1962

State of Utah v. Coy Ringo : Brief of Appellant

Utah Supreme Court

Dwight L. King; Counsel for Defendant and Appellant;

No. 9712

IN THE SUPREME COURT
of the
STATE OF UTAH

THE STATE OF UTAH,
Plaintiff and Respondent,

vs.

COY RINGO,
Defendant and Appellant.

BRIEF OF APPELLANT

DWIGHT L. KING. COUNSEL FOR
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PRELIMINARY STATEMENT

The parties will be referred to throughout the Brief by their given names, or as the STATE AND DEFENDANT.

Pages cited by statements concerning evidence will refer to the Reporter's Transcript of Testimony, and the record of the case on appeal.

All Italics are mine.

STATEMENT OF FACTS

This is an appeal from a Jury Verdict finding the defendant, Coy Ringo, guilty of the crime of malicious aforethought assault on a convict in the Utah State Prison with an instrument, namely, a laundry pin, contrary to the provisions of *Title* 76, *Chapter* 7, *Section* 12, *Utah Code Annotated,* 1953, as amended by the laws of the State of Utah, 1961.

At the trial of the defendant, he was represented by a Jimi Mitsunaga, Esq.

Thereafter, the Court appointed Dwight L. King to represent the defendant, and to perfect this Appeal.

All statements concerning the facts are based on the record on appeal, and the transcript of evidence on appeal since the present Counsel for the defendant has no personal knowledge of any occurrence and must rely therefor solely upon the Record made by the Trial Court.

On December 30, 1961, defendant was a convict in the Utah State Prison, committed on August 6th, 1958. (R. 85) Defendant was assigned to the Section known as B-North of the State Prison, a maximum security section.

Also assigned to Section B-North was a convict by the name of Howard LeRoy Ollerdisse.

Defendant, between 11:00 o'clock and 12:30 left his cell No. 213 and entered an area known as "Inmate Security Area" as shown on Exhibit 13, and in the inmate security area, he, and the inmate Ollerdisse commenced an affray. As soon as the guards were able, the two convicts were replaced in their respective cells, defendant in 213, and Ollerdisse in 209. The doors to both cells were closed and both men were immediately subjected to physical examinations. Exactly how the defendant obtained access to the inmate security area, at the same time as Ollerdisse was in said area is not shown by the evidence, although it is hinted at by the witnesses that he in some way jammed the mechanism which locked his cell and in this way kept the cell open until Ollerdisse came into the inmate Security area.

The affray between Ollerdisse and defendant was witnessed by guards who testified concerning the fact that both Ollerdisse and defendant struck several blows at their opponent in the affray.

An examination of Ollerdisse revealed that he had two punctured type wounds, one in the abdomen, and one in his rib cage. The punctured type wound in the abdomen had caused internal bleeding to the point where Ollerdisse was required to undergo surgical repair of the wound in his stomach at the Salt Lake County Hospital.

The guards at the State Prison immediately follow-

ing the affray and after the convicts had been returned to their respective cells, while the convicts were out of the cells, conducted a shake-down of the cell and searched the convicts. No weapon was ever found which could be responsible for the wound in Ollerdisse's stomach and chest.

The State introduced two Exhibits, one a Laundry pin which had been straightened out, and the other a laundry pin which had not been straightened out, and it is the claim of the State that a similar laundry pin straightened out was the weapon, or instrument, which the defendant used on the convict Ollerdisse.

There was no evidence that anyone ever saw such a weapon in the hand of defendant, and with the exception of statements made by the defendant himself, outside of the Trial Court, there is no evidence whatsoever to connect a laundry pin with the defendant or with the wound which the convict, Ollerdisse, suffered.

The only evidence connecting laundry pins or any weapon with the defendant is testimony by Ferris Andrus and Ernest D. Wright. They testified about a statement which the defendant gave when questioned about the affray. At the time Andrus questioned the defendant, there was present Andrus who is deputy Sheriff of Salt Lake County, the Deputy Warden, Fitzgerald, Ernest Wright, Executive Director of the Pardon Board, and Lt.

Jooston. (R. 229, 230, 231) The conversation with defendant took about between 35 minutes to an hour. Defendant was not represented by Counsel. Andrus did not inform Ringo he was charged with any crime, that he had a right to be represented by Counsel, did not tell him that he had a right not to incriminate himself, nor apparently was defendant informed that he did not have to discuss the occurrence with Ollerdisse. (R. 234, 235, 236) No promises were made to the defendant, nor threats of force used against him. (R. 241) Witness Wright agrees that defendant was never informed about being charged, that he had a right to Counsel, but disagrees with Andrus, concerning whether or not Andrus informed defendant that whatever he said would be used against him in Court. (R. 243, 244)

Proper objections were taken by Counsel on the ground that no proper foundation had been laid, and that the statements made by the defendant were not voluntary. (R. 245) Counsel also moved the Court to strike and exclude Andrus and Wright's testimony on the ground that they violated the defendant's rights under the Federal and State Constitution. (R. 292)

SUMMARY OF ARGUMENT

POINT I.

DEFENDANT WAS DEPRIVED OF HIS RIGHTS UNDER SECTION 12, ARTICLE 1, OF THE CONSTITUTION OF THE STATE OF UTAH, IN THAT HE WAS COMPELLED TO GIVE EVIDENCE AGAINST HIMSELF.

ARGUMENT

POINT I.

DEFENDANT WAS DEPRIVED OF HIS RIGHTS UNDER SECTION 12, ARTICLE 1, OF THE CONSTITUTION OF THE STATE OF UTAH, IN THAT HE WAS COMPELLED TO GIVE EVIDENCE AGAINST HIMSELF.

The defendant, at the time he was questioned by the Deputy Sheriff, Executive Director, Deputy Warden, and other officials at the State Prison, was in the maximum security section of the prison. Evidence showed that his cell was, in effect, a solitary confinement cell, that there were solid steel doors on the front of the cell which were closed each night from 4:30 P.M. until 8 o'clock the next morning. The force of prison discipline could well be appreciated by the defendant.

The circumstances, it is submitted, are calculated to impress upon the mind of the defendant, the great power that the Deputy Warden and the other prison officials had over him, and which, if his conduct was less than cooperative, they had full power to discipline him for. It is submitted that under the circumstances his statements in answer to the questions by Andrus were not voluntarily given. He had not come to the hearing at his own request and he certainly was under duress and in a position where his will was not effective. He was involuntarily incarcerated and disciplined.

The right against self incrimination has long been carefully guarded, not only by the Federal, but by the State Courts, and there is a great abundance of judicial

precedence concerning the protections that the defendant is entitled to do.

In *State v. Braasch,* 119 *U.* 450, 229 *P* 2*d.* 289, this Court considered the question of whether or not a confession was voluntary and pointed out that certain conduct was important to protect constitutional rights of the defendant. They include that fact, that the defendant was not subject to physical discomfort, and "defendant was fully informed of his rights." (P. 292) Defendant was never informed about his rights before the confession nor even informed that an investigation for a crime was under way. No waiver of rights by defendant here is possible since no knowledge of rights was ever given.

It has been stated that the compulsion prohibited is not alone physical or mental duress, such as comes from unlawful commands and authoritative orders by those engaged in extorting testimony, but comprehends also the lesser degree of compulsion which subjects the citizen to some important disadvantage to procure the evidence which is desired, should they extract it from him. *U. S. v. Bell,* 81 *Fed.* 830, *Boyd v. U.S.,* 116 *U.S.* 616, 6 *Sup. Ct.,* 524, 29 *L. Ed* 746.

It is defendant's position that because of the force, apparent and actual, that the Deputy Warden and the other officials had over him, he was compelled to answer all questions that were submitted to him.

Section 64-9-39 *UCA* 1953, gives to the Warden and Deputy Warden permission to punish convicts for misconduct. The only restrictions being that the convict cannot be showered with cold water or whipped with a lash on the bare body. Defendant was already under strict discipline, being kept in solitary confinement, it seems unlikely that he would not be aware of the power the Deputy Warden had and what could happen to him if he refused to cooperate.

Under State and Federal Constitutions, the rule for State Courts must be that no person shall, at any time, be compelled to answer any question, or say anything which might be confession of commission of public offense, or which might be used against him in an attempt to convict him of public offense. See authorities cited by this Court in *State v. Braasch,* 119 *U.* 450, 229 *P* 2*d.,* 289 *p.* 292; *Layman v. Webb,* 350 *P.* 2*d* 323.

It has always been the rule that a confession may be regarded as obtained by compulsion, and therefore in violation of the Fifth Amendment, where the defendant was not advised of his rights. *U. S. v. Kallas,* 272 *Fed.* 742. The Federal rule and probably the Utah rule was set down in the Kallas case.

> "Testimony as to a confession upon a trial is admissible in evidence, though not sufficient to convict; but the Court is now asked to go a step further, and hold that the alleged confession

obtained by an inquisition to which the accused was subjected while held in jail, at the mercy of his jailer, is admissible, without first showing that it was freely and voluntarily made, after the accused was fully advised of his rights and warned of his danger." (P. 746)

"Upon the question of what constitutes compulsion, within the meaning of constitutional provisions similar to the fifth amendment, the following synopsis is taken from Words and Phrases. Vol. 2, p. 1351.

"Const. art. 1, Sec. 6, declares that no person shall be compelled in any criminal case to be a witness against himself. Held, that the word 'compulsion' as there used, means merely compulsion exercised through the process of the Courts, or through laws acting directly on the party, and has no reference whatever to an indirect or argumentative pressure, such as is claimed is exerted by Act 1869 (Laws 1869, c, 678) declaring that on a criminal trial the accused shall at his own request, but not otherwise, be deemed a competent witness against himself. People v. Courtney, 94 N. Y. 490, 493." (P. 751)

(5) "The accused may be presumed to know the law — that is, that any statements or admissions which he voluntarily makes will be used against him; but he will also be presumed to know that he will not be compelled to be a witness against himself and that involuntary statements cannot be used in evidence against him. Hence, the question for determination is whether, in the absence of evidence that the accused was com-

pelled to make the statements attributed to him — that is, evidence other than that of his imprisonment or arrest — they can be considered as evidence against him. Even if he were advised that he was not compelled to answer and that statements which he made might be used in evidence against him, while constituting prima facie evidence that the statements were voluntarily made, and therefore admissible in evidence, it would not be conclusive for the examination of a detained prisoner might be so prolonged, and of such a character, and made under such circumstances, that a court might reasonably conclude that it was not voluntary, even though he was so warned.

"The questioning by or with the consent of his official captor of a prisoner is essentially inquisitorial in its nature. He is confined, and perforce must submit to such questions. True, he may remain silent; but he cannot escape the questions, as he might if he were physically free. The actual existence of duress, arising from the fact that he is confined and cannot escape his questioner, is sufficient, and requires that he be advised that he is not compelled to answer, and, if he does so, his answers will be used against him. Fairness can require no less. So much at least is guaranteed by the Fifth Amendment. How can it be said, if a court required an accused to answer upon the witness chair, with the alternative of going to jail if he refused, was such compulsion as to invalidate the evidence so obtained, and, at the same time, that a prisoner questioned in jail by his captor was not compelled to give evidence against himself?

"Such a course would be to very nearly, if not quite, blind oneself as to what constitutes compulsion. As above pointed out, the compulsion forbidden by the amendment — or at least included in its prohibition — is compulsion exercised through the process of the court. The commitment by which the petitioner in the present case was held in jail is no less compelling process than were he in court and ordered upon the witness chair for examination. In fact, there is greater need to safeguard the rights of the accused in this particular, when under arrest, than in the court, for in court a record is made that will, eventually, afford protection, however great the abuse practiced. It may not always be so of the prisoner subjected to an inquisition in his cell.

"While it may be that many know of their rights, and, even when in prison, have the will and courage to stand upon them, there certainly are others who do not. The safer and better course to pursue is to require evidence that each and every prisoner has been advised of his right to remain silent, and warned of the danger in speaking, before any statement made is admitted, rather than enter upon a more or less speculative inquiry as to whether the statements of accused were made voluntarily or not. In the nature of things, it often happens, not only upon the examination in the jail, but upon that in court regarding the circumstances of the inquiry at the jail, that there are many against one, the accused. Whether it arises from zeal or prejudice, born of their calling, the nature of the accusation or situation, or all of these and other things, it does

not matter — consciously, or unconsciously, upon such inquisition, the police, and officers having similar duties, often array themselves against the accused. An instance of this is to be noted in the present case. While both of the witnesses for the prosecution were asked to tell all that accused said when he was examined at the jail, it remained for the leading questions of the attorney for the accused to elicit the fact that the accused was a discharged soldier of the late war, although many things had been upon direct examination recounted, no more pertinent, but which would not reflect such credit upon the accused.

"The demurrer to the petition will be overruled." P. 753

CONCLUSION

It is respectfully submitted that defendant has been deprived of his constitutional rights to not give evidence against himself. The Judgment of the Court should be set aside.

Respectfully submitted

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