

1960

State of Utah v. Tommy Otis Fair : Appellant Brief

Utah Supreme Court

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Tommy Otis Fair; In Propria Persona;

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IN THE
SUPREME COURT OF THE STATE OF UTAH
BRIEF COVER

SALT LAKE COUNTY

STATE OF UTAH,
Respondent,)

vs.)

TOMMY OTIS FAIR,
Appellant.)

9244
Case No. 16745

APPELLANT BRIEF

Appeal from Third District Court,

Salt Lake County, State of Utah,

Honorable: A. H. Ellett, Judge.

APPEARANCES:

TOMMY OTIS FAIR
Attorney for Self

In Propria Persona.

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Supreme Court of the State of Utah

STATE OF UTAH

Plaintiff and Respondent,

vs.

TOMMY OTIS FAIR,

Defendant and Appellant

Case No.

16745

Brief of Appellant

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SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH

Plaintiff and Respondent,

vs.

TONNEY OTIS FAIR,
Defendant and Appellant

Case No.
16745

STATEMENT OF FACTS

The Appellant herein was, on the 20th day of January, 1960, in the Third District Court of Salt Lake County, State of Utah, purposely accused by Mr. J.E. Banks, District Attorney, in the information No. 16745 (See Court Transcript, Page 8), of the crime of Unlawful possession of a Narcotic Drug on November 20th 1959, defendant duly plead not-guilty to the said information on the 11th day of January, 1960. The defendant was tried, and by a jury, convicted on the alledged charge of Unlawfully Possessing a Narcotic Drug, upon which he was subsequently sentenced to a term of nothing but five years in the Utah State Prison.

Due the ~~lack~~ of diligence on the part of the Court, Hon. Judge A. H. ELLETT presiding, to make and give exceptions on matters of evidence, and the fact that this Supreme Court refuses to disturb a verdict of a trial jury, no matter how improbable the evidence to support the verdict, I, the Appellant, am forced to prosecute this appeal solely upon the issues presented by the information in this case.

Point One Illegal Seizure and Search

The information against Appellant, pertaining to the charge of Unlawful Possession of Narcotic Drug, does not state or alledge sufficient facts (None at all) to constitute grounds for legal seizure and search without a search warrant. (See Court Transcript Pages 42 and 43.) Under such void information the proceedings of the Court were unlawful, illegal and wrong; that therefore the conviction of Appellant under such void information, is in violation to, and a denial of Appellant's State and Federal Constitutional right "Due Process of Law" which

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guaranteed by the constitution of the State of Utah

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and also ~~that of the~~ States of America.

Unlawful Possession should only come about when one is conscious of the fact that he is in possession of an illegal or illicit object.

When a person is legally arrested for a crime, the officers have the right to search him. The search of an officer upon information from an informer is a violation, without admission and legal prerequisites. The Appellant contends that he was seized and searched before he was legally arrested. (See Court Transcript, Page 38). The evidence for the defendant's seizure and search was instrumented by the informer, or person or persons unknown to him.

The information does not show where the arresting officer complied with Legal Prerequisites in making arrest.

Point Two Denial of Due Process Of Law

The defendant contends that a motion for Bill of Particulars was denied him by the Court. (See Court Transcript, Page 10) Thus making the defendant unable to prove his innocence beyond a reasonable doubt.

The Court's ~~inference~~ upon an inference that a fact desired to be used circumstantially must itself be established by testimonial evidence; such as defendant asking to hear the informer's testimony in regard to the information. (See Court Transcript, Page 47) The defendant also pleaded that he had no knowledge of having an unlawful action in his possession. He also pleaded the fact to the Court, that if the Court would subject matters as to conform the nature and principle of the informer, the defendant would form a distinction between reasonable and unreasonable contention. Should the Court have granted the defendant this motion, the defendant would then prove that an overt act was in the testimony. The Appellant further contends that the Court erred in its instructions to the jury; that err being and inference of guilt which it could draw from the proven fact of Unlawful Possession of a Narcotic Drug, by information described by the Court. In that instruction, which is challenged by this contention, the jury was instructed as stated in (Court Transcript, Pages 15 to 41 and 48). The defendant says, the Court should not have instructed the jury in such language as quoted in (Court Transcript, Pages 39-49-50-51). The defendant says that, the

jury is not to be concerned with possibilities; its duty is to determine the issue of ultimate guilt or innocence.

Instructions such as the Court gave, which concerns the evidence necessary to a Prima Facie Case for the State, was only confusing to the jury and lead them to the conclusion that the State had met its burden and proven the ultimate guilt beyond a reasonable doubt. The Court's Prima Facie instruction to the jury, the instruction as given, was improper and is prejudicial. The Court, in addressing the jury, was not in accordance with law.

The Court waived such notice as assuming the disposition of member of the jury. (See Court Transcript, Pages 26) Bryant K. Rigby, the foreman of the jury, openly stated to the Court that he would give a Partial Decision.

SUMMON TO THE SUPREME COURT OF UTAH

Your Honors, and distinguished gentlemen, of the Utah Supreme Court. I regard this as one of the most important cases that can be submitted to the Utah State Supreme Court. It is

not a case that involves a little property, neither is it one that involves simply the liberty of one man. It involves the freedom and liberty of every citizen of Utah .

The question to be heard before you is whether a man has the right to Due Process of Law; and for this reason there can be no case of greater importance submitted to the Court. It may be well for me, at the outset, to admit that there could be no case in which I could take a greater and deeper interest. For my part, I would not wish to live in a world where I could not see my honest rights. Men who deny others the rights of equal law are not to be spectators. I deny the rights of any man, of any number of men, of any state, to put a padlock on the Process due by law - to make the Constitutional rights unlawful.

If there is one subject in this Court worthy of being discussed, worthy of being understood, it is the question of Due Process of Law.

(~~Submission to Supreme Court~~ Cont.)

If I may , I would like to point out some of the violations of this fact in my Court trial.

The Court, in its denial to the defendant the right to hear the testimony of the alleged informant, was wrong. In the Court's denial to the defendant the right to be confronted with the informer, he was rendered unable to submit proof of his innocence, and ascertain that he was being framed by the said information. For some reason, the Court Transcript does not quote the Court's statement of this, but the Court did make this statement to the jury:

"QUOTE". "I don't care if the arresting officers skin the defendant alive, as long as they get the dope off him, and I am not going to let the defendant know who the informer is. The defendant looks to me as though he might have his friends wipe out the informer."

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The ~~Appellant was made~~ to feel that the Court was Partial against him, to the Court making such a Prejudicial remark.

At this time, I wish to openly state that someone unknown to me deliberately planted the said Narcotic Drug upon my person and deliberately had me framed.

Closing Statement

Now, gentlemen of the Court, does not all this strike you as being very unfair? I am not asking you, The Supreme Court, to spare me from any further issues, but I do ask you, the members of the Court, to unchain the shackles that bind me from that result.

The Appellant does hereby make a motion to adjourn.

Appellant: In Propria Persona

TOMMY OTIS FAIR

(8) *Tommy O. Fair*