1972

State of Utah v. John Edward Barton : Brief of Respondent

Utah Supreme Court

Vernon B. Romney and David S. Young; Attorneys for RespondnetD. Gilbert Athay; Attorney for Appellant

In The Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

JOHN EDWARD BARTON

Defendant-Appellant.

BRIEF OF RESPONDENT

Appeal from a Jury Verdict of Guilty
Judicial District Court, in and for
The Honorable Bryant H. Croft, Judge

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In The Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

JOHN EDWARD BARTON

Defendant-Appellant.

Case No. 12486

BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

The appellant was tried in the Third Judicial District Court, in and for Salt Lake County, for robbery.

DISPOSITION IN THE LOWER COURT

After presenting no defense, appellant was found guilty by a jury of the crime of robbery. From this conviction, appellant appeals.

RELIEF SOUGHT ON APPEAL

Respondent prays that the findings of the lower court be affirmed.

STATEMENT OF FACTS

Respondent agrees basically with teh facts as stated by appellant with the following additions.

Mrs. Bennet testified that the reason she gave the money to appellant was because she was scared (T. 44).

Evidence was presented to show that during the commission of the crime charged in the present case, appellant robbed Terry Roney. An objection to the evidence was overruled (T. 40).

ARGUMENT

POINT I

APPELLANT IS NOT ENTITLED TO A NEW TRIAL BECAUSE THE EVIDENCE SUPPORTED THE VERDICT.

Respondent agrees with appellant's summary of the law concerning the granting of a new trial on the basis that the evidence does not support the verdict as discussed in his Point I. Appellant points out the test used by the Utah Supreme Court to determine whether the evidence in a case supports a jury verdict.

> "[T]o set aside a jury verdict the evidence must appear so inconclusive or unsatisfactory that reasonable minds acting fairly upon it must have entertained reasonable doubt that defendant committed the crime."

See *State v. Allgood,* Utah Supreme Court Case No. 12728, Filed July 18, 1972.

According to Utah Code Ann. § 76-51-1 (1953), there are four elements that must be proven beyond a reasonable doubt before a person can be convicted of the crime of robbery. There must be (1) a taking of personal property (2) from a person or from his immediate presence, (3) against his will, (4) accomplished by means of force or fear. Thus, before this Court can grant appellant a new trial, it must find that the evidence establishing the four elements of robbery is so inconclusive or unsatisfactory that reasonable minds must have reasonable doubt as to the guilt of appellant.

The evidence supporting a verdict of guilty, rather than being inconclusive or unsatisfactory is overwhelming and convincing. The four elements of robbery are unmistakenly established. Both Patrica Bennet, the victim, and Pamela Stone, a fellow employee, positively identified appellant as the man who demanded and received approximately $110.00 from Mrs. Bennet as she was counting and preparing it for deposit (T. 39, 45, 47). Mrs. Bennet testified that the reason she gave the money to appellant was because she was "really scared." She was scared because appellant was so close and because he was so serious about his request (T. 44). A customer in the store, Terry Roney, identified appellant as the man who took $40.00 from her. She testified that appellant had a gun (T. 54). All of the above witnesses testified that appellant took them to a back room and

told them to remain there for ten to fifteen minutes. They heard a scuffle and upon laving the back room, saw Mike Strand, a friend of Terry Roney, who returned to meet her, holding appellant on the floor (T. 41, 27, 53). Before Mike wrestled appellant to the floor, appellant pulled a gun on him (T. 60). The police soon arrived, arrested appellant and found $162.00 wadded in his pocket (T. 70). The above testimony must stand since appellant offered no evidence during his trial (T. 73). Thus, no reasonable mind could have any reasonable doubt that appellant was guilty as convicted.

POINT II

THE LOWER COURT DID NOT ERR IN ADMITTING EVIDENCE OF ANOTHER CRIME BECAUSE IT WAS RELEVANT TO EXPLAIN THE CIRCUMSTANCES OF THE PRESENT CRIME.

Evidence of prior crimes is inadmissible if its purpose is to "disgrace the defendant as a person of evil character with a propensity to commit crime." *State v. Lopez,* 22 Utah 2d 257, 451 P.2d 772, 775 (1969). The court continued:

> "However, if the evidence has relevancy to explain the circumstances surrounding the instant crime, it is admissible for that purpose;

> and the fact that it may tend to connect the defendant with another crime will not render it incompetent. Such harm as there may be in receiving evidence concerning another crime is to be weighed against the necessity of full inquiry into the facts relating to issues." *Id.*

While describing what happened at the time of the robbery Mrs. Bennet testified that appellant asked Terry Roney if she had any money. The following objection was raised (T. 40):

> MR. ATHAY: Your Honor, I will have to object at this point. I think the information is that he robbed this particular person. I think we are going beyond what is really relevant to the trial today.
>
> THE COURT: I think anything he said in committing the act is admissible and any conversation that takes place in his presence is admissible. The objection is overruled.

This evidence was relevant because it was presented to explain the circumstances surrounding appellant's commission of the robbery. In *State v. Baran,* 25 Utah 2d 16, 474 P.2d 728 (1970), the court found evidence of crimes committed by the defendant during the evening he committed the crime he was charged with to be admissible. Since testimony of such remote crimes is

admissible, certainly evidence of what appellant did during the commission of the present crime is admissible to explain the circumstances of the crime.

Terry Roney later testified to the fact that she was robbed and to facts that corroborate the testimony of Mrs. Bennet and Pamela Stone (T. 52-57).

Any harm that appellant may have received from testimony concerning another robbery committed by appellant while committing the crime he is charged with is minimal compared with the necessity of knowing what appellant did while he robbed Mrs. Bennet.

CONCLUSION

It is clear that the evidence supports the verdict reached by the jury and that evidence of another crime committed by appellant was properly received.

Respectfully submitted,

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