

1960

# State of Utah v. James LeRoy Hopkins : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

**FILED**

STATE OF UTAH,

Respondent,

vs.

JAMES LEROY HOPKINS,

Defendant and Appellant,

) 14 1960

) Supreme Court, Utah

) Case No.

) 9338

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BRIEF OF APPELLANT

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## TABLE OF CONTENTS

STATEMENT OF FACTS.....	2
STATEMENT OF POINTS.....	9
ARGUMENT.....	9
CONCLUSION.....	17

## AUTHORITIES CITED

<u>9 Am. Jur. Burglary</u> § 61.....	10
<u>20 Am. Jur. Evidence</u> § 1217.....	11
<u>State v. Burch</u> 100 Utah 414, 115 P.2d 911, 912 (1941).....	13
<u>State v. Wells</u> 35 Utah 400, 100 Pac. 681, 684, (1909).....	12

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Respondent,	:	
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	:	
Defendant and Appellant,	)	

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BRIEF OF APPELLANT

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STATEMENT OF FACTS

On April 22, 1960, police officer Archie Bukosky subscribed and swore to a criminal complaint against appellant, a negro. Appellant was charged with having committed the crime of burglary in the second degree in violation of Title 76, Chapter 9, Section 3, and with being an habitual criminal under Title 76, Chapter 1, Section 18, Utah Code Annotated, 1953

(R.4). A warrant for the arrest of appellant

was issued the same day by Judge Maurice D. Jones of the City Court of Salt Lake City, Utah (R.3).

Following preliminary hearing on May 23, 1960, appellant was ordered bound over to the District Court for trial on both charges of the complaint (R.2). Trial was had on July 7, 1960 (R.9). In the information executed by Jay E. Banks, District Attorney for the Third Judicial District, Salt Lake County, Utah, appellant was accused of the crime of burglary in the second degree in that on the 18th day of April, 1960, in the County of Salt Lake, State of Utah, appellant entered the apartment of Della McBreathy in the night-time with intent to commit larceny therein, and of being an habitual criminal (R.5). The allegation of habitual criminality was

**subsequently stricken from the information**

(R. 10-11). The evidence adduced by respondent at trial was to the effect that on the morning of April 18, 1960, a Mrs. Dorothy Garnett occupied apartment number three at 803 Park Street, Salt Lake City, Utah (R. 34, 36); that her apartment was directly beneath that of Mrs. Della McBreaty (R. 62-63); that there were three other units in the apartment house, one north of and on the ground floor with that of Mrs. Garnett, one north of and on the second floor with that of Mrs. McBreaty, and one in the basement with its entrance on the south side of the building (R. 35-37); that all five apartments were occupied that morning (R. 63-64); that there was a front entrance on the west side of the building leading into a hall which lead to the apartments of Mrs. Garnett and Mrs. McBreaty (R. 37);

that there was a rear entrance on the east side of the building to the apartments of Mrs. Garnett and Mrs. McBreathy (R.3); that prior to sun up on the morning of April 18, 1960, Mrs. Garnett was either awakened (R.50) or had been awake all night (R. 60-61) and heard noises in the front hall and at the rear of the building (R.39); that she looked out the living room window facing west and saw a white man standing there (R.39); that she then looked out the dining room window facing south and saw a colored man on the balcony on the building to the south (R.40); that she then saw the colored man drop a ladder from the balcony and a minute later she saw the ladder placed on the roof of the entrance to the basement apartment, directly beneath a window in Mrs. McBreathy's apartment (R.41);

that she then saw someone ascend the ladder (R.42) but saw only the person's legs (R.58) or feet (R.62) and further saw nothing distinguishing about his feet (R.61); that she then called the police (R.58); that during all this while a one hundred watt bulb was burning in Mrs. McBreaty's living room (R. 67-68) with the living room drapes open (R.68); that nothing was stolen (R.73); that Mrs. McBreaty had not known that anyone was in her apartment until the police so informed her (R. 71-72); that Mrs. McBreaty was awakened by the arrival of the police (71-72); that Mrs. McBreaty's husband was in Tooele County that night (R.63); that Mrs. McBreaty's six daughters, all less than eight years of age, were asleep in one of the bedrooms of her apartment (R. 63, 72); that the front and back doors to Mrs. McBreaty's apartment



were locked during the night (R. 64-65) but that the rear door was open when she awoke (R.66); that Mrs. McBreaty had given no one permission to be in her apartment (R.71); that the first police officer to arrive saw a colored man standing in front of the dining room window of Mrs. McBreaty's apartment (R. 76); that the police found a pair of shoes belonging to appellant (R.77); that an hour or so later, the police apprehended appellant walking east on Ninth South Street between Fifth and Sixth East (R. 82); that appellant told them he was going to visit a friend named Maggie (R.83); that appellant admitted to the ownership of an Oldsmobile automobile parked on Park Street (R.87); that appellant was later interrogated at the Public Safety Building in Salt Lake City (R.100) at which time he first denied and then

admitted ownership of the shoes that had been found (R.97); that he was later interrogated at the city jail (R.103) and that appellant then told the interrogating officer that he had been driving south on West Temple Street about three o'clock A.M. and was hailed by a white man for a ride home; that appellant offered to give the white stranger a ride in exchange for \$2.00 worth of gasoline; that the stranger bought the gasoline and appellant drove the stranger to his Park Street destination; that the stranger tried to get in Mrs. McBreaty's apartment but discovered the doors locked; and that the stranger then requested appellant's aid with the ladder (R.98). There was other evidence adduced, hereinafter to be mentioned.

At the close of respondent's evidence,

appellant moved the court for an order dis-

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missing the action on the grounds of  
insufficiency of the evidence (R.109).  
This motion was denied (R.109).

Appellant did not testify in his  
own behalf. The case was submitted to the  
jury, which returned a verdict of guilty  
(R.119). From judgment on the verdict,  
this appeal is prosecuted.

### STATEMENT OF POINTS

The sole issue raised herein is:

The evidence adduced by respondent was  
insufficient at law to sustain a conviction.

### ARGUMENT

THE EVIDENCE ADDUCED BY RESPONDENT WAS  
INSUFFICIENT AT LAW TO SUSTAIN A CONVICTION.

Appellant was tried and convicted of  
burglary in the second degree under an  
information which stated that on the 18th  
day of April, 1960, in the County of Salt

Lake, State of Utah, appellant entered the apartment of Della McBreaty in the nighttime with intent to commit larceny therein (R.5). The elements of the offense as stated in the information were in accordance with Utah Code Ann. § 76-9-3 (1953).

It is axiomatic that "intent, being a state of mind, is rarely susceptible of direct proof, but ordinarily must be inferred from the acts and conduct of the party and the facts and circumstances attending them which reasonably indicate them to the minds of others." 9 Am. Jur. Burglary § 61. In other words, intent must ordinarily be proved by circumstantial evidence. With respect to circumstantial evidence in criminal prosecutions, the general rule is as follows:

"Where circumstantial evidence is relied upon in a criminal prosecution, proof of a few facts or a multitude of facts all consistent with the supposition of guilt is not sufficient to warrant a verdict of guilty. In order to convict a person upon circumstantial evidence, it is necessary not only that the circumstances all concur to show that the prisoner committed the crime and be consistent with the hypothesis of guilt, since that is to be compared with all the facts proved, but that they be inconsistent with any other rational conclusion and exclude every other reasonable theory or hypothesis except that of guilt . . . A reasonable doubt must be resolved in favor of the accused where a fact or circumstance is susceptible of two interpretations. If the circumstances tending to show the guilt of the accused are as consistent with his innocence as with his guilt, they are insufficient. In order to convict a person of a crime, the facts must be inconsistent with, or such as to exclude, every reasonable hypothesis or theory of innocence. . . . The weight of circumstantial evidence is a question for the jury to determine; such evidence alone or in connection with other evidence may justify a conviction. Great care, however, must be exercised in drawing inferences from circumstances proved in criminal cases, and mere suspicions will not warrant a conviction." (20 Am. Jur. Evidence § 1217)

This has long been the law in Utah. In State v. Wells, 35 Utah 400, 100 Pac. 681, 684 (1909), this court stated:

"But, as in all cases of circumstantial evidence, not only must circumstances be established which agree with and support the hypothesis which they are adduced to prove, and concur to show the defendant's guilt, but they must also be inconsistent with any other reasonable conclusion. It is not enough that circumstances be proven from which an inference may be deduced that the production of the miscarriage was not necessary to preserve the life of the woman, but they must also be inconsistent with every other reasonable conclusion. 'The conclusion is not supported by circumstantial evidence, unless the facts relied on are of such a nature, and so related to each other, that no other conclusion can fairly or reasonably be drawn from them, and this requirement is strictly enforced, where decisive direct evidence is probably attainable, but is not produced.' 17 Cyc.817."

Thus, restating the law with respect to this case, the evidence adduced by res-

pendent with respect to defendant's intent to commit larceny is insufficient if the evidence is consistent with any other reasonable conclusion. Furthermore, no jury question arises "if the evidence is such that reasonable men would not differ upon the fact that it includes" a reasonable hypothesis of innocence. State v. Burch, 100 Utah 414, 115 P.2d 911, 912 (1941). In such a case "it is not a question for the jury, but is one for the court." State v. Burch, supra.

Defendant submits that the evidence adduced in this case is consistent with a reasonable hypothesis of innocence, and that therefore the court below erred in submitting the case to the jury and in not granting defendant's motion to dismiss.

Several facts which are inconsistent with the hypothesis of guilt make this hypothesis immediately suspect. Why would a burglar attempt to burglarize a second story apartment with a one hundred watt bulb burning brightly therein? There was no showing at the trial that Mrs. McBreathy's apartment contained anything of especial value, and, indeed, the showing was to the contrary (R. 68-69); or that entrance to the ground floor or basement apartments was not equally as accessible or even more accessible than it was to Mrs. McBreathy's apartment. Why would a burglar attempt to burglarize an apartment on a lighted street (R.40,46)? Why would a burglar attempt to gain access to a well lighted second story apartment first through the conventional front



and rear entrances? This approach is fraught with the danger of discovery because of a creaky staircase, a squeaky door or a vigil insomniac. There was no evidence to show that defendant knew or thought Mrs. McBreaty's apartment was empty. To the contrary, the evidence showed that Mrs. McBreaty and her six young daughters were home. If burglary had been the object of appellant's visit, why was there no showing that the man in the front hall had attempted to open Mrs. Garnett's front door, whereby escape would have been much easier had the would-be burglar been detected? Why was there no showing of the results of the fingerprint tests run on Mrs. McBreaty's purse which was lying right in front of the living room window (R.69) and would naturally

be the first thing a burglar would grab? These facts all tend to indicate that larceny was not the purpose of appellant's visit.

On the other hand, the undisputed facts in this case are that there was a white man present with appellant on the morning of April 18, 1960, at 803 Park Street in Salt Lake City, Utah, and that appellant drove this man to said address pursuant to his request and having been informed that it was the stranger's home, and that the stranger asserted his right to make entry (R.98). Such undisputed facts certainly do not prove and in fact tend strongly to disprove the existence of the requisite criminal intent. In the absence of proof of mens rea, appellant is innocent

as a matter of law. Such undisputed facts are in every way consistent with a reasonable hypothesis of innocence.

Appellant submits that he is the victim of circumstances, or, more accurately, of circumstantial evidence which on careful examination reveals quite clearly that he did not enter Mrs. McBreaty's apartment on the morning of April 18, 1960, and in the nighttime with intent to steal.

### CONCLUSION

The evidence adduced in this case is consistent with a reasonable hypothesis of innocence. Therefore, the court below erred in submitting the case to the jury

and in not granting defendant's motion  
to dismiss.

Respectfully submitted,

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