

1972

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

Utah Supreme Court

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In The Supreme Court of the State of Utah

THE STATE OF UTAH,

Plaintiff-Respondent,

-vs-

JOHN EDWARD BARTON,

Defendant-Appellant.

Brief of Appellant Accompanying Request To Withdraw

Appeal from a jury verdict of guilty
Judicial District Court, in and for Salt Lake County,
the Honorable Bryant H. Croft, presiding.

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FILE

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Clerk, Supreme Court

In The Supreme Court of the State of Utah

THE STATE OF UTAH,
Plaintiff-Respondent,
-vs-
JOHN EDWARD BARTON,
Defendant-Appellant.

Case No.
12486

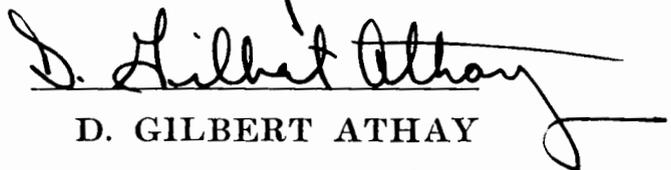
REQUEST TO WITHDRAW

D. Gilbert Athay, attorney for appellant above named, hereby requests permission to withdraw as counsel for appellant on appeal. Said request is based upon the fact that counsel, after careful examination of the record, and having been trial counsel, believes the appeal is wholly frivolous and there are no meritorious grounds of appeal.

In compliance with the United States Supreme Court decisions in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), counsel for appellant submits the accompanying brief setting forth anything that might arguably support the appeal with discussion of the appropriate law. A copy of the accompanying brief has been furnished appellant.

In compliance with *Anders v. California*, this court examines the proceedings and determines whether the appeal is wholly frivolous. If this court so finds, counsel requests this court grant him permission to withdraw. The court can then dismiss the appeal or proceed to a decision on the merits.

Dated this 7th day of July, 1972.



D. GILBERT ATHAY

Attorney for Appellant

FILED

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In The Supreme Court of the State of Utah

THE STATE OF UTAH,

Plaintiff-Respondent,

-vs-

JOHN EDWARD BARTON,

Defendant-Appellant.

} Case No.
12480

Brief of Appellant Accompanying Request To Withdraw

STATEMENT OF THE NATURE OF THE CASE

The appellant, John Edward Barton, appeals from a conviction of robbery in the Third Judicial District Court, Salt Lake County, State of Utah.

DISPOSITION IN LOWER COURT

The appellant, John Edward Barton, was found guilty by a jury of the crime of robbery on January 28, 1971, and was thereafter sentenced to the Utah State Prison on that date for the term prescribed by law.

RELIEF SOUGHT ON APPEAL

Appellant prays that the judgment of the lower court be reversed and the case remanded for a new trial. Counsel on appeal requests permission to withdraw from the appeal and submits this brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

STATEMENT OF FACTS

On October 31, 1970, at about 5:30 p.m., a man entered a Salt Lake retail establishment and robbed Patricia Bennett. (R. 38, 39) Patricia Bennett testified that it was the appellant that came into the store where she was working and asked for the money in the cash register. (R. 39) She testified that he took about \$110.00. (R. 39) Another employee, Pamela Stone, testified similarly. (R. 45) A customer in the store, Terry Roney, was also present and she testified that appellant took \$40.00 from her purse. (R. 53) The testimony was that appellant took these three witnesses into the back room and told them to remain there for ten to fifteen minutes. (R. 41) A scuffle was then heard in the store and upon leaving the back room, the above three witnesses saw appellant being held on the floor in the middle of the store by Mike Strand. (R. 41, 47, 53)

Mike Strand was with the customer Terry Roney when they first entered the store. (R. 58) He then left but soon returned and saw appellant escorting Terry

Roney into the back room. (R. 58) Pamela Stone was gesturing from the back of the store, so Mr. Strand turned and left the store and went to a shop nearby and had someone call the police. (R. 58, 59) Mr. Strand then returned to the store and found appellant in the process of leaving. He told appellant to wait, that he wanted to talk to him, whereupon appellant drew a gun. (R. 59, 60) Mike Strand then knocked the gun away and wrestled appellant to the floor and held him until the police arrived. (R. 60) The police soon arrived and arrested appellant and found \$162.00 wadded in his pocket. (R. 70)

Appellant put on no witnesses and offered no evidence. (R. 73)

ARGUMENT

POINT I

APPELLANT IS ENTITLED TO A NEW TRIAL BECAUSE THE EVIDENCE WAS CONTRARY TO THE VERDICT.

This court has on numerous occasions stated the rules concerning the granting of a new trial on the basis that the evidence did not support the verdict. In *State v. Cooper*, 114 Utah 531, 201 P.2d 764, 770 (1949) this court stated:

The question of granting or denying a motion for a new trial is a matter largely within the

discretion of the trial court 'This court cannot substitute its discretion for that of the trial court We do not ordinarily interfere with the rulings of the trial court in either granting or denying a new trial, and unless abuse of, or failure to exercise discretion, on the part of the trial judge is quite clearly shown, the ruling of the trial court will be sustained.

While in appellant's case there was no motion for a new trial, the above language would seem to indicate when this court will grant a new trial, even in the absence of such a motion.

This court further has stated, in *State v. Miles*, 122 Utah 306, 249 P.2d 211 (1952) :

If the state's evidence is so 'inherently improbable' as to be unworthy of belief, so that upon objective analysis it appears that reasonable minds could not believe beyond a reasonable doubt that the defendant was guilty, the jury's verdict cannot stand. Conversely, if the state's evidence is such that reasonable minds could believe beyond a reasonable doubt that the defendant was guilty, the verdict must be sustained. 249 P.2d at 212.

See also *State v. Horne*, 12 Utah 2d 162, 364 P.2d 109 (1961), for the same rule. This court later said that

before setting aside a jury verdict, "it must appear that the evidence is so inconclusive or unsatisfactory that reasonable minds acting fairly upon it *must* have entertained reasonable doubt that the defendant committed the crime." (emphasis in original) *State v. Danks*, 10 Utah2d 162, 350 P.2d 146 (1960), citing *State v. Sullivan*, 6 Utah2d 110, 307 P.2d 212 (1957). A jury verdict is reversed only when, taking the evidence in the light most favorable to the verdict, the "findings are unreasonable." *State v. Berchtold*, 11 Utah2d 208, 357 P.2d 183 (1960). If the verdict is "supported by sufficient competent evidence" a new trial is to be denied. *State v. Rivenburgh*, 11 Utah2d 95, 355 P.2d 689 (1960). See also *State v. Schad*, 24 Utah2d 255, 470 P.2d 246 (1970) (must be "reasonable basis" for verdict.)

It is apparent from these various statements of the law that this court does have the power to grant a new trial in appropriate cases.

We are not unmindful of the settled rule that it is the province of the jury to weigh the testimony and determine the facts. Nevertheless, we cannot escape the responsibility of judgment upon whether under the evidence, a jury could, in reason, conclude that the defendant's guilt was proved beyond a reasonable doubt. *State v. Williams*, 111 Utah 379, 180 P.2d 551, 555 (1947).

Clearly, then, each case must turn upon its own facts as to whether or not a new trial is warranted because the verdict was not supported by the evidence.

POINT II

THE COURT BELOW ERRED IN ADMITTING EVIDENCE OF OTHER CRIMES.

Appellant was accused by information of robbing Patricia Bennett. (R. 35) During Patricia Bennett's testimony she testified, over appellant's objection, that appellant also asked Terry Roney for her money and that he took her money. (R. 40, 41) Appellant objected to this testimony. (R. 40)

The rule as to when evidence of other crimes is admissible is stated clearly in *State v. Lopez*, 22 Utah 2d 257, 451 P.2d 772 (1969) :

. . . evidence of other crimes is not admissible if the purpose is to disgrace the defendant as a person of evil character with a propensity to commit crime and thus likely to have committed the crime charged. 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. 22 Utah 2d at 262.

CONCLUSION

D. Gilbert Athay, attorney for appellant, respectfully requests permission to withdraw, believing the appeal is without meritorious grounds. The foregoing brief discusses the law applicable to the only points that could arguably be presented on appeal. This court can, pursuant to *Anders v. California, supra*, dismiss the appeal as frivolous or proceed to a decision on the merits.

Respectfully submitted,

D. GILBERT ATHAY

Attorney for Appellant