1965

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

IN THE SUPREME COURT

OF THE

STATE OF UTAH

OBERT BUDDY WASHINGTON

Appellant.

VS. CASE NO.

10387

TATE OF UTAH

Respondant

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

Appellant was convicted of Burglary in the ird Degree as an Included offense in an Infor- tion Charging Burglary in the Second Degree and and Larceny. (R-2).

PRELIMINARY STATEMENT

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

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 SOUGHT 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 was 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

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

That upon returning home at about 8:30 or 9:00
. that same evening, (TR-14) he entered his house
d could feel a breeze blowing through the house,
-15) and by alking through the house he saw
at things were disarray, drawers ere pulled open,
ings sere scattered about, (TR-15) and a back
ndow and screen were broken and a curtin
o ing through, (TR-15).

That he called the Salt Lake City Police,

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

Mr. Singleton testified that his wife was in vannah, Georgia during this time (TR-12) and that ever took his $170.00, the $170.00 which he had, the 16th day of December, 1964, withdrawn from savings account at the Continental Bank, caused not to go to his wife's mother's funeral, (TR-,21,23).

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

Mr. Wade Robinson (Robertson), Salt Lake City lice Officer, testified in effect as follows: t he was a fingerprint expert, and that he had asion to go the 624 So. Fourth East, Salt Lake City h, the residence of the complainant, during the ning of the 19th of December, 1964; and that te's Exhibit(s) No. 1,2,2,4 Latent Fingerprints, e discovered by him on a Box-top, found in the plainant's home, (TR-44 - 60, 71).

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

Mr. Paul Brennan, 1245 East 19th South, Salt e City, Utah, Bookkeeper from the Continental k, 2nd South and Main Street, Salt Lake City stified that he had checked the records of s 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 withdrawel on the 18th day of December, 1964.

Miss Ann Stevensen, 54 East 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-88,89).

Miss, Stevensen further testified that she and appellant did not leave Pocatello, Idaho, until about 4:00 P.M., December 19, 1964(TR-89) and that thereafter 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. Stevensen'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.

STATEMENTS OF POINTS

POINT I

THAT THE TRIAL COURT ERRORED IN ADMITTING TO EVIDENCE THE TESTIMONY OF MR. OSCAR SINGLETON, SAID TESTIMONY BEING SHOWN TO BE PERJURED.

POINT II

THAT THE EVIDENCE WAS INSUFFICIENT TO OVERCOME THE PRESUMPTION OF INNOCENCE BEYOND A REASONABLE DOUBT.

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 errored in admitting to evidence the testimony of Mr. Oscar Singleton, said testimony being shown to be prejured.

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 December 19, 1964, or as to whether or not anything WAS stolen, or whether or not his home was even burglarized.

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

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 weitnesses against him may not be worthy of belief. Due process most certainly also encompasses the concept that the state will not seek to conceal material evidence in the accused's favor. If due process of law does not encompass such concepts, then we have most assuredly deserted 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 part."

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 Mazzie, a government witness, although contending that the testimony given in the instant case by Mazzei was "entirely

uthful and credible." The government sought to ve the matter remanded to the District Court for full consideration of the credibility of the stimony of the witness Mazzei. The counter- tion of petitioners asked for a new trial. In viewing the judgements below with directions to ant the petitioners a new trial, Mr. Chief ustice Warren, speaking for the court had this 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 x-top, A MOVABLE OBJECT, and the box-top was und, POINTED OUT, by complainant, in his home.

Appellant was convicted on this flimsy bit of ircumstantial evidence, and sentenced to prison. mplainant testified that said box-top had been his home for about a year. But, Mr. Singleton erjured himself just minutes before, and minutes ter, he made this statement--why would he tell he truth in one breath and lie in others? The w says that we must not believe ANY of this man's estimony. This man is a PERJURER. This is America, nd this is the great State of Utah....Is our overnment so piteously weak as to need to resort erjured testimony to convict its suspected crimin eople 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 judgements below with direction to grant the petitioners a new trial."

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

A lie is a lie, no matter what it's subject. And if it is in anyway relevant to the case, the District Attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.

POINT II.

THE EVIDENCE WAS INSUFFICIENT TO OVERCOME THE PRESUMPTION OF INNOCENCE BEYOND A REASONABLE DOUBT.

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

In the instant case it is obviously clear, from the foregoing testimony of Miss. Mary Ann Stevensen and Mr. Joseph McQueen, that appellant could not possibly have been the person who burglarized 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 as it applies to the appellant in the instant case, where inference built upon an inference led to conviction. It respectfully submitted that the prosecution failed to prove appellant's guilt beyond a 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 a reasonable doubt. That the presumption of innocence is a conclusion drawn by the law in favor of the accused, by virtue wherof, when brought to court in a criminal chargo, he must be acquitted, unless he is proven guilty. Presumption of innocence means that one accused of crime has the right

o have the jury take such resumption t the jury
m jur thom ng the voice of the law, saying in
rect: "y u are not to guess or s eculate as to
his n's guilt. He is innocent, unless the
vidence convinces y u f his guilt to a moral
ertainty."

... odson 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
he irst rinciples 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...

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

eb. 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.

tah 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,

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

iss. 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.

"The presumption of innocence as a procedural aid, 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,

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

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

Wash. State vs. Vevy, 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.

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

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

Va. Holland vs. Commonwealth, 55 SE 2d 437, 190 Va. 32. (See cases cited in this case).

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

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

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

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

"Defendants in criminal cases based on

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

Thus here the facts or evidence is equally usceptible of differente interpertations, the resumption 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 interperted in light of innocence."

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

.Y. In re Rosen, 54 N.Y.S. 2d 632.
alif. People vs. Watson, 299 P. 2d 243,
.J. State vs. Bresina, 133 A. 2d 366, 45 N.J. Super. 596

Whereas acts or circumstances are attributale to either an innocent or a guild of a riminal cause, the innocent hypothesis will e adopted.

Ill. People vs. Johnson, 16[illegible] NE 2d 80
19 Ill. 2d 50.
People vs. Potter, 125 NE 2d 510,
5 Ill. 2d 365.
People vs. Grego, 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. 32[illegible].
People vs. Altiers, 138 NE 2d 61,
11 Ill. App. 2d 489.

The presumption of innocence requires that [illegible]me be resumed to have acted with the least [illegible]uilty intent consistent with his conduct.

Ga. Dorsey vs. State, 34 SE 135, 108 Ga. 477.
Herton 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 [illegible]s be infered must not rest on conjecture, and it [illegible]s not [illegible]missible t[illegible]pile conjecture [illegible]n conjecture.

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

Suspicion is not evidence which will overcome [illegible]resumption [illegible]f innocence.

U.S. Morei vs. United States, C.C.A. Ohio, 127, F. 2d 827.

The law will not permit the drawing of an [illegible]nference from a supposed fact of which existence [illegible]here is no direct proof. 22 C.J., Evidence, [illegible]ec't. 8, p. 65, note 20.

An inference of fact should not be drawn from [illegible]remises which are uncertain, but the facts upon [illegible]hich an inference may legitimately rest must, it [illegible]s said, be established by direct evidence as if [illegible]hey were the very facts of the issue. It

llows that one presumption cannot be based on
nother 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 Foundry, 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."

Ill. Morris vs. Indianapolis, etc, etc., R. Co.,
10 Ill. A. 389, 395.

"To hold 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 pass in out the chain of presumptions into the region of barest conjecture."

Mo. Moore 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 would warrant a suspicion, however strong, cannot overcome the presumption of innocence.

Ala. Turner vs. State, 35 So. 2d 624,
33 Ala. App. 607.
Griffey vs. State, 12 So. 2d 863
31 Ala. App. 170.

POINT III.

THE COURT ERRED IN ITS CONTRARY TO LAW AND TO THE EVIDENCE, IN THAT IT WAS NOT SUPPORTED BY THE EVIDENCE.

While anyone of the situations noted above

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

People vs. Riser, Supra.

CONCLUSION

Appellant respectfully submits that the prosecution, in the light of the foregoing, has 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 the alternative, that appellant's cause be remanded for new trial.

RESPECTFULLY SUBMITTED,

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Prop. Per.

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