2017

State of Utah, P;aintiff/Appellee vs. Thomas Edward Egley, Defendant/Appellant

Utah Court of Appeals

39147

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff and Appellee, vs. THOMAS EDWARD EGLEY, Defendant and Appellant.	Appellate No: 20160976-CA Trial Court No: 161700342

BRIEF FOR APPELLANT

In accordance with *Anders v. California*, 386 U.S. 738 (1967)

Appeal from a final judgment and conviction of the Carbon County Seventh District Court, entered by Judge George M. Harmond, Jr.

Utah Attorney General
Criminal Appeals Division
160 East 300 South
PO Box 140854
Salt Lake City, Utah 84114-0854

Attorneys for Plaintiff/Appellee

Don M. Torgerson #10318
TORGERSON LAW OFFICES, P.C.
453 East Main, Suite 100
P.O. Box 955
Price, Utah 84501
Telephone: (435) 637-7011
Facsimile: (877) 794-8685

Attorneys for Defendant/Appellant

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff and Appellee, vs. THOMAS EDWARD EGLEY, Defendant and Appellant.	Appellate No: 20160976-CA Trial Court No: 161700342

BRIEF FOR APPELLANT

In accordance with *Anders v. California*, 386 U.S. 738 (1967)

Appeal from a final judgment and conviction of the Carbon County Seventh District Court, entered by Judge George M. Harmond, Jr.

Utah Attorney General
Criminal Appeals Division
160 East 300 South
PO Box 140854
Salt Lake City, Utah 84114-0854

Attorneys for Plaintiff/Appellee

Don M. Torgerson #10318
TORGERSON LAW OFFICES, P.C.
453 East Main, Suite 100
P.O. Box 955
Price, Utah 84501
Telephone: (435) 637-7011
Facsimile: (877) 794-8685

Attorneys for Defendant/Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

PREAMBLE and STATEMENT REGARDING ORAL ARGUMENT

This brief is submitted in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Clayton*, 639 P.2d 168 (Utah 1981). Counsel has carefully examined the record and applicable law. Based on that investigation, it is Counsel's good faith belief and professional opinion that this case does not present any nonfrivolous legal questions on which Defendant could prevail. Oral argument is not requested and counsel has requested in this brief to withdraw as counsel.

JURISDICTION AND NATURE OF PROCEEDINGS

Thomas Edward Egley appeals from a final judgment and conviction of the Carbon County Seventh District Court, entered by the Honorable George M. Harmond on November 22, 2016. This Court has jurisdiction by transfer from the Utah Supreme Court under UTAH CODE § 78A-4-103(2)(j).

ISSUES ON APPEAL AND STANDARD OF REVIEW

Issue 1: Was jurisdiction and venue proper in Carbon County instead of Colorado?

Where Preserved: There is no record of preservation.

Standard of Review: Challenges to both subject matter and personal jurisdiction present questions of law which are reviewed

for correctness.[1] Venue determinations are reviewed for abuse of discretion.[2]

Issue 2: Did the statute of limitations run on this case because defendant did not have a speedy trial?

Where Preserved: There is no record of preservation.

Standard of Review: Challenges to the statute of limitations are reviewed for correctness.[3]

Issue 3: Was Defendant's confession not voluntary because his friend and neighbor acted as a confidential informant in obtaining it?

Where Preserved: There is no record of preservation.

Standard of Review: Voluntariness of a confession is a legal question, reviewed for correctness.[4]

Issue 4: Did the trial court abuse its discretion by not permitting defendant to present additional witnesses at sentencing?

Where Preserved: There is no record of preservation.

Standard of Review: A denial of a defendant's right to allocution is reviewed for correctness. Presumably, that extends to a trial court's refusal to hear additional witnesses.[5]

---

[1] *State ex rel. W.A.*, 63 P.3d 607, 611 (Utah 2002) and *State v. Smith*, 344 P.3d 573, 576 (Utah 2014).
[2] *State v. Hattrich*, 317 P.3d 433, 436 (Utah Ct.App. 2013).
[3] *State v. Lusk*, 37 P.3d 1103, 1106 (Utah 2002).
[4] *State v. Rettenberger*, 984 P.2d 1009, 1012 (Utah 1999).
[5] *West Valley City v. Walljasper*, 286 P.3d 948, 950 (Utah Ct.App. 2012).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

There are no statutes, rules, or constitutional provision that are of central importance to this appeal.

STATEMENT OF THE CASE AND FACTS

A. Nature of the Case and Proceedings Below:

Thomas Edward Egley pleaded guilty to one count of Criminal Homicide — Murder in the Second Degree, under UTAH CODE § 76-30-1 (1953). On November 22, 2016, he was sentenced under the 1970 version of the Utah Code to serve not less than ten years and which may be life in the Utah State Prison.

B. Statement of Relevant Facts[6]:

Forty-six years ago, Tom Egley killed Loretta Jones with "malice aforethought" at her home in Price, Utah. (R.58). Loretta had refused Egley's request for sex, so he stabbed her 17 times in the back, twice in the chest, and cut her throat. (PR.23, 25). Loretta was 23-years-old. (R.3, 105). Her 4-year-old daughter slept through the incident in another room, but found her mother's body the next morning. (R.3, 105).

Egley was the only person ever charged with the crime and the case

---

[6] Counsel has prepared this brief in reliance on the electronic record on appeal, including the transcript of the sentencing proceeding. As such, any reference to a document filed in the case, or to a portion of the transcript, will be made by the record page number of the consecutively paginated electronic record. References to the Public record will be designated as (R. _____). References to the Private record are designated as (PR. _____).

proceeded to a preliminary hearing in 1970. (R.4). But the magistrate ruled there was insufficient evidence to bind the case over for trial and Egley was released. (R.5).

In the years after the preliminary hearing, the investigation continued intermittently. In 2016, the victim's body was exhumed and DNA testing was attempted. (R.6). As part of the renewed investigation, Egley was again interviewed and a confidential informant helped obtain a confession. (PR.23-25).

On August 18, 2016, Egley was charged under the 1970 criminal code with the crimes of Criminal Homicide, Murder in the Second Degree; and Rape (a first-degree felony). (R.1-7). He was arrested that same day at his home in Colorado.

On October 11, 2016, through plea negotiations, the Rape charge was dismissed and Egley pleaded guilty to Criminal Homicide — Murder in the Second Degree. (R.55-64).

The Department of Corrections prepared a presentence investigation report and Egley was sentenced on November 22, 2016. (R.65-70). At the sentencing hearing, Egley confirmed that no corrections were necessary to the presentence investigation report. (R.95). The trial court listened to the recommendations and then sentenced Egley under the 1970 version of the criminal code, to an indeterminate term of 10 years to life in the Utah State Prison. (R.69, 111).

SUMMARY OF ARGUMENT

The jurisdiction and venue for this case were properly in Carbon County, Utah because the offense was committed entirely within Carbon County.

There is no statute of limitations for murder. Moreover, there is no evidence in the record indicating prejudice to Egley by the delay in charging this case, or that he challenged statute of limitations below.

There is insufficient evidence in the record to show that Egley's confession was not voluntarily given or was improperly coerced by law enforcement. And Egley did not challenge his confession in the trial court.

Finally, there is no evidence in the record showing that Egley advised the trial court of additional witnesses that he wished to present at his sentencing hearing.

ARGUMENT

A. The jurisdiction and venue for this case were appropriately in Carbon County, Utah.

A person is subject to prosecution in Utah if he commits an offense wholly or partly within the state.[7] And to avoid the presumptive jurisdiction in Utah for a homicide offense, a defendant must prove by clear and convincing evidence that: (1) the result of the homicide did not occur in Utah; and (2) the defendant did not engage in any conduct in this

[7] UTAH CODE § 76-1-201.

state which is an element of the offense.[8] Furthermore, the pleadings establish jurisdiction unless a defendant challenges it by motion.[9]

Similarly, venue is based on the location where the offense is consummated and a defendant waives an objection to venue if the issue is not raised before trial.[10]

In this case, Egley was living in Colorado at the time of his arrest, and he had been living outside of Utah in the 46 years since he committed this crime. (PR.27). But he was living in Utah when he killed Loretta Jones and he the offense occurred entirely within Carbon County. (PR.23, 27). Since the crime was committed in Carbon County, Egley could not have challenged jurisdiction on the grounds that the result or conduct of the crime did not occur in Carbon County. He also did not have an argument against venue since the offense was consummated in Carbon County. Accordingly, jurisdiction and venue could only properly lie in the Carbon County Seventh District Court.

Finally, there is no evidence in the record that Egley ever attempted to challenge jurisdiction or requested a change of venue before entering his plea, thereby waiving any objection to the location of the proceedings.

---

[8] *Id* at (3).
[9] *Id* at (5).
[10] UTAH CODE § 76-1-202; *State v. Lovell*, 758 P.2d 909, 911 (Utah 1988).

B. There is no statute of limitations for the charges in this case.

A murder prosecution may be commenced at any time, and that rule has existed since before Egley committed this offense.[11] Interestingly, the *Renzo* case is procedurally very similar to this case. In *Renzo*, the original murder case against the defendant was dismissed when he was discharged during the preliminary hearing stage "for reasons best known to [the magistrate]."[12] After almost 20 months passed, the State re-filed the murder charge against the defendant and he argued that he was denied due process because he was not given a speedy trial.[13] In analyzing prior precedent, the Utah Supreme Court adopted the reasoning of the prior courts in essentially holding that a defendant who has been free while awaiting prosecution is not denied due process by the delay unless the defendant demanded a speedy trial or there is evidence that the delay impeded his ability to make his defense.[14]

In this case, Egley was discharged by the magistrate in 1970 after the preliminary hearing. He remained free for the next 46 years until his re-arrest on August 18, 2016, when the Information was re-filed. During that time, he did not demand a speedy trial or earlier disposition, thereby waiving his right to have a prompt determination of guilt or innocence.

---

[11] UTAH CODE §76-1-301(2)(c); *State v. Renzo*, 21 Utah 2d 205, 207 (Utah 1968).
[12] *Renzo* at 206.
[13] *Id* at 210.
[14] *Id.*

Moreover, there is no evidence in the record that Egley ever objected to the delay or that the delay prejudiced his defense. Instead, the record plainly demonstrates that this prosecution was based almost entirely on Egley's own confession and memory of the events from 1970. (R.6,58; PR.25).

C. Egley did not raise an entrapment defense and there is insufficient evidence in the record to determine if his confession was coerced.

Entrapment is a defense if a defendant is "...entrapped into committing the offense."[15] It occurs when a government actor induces the commission of an offense to obtain evidence to prosecute the offense.[16] And it is designed to protect against situations where law enforcement induces or persuades a person to commit a crime who would not have done it otherwise if merely given the opportunity to commit the offense.[17] Also, the defense of entrapment requires a written motion and hearing before trial.[18]

But entrapment is different from determining if a confession is voluntary. A confession is involuntary if the evidence shows " 'some physical or psychological force or manipulation that is designed to induce the accused to talk when he otherwise would not have done so.' "[19] Coercive police conduct must be present and the factors to be considered in

---

[15] UTAH CODE §76-2-303(1);
[16] *Id.*
[17] *State v. Salmon*, 612 P.2d 366, 368 (Utah 1980).
[18] UTAH CODE §76-2-303(4).
[19] *State v. Montero*, 191 P.3d 828 (Utah Ct.App. 2008), citing *State v. Rettenberger*, 1999 UT 80, ¶25.

determining voluntariness include "the duration of the interrogation, the persistence of the officers, police trickery, absence of family and counsel, and threats and promise made to the defendant by the officers."[20] The voluntariness of a confession is considered by reviewing the totality of the circumstances.[21]

In this case, Egley's appeal asserted entrapment as a basis for his appeal. But there was no police involvement at the time the offense was committed, so the entrapment defense does not apply in this case. More accurately, Egley believes he was "entrapped" into making a confession. In other words, he contends that his confession was not voluntarily given for two reasons: (1) his neighbor and friend, Lisa Carter, cooperated with law enforcement to obtain his confession; and (2) law enforcement publicly exhumed the victim's body in 2016 as a ruse to get him to speak and ask questions.

But the record is insufficient to determine whether there was any coercive police conduct involved in obtaining Egley's confession. Prior to Egley's plea being entered, the entirety of the record on this issue is contained in two paragraphs on page 6 of the Information. (R.6). And the information contained in those paragraphs is insufficient to demonstrate that his confession was not voluntarily given. He also never challenged the voluntariness of his confession at any time during the proceedings below.

---

[20] *Rettenberger* at ¶14.
[21] *Montero* at 834.

Additionally, Egley confirmed his confession when he entered his plea via his *Statement of Defendant*, when he provided a statement for the presentence investigation report, and when he confirmed that statement, through counsel, at sentencing. (R.58,19; PR.25).

D. Defendant was given an opportunity to speak and to have other people speak in his behalf.

At a sentencing hearing, the trial court must receive any testimony that the defendant desires to present concerning the appropriate sentence.[22] In this case, Egley is frustrated that his pastor and family were not permitted to speak in his behalf at sentencing, even though they had driven from Colorado for the hearing. (R.71).

But according to the record, the trial court gave Egley the opportunity to personally address the trial court before he was sentenced — and he declined. (R.109-110). And after he was sentenced, he requested a prison placement "a bit closer" and also told the trial court he was not satisfied with the sentence imposed. (R.112). Yet there is no evidence in the record that he ever notified the Court or his trial counsel that his pastor and family were present in the courtroom and wished to speak in his behalf.

Because Egley did not notify the trial court that he wished to present additional testimony, the trial court did not abuse its discretion by not receiving that testimony.

---

[22] UTAH CODE §77-18-1(7).

CERTIFICATION and MOTION TO WITHDRAW

By signature below, Counsel certifies that he has conscientiously examined the record and researched the law with a good faith intent of advancing defendant's interest, including potential issues not raised by Defendant. After doing so, Counsel believes there are no meritorious points on appeal and the issues are wholly frivolous.

With sufficient time to allow a response, Counsel has previously notified Defendant of that conclusion and requested any additional points that he would like to raise on appeal so they could be incorporated into this brief. But Defendant has not responded to that request or provided Counsel with any additional issues not addressed above. Concurrently with this filing, Counsel has served a copy of this final brief on defendant with a second request for additional issues.

Accordingly, Counsel moves this Court to permit his withdrawal as counsel for the defendant if the Court concludes that the case is wholly frivolous.

SUBMITTED this 29th day of March, 2017.

TORGERSON LAW OFFICES, P.C.

By: /s/ Don M. Torgerson
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

On March 29, 2017, I served the foregoing *Brief for Appellant* on all interested parties as follows:

Jeffrey Mann
Assistant Utah Attorney General
Appeals Division
160 East 300 South
PO Box 140854
Salt Lake City, UT 84114-0854
criminalappeals@utah.gov

_____ By Hand
_x__ By First Class Mail
_____ By Facsimile Transmission
_x__ By Email

By: /s/ Don M. Torgerson