

1962

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

JAN 26 1962

STATE OF UTAH,

Plaintiff and Respondent,

—VS.—

ROBERT BUDDY WASHINGTON,

Defendant and Appellant.

Clerk, Supreme Court, Utah

Case
No. 9533

BRIEF OF RESPONDENT

Appeal from the Judgment of the
Third District Court for Salt Lake County
HON. RAY VANCOTT, JR., *Judge*

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff and Respondent,

—vs.—

ROBERT BUDDY WASHINGTON,

Defendant and Appellant.

} Case
No. 9533

BRIEF OF RESPONDENT

STATEMENT OF KIND OF CASE

The defendant was convicted of burglary in the second degree in violation of 76-9-3, U.C.A. 1953, and contends the evidence is insufficient to warrant conviction.

DISPOSITION IN THE LOWER COURT

The defendant was tried and convicted by jury trial on the 11th day of May, 1961, upon the charge of second degree burglary, 76-9-3, U.C.A. 1953. The court sentenced defendant to be committed to the Utah State Prison for the indeterminate sentence provided by law, but allowed the defendant to remain free pending appeal upon the posting of a \$3,500.00 bond.

RELIEF SOUGHT ON APPEAL

The State of Utah seeks affirmance of the judgment and sentence of the trial court.

STATEMENT OF FACTS

The respondent will accept the statement of facts as set forth in the appellant's brief, but, in addition thereto, notes that the appellant stated, subsequent to his arrest during an interrogation conducted by Officer Campbell of the Salt Lake Police Department, at the scene of the burglary, that "a couple of guys were in the building and that they had handed it (the phonograph) out to him. (R. 34).

Since the issue raised on appeal is the sufficiency of the evidence, further discussion of the relevant facts will be made under the argument presented on that point.

ARGUMENT

POINT

THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE DEFENDANT'S CONVICTION FOR THE CRIME OF SECOND DEGREE BURGLARY.

The appellant has attacked the sufficiency of the evidence presented at trial to sustain the conviction. The burden rests upon the appellant to demonstrate that the evidence before the lower court was not sufficient to afford a basis whereby the jury could have concluded that the appellant was guilty beyond all reasonable doubt. The case on appeal must be viewed in the light most favorable to the verdict. *State v. Berchtold*, 11 U.2d 208,

357 P.2d 183 (1960). The standard to be applied in the appellate review of this case is as noted in *State v. Ward*, 10 U.2d 34, 347 P.2d 865 (1959), where this court said:

“The rules governing the scope of review on appeal as to the sufficiency of the evidence to sustain the verdict are well settled: that it is the prerogative of the jury to judge the credibility of the witnesses and to determine the facts; that the evidence will be reviewed in the light most favorable to the verdict; and that if when so viewed it appears that the jury acting fairly and reasonably could find the defendant guilty beyond a reasonable doubt, the verdict will not be disturbed.”

It is submitted that when the case is viewed in a light most favorable to the verdict, as above required, the facts amply sustain the conviction.

Mr. G. C. Martin testified that he operated the Air Wave Radio and Television Company at 338 West First South, Salt Lake City, and that on election night, Tuesday, November 8, 1960, he closed the store at approximately 8:00 P.M. At the time Mr. Martin left, the building was locked up and it was dark. (R. 18). At approximately 9:30 P.M. the night watchman called and indicated there had been a burglary, and Mr. Martin returned to the store, where he noticed that a window at the side of the store had been broken, and that a phonograph that had been in the store when it was closed, was in a police car that was now present (R. 19, 20). The window that was broken was a 12 x 16 inch pane, which Mr. Martin testified was a sufficient opening to put the record player through. Mr. Martin indicated that upon investigating

the inside of the store, it appeared that someone had been there, as a few items were disturbed. (R. 22). He further testified that there was sawdust in the building on a bench, and all around the floor. On the bench was also a television set that had been moved from its regular place and put on a saw which was about 12 feet from the broken window. (R. 22).

Mr. Jack Merrick, a special officer and night watchman, whose job it was to patrol the premises, testified that at 8:30 P.M. he checked the Air Wave Radio and Television Company premises, and they were locked up. (R. 24). At approximately 9:30 P.M. he checked the premises again. He noticed a broken window, and the defendant pressed up against the side of the building holding the phonograph that had been in the shop of Mr. Martin. (R. 26, 30). He, Merrick, also noticed a brown cotton glove on the ground where the defendant had been. Merrick apprehended the defendant, and called the police. (R. 27, 28).

Officer Campbell testified that upon arriving at the scene of the crime, he searched the defendant and found a brown cotton glove, and that the glove taken from the accused and the one found on his person had sawdust on them. (R. 33, 34). The gloves are obviously matching. (Exhibit 2). Officer Campbell further testified that he took the appellant to the police car, and asked him where he got the phonograph, to which the defendant replied that a "couple of guys were in the building and they handed it out to him." (R. 34).

The defense of the accused was that two other persons, Elmer Carter and Kenny Rosenbaum, had broken

into the Air Wave Radio and Television Company, and took the record player, but needed additional tools to get in and get other items out, and that if the defendant would keep watch for them, he could have the record player. The defendant contended he pretended to go along with the idea in order to contact an Officer Hoagland of the Salt Lake City Police, with whom he was working to solve burglaries. (R. 47, 48). He admitted he had never been authorized by Officer Hoagland to undertake such action, (R. 54) and Officer Hoagland testified he never authorized defendant to so act (R. 41), but that the defendant had volunteered to obtain some information about one month prior to the burglary. Hoagland further testified that the defendant had admitted walking past the Police Station after, according to the defendant, being approached to act as a lookout, and that the defendant did not make any effort to contact the police. (R. 58).

The appellant has attacked the sufficiency of the evidence on the grounds that there is insufficient evidence to show an entering or the required intent on the part of the appellant.

The evidence amply sustains a breaking and an entering by someone. The premises at 8:30 P.M. were locked, a phonograph was later found outside the premises that was inside at the time the building was locked, and a window in the building was broken, through which the phonograph was capable of being passed. Sawdust similar to that on the floor and tables within the building was found on the outside of the defendant's gloves, and other items had been moved around within the store. In

addition, the defendant was still in the vicinity of the premises burglarized and in possession of property he had no right to, that had been taken from the store.

In *State v. Crawford*, 59 Utah 39, 201 Pac. 1030 (1921), this court indicated that the possession of recently stolen property could by inference support a conviction for burglary if the possession was "recent" and "exclusive." In the instant case, both these elements support the inference deemed permissible in the Crawford case. The defendant's possession while he was still in the vicinity of the premises, a scant period of time from when the burglary could possibly have occurred, and the defendant's exclusive possession support the inference of the defendant having participated in the burglary.

As to the defendant's contention that there was no showing that he actually entered the building, it is sufficient to note the substantial evidence of someone having entered the building, and the defendant's admission that two other persons in the building passed the phonograph out to him corroborates the other evidence. The trial court instructed on the issue of accomplices (R. 61, 62), and aiding and abetting, and the defendant's admission supplied the connection sufficient to establish the crime. This court has in other cases noted that such possession of stolen goods under similar circumstances indicating burglary is sufficient to sustain a conviction. In *State v. Thomas*, 121 Utah 639, 244 P.2d 653 (1952), the court approved the following language:

"* * * when the facts in evidence warrant the finding of larceny, and the surrounding circumstances are such as to show that larceny could not have been committed without the burglarious

entry, the evidence is sufficient to warrant the finding of burglary also.”

The facts of the Thomas case are in some particulars similar to those now before the court, and in Thomas this court held the evidence sufficient to sustain the conviction.

As to the defendant’s contention that the evidence is insufficient to support a conviction because of an absence of a showing of intent, it is, of course, a recognized principle of law that intent may be inferred from the circumstances of the crime, and that in most instances the only evidence of intent is circumstantial. *People v. Ragone*, 84 Cal. App. 2d 476, 191 P.2d 126 (1948). As noted by the Kansas Supreme Court in *State v. Gatewood*, 169 Kan. 679, 221 P.2d 392 (1950) :

“Intent is a state of mind existing at the time a person commits an offense. If intent must have definite and substantive proof it would be almost impossible to convict, absent facts disclosing a culmination of the intent. The mind of an alleged offender, however, may be read from his acts, conduct and inferences reasonably to be drawn therefrom.”

In *People v. Morton*, 4 Utah 407, 11 Pac. 512 (1886), the Territorial Court early recognized the above quoted principle. The evidence in that case showed one Morton and Carson went to a store in the nighttime, and that Morton entered while Carson stayed outside. Morton was arrested near the store safe, and with a steel bit or bar similar to what Carson had bought the day before. The court said:

“With all these facts before the jury, it would seem impossible to account for the presence of the

appellants at that store that night upon any reasonable hypothesis other than that they were there to steal. The conclusion is irresistible.”

The facts here are equally as conducive to demonstrating beyond a reasonable doubt the defendant's intent to steal. He was in possession of property taken from the store after it was first entered in the nighttime. The defendant admitted the phonograph had been passed to him from persons inside the store, and evidence showing a broken window from which it could be passed was also introduced. The defendant had full opportunity to report the crime if his version of the story were true, but he did not do so. All this evidence was before the jury. Under these circumstances the jury was well justified in concluding that the defendant was a willing partner to the crime of burglary and that his intent was to steal the property taken during the burglary.

CONCLUSION

It is submitted that an examination of the evidence, in the light most favorable to the verdict, compels a finding that the evidence was sufficient to support the conviction.

Respectfully submitted,

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