1968

# Ronald E. Gellatly v. State of Utah : Brief of Appellant

IN THE UTAH SUPREME COURT

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ALD E. GELLATLY, )

Defendant-
Appellant )

VS. ) Case No. 11337

TE OF UTAH )

Plaintiff-
Respondent. )

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BRIEF OF APPELLANT

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Appeal from the trial courts judgment in the
cond Judicial District Court of the State of Utah,
unty of Morgan Honorable John F. Walquist Presiding.

RONALD E. GELLATLY
Appellant In Pro Se;
P.O. Box 250
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IN THE SUPREME COURT

OF THE STATE OF UTAH

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Defendant- )
Appellant, )

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Plaintiff- )
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# BRIEF OF APPELLANT

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## STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a judgment and conviction by a jury in the Second Judicial District Court of the State of Utah, County of Morgan, wherein appellant was convicted of the crime of grand larceny.

## DISPOSITION IN THE LOWER COURT

Appellant was tried before a jury in the Second Judicial District Court of the State of Utah, County of Morgan, and subsequently convicted of the crime of Grand Larceny. On the 3rd day of November 1967. And sentenced to Utah State Prison November 20th 1967. The case was again continued pending a hearing on a motion for new trial on newly discovered evidence, appellant will file a supplementary brief upon receiving transcript of said hearing.

## RELIEF SOUGHT ON APPEAL

The appellant seeks a reversal of the judgement and conviction, and trial do novo.

## STATEMENT OF FACTS

The appellant is presently incarcerated in the Utah State Prison, at Draper, Utah. Having been convicted of the crime of grand larceny and having been sentenced as prescribed by law to a term of from One to Ten years at Utah State Prison, said sentence to run concurrant with appellants term for parole violation.

In the trial of the substantive charge the evidence was that Ronald E. Gellatly, appellant herein supposedly left a saddle with an excessive value of $50.00 Fifty Dollars at the home of LeAnn Clark, now LeAnn Hill. LeAnn Clark-Hill, testified TR 16-17-18 that she and your appellant had been drinking Jim Beam whiskey then they went to her home and in the morning she woke up to find a saddle on the floor and defendant appellant was also still there she claimed not to have known where the saddle came from., She then testified that your appellant didn't tell her where it came from but asked her to keep it for him which she did for a number of days, TR 19-20, she even testified that she sold the saddle for your appellant for $65.00 to Pete Miller, that this Pete called her back up and told her he wanted his money back because the saddle was stolen. And that your appellant returned the money to her and she went and gave it back.

Counsel for appellant motioned for a change of venue TR 3 on the basis that the entire jury was highly prejudiced in this case, in that the majority of the jury members testified they had heard of the case by rumor TR 3 That at least three were related to the person Mr. Bingham who was the owner of the saddle, and that all were acquainted with both Mr. Bingham and the Sheriff and call them by their first names. TR 3. Both whom were witnesses for the state.

The state presented also the testimony of James Bingham TR 61-65. Who testified that the saddle in question belonged to him.

The state further presented the testimony of Porter Carter Sheriff of Morgan County Utah TR 81-84.

The particular point is that in a county the size of Morgan appellant was denied a fair and impartial trial in that everyone knew everyone. And the case had been previously talked over by the jurors.

Appellant is unversed in the law and subsequently the Court will have to bear with him. Also trial counsel filed a motion for a new trial on newly discovered evidence, and your appellant has not yet received the transcript of the hearings on the motions for new trial and will therefore file a supplemental brief.

## ARGUMENT

### POINT 1

THE STATE FAILED TO PROVE BY THE EVIDENCE PRESENTED THAT YOUR APPELLANT WAS THE PERSON WHO STOLE THE SADDLE CONSEQUENTLY FAILING TO PROVE THE CRIME CHARGED BEYOND A REASONABLE DOUBT AND THERE WAS NO UNION OF ACT AND INTENT SHOWN THUS THE STATE FAILED TO PRESENT A PRIMA FACIE CASE:

Appellant submits that under Utah Statutes in order for a defendant to be convicted of a felony a joint union of act and intent must be shown. And that in the case at bar it was not even proven beyond a reasonable doubt that he was the person who had stolen the saddle in question. That at most he was possibly in possession of the saddle at diverse times, and could possibly have been convicted of possession of stolen property. See 90 C.J. sec. 20. State v. Louisianna, 91 So. 349, 150 La. 349. State v. Mish, 92 Pac. 459 (Mont.) State v. Moore, 12 N.H. 42.

Appellant submits that trial counsel may have been negligent in his advising the court that he did not desire an instruction to the jury regarding the lessor offense of receiving stolen property.

There are some Utah Cases which charge the trial court with the responsibility of instructing the jury on included offenses, even though no request is made therefore by the defendant. See State v. Cobo, 90 Utah 89, 60 P. 2d 952 (1936).

## POINT 2

THE TRIAL COURT ERRED PREDJUDICIALLY IN DENYING APPELLANTS MOTION FOR A CHANGE OF VENUE IN THAT THE ENTIRE JURY WAS HIGHLY PREJUDICIAL TO THE CASE.

Three quarters of the jury venire testified they had heard of the case by rumor, TR 3. And each of them were acquainted with the essential states witnesses Mr. Bingham the person who had been the owner of the stolen saddle. Three members of the jury were even in fact related to him. TR 3. And Sheriff Porter Carter.

Appellant submits that he was subjected to trial by ordeal in a community exposed to highly adverse publicity through rumor. The town of Morgan being of a size where everyone knows everyone. Rideau v. Louisiana, 373 U.S. 723, 727.

Appellant submits that though he is unversed in the law he was aware that he was effectively denied a fair and impartial trial. And thereby deprived of the due process and equal protection of the law provided for under the Fourteenth Amendment to the United States Constitution.

"To try a defendant in a community that has been exposed to publicity, or rumor highly adversed to the defendant, is PER SE GROUNDS FOR REVERSAL."

## CONCLUSION

Appellant respectfully submits that it is clear the trial court was predjudicial, in denying appellants motion for a change of venue. And in its failure to appraise and instruct the jury as to other elements of the case, and as to the lessor offense of possession or receiving stolen property.

RESPECTFULLY SUBMITTED

Ronald E. Gellatly

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