

1960

# The State of Utah v. Irene Hedgebeth and Henry Allen : Brief of Defendants and Appellants

Utah Supreme Court

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IN THE  
SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff and Respondent,

vs.

IRENE HEDGEBETH and  
HENRY ALLEN,

Defendants and Appellants.

BRIEF OF DEFENDANTS  
AND APPELLANTS

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BRIEF OF APPELLANTS

PRELIMINARY STATEMENT

Reference in Appellants' Brief to the transcript of proceedings will be designated by the letters "TR" and to the main record by the letter "R".

STATEMENT OF FACTS

Defendants appeal from a jury verdict finding them guilty of the crime of robbery.

All of the evidence before the court was presented by witnesses for the prose-

cution. The defendants did not testify on their own behalf.

On the 7th day of January, 1960, Alva Israelson was paid off from his job in the sum of \$72.00. That evening he spent some time drinking on 25th Street in Ogden, Utah. (TR p.14, 1.10-17) He then purchased some liquor and took it home. When he ran out of liquor the next day, he returned to 25th Street sometime in the late afternoon or evening of January 8, 1960. He bought a bottle of wine, and met the defendants in one of the bars. He had previously known defendant Irene Hedgebeth, and offered or consented to obtain a room with her. (TR p.18) He also purchased two bottles of beer (TR p.57, 1.7) apparently disposed of his own, and after visiting several other bars Alva Israelson and

defendant Irene Hedgebeth went to a room in a boarding house at 2546 Wall Ave., Ogden, Utah and were joined there by defendant Henry Allen. Irene Hedgebeth then threatened to hit Alva Israelson with a beer bottle unless he gave her enough money to get something else to drink.

(TR p. 10) Upon attempting to leave the room Mr. Israelson alleged that defendant Allen forcefully threw him on the couch and took his wallet, made him drink the rest of the wine in his bottle and then told him to get out. Mr. Israelson then called the police from a 25th Street restaurant, and then with the police returned to the apartment. (TR p.11 & 12; 24)

Defendants were arrested at about 11:05 a.m. January 9, 1960, booked and searched at the police station, (TR p.48,49) and

State's exhibit B, a cigarette lighter, and E, some money, were taken from defendant Henry Allen. Mr. Israelson's wallet was found Saturday, the 8th day of January, 1960, according to Mrs. Howard Checketts' testimony.

State's exhibits C and D, a wine bottle and a beer bottle were obtained by Ogden City Police shortly after 9:00 a.m. on the 9th day of January, 1960. (TR p.42) The complaint was not issued until the 12th day of January, 1960. (R P.1)

### STATEMENT OF POINTS

#### POINT I

THE TRIAL COURT WAS IN ERROR IN RECEIVING INTO EVIDENCE, STATE'S EXHIBITS A, B, C, D, AND E.

#### POINT II

TESTIMONY GIVEN BY SOME WITNESSES

PRODUCED BY THE STATE IS NOT WORTHY OF

CREDIBILITY.

POINT III

OGDEN CITY POLICE WERE OBVIOUSLY  
BIASED AND PREJUDICED AND THEIR ATTITUDE  
AFFECTED THE JURY AND WAS PREJUDICIAL TO  
DEFENDANTS.



ARGUMENT

POINT I

THE TRIAL COURT WAS IN ERROR IN  
RECEIVING INTO EVIDENCE, STATE'S EXHIBITS  
A, B, C, D AND E.

a. Mrs. Howard Checketts testified that she always goes shopping on Saturday morning, that on the morning of the 8th of January, 1960, she went shopping at approximately 10:30 a.m. and returned to her home at 12:15 p.m. at which time she then discovered in her back yard a wallet together with certain papers designating the complaining witness as the owner. (TR p.26,27) Yet all of the other witnesses, including the complaining witness testified that the alleged robbery did not take place until between 8:30 and 9 o'clock on the evening of the 8th of January, 1960. There is a

public or semi-private alleyway running north and south directly east of Mrs. Checketts' home. Anyone desiring to put a wallet in her back yard could easily do so by simply dropping it out of the car window while proceeding through the alley. While there may have been a mistake, there was no attempt at the trial to clarify the error or to make plain to the jury just what day the wallet was found. It was error to admit the wallet into evidence as the State's exhibit A without clarifying for the jury the date on which the wallet was found by the prosecution's witness Mrs. Checketts.

b. The complaining witness Alva Israelson first testified that defendant Irene Hedgebeth took his cigarette lighter from him when she was going through his pockets for change in the apartment.

(TR p.10, 1.24 and 25) Upon further cross-examination, Mr. Israelson in a masterpiece of deductive reasoning stated that he had had his lighter with him the evening of January 7, and throughout the following day, January 8, and then he didn't have it any more. This was after he had already stated that defendant had definitely taken the lighter from him at the apartment.

(TR p.55, 1.20-27) He also testified that he purchased the lighter on a special two packs of Newport Cigarettes which made it a little special. (TR p.55, 1.11-14) It can easily be assumed that other people bought Newport Cigarettes and obtained a lighter exactly similar to the one Mr. Israelson identified simply by a purchase.

c. Sergeant Butcher testified that he went to the apartment at 9 a.m. on the morning

of January 9, and did pick up a wine bottle which was taken as evidence. This wine bottle was admitted into evidence on Sergeant Butcher's testimony that Officer Gill had initialed the bottle at the apartment for identification. Officer Gill got on the stand and failed completely to identify the bottle or his alleged initials or to corroborate the testimony of Officer Butcher. (TR p.42)

d. The usual means of scientific detection usually relied upon by the police department in cases of this nature were not only overlooked, but apparently intended not to be used. Lt. Robert Carver apparently has sole access to the evidence closet in the crime laboratory. (TR p.50, 1.21-25) He did not receive the exhibits until January 11, (TR p.50, 1.15) at which time he apparently

examined the items for finger prints and discovered none which were identifiable on the wallet. Finger prints are easily identifiable on glass, yet there was no testimony showing the bottles or the cigarette lighter had been tested for finger prints and the money, which certainly was used as evidence in this case, was never submitted to Officer Carver to be put in his evidence closet and he, therefore, had no opportunity to test it for finger prints, or otherwise identify it.

At the trial counsel objected to the admission of these exhibits as evidence and the objection was erroneously overruled, which resulted in prejudicial error to these defendants.

## POINT II

### TESTIMONY GIVEN BY SOME WITNESSES

PRODUCED BY THE STATE IS NOT WORTHY OF CREDIBILITY.

a. Georgie Reed testified that while attempting to unlock the door to her apartment, she and her "husband" heard conversation coming from the apartment across the hall such as the following: (TR p.30, 1.26)

"A. We was just having trouble getting in the house, so I heard Irene say to whatever his name is, 'I'll kill you' or something to the man. He broke out of the house and he said, 'I'm going to call the police.'"

But just prior to that Georgie Reed testified at page 29, line 20:

"Q. Mrs. Reed, do you know the defendant, Irene Hedgebeth?"

"A. When I see her."

"Q. And do you know the defendant, Henry Allen?"

"A. When I see him."

"BY MR. HENDRICKS. What was your answer?"

"A. I don't know them by name, I know them when I see them."

Apparently Mrs. Reed did not know the defendants well enough to know their names, but she knew them well enough to identify their voices out in the hallway.

She then testified (TR p.32, 1.7) as follows:

"A. Yes. He left then."

"Q. He left then?"

"A. Yes. Then they later left."

"Q. Then they left along about 10?"

"A. Right after he left, they left.

When the police came they wasn't there."

"Q. Do you know when he come back?"

"A. Who? The policemen?"

"Q. Yes."

" "A. I was still trying to get in my house."

"Q. Did you tell the police at that time."

"A. No, I didn't. I went in the house and called Robert Drake and asked him did he know they was in his house and he said no."

Robert Drake then testified for the prosecution at page 36, line 13 as follows:

"A. Yes sir. At about 9:30 or 10 o'clock that night I received a phone call from Mrs. Reed. She called me."

"Q. When you arrived at the apartment, Mr. Drake, was anyone there."

"A. No one was there when I got there about ten or fifteen minutes after, and that's when the officers came."

It seems rather inconsistent that Mrs. Reed did not call Drake until after she had



entered her apartment and that she did not enter her apartment until after the police arrived and yet Drake was able to receive her phone call and get home to his apartment before the police arrived.

Obviously, Georgie Reed is lying and her inconsistent testimony further strengthens this fact. Her testimony is entirely unworthy of belief and yet, she is the only witness who identified the defendants as having been in the company of Mr. Israelson save for his own testimony.

b. Mr. Israelson alleged that he was not too drunk to remember accurately the events of the evening of January 8, but blandly admitted that his lack of judgment in taking a room with defendant Irene Hedgebeth was occasioned by his having had too much to drink. (TR p.18, 1.3-7) Upon

cross-examination, he admitted that he had been drinking on 25th Street the previous afternoon and evening, had taken a bottle home and then had come back to 25th Street the late afternoon and evening of the 8th. Thus having imbibed intoxicating beverages for two days, he was nevertheless able to present a clear and convincing account of an alleged robbery that never took place.

He further testified that after he called the police he returned with them to the apartment and no one was there. (TR p.24, 1.28)

But the State's witness, Robert Drake, testified he was there when the police arrived. (TR p.36, 1.13-21)

By his own admission, he was ready to pass out, (TR p.25, 1.18-23) and though he pretended to remember other details so perfectly, he was so drunk he could not

identify the police officers who supposedly went back to the apartment with him. (TR p.25, 1.7-10)

It also is rather inconsistent that Alva Israelson allegedly called the police to report the robbery, but had to be subpoenaed along with Georgie Reed to testify at the preliminary hearing. (R p.2) See also (TR p.58, 59)

### POINT III

OGDEN CITY POLICE WERE OBVIOUSLY BIASED AND PREJUDICED AND THEIR ATTITUDE AFFECTED THE JURY AND WAS PREJUDICIAL TO DEFENDANTS.

Defendants had been picked up, booked and searched at the Ogden Police Station by 11:26 a.m. on the morning of January 9. Assuming arguendo that Mrs. Checketts meant to testify that she found the wallet at about

12:15 p.m. on the 9th day of January, 1960, according to the testimony in the record this information could not have been relayed to the police until about an hour after the defendants had been arrested. (TR p.27)

Apparently, Officer Butcher was confident the wallet would be "found." Therefore, the arrest order for these defendants was not based upon the wallet turning up next to Irene Hedgebeth's boarding house unless they had knowledge of that fact that was not conveyed to the court or the jury.

The wallet was the only exhibit at the preliminary hearing. (R. p.4)

Officer Vern Butcher and Officer Fred Gill in their capacity as law enforcement officers have been key witnesses in other cases involving similar patterns of conduct on 25th Street. See State vs. Danks,

350 P. 2d 146 1960. The enmity between the defendants and Officer Butcher had been very well known, and attempts had been made by Officer Butcher on previous occasions to involve defendant Henry Allen in other crimes.

Officer Butcher testified that information on the alleged crime came from the night sergeant, that he did not put out the order of arrest and didn't know who did order their arrest. Officer Butcher apparently knew defendants were suspect from reading a report. (TR p.44) But there is no testimony to show that the complaining witness, Alva Israelson, had returned to the police station, the morning of January 9th to further embellish his admittedly drunken tale of the previous night. Therefore, from the record it appears that a 25th Street drunk called the police and alleged

he had been robbed. In the company of the police, he then went to the apartment of Mr. Drake. The police did not then search the apartment for evidence but waited until approximately 9:00 a.m. the next morning to gather two bottles, neither of which showed defendants' finger prints. There was absolutely no investigation the night of the alleged robbery. Mr. Israelson was sent home. (TR p.25) Georgie Reed was not questioned that night. (TR p.32, 1.16-30) But the investigation proceeded swiftly when Officer Butcher came on duty. Bottles were collected, a conveniently placed wallet was found; money, a very rare bit of evidence, was taken from the defendants, but not given to Lt. Carver for examination or as evidence.

Apparently, this was all done without

further contact with the complaining witness. In fact, the complaint was not signed or filed until January 12, 1960, and is irregular on its face by virtue of a correction in ink which, though initialed, is not dated. Apparently no one seemed to know on just what day this crime was to be committed.

### CONCLUSION

Of all the testimony presented by witnesses for the State, only the facts related by Mrs. Howard Checketts, Mr. Robert Drake and Lt. Carver are worthy of belief. All other persons involved in the case were so obviously biased and contradictory in their testimony that their stories take on an aura of superficiality and become hardly credible. Officers Gill and Butcher were prejudiced and made no

attempt to preserve inviolate the evidence they submitted to the court. None of the usual police methods for identification were used and additionally, they withheld from the officer in charge of evidence the money which they allegedly took from the defendant Henry Allen.

Georgie Reed was obviously scared of the truth and was apparently pressured into testifying for fear that her private affairs may be closely investigated and disturbed should she fail to cooperate.

Finally, Alva Israelson with shabby habits and morals and a tendency toward alcoholism, attempted time after time to delude the court and the jury with the thought that he had sallied forth to the 25th Street Shrine of Bacchus as a jovial, innocent youth, but had been conquered by



overwhelming odds. Thus, the defendants could only be convicted upon the testimony of Mrs. Checketts, who testified that the wallet was found before the alleged crime was committed, Mr. Drake and Lt. Carver, and their testimony is not sufficient upon which to base a conviction because it is so inconclusive and unsatisfactory that reasonable minds must have entertained a reasonable doubt of defendants' guilt. State vs. Sullivan 6 Utah 2d 110, 114, 307 P. 2d 212, 215.

Respectfully submitted,

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