

1967

Marvin Joe Reeves v. State of Utah : Brief of Respondent

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In The Supreme Court of the State of Utah

STATE OF UTAH,

Respondent

- vs. -

MARVIN JOE REEVES,

Appellant

BRIEF OF RESPONSE

Appeal from the Judgment of the
Judicial District, Washington County,
Honorable Charles E. [illegible]

FILED

NOV 20 1967

Cl. Sec. [illegible]
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In The Supreme Court of the State of Utah

STATE OF UTAH,

Respondent,

- vs. -

MARVIN JOE REEVES,

Appellant.

} Case No.
10865

BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

The appellant, Marvin Joe Reeves, appeals from a conviction of the crime of grand larceny on jury trial in the Second Judicial District Court, Weber County, State of Utah.

DISPOSITION IN LOWER COURT

The appellant was charged by information with the crime of grand larceny. A jury trial was held February 3, 1967. The jury returned a verdict of guilty as charged, and the Honorable Charles G. Cowley imposed sentence on the appellant of confinement in the state prison for a term of not less than one year nor more than ten years.

RELIEF SOUGHT ON APPEAL

The respondent submits that the judgment of the Second District Court should be affirmed.

STATEMENT OF FACTS

The respondent, State of Utah, submits the following statement of facts as being more in keeping with the rule that evidence will be reviewed on appeal in a light most favorable to the jury's verdict.

Early on the morning of September 8, 1966, Marvin Joe Reeves, appellant herein, was seen removing a floor polishing machine from the back of a pickup truck owned by Mr. J. B. Asher. Mr. Asher had parked his truck in the parking lot of the Big-B Cafe in Ogden, Utah and went inside for a cup of coffee. Two eyewitnesses, Mr. Robert Goettle and Mr. Russell Whitaker, watched as Reeves lifted a buffing brush from the bed of the truck and placed it in a nearby automobile (T. 56). Reeves then returned to the pickup and took out the floor polisher and disappeared with it around the back of the cafe (T. 65).

The polisher was later recovered approximately one half block away from the cafe by an officer of the Ogden City Police Department (T. 36). There were fresh blood stains on the electrical cord of the machine (T. 37). The two eyewitnesses notified Mr. Asher that appellant had taken a machine from the pickup and Mr. Asher observed appellant lying down in the back seat of the automobile in which the

brush attachment to the polisher was located (T. 19).

At this time Officer Darrell Hawkins of the Ogden City Police Department arrived on the scene and was requested by Mr. Asher to place appellant under arrest for taking the polisher (T. 24). The buffing brush belonging to Mr. Asher was turned over to the police officer by the owner of the vehicle in which it had been placed and in whose back seat the appellant was discovered by Mr. Asher (T. 27).

Appellant was requested to place his hands on the roof of the police vehicle so that a search for a supposed weapon could be conducted. There is no evidence of a weapon being involved in this case however. Later, blood stains were found on the roof of the police vehicle (T. 25). At the Ogden police station, appellant was observed to be bleeding from a cut on the top of his left ring finger (T. 46).

ARGUMENT

POINT I.

THE TRIAL COURT WAS CORRECT IN NOT DIRECTING A VERDICT FOR THE APPELLANT SINCE THERE WAS COMPETENT EVIDENCE ADDUSED FROM WHICH THE JURY COULD FIND BEYOND A REASONABLE DOUBT THAT APPELLANT HAD PERPETRATED THE CRIME OF GRAND LARCENY.

In a criminal case, a motion for directed verdict raises the question of whether or not, as a matter of law, there is substantial evidence of accused's guilt. **State v. Lewellyn**, 71 Utah 331, 266 Pac. 261

(1928). The trial record reveals that the State presented direct evidence which was sufficient to convict the appellant of grand larceny.

It has been repeatedly held by this court that on a motion to dismiss or to direct a verdict of not guilty for lack of evidence that the trial court does not consider the weight of the evidence or the credibility of the witnesses, but determines the naked legal proposition of law, whether there is any substantial evidence of guilt of the accused, and all reasonable inferences are to be taken in favor of the state. If there is before the court evidence on which reasonable men might differ as to whether the defendant is or is not guilty he may deny the motion. **State v. Rivenburgh**, 11 Utah2d 95, 355 P.2d 689 (1960); **State v. Penderville**, 2 Utah2d 281, 272 P.2d 195 (1954).

The respondent would submit that there is substantial evidence of guilt of the accused to affirm this conviction. A colored man was observed by two eyewitnesses, Mr. Robert Goettle and Mr. Russell Whitaker, removing a floor polishing machine from the bed of a pickup truck owned by Mr. J. B. Asher. Both witnesses testified that they had observed the same colored man earlier remove a buffing brush from the truck and place it inside a nearby automobile. When the owner of the floor polisher was leaving the parking lot, these two witnesses stopped him and informed him that the colored man had removed the machine (T. 65).

Mr. Asher had previously become aware of appellant as apparently acting in a suspicious manner in the back of the cafe:

When I came out, my truck was parked kind of behind the north side of the building. And when I walked around my truck, Reeves was standing in the back of the building looking in the windows at this time. And when I walked around, I almost bumped into him and he kind of threatened me at this time. He acted suspicious, so I got in my truck and drove in front of the building and told the girls in there to call the police, because I thought he was acting a little suspicious (T. 11).

Mr. Asher made a positive identification of appellant as the colored man the two witnesses said had committed the larceny (T. 15). He also discovered appellant in possession of the buffing brush from the polisher (T. 19). The arresting officer placed appellant under arrest at the request of Mr. Asher.

The brief of appellant attempts to show that the two eyewitnesses to the larceny identified someone other than appellant at a line up conducted on the morning of the trial. Respondent does not deny that this mistaken identification was made, but the fact that witnesses' testimony may be weakened on cross examination or is conflicting with other evidence is not a reason for setting a judgment of guilty aside on the grounds of insufficiency of the evidence to sustain it. **People v. Bingham**, 44 C.A.2d 667, 112 P.2d 941 (1941).

The jury had before it evidence that a colored man was seen in the act of taking, that Reeves was the only colored man in the area that morning (T. 32) that Reeves was next seen by the two eyewitnesses being placed in the police car by the arresting officer (T. 57) and that the arresting officer had placed Reeves under arrest at that time (T. 25). One of the eyewitnesses, Mr. Whitaker, positively identified Reeves as the person taking the polisher that morning (T. 67).

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. **State v. Ward**, 10 Utah2d 34, 357 P.2d 865 (1959).

In a criminal prosecution it is the function of the jury in the first instance, and of the trial court after verdict, to determine what facts are established by the evidence, and before a verdict of a jury which has been approved by the trial court may be set aside on appeal on the ground of insufficiency of evidence, it must be made clearly to appear that upon no hypothesis whatever is there sufficient substantial evidence to support the conclusion reached

trial court. **State v. Walker**, 198 Kan. 14, 422 P.2d 565 (1967).

CONCLUSION

The respondent would submit that substantial evidence of the guilt of appellant has been shown. There is sufficient direct evidence showing appellant did in fact commit the crime of grand larceny. Appellant has wholly failed to show any impropriety in the trial court's refusal to grant a directed verdict of acquittal.

Therefore, this court should affirm.

Respectfully submitted,

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