to determine guilt or innocence, the weight to give conflicting evidence, or the credibility of witnesses. State v. Lamm, supra; State v. Gorlick, Utah, 605 P.2d 761 (1979). In State v. Logan, Utah, 563 P.2d 811, 814 (1977), this Court recast its review

standard in rather succinct terms: "[U]nless there is a clear showing of lack of evidence, the jury verdict will be upheld." Furthermore, this Court has stated that its review of the evidence and those inferences reasonably deduced therefrom will be conducted in the light most favorable to the jury verdict. State v. Kerekes, Utah, 622 P.2d 1161, 1168 (1980). In addition, the defendant bears the burden of establishing that the evidence presented at his trial was so inconclusive and insubstantial that reasonable minds must have entertained a reasonable doubt concerning his guilt for the crime charged. Id. at 1168.

Those facts marshalled by appellant in his brief and his construction of those facts simply fail to cast doubt on the appropriateness of his guilty verdict for second-degree murder. Quite to the contrary, the lower court record contains overwhelming evidence pointing to his participation in the murder. Indeed, those facts in the record and reasonable inferences deduced therefrom would convince a reasonable person beyond a reasonable doubt that appellant was guilty of second-degree murder.

A brief review of the evidence reveals the following: It is undisputed that on March 14, 1981, appellant, angered by the victim's treatment of a dog, hit him with his fist and knocked him to the floor (T. 117). While the victim was in this condition, the appellant continued

the beating and was later joined by Mary Holloway and Charles Crick (T. 117, 118). Later, in the early morning hours of March 15, 1981, appellant was seen dragging the body of the victim from a car, his hands and body covered with blood (T. 4-6). During trial, the forensic pathologist testified that fifteen knife wounds had been inflicted on the victim's thorax and abdomen, each wound fatal (T. 61, 62, 66). He further testified that the wounds were inflicted at different angles, indicating that the victim either moved during the attack or the assailant moved around the victim's body as the attack progressed (T. 63). The latter inference is more reasonable in light of the earlier vicious beating that must have incapacitated the victim, and in light of other testimony presented by the pathologist that the victim's blood contained high concentrations of alcohol and other sedative and hypnotic drugs (T. 117, 118, 69, 70). Thus, the reasonable inference is that the victim remained motionless while the assailant moved around the body stabbing at will. Note, however, that a multiple party attack with one knife, each member stabbing the victim in turn, would be consistent with this result and would explain the variety of wounds, each with a different angle. Furthermore, this explanation is all the more reasonable when it is remembered that the initial beating of the victim was conducted jointly by the appellant and his two accomplices.

On March 15, 1981, a knife covered with blood was found at about 800 South 1200 East, a location adjacent to the route appellant took after the victim's body had been dropped (T. 104, 88). In addition, the appellant had admitted owning a knife (T. 119). Further examination and analysis of the knife revealed that the blood found thereon was consistent with blood removed from the victim (T, 89), and that the knife could have caused the wounds inflicted on his body (T. 62, 63).

On March 23, 1981, the Kelsey Avenue apartment was searched, revealing a mattress soaked in blood and nearby walls spotted with blood (T. 80, 81). Samples from the mattress and wall were removed (T. 80, 81). Later analysis showed that the chemical characteristics of the blood removed from the mattress were consistent with characteristics of the victim's blood and that the blood found on the wall was consistent with the appellant's blood (T. 90, 91, 81, 93).

Utah Code Ann., § 76-5-203(1) (1973), as amended, states in part:

> Criminal homicide constitutes 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 engages in conduct which creates a grave risk of death to another and thereby causes the death of another.
> . . .

Clearly, as a minimum, appellant's conduct falls within the ambit of § 76-5-203(1)(b), supra. The evidence summarized above shows that appellant attacked the victim intending to cause at least serious bodily injury. The nature and extent of the victim's facial wounds are conclusive on that issue. Next, the evidence supports a reasonable inference that appellant, in concert with the others, stabbed the victim, opening wounds that were separately fatal. Certainly this would be deemed an act clearly dangerous to human life and which caused the death of the victim.

In sum, appellant has not carried his burden of demonstrating the insufficiency and inconclusiveness of the evidence. To the contrary, the evidence presented by respondent, together with reasonable inferences deduced therefrom, would compel a reasonable person to conclude that appellant was guilty of second-degree murder. Therefore, appellant cannot prevail on this claim.

POINT II

ADMISSION OF PHOTOGRAPHS OF THE VICTIM WAS NOT ABUSE OF THE TRIAL COURT'S DISCRETION.

During trial, respondent moved for the admission of six color photographs, each depicting the victim as he was

found at 1400 East Sunnyside Avenue (T. 34). The trial court admitted five of the photographs over appellant's objection to four of them (T. 34, 35).

The appellant argues that by admitting the photographs the trial court abused its discretion because the photographs lacked probative value and they merely served to inflame the passions of the jury, citing State v. Poe, 21 Utah 2d 113, 441 P.2d 512 (1968). Poe, however, is clearly distinguishable from the instant case. There, the defendant was convicted of first-degree murder and he appealed contending, inter alia, that the lower court abused its discretion in admitting color slides depicting the victim's autopsy. The slides depicted stages of the autopsy as parts of the victim's skull and brain were removed. Prior to the admission of the color slides, black and white photographs had been introduced showing the victim lying in bed with two bullet wounds in his head. In resolving the defendant's claim, this Court adopted a balancing test:

> Initially, it is within the sound discretion of the trial court to determine whether the inflammatory nature of such slides is outweighed by their probative value with respect to an issue in fact. If the latter they may be admitted even though gruesome.

441 P.2d at 515. Applying this standard, this Court reversed the defendant's conviction and remanded his case for a new

trial because any facts that could have been adduced from the autopsy slides had been established by prior medical testimony and thus the slides had no probative value. 441 P.2d at 515.

In the instant case the color photographs did not depict details of the victim's autopsy that could have been established by appropriate medical testimony. Rather, the photos showed the nature of the victim's wounds, the surrounding area where the victim had been deposited, and the depravity of the appellant's assault upon the victim.

In State v. Renzo, 21 Utah 2d 205, 443 P.2d 392 (1968), the defendant was charged with first-degree murder but convicted of voluntary manslaughter. The defendant appealed his conviction contending that he had been prejudiced by the introduction of two gruesome color pictures depicting the murder in which sexual mutilation had also occurred. This Court noted that a photo of a murder victim is not per se inadmissible because of its gruesomeness. Rather, there "is no reason for excluding it from evidence if it is otherwise competent and relevant." 443 P.2d at 392. Affirming the defendant's conviction, this Court held that the photos were properly admitted because they were relevant in demonstrating a depraved mind which was required for the applicable first-degree murder statute (Utah Code Ann., § 76-30-3 (1953)). See also: State v. Ross, 28 Utah 2d 279, 501 P.2d 632 (1972) (photos of the victim were properly admitted because they were

of probative value in illustrating the nature of the attack on the victim where malice was an issue); State v. Poe, 24 Utah 2d 355, 471 P.2d 870 (1970) (two black and white photos depicting the victim's death by gunshot wounds were held properly admitted for the purpose of showing the nature and degree of the homicide).

In the instant case, appellant was charged with second-degree murder in violation of § 76-5-203(1). Paragraph (c) under that statute requires that the respondent prove appellant acted under "circumstances evidencing a depraved indifference to human life. . . ." Thus, these color photos were probative of an issue in fact; vis., the appellant's depraved indifference to human life.

Finally, some of the photos are valuable in describing the area at which the victim was dropped. Particularly, these photos show the position of the victim in relation to a sidewalk adjacent to Sunnyside Avenue and a nearby parking lot. Clearly, the probative value of these pictures outweighs their inflammatory nature and thus was properly admitted by the trial court.

POINT III

THE LOWER COURT COMMITTED NO ERROR IN ITS RECEPTION OF EVIDENCE DURING TRIAL.

Recall that the appellant fled from his car and was apprehended two blocks away by Officer Nielsen. The following

testimony dealt with Officer Nielsen's effort to obtain some assistance from passers-by:

> Q. Who was present besides--
>
> A. Myself and Mr. Garcia and the individual that was walking down the street.
>
> Q. And what did you tell this individual?
>
> A. I told him I was a police officer and that I needed some help, and would he go call the police.
>
> Q. There were three people present?
>
> A. Yes. He never stopped. Continued to walk away.
>
> Q. After you made that statement to him, did Mr. Garcia say anything?
>
> A. Yes, he did.
>
> Q. What did he say to him.
>
> A. Said, "I will kill you."

(T. 15). Apparently, appellant's verbal threat was intended to thwart any third party assistance that would aid in his apprehension. To Officer Nielsen's answer, defense counsel raised an objection which was sustained by the trial court (T. 15). Appellant contends that this statement, "I will kill you," was hearsay evidence that tended to paint him as a person predisposed to commit murder, and thus in addition violated Rules 45, 47 and 55 of the Utah Rules of Evidence. Appellant's argument, however, is built on a foundation of

sand, for appellant attempts to assign as error to the trial court his own defense counsel's negligence.

The form of questioning above clearly indicates that defense counsel had sufficient time and warning to anticipate the witness' answer and to interpose an objection to the hearsay testimony:

> Usually, in the taking of testimony of a witness an objection is apparent as soon as the question is asked, since the question is likely to indicate that it calls for inadmissible evidence. Then counsel must, if opportunity affords, state his objection before the witness answers.

McCormick, Law of Evidence § 52, at 113 (2d Ed. 1972). Assuming arguendo that defense counsel was not afforded sufficient opportunity to interpose a timely objection, then a motion to strike should have been made:

> In all these cases, an "after objection" may be stated as soon as the ground appears. The proper technique for such an objection is to phase a motion to strike out the objectionable evidence, and to request an instruction to the jury to disregard the evidence.

Id. § 52 at 113 (emphasis added). Furthermore, "where objection to testimony is sustained, but no motion to strike is made, the answer becomes part of the record." State v. Abbey, 13 Ariz. App. 55, 474 P.2d 62, 63 n. 1 (1970).

Here, the record contains the answer because defense counsel failed to make a motion to strike, not because of any error in the trial court's reception of evidence. Thus, appellant's claim lacks merit.

CONCLUSION

Appellant's conviction for second-degree murder was supported by sufficient evidence. Furthermore, the photos of the victim were properly admitted at trial because their probative value outweighed their inflammatory effect. Finally, the trial court committed no error in its reception of evidence. Therefore, respondent respectfully requests this Court affirm appellant's conviction.

Respectfully submitted this 3rd day of November, 1982.

DAVID L. WILKINSON
Attorney General

Earl F. Dorius Jr

ROBERT N. PARRISH
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I mailed three true and exact copies of the foregoing Brief, postage prepaid, to John W. Ebert, Attorney for Appellant, Salt Lake Legal Defender Assoc., 333 South 200 East, Salt Lake City, Utah, 84111, this 3rd day of November, 1982.

Susan Patton

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December 7, 1982

Mr. Geoffrey Butler
Clerk of the Utah Supreme Court

Dear Geoff,

Enclosed are ten (10) copies of my Supplement to Brief of Respondent in the case of State of Utah v. Thomas Garcia, Case No. 18126. I have spoken by phone to appellant's counsel, Mr. Ebert, who authorized me to represent to you that he has no objection to my filing the supplement and that no stipulation in writing would be necessary. As always, thanks for your cooperation in this case.

Sincerely yours,

Rob Parrish

ROBERT N. PARRISH
Assistant Attorney General

RNP/sp
Enclosures

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 18126
THOMAS GARCIA,	:	
Defendant-Appellant.	:	

SUPPLEMENT TO BRIEF OF RESPONDENT

The respondent, having heretofore filed a brief in this matter on November 3, 1982, respectfully submits the following Supplement to Brief of Respondent. The following arguments are tendered in support of the points set forth in Respondent's brief.

ARGUMENT

POINT I

RESPONDENT PRESENTED SUFFICIENT EVIDENCE AT TRIAL TO SUPPORT APPELLANT'S CONVICTION.

Although the evidence presented at trial, as recited in Respondent's brief, was clearly sufficient to support appellant's conviction for second-degree murder under subsection (b) of § 76-5-203(1), it was also sufficient under subsections (a) and (c) of that statute. Appellant's conduct,

as established by the evidence and reasonable inferences to be drawn therefrom, could support the conclusion that he intended the death of Sam Beare or acted with the awareness that his conduct was reasonably certain to cause the death of the victim. § 76-5-203(1)(a). Further, his conduct in beating the victim and participating in further attacks on the victim, including the infliction of 15 stab wounds, certainly shows he acted with depraved indifference to human life, created a grave risk of death to the victim, and caused the victim's death. § 76-5-203(1)(c). The jury was instructed on each of the subsections of the statute and could reasonably have based their verdict on any of the three (R. 93, 94, 96, 97).

In addition, respondent submits that it was not necessary for the State to prove that appellant personally inflicted all or any of the knife wounds which were determined to be the cause of death in order to be properly convicted of second-degree murder. Under Utah Code Ann., § 76-2-202 (1973 as amended), any person:

> . . . acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct.

The jury was so instructed in this case (R. 92).

Although there is no direct evidence of how Samuel Taylor Beare, IV, was killed, the believable circumstantial

evidence points to the inference that appellant initiated a fist fight with the victim which escalated into a brutal beating and a fatal stabbing by appellant, Charles Crick and Mary Holloway. There was no evidence presented at trial which would indicate that appellant withdrew after beginning the fight. There was evidence that the murder weapon matched the description of appellant's knife (T. 119) which he gave to Dianna Poor, requesting that she try to find it. The knife was found near where the victim's body was removed from the car and dropped on the ground by appellant (T. 5-7, 105). Although appellant was covered with blood at the time of his first contact with Officer Nielson, the officer noted that he did not notice blood on either Crick or Holloway at the time he attempted to apprehend them (T. 5, 10, 127-128). Finally, the fact that appellant had his shirt off despite the cold weather and the fact that most of the blood was gone from the victim's body before it was dragged out of the car and dumped (T. 4-6, 42-43) allow the inference that the blood all over appellant was not solely from his dragging the body out of the car but was from his contact with the victim at the time of the killing. All this allows the inference that even if appellant did not personally inflict stab wounds on the victim, he supplied his knife to the others for that purpose and thus intentionally aided, encouraged or instigated the actual killing.

A more reasonable inference remains that appellant directly participated with the others in inflicting the beating and the stab wounds.

POINT II

THE LOWER COURT COMMITTED NO ERROR IN ITS RECEPTION OF EVIDENCE DURING TRIAL.

The statement by Officer Nielson relating that appellant said "I will kill you" to a passerby who had been requested by the officer to call the police (T. 15) was not hearsay and did not violate Rules 45, 47 and 55 of the Utah Rules of Evidence. The statement was not admitted to show the truth of the matter stated, but merely to show the statement was made. Thus, it was non-hearsay.

Even if it was hearsay, the statement would have been admissible under Rule 63(12) as:

> . . . a statement of the declarant's then existing state of mind . . . when such a mental or physical condition is in issue or is relevant to prove or explain acts or conduct of the declarant.

In this case, the statement was relevant to show, when considered with appellant's flight from the point at which the police officer first attempted to apprehend him, that appellant's state of mind at the time of the threat to the bystander was consistent with his being a person who was

guilty of a crime and had been caught. The statement was thus admissible to show his state of mind even if it was hearsay.

The statement simply does not run afoul of Rules 47 or 55 of the Utah Rules of Evidence since it was not introduced as evidence of appellant's character in general or as evidence of some prior specific criminal act or civil wrong. Rule 45 is similarly unavailing since the evidence was relevant, as indicated above, and was not unduly prejudicial to appellant when viewed in context with all the other evidence adduced at trial.

Although not noted in the prior brief of Respondent, it should be noted that the allegedly objectionable statement was objected to immediately after it was made and the trial court sustained the objection (T. 15). Immediately following this a discussion occurred at the bench; however, nothing further was stated concerning a motion to strike or to admonish the jury. Another discussion as to the statement occurred later in the trial in which defense counsel clarified his objection but again made no motion to strike or for a mistrial. The trial court indicated he would rule on the matter the next day of trial if he needed to (T. 45-46). Nothing else was said after that point concerning the statement. Thus, respondent urges this Court to find that even if the statement should not have been admitted, appellant

failed to preserve the issue for this appeal by failure to make a timely motion to strike or to admonish the jury to disregard the statement.

Respectfully submitted this 7th day of December, 1982.

DAVID L. WILKINSON
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Robert N. Parrish

ROBERT N. PARRISH
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I mailed three true and exact copies of the foregoing Supplement to Brief of Respondent, postage prepaid, to John W. Ebert, Attorney for Appellant, Salt Lake Legal Defender Assoc., 333 South 200 East, Salt Lake City, Utah, 84111, this 7th day of December, 1982.

Susan Patton