1972

the State of Utah v. Ronald Streff : Brief of Respondent

Utah Supreme Court

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

THE STATE OF UTAH,
Plaintiff-Respondent,

vs.

RONALD STREFF,
Defendant-Appellant.

Case No. 12965

BRIEF OF RESPONDENT

Appeal from the jury verdict and judgment of the Second Judicial District Court of Weber County, State of Utah, Honorable Calvin Gould, Presiding.

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STATEMENT OF THE NATURE OF THE CASE

The defendant was charged by information together with Jackie Dale Howard and David Jones of the crime of robbery in that "said defendants robbed Evelyn Baker" (R. P. 22).

DISPOSITION IN THE LOWER COURT

The defendants Howard and Jones having therefore entered pleas of guilty to burglary in the second degree (R. P. 110), the defendant Streff was tried before a jury in the Second Judicial District Court in and for Weber County, State of Utah, before the Honorable Calvin

Gould, presiding. He was found guilty and sentenced to serve in the Utah State Prison not less than five years, which may be for life (R. P. 95).

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the conviction affirmed.

STATEMENT OF FACTS

On December 16, 1971, David Jones and Jackie Howard entered the Canyon View Grocery in Ogden and committed armed robbery on the person of Evelyn Baker at approximately 6:30 p.m. (T. 112). Just prior to the robbery, Mrs. Baker sent two girls, Connie and Kathy Van Leeuwen, to a next door neighbor's house to deliver a newspaper (T. 113). After the robbery, Mrs. Baker observed the robbers running to a Volkswagen in the parking lot and made a note of the license number. She then reported this number, EC 7004, to the police (T. 115).

Connie and Kathy Van Leeuwen testified that upon leaving the store, they had observed a man sitting alone in a light-colored Volkswagen (R. 120 & 123), which was the only car in the lot (T. 123). Upon returning to the store to give Mrs. Baker the money, the girls observed that the Volkswagen was still there and the man was still sitting in it (T. 121 and 123). The girls then left before the robbery occurred.

Officer Bailey testified that he responded to a call concerning the robbery at about 6:30 p.m. and proceeded to set up a road block on the corner of Harrison and 28th

Street (T. 128). The appellant's car stopped four cars from the road block at which time all three persons emerged and began to flee. Officer Bailey identified the appellant as the driver (R. 129, 130, 131).

Officer Turner of the Ogden Police Department also responded to a dispatch involving the Canyon View Market robbery and was proceeding north on Harrison Boulevard when he observed the suspect's car in the southbound lane. He also identified the appellant as the driver (T. 140, 141, 145).

ARGUMENT

THE COURT CORRECTLY DENIED THE MOTION FOR A DIRECTED VERDICT BECAUSE THE STATE PRESENTED SUFFICIENT EVIDENCE TO CONVICT APPELLANT OF AIDING AND ABETTING THE CRIME OF ROBBERY.

The law concerning a defendant's motion to direct a verdict of not guilty was succinctly stated in *State* v. *Penderville*, 2 Utah 2d 281, 286, 272 P. 2d 195 (1954):

> "It has been repeatedly held by this court that upon a motion to dismiss or to direct a verdict of not guilty for lack of evidence that the trial court does not consider the weight of the evidence or credibility of the witnesses, but determines the naked legal proposition of law, whether there is any substantial evidence of the guilt of the accused, and all reasonable inferences are to be taken in favor of the state....

> "[I]f there is before the court evidence upon which reasonable men might differ as to whether the defendant is or is not guilty he may deny the motion." 272 at 198.

This holding has been followed in *State* v. *Rivenburgh*, 11 Utah 2d 95, 355 P. 2d 183 (1960) and *State* v. *Woodall*, 6 Utah 2d 8, 305 P. 2d 473 (1956).

On appeal, appellant makes two assertions: 1. There was no evidence that appellant aided or abetted the commission of the crime. 2. There was no other evidence which would in any way connect appellant with the crime.

Utah Code Ann. § 76-1-44 (1953) reads:

> "All persons concerned in the commission of a crime, either felony or misdemeanor, whether they directly commit the act constituting the offense or aid and abet in its commission or not being present, have advised and encouraged its commission, . . . are principals in any crime so committed."

The appellant was not an unknowing bystander or unwitting participant. He was by prior arrangement, the driver of the getaway car, an involvement which made him just as guilty as Howard and Jones, who actually committed the robbery on the person of Mrs. Baker.

The following evidence presented at trial was such that reasonable men could determine that appellant was guilty of robbery: 1. Mrs. Baker jotted down the license number of the getaway vehicle (EC 7004) immediately after the robbery, which occurred around 6:30 p.m., December 16, 1971 (T. 115, 117 and 119). 2. Two witnesses,

who left the store, returned, anl left again prior to the robbery while the robbers were in the store, testified that they observed a third man sitting alone in a light colored Volkswagen (T. 120, 123), later identified as the getaway vehicle. 3. Approximately fifteen minutes after the robbery, the Volkswagen with license number EC 7004 (T. 135) was observed by police and stopped at a road block. Appellant was the driver. This was established by the testimony of several officers (T. 128, 129, 131, 132, 140). 4. All three suspects started to run from the vehicle and appellant Streff attempted to elude capture by running down a driveway (T. 129).

These facts provide sufficient basis for the jury's verdict. In cases similar to the one at bar, this court has held:

> "The prerogative of judging the credibility of . . . testimony was for the jury, and under the traditional rule, the evidence is to be reviewed in the light favorable to their verdict. This involves recognition of the privilege which was theirs, not only of believing those aspects of the evidence which support the verdict, but also of drawing all reasonable inferences that could fairly be deducted therefrom . . ." (Footnote omitted.) *State* v. *Murphy*, 26 Utah 2d 330, 489 P. 2d 430 at 432 (1971).

There is no basis for setting aside a jury verdict unless:

> "[*T*]*he evidence was so inconclusive or unsatisfactory that reasonable minds acting fairly upon it must have entertained reasonable doubt that defendants committed the crime.* Unless the evi-

> dence compels such conclusion as a matter of law, the verdict must stand. . . ." (Emphasis added.) *State* v. *Sullivan*, 6 Utah 2d 110, 307 P. 2d 212 (1957).

Appellant's counsel called as a witness one of the robbers, David Jones. Mr. Jones offered testimony to the effect that appellant had been let out of the car prior to the robbery and picked up after it was completed. Thus, appellant argues, he had no knowledge of the robbery. The jury obviously did not believe this self-serving testimony. It is the prerogative of the jury to determine, from the facts and circumstances shown in evidence, whether a witness is telling the truth. The facts and circumstances, as viewed by the jury:

> ". . . may well [be] regarded as speaking louder thna defendant's later defensive claims as to what his intentions were." *State* v. *Peterson*, 22 Utah 2d 377, 453 P. 2d 697 (1969).

CONCLUSION

Respondent submits that the jury could reasonably infer from the evidence established at the trial, that the defendant was guilty of aiding and abetting Messrs. Howard and Jones in the crime of robbery. The court was therefore correct in submitting instructions on aiding and abetting to the jury. The verdict should therefore be affirmed.

Respectfully submitted,

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