

1960

The State of Utah v. Irene Hedgebeth and Henry Allen : Brief of Respondent

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.

Case
No. 9299

FILED

SEP 20 1960

Clerk, Supreme Court, Utah

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

STATEMENT OF FACTS

Respondent does not dispute the statement of facts set forth in appellants' brief.

STATEMENT OF POINTS

POINT I.

THE COURT DID NOT ERR IN RECEIVING INTO EVIDENCE STATE'S EXHIBITS A, B, C, D AND E.

POINT II.

DETERMINING WHETHER OR NOT A WITNESS IS CREDIBLE IS THE FUNCTION OF A

JURY AND IS NOT REVIEWABLE BY THE APPELLATE COURT.

POINT III.

THE RECORD DOES NOT INDICATE THAT THE OGDEN CITY POLICE WERE ANY MORE BIASED OR PREJUDICED THAN ORDINARY LAW ENFORCEMENT OFFICERS.

POINT IV.

IF THERE WAS ERROR IN RECEIPT OF STATE'S EXHIBITS A, B, C, D AND E, IT WAS NOT PREJUDICIAL.

ARGUMENT

POINT I.

THE COURT DID NOT ERR IN RECEIVING INTO EVIDENCE STATE'S EXHIBITS A, B, C, D AND E.

(a) The initial objection raised by defendants is that State's Exhibit A, a wallet, was received into evidence without clarifying whether it was found on Friday, January 8, 1960, or Saturday, January 9, 1960. The pertinent part of the transcript is as follows:

“Q. Mrs. Checketts, I'll call your attention to the morning of January 8th just at about 10:30 a.m. of that day and ask you whether or not you had occasion to go downtown here in Ogden.

A. I go downtown every Saturday morning and purchase my groceries and do any other shopping I need to, and I left home about 10:30—

MR. HENDRICKS: (interposing A.M. or P.M.?)

A. A.M. No grocery stores are open around town at 10 p.m.

Q. Mrs. Checketts, did you later in the day return to your home?

A. Yes, I did.

Q. Approximately what time?

A. Around a quarter after twelve at noon.

Q. And did you at that time have occasion to go to your back yard, Mrs. Checketts?

A. Yes, I go to the back door and open it so my husband can bring the groceries in through it.

Q. On this occasion as you entered your apartment on the 9th, did you find anything that appeared to be unusual?

A. As I opened the back door —

MR. HENDRICKS: (interposing) Object to the leading questions. * * *''

It is true that the prosecuting attorney framed his initial question concerning the date using January 8, 1960. The witness, however, answered that she went downtown every Saturday (which would have been January 9, 1960) without mentioning the day of the month. The prosecution later corrected the mistake when he questioned the witness about when she entered her apartment on January 9th. (Tr. 27)

It is improbable that a natural and innocuous slip caused any confusion in the minds of the jury. Defendants' attorney was present and did not correct the error; in fact, he did not even cross-examine the witness.

The testimony of Officer Butcher later in the trial (Tr. 45) also indicated that the wallet was found on the 9th of January, 1960.

(b) The Trial Judge did not err in receiving Exhibit B in evidence. The exhibit, a cigarette lighter, was relevant as it tended to establish a material proposition. Admitting this exhibit could not have aroused the jury's emotions of prejudice nor created a side issue to mislead the jury. A fair standard for determining the relevancy of evidence is set out by McCormick on Evidence (Ch. 16, para 152, p. 318) :

“Does the evidence render the inference more probable than it would be without the evidence?”

Further as to the standard a judge should use in making the determination, McCormick states :

“The answer must filter through the judge's experience, his judgment and his knowledge of human conduct and motivation.”

In *Thompson v. American Steel and Wire Company*, 317 Pa. 7, 11, 175 A. 541, 1934, the court stated, speaking of the Judge :

“He is constantly faced with questions on evidence in their special relation to the issue to be tried. He must deal with such questions in the light of the purposes of the ultimate inquiry and does so in the exercise of what is known as judicial discretion. He should see that nothing relevant is excluded so long as its admission will not unduly distract the attention of the jury from the main inquiry by first requiring the ascertainment

of an unnecessary quantity of subordinate facts from which the main inference would ultimately be made. His conclusion or decision on such points will not be interfered with on appeal save for manifest abuse of power.”

Although the complaining witness, Mr. Israelson, was unable to identify positively the cigarette lighter, admission of it as an exhibit was not prejudicial as it was used to show that at the time of the defendant, Henry Allen's, arrest, he had a lighter which was at least similar to the one taken from the complaining witness. The Court's decision to receive Exhibit B was made in the exercise of judicial discretion and the record does not indicate the Judge abused his power in any way.

(c) It is true that Officer Gill failed to identify Exhibit C or his initials thereon. However, Officer Butcher was present when Officer Gill obtained the bottle and initialed it, and at the trial identified the bottle by the initials of Officer Gill. Exhibit D, the beer bottle, could have been more precisely identified; nevertheless, Officer Butcher was present when the beer bottle was found in the apartment, and so testified. Since the bottle was introduced merely to show that a beer bottle was found in the apartment, it was not error to receive it.

(d) Whether or not scientific detection was used is not applicable on review, as this matter would go to the weight of the evidence and would not affect the admissibility as long as reasonable methods were followed. This is especially true where an attempt to obtain fingerprints was not made immediately after taking the exhibit into

custody. The fact that Lt. Carver did not receive the exhibit until January 11, 1960, appears to have little impact in determining if scientific detection was used.

POINT II.

DETERMINING WHETHER OR NOT A WITNESS IS CREDIBLE IS THE FUNCTION OF A JURY AND IS NOT REVIEWABLE BY THE APPELLATE COURT.

The appellate court should not pass on the credibility of witnesses as this is a question solely for the determination of the jury or the trial court in cases tried without a jury, the reason being that the jury or judge who see and hear witnesses testify have an opportunity to observe their demeanor and appearance and are in a better position to determine the credibility. In *Gittens v. Lundberg*, 284 P. 2d 1115, 3 U. 2d 392, the court stated:

“It is the duty of this court to leave the question of credibility of witnesses to the jury as fact trier and we have quite consistently adhered to that policy. As has often been said, the jury is in a favorable position to form impressions as to the trust to be reposed in witnesses. They have the advantage of fairly close personal contact; the opportunity to observe appearances and general demeanor; and the chance to feel the impact of personality, all of which they may consider in connection with the reactions, manner, approaches and apparent frankness and candor or want of it in reacting to and answering questions on both direct and cross examination in determining whether and to what extent witnesses are to be believed.”

POINT III.

THE RECORD DOES NOT INDICATE THAT THE OGDEN CITY POLICE WERE ANY MORE BIASED OR PREJUDICED THAN ORDINARY LAW ENFORCEMENT OFFICERS.

Defendants imply that arresting defendants prior to finding Exhibit A, the wallet, was improper and that this act prejudiced defendants. This position is untenable. The record before the Court contains nothing which even suggests that finding the wallet was the justification for defendants' arrest. The fact that the wallet was the only exhibit at the preliminary hearing has no bearing on the arrest. Defendants' statements regarding the enmity between the defendants and Officer Butcher is an extraneous issue and is outside the scope of this appeal as this issue was not raised in the trial court. While it is admitted that certain procedures of the investigating officers could have been improved, there is nothing in the record which indicates that the defendants have been prejudiced. Volume 30, C. J. S., Sec. 1031b, page 1073, sets forth the general law on bias as follows:

“The interest or bias of a witness, or the absence thereof, may be considered as affecting the weight of his testimony, the weight of the testimony of an interested witness, depending largely on the facts in each case. So where a party testifies as a witness his interest in the outcome of the cause may and should be considered in determining probative value of his testimony. However, the interest or bias of a witness does not ipso facto wholly deprive his testimony of probative force.”

POINT IV.

IF THERE WAS ERROR IN RECEIPT OF STATE'S EXHIBITS A, B, C, D AND E, IT WAS NOT PREJUDICIAL.

5A C. J. S., para. 1724, page 945, states :

“A judgment will not be reversed because of the erroneous admission of evidence where it did not, or probably did not, affect the result, conclusion, judgment or verdict or could not have done so, or was not reasonably calculated to cause a result unfair to the complaining party or was not of such a character to reasonably tend to cause the rendition of an improper verdict or could not have materially affected decisive issues, or could not have misled, confused, influenced or prejudiced the minds of the jury.”

Respondent contends that there was no error in receiving the exhibits in question, but if there were, defendants have not been prejudiced. In the case of the wallet, had the jury believed it had been found the day prior to the incident, the respondent's case certainly would have been weakened, which would have been advantageous to the defendants. The bottles were not properly identified by the particular officer who marked them; however, Officer Butcher did testify that he was present and that he and Officer Gill jointly obtained the bottles. There was no positive identification of the cigarette lighter and the attorney for the defendants called this fact to the jury's attention. Receiving the money as evidence had probative value and was used only for the purpose of showing that one of the defendants had money on his person.

CONCLUSION

The record on appeal does not indicate that any of the evidence admitted unlawfully prejudiced the defendants. The latter, entirely within their rights, failed to testify, thereby waiving an opportunity to clarify any issue which might have been offensive to their position. There appears to be some question as to the force used against Israelson and as to whether or not he was actually placed in fear, and also as to his sobriety on the evening in question. However, we do not feel that the Court committed prejudicial error in its conduct of the trial and it is the function of the jury to make its decision as to guilt or innocence.

Respectfully submitted

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