1960

State of Utah v. James LeRoy Hopkins : Brief of Respondent

Utah Supreme Court

Walter L. Budge; Homer F. Wilkinson; Attorneys for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
Plaintiff and Respondent,

— vs. —

JAMES LEROY HOPKINS,
Defendant and Appellant.

Case
No. 9338

BRIEF OF RESPONDENT

WALTER L. BUDGE
Attorney General

HOMER F. WILKINSON
Assistant Attorney General

Attorneys for Respondent

TABLE OF CONTENTS

Authorities Cited

Cases Cited

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
Plaintiff and Respondent,

— vs. —

JAMES LEROY HOPKINS,
Defendant and Appellant.

Case No. 9338

BRIEF OF RESPONDENT

STATEMENT OF FACTS

On April 18, 1960, defendant was convicted of burglary in the second degree in the Third Judicial District Court. He was sentenced to an indeterminate term in the State Penitentiary.

Respondent accepts the statement of facts as submitted in appellant's brief. There are also presented hereinafter in this brief the basic facts as proved at trial.

STATEMENT OF POINTS

Point I

THE EVIDENCE WAS SUFFICIENT TO CONVICT THE DEFENDANT OF THE CRIME OF BURGLARY IN THE SECOND DEGREE.

ARGUMENT

Point I

THE EVIDENCE WAS SUFFICIENT TO CONVICT THE DEFENDANT OF THE CRIME OF BURGLARY IN THE SECOND DEGREE.

Section 76-9-3, U.C.A. 1953, defines the offense of second degree burglary:

> "Every person who, in the nighttime, forcibly breaks and enters, or without force enters an open door, window or other aperture of, any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, or any tent, vessel, water craft, railroad car, automobile, automobile trailer, aeroplane or aircraft with intent to commit larceny or any felony, is guilty of burglary in the second degree. * * *"

The offense of second degree burglary includes the element of intent and appellant's appeal is directed solely to that element, viz., whether there was sufficient evidence to prove that appellant committed the acts alleged with "* * * intent to commit larceny or any felony. * * *."

We have no substantial disagreement with appellant on matters of law. In a criminal conviction, each element

of an offense, including that of intent, must be proved beyond a reasonable doubt. *State* v. *Clark* (Utah), 223 P. 2d 184. The issue here concerns itself with the proof of intent. It is a general rule that intent, being a state of mind, is rarely susceptible of direct proof and must, therefore, be proved by circumstantial evidence. 9 Am. Jur. 271, Burglary, Sec. 61 and 12 C.J.S. 731, Burglary, Sec. 55. In *State* v. *Woodruff* (1929), 225 N.W. 254, an Iowa case, the defendant was apprehended inside a dwelling house at night. It did not appear that he had taken any property. He made no explanation as to the reason for his presence in the house. On an appeal by the State from a directed verdict for the defendant, the Appellate Court reversed. The Court said:

> "The general rule is that the in the absence of explanation, the jury may infer from the fact of his breaking and entering that his intent was to commit larceny. In ascertaining the intent, the jury may take into consideration all the other facts and circumstances disclosed by the evidence, and bearing upon that question.

See also *State* v. *Maxwell,* 42 Iowa 211.

In *Alexander* v. *State* (Texas), 20 S.W. 756, it was said:

> "Although there was no direct evidence of the intent, it might be inferred from the surrounding circumstances. The weight to be given these was a question properly left to the jury; and when a person enters a building through a window at a late hour of the night, after the lights are extinguished, and no explanation is given of his intent, it might well be inferred that his purpose was to commit

larceny, such being the usual intent under such circumstances."

See also *Vickery* v. *State* (1911 Texas), 137 S.W. 687.

In a very recent Idaho case, the court commented on the proof of intent in a burglary prosecution. *Ex Parte Seyfried* (1953 Idaho), 264 P. 2d 685. A conviction for burglary was taken to the Idaho Supreme Court on a writ of habeas corpus. The defendant had been apprehended at night in the dwelling house of another by police officers. He had taken no property when apprehended. He made no explanation of his presence in the house. The court held that the magistrate was justified in committing the defendant for trial and the order quashing the writ and remanding the defendant was affirmed. The court said:

> "Where a dwelling house is broken and entered in the nighttime and no lawful motive or purpose is shown or appears, or any satisfactory or reasonable explanation given for such breaking and entering, the presumption arises that the breaking and entering were accomplished with the intent to commit larceny. The fact that the officers were present and apprehended the burglar before he had an opportunity to carry his purpose into execution is of no importance. The crime of burglary was consummated when the unlawful entry was made with intent to steal or commit some felony therein. Sec. 18-1401, I. C.
>
> "The common experiences of mankind raise a strong presumption and inference that such a breaking and entering as is here shown was made with the purpose of committing larceny, no other purpose appearing. It is sufficient to show the essential unlawful intent when the entry was made

> by circumstantial evidence. Direct evidence of such intent is not required. One's intent may be proved by his acts and conduct, and such is the usual and customary mode of proving intent. * * *''

In an old Utah case, *People v. Morton,* 1886, 11 Pac. 512, this court held that where the facts are such that it is impossible to account for the presence of the defendant in the place where he was arrested, unless on the hypothesis that he was there to commit larceny, a conviction of burglary is justified.

The Morton and Seyfried cases were upheld by the Utah Supreme Court in the 1958 case of *State* v. *Tellay,* 324 P. 2d 490, where the contention and appeal was based on the same principle, as in this case, namely the insufficiency of the evidence to convict appellant of burglary because it was not directly proved that he had the intent. The Court held:

> ''The answer to that is that the jury did not so find.''

A basic principle of appellate review provides that an appellate court will not review questions of fact for it is the function of the jury. The court may, however, make a determination of the sufficiency of the evidence, and if the verdict is supported by substantial evidence, the reviewing court will not disturb it. 3 Am. Jur., Appeal and Error, Sec. 883, 5A C.J.S., Appeal and Error, Sec. 1647. This court held that where there is evidence to support the jury's verdict, it will not be overturned by a reviewing court. See *Henrie* v. *Rocky Mountain Pack-*

ing Corporation (Utah), 202 P. 2d 727; *Angerman* v. *Edgemon* (Utah), 290 Pac. 169; *State* v. *Johnson* (Ida.), 287 P. 2d 425.

With the foregoing rules in mind, we proceed to consider appellant's contention, which is that since the evidence is largely circumstantial, does that circumstantial evidence prove intent?

There was sufficient proof of defendant's intent as required by the statute. There was no direct proof of intent, as is the usual case in burglary prosecutions, but the basic circumstantial evidence as proved raises the presumption of intent. That presumption was not rebutted at the trial. The following facts were proved:

(1) That the door to Mrs. McBreaty's apartment was locked when she retired (R. 64).

(2) That the door was found wide open the morning of April 18, 1960 (R. 66).

(3) That Mrs. Garnett saw a colored person climb up the ladder to Mrs. McBreaty's dining room window (R. 42).

(4) That Officer Firth, at approximately 4:28 A.M., saw a colored person standing in front of Mrs. McBreaty's dining room window (R. 74 and 76).

(5) That the appellant's shoes were found at the scene of the burglary (R. 77, 97).

(6) That the appellant's car was located one-half block from the apartment (R. 87).

(7) That the appellant was found leaving the area without his car and going in a direction opposite to his car (R. 82).

(8) That appellant's explanation for being in the area was so illogical that counsel did not even attempt to put on any evidence to prove it.

Considering the evidence adduced, there is no other reasonable hypothesis which the jury could have found; no logical explanation was made why defendant was in the apartment at an early hour.

Appellant, on pages 14-15 of his brief, suggests several statements and questions why the accused would not have attempted to burglarize the apartment in question. In answer to these, respondent must ask the appellant, what makes a person attempt to burglarize any apartment? The State submits that a burglar is not a logical person, nor is burglarizing based on logic. The questions and statements of appellant are not reasonable, nor were they suggested by the evidence at the trial.

CONCLUSION

It is respectfully submitted that the judgment of the trial court should be affirmed.

WALTER L. BUDGE
Attorney General

HOMER F. WILKINSON
Assistant Attorney General

Attorneys for Respondent