1982

State of Utah v. Sandra J. Talbot : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff-Respondent, vs. SANDRA J. TALBOT, Defendant-Appellant.	Case No. 18,340

BRIEF OF APPELLANT

APPEAL FROM A VERDICT OF GUILTY ENTERED
IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged by information with manslaughter; in that on or about the 11th day of July, 1981, in violation of Section 76-5-205, Utah Criminal Code, as amended, the defendant did recklessly cause the death of Brandon Glen Talbot.

DISPOSITION IN THE LOWER COURT

Appellant was tried by jury in the Fourth Judicial District Court of Utah County, the Honorable Allen B. Sorensen, Judge, presiding, on the 18th day of November, 1981. The jury found the defendant guilty as charged. Defendant was sentenced by the Court on February 26, 1982, to serve 1-15 years in the Utah State Prison. Notice of Appeal was filed on March 23, 1982.

RELIEF SOUGHT ON APPEAL

Appellant respectfully requests that the Court reverse the

verdict of guilty entered in the District Court.

STATEMENT OF FACTS

The following facts are those which were proved at trial with the use of the defendant's statement. On July 11, 1981, Brandon Talbot (deceased), awoke from sleep at approximately 10:30 a.m. Sandra Talbot, mother of the deceased stated that Brandon had been throwing temper tantrums for a period of several weeks prior to July 11, 1981, and this day was no exception. Therefore, when Brandon threw a tantrum Sandra put him back to bed. Brandon awake again at approximately 1:30 p.m. Sandra gave Brandon a piece of toast and put him on a kitchen chair. Again Brandon threw a temper tantrum, at which point Sandra hit the child twice in the head with her hand. The child fell forward and his head hit the table. The defendant, thereafter, began loving the child and telling the child that she would never hit him again. After the child was calm, the child was put back in the chair at the table.

Sandra went over to the television and started to adjust it. She turned around and noticed Brandon choking. However, he soon stopped choking. Again she began adjusting the television and again Brandon started choking. When Sandra turned around the second time, the child was falling off the chair onto the floor. Sandra picked the child up and rushed next door to the neighbors,

Mr. and Mrs. Robert Scott. Sandra told the Scott's that Brandon was choking, and he was not breathing. She also told them that Brandon had fallen off the chair and had possibly hurt himself. The Scott's and Sandra took Brandon to the Utah Valley Hospital emergency entrance. Whereupon, Doctors Robert Gray, Brent Griffin and John Andrews attended to the child's medical needs until the child's death on July 13, 1981, at approximately 7:30 a.m.

During examination and treatment of the child prior to its death, pieces of toast were found lodged in its throat. An autopsy was performed on the body of the deceased by Dr. John Wallace Graham (State Medical Examiner) to determine the cause of death. The cause of death was attributed to bilateral subdural hematoma caused by a combination of several blows to the head. All doctors testified that the blows could have been accidental.

Sandra Talbot was tried by a jury and was found guilty of manslaughter. Sentence was pronounced for one to fifteen years in the State Prison.

The following facts were proved at trial without the use of the defendant's statement. Sandra rushed next door to the neighbors, Mr. and Mrs. Robert Scott. Sandra told the Scotts that Brandon was choking, and he was not breathing. She also told them that Brandon had fallen off the chair and had possibly hurt himself. The Scotts and Sandra took Brandon to Utah Valley Hospital emergency entrance. Whereupon, Doctors Robert Gray,

Brent Griffin and John Andrews attended to the child's medical needs until the child's death on July 13, 1981, at approximately 7:30 a.m. During examination and treatment of the child prior to its death, pieces of toast were found lodged in its throat.

An autopsy was performed on the body of the deceased by Dr. John Wallace Graham (State Medical Examiner) to determine the cause of death. The cause of death was attributed to bilateral subdural hematoma caused by a combination of several blows to the head. All doctors testified that the blows could have been accidental.

ARGUMENT

POINT I

THE STATE DID NOT PRESENT EVIDENCE OF THE CORPUS DELECTI OF MANSLAUGHTER AND THUS, THE INFORMATION CHARGING THE DEFENDANT SHOULD HAVE BEEN DISMISSED, AND THE DEFENDANT DISCHARGED.

It is a fundamental principal of criminal law that an accused cannot be convicted of a crime unless the prosecution can prove beyond a reasonable doubt the corpus delecti of the crime. In the instant case, the defendant was charged with manslaughter in that she recklessly caused the death of her son Brandon Talbot. In homocide cases such as this, the State must prove at least two facts to establish the corpus delecti. First the State must prove the fact of the child's death and secondly the State must prove beyond a reasonable doubt that the child's death was

caused by means of criminal agency inflicted by the accused. Bennett v. State, 377 P.2d 634 (Wyo. 1963); State v. Thatcher, 157 P.2d 258 (Utah, 1945); State v. Bassett, 495 P.2d 318 (Utah, 1972).

During the State's case, the State proved that the deceased, Brandon Talbot, died as a result of bilateral subdural hematoma, induced by several concussions on the brain. To establish this proof, the State called four medical doctors, the last of which was the medical examiner for the State of Utah, Dr. John Wallace Graham. The first doctor to testify was Dr. Robert Nelson Gray, a physician who worked in the emergency room at the Utah Valley Hospital (R. 87). Dr. Gray testified, over the objection of defense counsel, that he had been told by the defendant that the child (deceased) was sitting in a chair eating and fell from the chair, began to vomit and then quit breathing. When asked whether his examination of the child revealed the physical evidence consistent with the defendant's statement, the doctor replied in the affirmative (R. 98). Upon being further examined by both the Court and the prosecution, Dr. Gray testified that the injury to the child's head, which was a fresh injury, was consistent with the child falling from a chair and hitting a hard object (R. 94).

The prosecution then called Dr. Brent Griffin, a pediatrician, who testified that he treated the child until its death. He performed certain medical procedures in an attempt to restore the

child to a state of consciousness (R. 100-116). On cross-examination and on re-direct examination, Dr. Griffin testified that he could not rule out accident as the cause of the injury to the child's head and further stated that the child could fall against something and receive the injury that was discovered to be present on the child's head which in combination with other bruises to the head was diagnosed as the eventual cause of death.

The State next called Dr. John M. Andrews, a neurologist, who testified regarding his examination of the child, Brandon Talbot, his diagnosis and conclusions regarding the injury and injuries found on the child's head (R. 120-134). On cross-examination, Dr. Andrews, consistent with the previous doctors, testified that he could not rule out accident as a cause of injury to the child's head (R. 136).

Finally, Dr. John Wallace Graham, the Utah State medical examiner was called as a witness and testified of the cause of death of the child and then gave his testimony regarding the cause of injury. Dr. Graham testified that the cause of death was a head injury (R. 149). Dr. Graham identified a total of five bruises about the head area, one of which was a fresh bruise, the others of which were between five and seven days old as confirmed by testimony of the other doctors (R. 151). Dr. Graham further testified that the precise injury to the head which occurred within two to three days of the child's death, by itself, might not have caused the death of the child but that the

injury acting in combination with other injuries on the child's head would have caused the death of the child (R. 152-155). Consistent with the other doctors' testimony, Dr. Graham testified that the injury, which was determined to be the most recent of the injuries could have been caused by the child falling against a hard object by accident. Dr. Wallace Graham went on to give his opinion that a total of five injuries could not have been caused by accident, although he did not give any medical reasons or other logical explanation for his conclusion and opinion.

Thus, the State at the conclusion of testimony of the doctors, and excluding any other testimony, proved only that the life of Brandon Talbot had ended due to injuries received to the head which injuries could have been the result of the child falling accidently against a hard object or a hard object accidently hitting the child's head. None of the doctors could rule out accident as a cause of injury, and the State Medical Examiner stated that the injuries to the head eventually caused his death. The only evidence of the defendant's involvement in the injuries, exclusive of her statement, was that the child had fallen from a chair, had hit the floor, began choking and vomiting and then quit breathing while it was in her custody and care. Thus, the State failed to prove a corpus delecti of the crime charged. That is, the State only proved that the death of the baby was caused by injuries to the head, any one of which

could have been caused by accident. The State did not prove that the injuries to the child were caused by a criminal means or criminal agency inflicted by the defendant, Sandra Talbot.

In the case of State v. Bassett, 495 P.2d 318 (Utah 1972) the Utah State Supreme Court faced a fact situation very similar to the instant case. In Bassett, the defendants Weldon Bassett and Judy Bassett were found guilty of involuntary manslaughter. The facts disclosed that on the 8th day of November, 1970, Erica, the child of the defendants was taken to a hospital for treatment of an ailment manifested by convulsions and a mild fever. The family physician examined the baby, performed certain medical examinations and treatment and released the child. Thereafter, on the 24th day of November, 1970, the child was again taken to the hospital where she was pronounced dead. An autopsy was performed and it was found that the child had died from an acute and chronic subdural hematoma. The baby also had fractured ribs, but these did not contribute to her death.

At the trial in the District Court, no evidence was produced by the prosecution which showed that either of the defendants committed any act or omission which resulted in the death of the baby. The Court submitted the case to the jury upon the theory that the defendants, being parents of the deceased child and being responsible for the child's protection, imposed upon them the duty of using ordinary reasonable care for the child's safety. The Court instructed the jury in effect that if the defen-

dants were guilty of gross negligence in the care of the child in such a manner as to evidence willful disregard for consequences; and there being no circumstances amounting to a satisfactory excuse, and if fatal injury resulted from such lack of care, then such acts or ommisions were a sufficient basis to find the defendants guilty.

The Court reversed the conviction of the defendants and found as follows:

> The State had the burden of proving beyond a reasonable doubt that the death of the child resulted proximately from some act or omission on the part of defendants. Even a showing of a mere thoughtless omission or slight deviation from the norm of prudent conduct is insufficient to support a finding of criminal negligence. In order to make out a case under the statute above referred to, it is incumbent upon the State to show an unlawful act or an infraction which is done in marked disregard for the safety of others. In this case, there being no evidence to show any act on the part of the defendants or either one of them, it was error for the Court to submit the case to the jury and to permit the jury to speculate upon the guilt or innocence of the defendants. The unfortunate death of the baby from injuries suffered by her from a source not shown by the evidence is insufficient on which to base a conviction.

In the instant case, the State did not prove that the death of Brandon Talbot was caused by criminal agency or by any act or omission committed by the defendant. The State merely proved that the child had five bruises to the head, one of which had been inflicted within two to three days of its death and that the combination of bruises caused the death of the child. The State's witnesses further testified that any one or more of the

injuries to the head of the child could have been caused by accident. Thus, on its own, the State's evidence exclusive of any statement of the defendant was insufficient to establish the corpus delecti of the crime of manslaughter, and the Court, upon motion of defense counsel, should have dismissed the information.

This Court has further stated that to constitute voluntary manslaughter, there must be an intent to kill or do great bodily harm, or do an act knowing the "natural and probable consequence thereof will be death or great bodily harm." State v. Gallegos, 396 P.2d 414 (Utah, 1964). The State did not present evidence to show or prove that the defendant performed any act knowing the "natural or probable consequences" thereof would be death. In the case of People v. Strohm, 523 P.2d 973 (Colo., 1974), the Colorado Supreme Court stated that:

> The death could have been caused equally by accident or by a felonious act. In the view of this evidence, the inference of guilty beyond a reasonable doubt cannot be rationally drawn.

In the instant case, the State's expert witnesses who testified concerning the cause of injuries and the cause of death all testified that the cause of injuries could have been by accident and that the cause of death was a result of the injuries. There was no testimony on the part of the expert witnesses indicating that the cause of the injuries or the death was by means of criminal agency. Thus, it is the contention of the defendant

that on the authority of the case of State v. Bassett and other cases cited herein, the information charging her with manslaughter should have been dismissed and she discharged.

POINT II:

THE COURT ERRED IN ADMITTING THE STATEMENT OF THE DEFENDANT SANDRA J. TALBOT.

During the prosecution of its case, the State called Officer George Pierpont, a detective for the Provo police department who testified that he responded to a request to investigate the death of Brandon Talbot. Mr. Pierpont contacted the defendant Sandra Talbot and explained to her that he was a police officer and was investigating the death of her son. After his identification and his declaration of the miranda rights to the defendant, he interrogated her regarding her knowledge of the incidents leading up to the death of her child (R. 138-144; 157-162). When Mr. Pierpont was prepared to recite in open Court the content of the statement he had taken from the defendant, counsel for the defendant objected, upon the ground that the statement was inadmissable for the reason that the state had not proved the corpus delecti of the offense of manslaughter and that until a corpus delecti of the crime were established, the State could not use an incriminating statement of the defendant.

At the outset of this brief, counsel took the liberty to

present two statements of facts, one including facts obtained from the statement of the defendant and the other one excluding those facts. It is quite obvious that a brief reading of counsel's two statements of facts together with the entire transcript of the record indicate that without the additional facts contained in the statement of the defendant, there would be absolutely no evidence of criminal agency involved in the causing of the injuries and eventual death of the child Brandon Talbot. Thus, it is easy to conclude that exclusive of the defendant's own statement, the State failed to prove a corpus delecti of the crime of manslaughter.

It is fundamental and basic law in the State of Utah and other jurisdictions that a statement of an accused cannot be used against the accused to establish the corpus delecti of a crime and that said statement is excludable evidence until such time as the state independently establishes the corpus delecti of the offense charged. State v. Pineda, 519 P.2d 41 (Ariz., 1974); State v. Padilla, 474 P.2d 821 (Ariz., 1970); State v. Cooley, 603 P.2d 800 (Utah, 1979)

A reading of the transcript of the trial indicates that at best the State proved, exclusive of the statement of the defendant that the child Brandon Talbot died as a result of injuries to its head, which injuries caused a subdural hematoma. All of the expert witnesses testified that the injuries could have been caused by accidental means. None of the experts gave testimony

based upon medical expertise that the child's injuries were caused by criminal means or criminal agency. However, with the addition of the defendant's testimony that she slapped the child twice causing the child's head to hit a table, the State was able to adduce evidence that the defendant perhaps acted recklessly and that her reckless actions under the criminal law caused her to become criminally culpable for the death of her child. It is defendant's contention that even adding her statement to the whole of the evidence, although defendant does not concede that it was admissable, does not give sufficient evidence to prove criminality in the cause of the injuries and eventual death of the child. That is, the striking of the child's head twice, causing the child to fall against a table and nothing more, seems wholey inadequate as evidence to persuade that the injuries were caused by criminal means.

It should be noted that after the child's head struck the table, it was completely calmed down and restored to a point where it was eating toast which had been furnished by its mother. That it was after such occurrance that the child began to choke and because of choking apparently fell from the chair and struck its head once again.

Defendant acknowledges that the jury has the right, if the evidence is appropriately before it, to consider all of the facts and evidence and make its determination of the verdict. However, the defendant does not believe that the jury should have been

permitted to hear and consider her statement inasmuch as the State had failed to prove the corpus delecti of the crime and therefore under the rules of evidence should have been precluded from introducing, and having admitted the statement given by the defendant to Officer George Pierpont.

The defendant further contends that the Court erred in admitting the statement given by the defendant to George Pierpont and that such error was not harmless and was the essential ingredient upon which the jury relied to enter a verdict of guilty. Without her statement, the State's case would have failed. Thus, the Court committed reversable error and this defendant respectfully requests that this Court enter its order of reversal upon her second point aforesaid.

POINT III

THE COURT ERRED IN DENYING DEFENSE COUNSEL'S MOTION FOR MISTRIAL.

At the conclusion of the State's case, defense counsel made a motion to the Court to enter an order of mistrial of the case for the reason and upon the ground that the prosecutor in his opening statement and during the course of trial repeatedly used the words "death blow" and words of that kind in reference to the actions of the defendant. Counsel for the defendant maintained and argued that the use of such words was highly inflammatory and caused the jurors to form an attitude of prejudice against the

defendant, unduly and unfairly, and that such actions of the prosecutor should have resulted in a mistrial of the case.

In the case of People v. Purvis, 384 P.2d 424 (Cal., 1963) the California Court held that:

> It has consistently been held that the official position of the district attorney, as representative of the people, carries such weight with the jury that his statements of fact predicated on his knowledge, rather than on the evidence, constitutes reversable error.

In the case of People v. Lyons, 303 P.2d 329 (Cal., 1956), the Court stated that where the evidence in a case is closely balanced and the guilt of the defendant has not been established, the prosecution's misconduct may turn the scales against the defendant thus resulting in grounds for reversal or mistrial. The court further intimated that it is as much the prosecutor's duty to refrain from improper methods to produce a wrongful conviction as it is to bring about a just one.

A particular statement made by the prosecutor in the closing paragraphs of his opening statement seems to be particularly inflammatory and calculated to excite the jury unduly and unfairly against the defendant at the outset of the trial. The statement is as follows:

> Now the charge today is a serious charge. Its manslaughter. Manslaughter is always a very serious charge, because it means that someone is dead. Nothing we do here today can bring that person back to life. This particular case, the facts are particularly tragic, because the person who is

> dead, his life was so short. His name was Brandon Glen Talbot. He died when he was eighteen months old. Just a child. Not much more than a baby with a very small vocabulary. The tragedy of this case lies, not only in the fact that the child was so young, but that the death blow was delivered by the child's mother, the defendant in this particular case.

The prosecutor, after being admonished by the Court off the record, used the words "death blow" a second time in the remainder of his opening statement. The prosecutor's opening statement is in the record at pages 79 through 80. Counsel for the defendant reserved his right to make additional arguments for mistrial at the close of State's case. Upon the close of State's case, the defendant's counsel did move the Court for a mistrial of the case upon the ground and for the reason that the prosecutor's statements and use of the words "death blows" were inflammatory and prejudicial (R. 176). It is the defendant's position that the conduct of the prosecutor in his opening statement created sufficient prejudice against the defendant that the defendant had grounds for mistrial of the case. This is true particularly in light of the fact that the prosecutor was not able to prove in his case that the defendant did inflict "death blows" on the child Brandon Talbot.

CONCLUSION

The corpus delecti of a case must be proven by the prosecution beyond a reasonable doubt. The corpus delecti of

slaughter includes proof of the death of the victim as well as proof that the death was caused by criminal agency inflicted by the accused. In this case, the prosecution did not present evidence which would lead a reasonable mind to conclude beyond a reasonable doubt that criminal agency was the vehicle in causing the injuries and eventual death of Brandon Talbot.

The Court admitted the statement of the defendant Sandra J. Talbot over the objection of counsel, which statement should have been excluded from the evidence until such time as the prosecution had introduced evidence supporting the corpus delecti of the offense of manslaughter. As previously contended, the State failed to present evidence giving rise to the corpus delecti of the crime of manslaughter and therefore it was error for the Court to allow the statement of Sandra J. Talbot, the defendant to be admitted as evidence.

Finally, the prosecutor, in his eagerness to obtain the conviction of the defendant in this case used inflammatory and prejudicial statements in his opening argument which incited a prejudice in the minds of the jury against the defendant unduly and unfairly and which should have resulted in a mistrial of the case.

Respectfully submitted this 14th day of October, 1982.

ALDRICH, NELSON, WEIGHT & ESPLIN

Gary H. Weight

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CERTIFICATE OF SERVICE

I hereby certify that I mailed two copies of the foregoing brief of appellant to the Utah Attorney General, DAVID L. WILKINSON, at 236 State Capitol, Salt Lake City, Utah, 84111 this 14th day of October, 1982.

Colleen Barton