

1965

Robert Buddy Washington v. State of Utah : Brief of Appellant

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

ROBERT BUDDY WASHINGTON

Appellant.

VS.

CASE NO.

10387

STATE OF UTAH

Respondant

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

Appellant was convicted of Burglary in the third Degree as an Included offense in an Information Charging Burglary in the Second Degree and Grand Larceny. (R-2).

PRELIMINARY STATEMENT

Reference in Appellant's Brief to the Transcript of proceedings will be designated by the letters "TR" and the main Record by the letter

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DISPOSITION MADE BY THE LOWER COURT

The Jury returned a verdict of guilty of Third Degree Burglary as included in the Information, and the appellant was sentenced to be confined and imprisoned in the Utah State Prison for the indeterminate term as provided by law for the crime of Burglary in the Third Degree, ((R-5).

RELIEF SUGHT ON APPEAL

Reversal of the Trial Court's Judgement.

STATEMENT OF FACTS

Parties will be referred to as they stand on appeal. The home of Oscar Singleton, 624 South Fourth East, Salt Lake City, Utah was entered sometime between the hours of 5:30 P.M. and 9:00 P.M., Saturday, December 19, 1964, and it is alleged that certain items and money was stolen. Mr. Oscar Singleton, complainant, testified at the trial to the effect that he worked for the Pullman Company, (TR-19) that he did not work on the 16th day of December, 1964 but had gone to his bank, the Continental Bank, 2nd South

and Main Street, Salt Lake City, Utah, and withdrawn from his Savings Account the amount of \$170.00, (TR-12,21) for the purpose of financing a trip to Savannah, Georgia, (TR-12) and that he had placed the \$170.00 on his wife's dresser, (TR-13,20,22,24) and had gone to work on the 17th and 18th days of December, 1964, (TR-20) and had not returned home until the morning of the 19th day of December, 1964. (TR-20) and that the \$170.00 had still been there on his wife's dresser, on that morning of the 19th, (TR-22) and he had been home about 5:30 P.M., at which time he had left his home and gone to the Elks Club, (TR-13),.

That upon returning home at about 8:30 or 9:00 P.M. that same evening, (TR-14) he entered his house and could feel a breeze blowing through the house, (TR-15) and by walking through the house he saw that things were disarray, drawers were pulled open, things were scattered about, (TR-15) and a back window and screen were broken and a curtain blowing through, (TR-15).

That he called the Salt Lake City Police,

reported his findings, regarding the condition of his home, (TR-15) and that after the police had arrived he did check his belongings and determine that property was missing, to-wit: 1 Radio, 1 Shotgun, 1 Flashlight, and the \$170.00 which he placed upon his wife's dresser, (TR-17,23).

Mr. Singleton testified that his wife was in Savannah, Georgia during this time (TR-12) and that he never took his \$170.00, the \$170.00 which he had, the 16th day of December, 1964, withdrawn from a savings account at the Continental Bank, caused him not to go to his wife's mother's funeral, (TR-21,23).

Mr. Author James Allen, Salt Lake City Police Officer, testified to the effect that upon his arrival at 624 So. Fourth, East, Salt Lake City, on the evening of December 19, 1964, he noted that a window and screen were broken; and corroborated Singleton's testimony as to the general disarray of the residence. (TR-37 - 44.).

Mr. Wade Robinson (Robertson), Salt Lake City Police Officer, testified in effect as follows: that he was a fingerprint expert, and that he had permission to go to the 624 So. Fourth East, Salt Lake City, the residence of the complainant, during the evening of the 19th of December, 1964; and that State's Exhibit(s) No. 1,2,2,4 Latent fingerprints, were discovered by him on a box-top, found in the complainant's home, (TR-44 - 60, 71).

Mr. Lester K. Rich, Salt Lake City Police Officer, testified in effect as follows: that he is a fingerprint expert, and that the State's Exhibit No. 2. was a fingerprint of one Robert Buddy Washington, Appellant, (TR-60 - 64).

Mr. Paul Brennan, 1245 East 19th South, Salt Lake City, Utah, Bookkeeper from the Continental Bank, 2nd South and Main Street, Salt Lake City testified that he had checked the records of the Bank regarding the savings account of Mr. Oscar

Singleton, and that according to the records, Mr. Singleton had made his last withdrawal on the 18th day of January, 1961, for the amount of Ten dollars, (TR-104). Mr. Paul Brennan's testimony as corroborated by the Bank Records, (TR-104). Mr. Oscar Singleton did not make a withdrawal on the 18th of December, 1964.

Miss Mrs. Ann Stevenson, 54 West 3rd Street, Salt Lake City, Utah, testified as alibi witness for appellant, to the effect that she was acquainted with the appellant, (TR-88) and that she was with appellant from December 17th through and including December 19, 1964, (TR-89) and that she had known appellant for three years, (TR-89) and that at 10:00 A.M., December 18, 1964 she and appellant left Salt Lake City, Utah, for Pocatello, Idaho, (TR-81, 89).

Miss Stevenson further testified that she and appellant did not leave Pocatello, Idaho, until about 4:00 P.M., December 19, 1964 (TR-89) and that she and appellant, driving from Pocatello, stopped in Ogden, Utah, and did see and talk with a Mr. Joseph McQueen at about 8:30 or 9:00 p.m., Saturday December 19, 1964, (TR-89) and that she and appellant went to the Tokyo Restaurant and had supper, (TR-90) and that they had stayed in said restaurant for about one hour, (TR-90) and then left the Tokyo Restaurant and went to a place across the street and did not leave there until about 10:30 p.m., (TR-19) and that they arrived in Salt Lake City at about 11:45 or 12:00 p.m. on the night in question, (TR-92).

Mr. Joseph McQueen, 2531 Lincoln, Ogden, Utah gave corroborating evidence to Miss Stevenson's testimony to the effect that she and appellant were in Ogden, Utah at about 8:30 or 9:00 p.m. Saturday, December 19, 1964, (TR-79, 80, 81). And further, that appellant did borrow \$6.00 from him, (TR-79, 80, 81).

The appellant did not testify in his own behalf.

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STATEMENTS OF POINTS

POINT I

POINT I
THAT THE TRIAL COURT ERRORED IN ADMITTING
THE TESTIMONY OF MR. OSCAR SINGLTON,
WHICH, HIS TESTIMONY BEING SHOWN TO BE PERJURED.

POINT II

POINT II
THAT THE EVIDENCE WAS INSUFFICIENT TO OVERCOME
THE PRESUMPTION OF REASONABLE DOUBT.

POINT III

POINT III
THAT THE VERDICT IS CONTRARY TO LAW AND TO
THE EVIDENCE, AND IS NOT SUPPORTED BY THE EVIDENCE.

ARGUMENT OF THE POINTS

POINT I.

That the Trial Court erred in admitting
to evidence the testimony of Mr. Oscar Singleton,
his testimony being shown to be perjured.

Mr. Oscar Singleton, complainant, was the
only person that could give evidence as to what
was actually stolen from his home, on the night of
September 19, 1964, or as to whether or not any-
thing WAS stolen, or whether or not his home
was even burglarized.

The testimony of the three Salt Lake City
policemen was nothing more than a circumstance
from which an inference could be properly drawn
in favor of the testimony of complainant. The
three policemen could testify to nothing more than
the general condition of complainant's house;
drawers were pulled open and things were disarray,
back window was broken and a screen was torn,
but no living person other than the complainant
could know whether or not anyone other than the

CONFIDENTIAL

SECRET

The following information was obtained from a confidential source who has provided reliable information in the past.

It is noted that the above information was obtained from a confidential source who has provided reliable information in the past.

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complainant himself, entered his home. And complainant has chosen to resort to perjury, for reasons known only to himself. Mr. Oscar Singleton explained to the police and testified under oath that, 1) His home was burglarized. 2) That he had in his home \$170.00. 3) That he had withdrawn the 170.00 from his savings account at the Continental Bank.

Therefore, in view of the unimpeachable evidence, it has been proven beyond any doubt that Mr. Singleton perjured himself when he testified under oath that he had withdrawn \$170.00 from his savings account, and from this fact, we are justified in concluding that Mr. Singleton did not have 170.00 in his home, thus, leaving us with one unanswered question: was the complainant's home really burglarized? Are we to believe him on one statement when he has already perjured himself by his last statement?? The Law says no. The Law says that the American concept of Due Process must certainly encompass the right of an accused to be confronted by trustworthy witnesses and the right to show, if he can, that witnesses against him are not worthy of belief. Due process most certainly also encompasses the concept that the State will not seek to conceal material evidence to the accused's favor. If due process of law does not encompass such concepts, then we have most assuredly departed a long way from the very foundation upon which our system of justice rests--the ideal that every man is presumed innocent until proven guilty beyond a reasonable doubt. In the words of Mr. Justice Holmes, Olmstead vs. United States, 277 U.S. 438, 58 S. Ct. 564, 72 L.Ed. 944:

"It is better that one criminal escape than that the government lay an ignoble wart."

In Mesarosh vs. United States, 77 S.Ct. 1; 77 S.Ct. 8, 9, the government moved to remand a case to the Trial Court because of untruthful testimony given before another tribunal by Mazzo, a government witness, although contending that the testimony given in the instant case by Mazzo was "entirely

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truthful and credible." The government sought to have the matter remanded to the District Court for full consideration of the credibility of the testimony of the witness Mazzei. The counter-petitioners asked for a new trial. In reviewing the judgments below with directions to grant the petitioners a new trial, Mr. Chief Justice Warren, speaking for the court had this to say (77 S.Ct. 8):

"Mazzei, by his testimony, has poisoned the water in this reservoir, and the reservoir cannot be cleansed without first draining it of all impurity...."

Appellant's finger prints were lifted from a box-top, A NOVALE OBJECT, and the box-top was found, POINTED OUT, by complainant, in his home.

Appellant was convicted on this flimsy bit of circumstantial evidence, and sentenced to prison. Complainant testified that said box-top had been in his home for about a year. But, Mr. Singleton injured himself just minutes before, and minutes after, he made this statement--why would he tell the truth in one breath and lie in others? The law says that we must not believe ANY of this man's testimony. This man is a PERJURER. This is America, and this is the great State of Utah....Is our government so pitifully weak as to need to resort to perjured testimony to convict its suspected criminals? People vs. Riser, 305 P.2d 1:

"The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them. The interest of justice call for a reversal of the judgments below with direction to grant the petitioners a new trial."

Surely the great state of Utah does not need convictions based upon the deprivation of appellant's constitutional right to due process -
law?

A lie is a lie, no matter what it's subj ct.
and if it is in any way relevant to the case, the
District Attorney has the responsibility and duty
to protect what he knows to be false and elicit
the truth.

POINT II.

THAT THE EVIDENCE WAS INSUFFICIENT TO OVER-
COME THE PRESUMPTION OF REASONABLE DOUBT.

The presumption of innocence requires the
prosecution to prove the guilt of an accused beyond
reasonable doubt, and, absent direct evidence,
notwithstanding the perjured testimony of Mr.
Pear Singleton, implicating appellant in burg-
lary and larceny charge, an inference built upon
such an inference to bring conviction will not sustain
such a conviction.

In the instant case it is obviously clear,
from the foregoing testimony of Miss. Mary Ann
Jensen and Mr. Joseph McQueen, that appellant
could not possibly have been the person who burg-
larized Mr. Singleton's home, (TR-79 - 92).

This court, in the light of the foregoing
evidence, is respectfully invited to consider the
rule of law relating to the presumption of innocence
and its application to the appellant in the instant case,
where an inference built upon an inference led to con-
viction. It is respectfully submitted that the pro-
secution failed to prove appellant's guilt beyond
reasonable doubt and, therefore, such conviction
cannot be sustained.

22A C.J.S., Criminal Law, Sec't 581, relates
that the presumption of innocence requires the
prosecution to prove the guilt of an accused beyond
reasonable doubt. That the presumption of inno-
cence is a conclusion drawn by the law in favor of
the accused, by virtue whereof, when brought to
court in a criminal charge, he must be acquitted,
unless he is proven guilty. Presumption of inno-
cence means that one accused of crime has the right

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to have the jury take such resumption to the jury
and will then as the voice of the law, saying in
effect: "You are not to guess or speculate as to
this man's guilt. He is innocent, unless the
evidence convinces you of his guilt to a moral
certainty."

Woodsen vs. United States, C.C.A., Va., 23 F
2d 401, followed in Turner vs. United States,
25 F. 2d 1023.

The presumption of innocence is founded on
the first principles of justice.....

J. State vs. Cynkowski, 88 A.2d 220, 19 N.J.
Super. 245, affirmed 92 A.2d 782, 10 N.J. 571

and is intended, not to protect the guilty...

Mont. State vs. Hanlon, 100 P. 1035, 38 Mont. 557.

W. B. Bertito vs. State, 287 NW 58, 63, 136 Neb. 658

but to prevent, so far as human agencies can,
the conviction of an innocent person.

Utah State vs. Sullivan, 307 P.2d 212
6 Utah 2d 110, certiorari denied
Sullivan vs. State of Utah, 78 S.Ct.
74, 355 U.S. 848, 2 L.Ed 2d 57.

6 C.J., Criminal Law, p. 535, note 51.

Presumption of innocence is a rule of law
by which the necessity for evidence may be
determined,

Ill. People vs. Grant, 144 NE 813, 313, Ill. 69
People vs. Isenhart, 259 Ill. App. 9

Miss. Carr vs. State, 4 So. 2d 887, 192 Miss. 15.

its only function being to cast on the state
the burden of proving the guilt of an accused
beyond all reasonable doubt.

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"The presumption of innocence as a procedural id, compels the state to assume and maintain the burden of proving guilt, which burden never shifts to accused." (Carr vs. State, Supra.)

The presumption of innocence requires that all doubts be resolved in favor of the accused,

1. Schluter vs. State, 37 NW 2d 396
151 Neb. 284.

2. Behrens vs. State, 1 NW 2d 289, 140
Neb. 671

3. State vs. Vezy, 113 P. 2d 306
8 Wash. 2d 630, wherein it was held:

"In a criminal case, reasonable doubts on questions of law as well as on questions of fact must be resolved in favor of accused."

and it has been held that the presumption is sufficient to turn the scale in favor of the accused where the case is doubtful.

4. People vs. Hill, 175 P. 2d 45
77 C.A. 2d 287.

5. State vs. Reichert, 80 NE 2d 289,
226 Ind. 358.

6. Holland vs. Commonwealth, 55 SR 2d
437, 190 Va. 32.

(See cases cited in this case).

7. Burke vs State, 114 So. 72
216 Ala. 655, wherein it was held:

"Presumption of innocence is sufficient in itself to authorize acquittal."

8. People vs. Lowe, 286 p. 697, 209 C. 199

9. State vs. Buckingham, 234 A. 2d 568,
11 Terry 469, wherein it was held:

"Defendants in criminal cases based on

1. The first part of the document is a list of names and addresses, including "John Doe, 123 Main St, New York, NY" and "Jane Smith, 456 Elm St, New York, NY".

2. The second part of the document is a list of names and addresses, including "Robert Brown, 789 Oak St, New York, NY" and "Mary White, 101 Pine St, New York, NY".

3. The third part of the document is a list of names and addresses, including "David Green, 202 Cedar St, New York, NY" and "Susan Black, 303 Birch St, New York, NY".

4. The fourth part of the document is a list of names and addresses, including "Michael Red, 404 Spruce St, New York, NY" and "Elizabeth Blue, 505 Willow St, New York, NY".

5. The fifth part of the document is a list of names and addresses, including "James Purple, 606 Ash St, New York, NY" and "Patricia Yellow, 707 Hickory St, New York, NY".

6. The sixth part of the document is a list of names and addresses, including "Richard Grey, 808 Sycamore St, New York, NY" and "Jennifer Pink, 909 Magnolia St, New York, NY".

7. The seventh part of the document is a list of names and addresses, including "Thomas Orange, 1010 Dogwood St, New York, NY" and "Michelle Green, 1111 Redwood St, New York, NY".

8. The eighth part of the document is a list of names and addresses, including "Christopher Blue, 1212 Cypress St, New York, NY" and "Amanda White, 1313 Juniper St, New York, NY".

9. The ninth part of the document is a list of names and addresses, including "Daniel Black, 1414 Fir St, New York, NY" and "Stephanie Red, 1515 Palm St, New York, NY".

10. The tenth part of the document is a list of names and addresses, including "Matthew Purple, 1616 Olive St, New York, NY" and "Nicole Yellow, 1717 Cherry St, New York, NY".

11. The eleventh part of the document is a list of names and addresses, including "Andrew Grey, 1818 Peach St, New York, NY" and "Katherine Blue, 1919 Plum St, New York, NY".

12. The twelfth part of the document is a list of names and addresses, including "Joshua Black, 2020 Apple St, New York, NY" and "Ashley Red, 2121 Pear St, New York, NY".

13. The thirteenth part of the document is a list of names and addresses, including "Tyler Green, 2222 Banana St, New York, NY" and "Megan White, 2323 Grape St, New York, NY".

Circumstantial evidence alone are entitled to have their presumption of innocence sustained as a matter of law when the inference of innocence is a reasonable one under the evidence."

Thus here the facts or evidence is equally susceptible of different interpretations, the presumption requires the adoption of the interpretation which does not incriminate the accused.

"(1) Where facts and all reasonable deductions from evidence present two theories, one theory of guilt and the other theory of innocence, the justice and humanity of law compel acceptance of the theory consistent with innocence."

Barnwell vs. State, 11 SE 2d 139,
100 Ga. App. 285.

"(2) Action that is consonant with innocence as well as guilt should be interpreted in light of innocence."

"(3) If evidence is susceptible of two constructions or interpretations, each of which appears to be reasonable, and one of which points to guilt of accused, and the other to his innocence, jury have the duty to adopt interpretation which will admit of his innocence and reject that which points to his guilt."

In re Rosen, 54 N.Y.S. 2d 632.

People vs. Watson, 299 P. 2d 243.

State vs. Bresina, 133 A. 2d 366, 45 N.J. Super. 596

Whereas acts or circumstances are attributable to either an innocent or a guilt of a criminal cause, the innocent hypothesis will be adopted.

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11. People vs. Benson, 16 NE 2d 80
 19 Ill. 2d 50.
People vs. Potter, 125 NE 2d 510,
 5 Ill. 2d 365.
People vs. Grogg, 70 NE 2d 578,
 395 Ill. 451.
People vs. Lynn, 52 NE 2d 166,
 385 Ill. 165.
People vs. Burgard, 36 NE 2d 558
 377 Ill. 327.
People vs. Altiers, 138 NE 2d 61,
 11 Ill. App. 2d 489.

The presumption of innocence requires that
 he be presumed to have acted with the least
 guilty intent consistent with his conduct.

12. Dorsey vs. State, 34 SE 135, 108 Ga. 477.
Horton vs. States, 41 SE 2d 278
 74 Ga. App. 723.
Borders vs. State, 6 SE 2d 795,
 61 Ga. App. 573.

An incriminating circumstance from which guilt
 may be inferred must not rest on conjecture, and it
 is not permissible to pile conjecture on conjecture.

13. People vs. Flores, 137 P. 2d 767, 58 C.A.
 2d 764.

Suspicion is not evidence which will overcome
 presumption of innocence.

14. Morel vs. United States, C.C.A. Ohio,
 127, P. 2d 827.

The law will not permit the drawing of an
 inference from a supposed fact of which existence
 there is no direct proof. 22 C.J., Evidence,
 Sect. 8, p. 65, note 20.

An inference of fact should not be drawn from
 premises which are uncertain, but the facts upon
 which an inference may legitimately rest must, it
 is said, be established by direct evidence as if
 they were the very facts of the issue. It

allows that one presumption cannot be based on another presumption. 22 C.J., Evidence, Sec't. 7 (2), note 70, 71, 72.

Utah Buses vs. Murray Meat, etc., Co.,

45 Utah 596, 147 P. 626.

Utah Laundry, etc., Co. vs. Utah Gas, etc., Co.,

42 Utah 533, 131 P. 1173.

"A presumption which the jury is to make is not a circumstance in proof, and is not, of itself, a legitimate foundation for a second presumption."

11. Morris vs. Indianapolis, etc., etc., R. Co.,

10 Ill. A. 389, 395.

"It held that the fact thus inferred or presumed at once becomes established fact, for the purpose of serving as a base for a further inference or presumption, would be to take in out the chain of presumptions into the region of barest conjecture."

More vs. Missouri Pac. R. Co.,

28 Mo. A. 622.

Diel vs. Missouri Pac. R. Co.,

37 Mo. A. 454.

An accused must be proved guilty beyond a reasonable doubt of the crime charged, and facts which will warrant a suspicion, however strong, do not overcome the presumption of innocence.

12. Turner vs. State, 35 So. 2d 624,

33 Ala. A p. 607.

Gaffey vs. State, 12 So. 2d 863

31 Ala. A p. 180.

POINT III.

THE ALLEGED FACTS CONTRARY TO LAW AND TO THE EVIDENCE, AND NOT SUPPORTED BY THE EVIDENCE.

While anyone of the situations noted above

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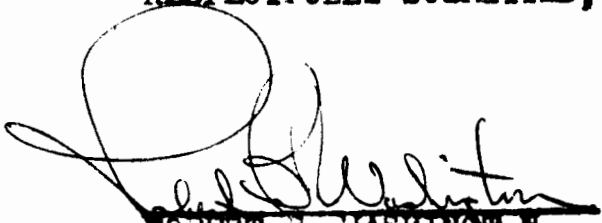
ve been held sufficient to constitute constitutional violations of an accused, it is contended by appellant that all are applicable to the case at bar. First, there is a dearth of evidence indicating the appellant was convicted by use of coerced testimony (PRINT I). Therefore, it is respectfully submitted that all testimony given by Mr. Oscar Singleton is therefore incompetent and unlawful and therefore incapable of supporting the judgement explained herein.

People vs. Riser, Supra.

CONCLUSION

Appellant respectfully submits that the prosecution, in the light of the foregoing, failed to prove appellant's guilt of burglary in the Third Degree beyond a reasonable doubt, and it is respectfully submitted that the best interest of justice will be served by reversal of the judgement of conviction or in alternative, that appellant's cause be remedied for new trial.

RESPECTFULLY SUBMITTED,



ROBERT B. WASHINGTON
Appellant
Prop. Per.

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