

1963

State of Utah v. Terry D. Loudon : Appellant's Reply Brief

Utah Supreme Court

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Recommended Citation

Reply Brief, *State v. Loudon*, No. 9851 (Utah Supreme Court, 1963).
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IN THE SUPREME COURT
OF THE
STATE OF UTAH

THE STATE OF UTAH,)	
)	
Plaintiff and Respondent,)	
)	
vs.)	No. 9851
)	
TERRY D. LOUDEN,)	
)	
Defendant and Appellant.)	

APPELLANT'S REPLY BRIEF

ARGUMENT

POINT 1

THE ORAL STATEMENT ADMITTED WAS AS TO
A CONFESSION NOT MERELY AN ADMISSION.

Respondent in its brief at page 6 cites the case of
State v. Masato Karumai, 101 Utah 592, 126 P. 2d 1047
(1942) in support of the proposition that the oral
statement admitted into evidence, which appellant
claims as error in Point 1 of his brief, was not a
confession as claimed by appellant but rather merely
an admission. The Karumai case does not support
that *seems* holds at most

that no preliminary showing of voluntariness is necessary before admitting an admission into evidence, where the admission is not too comprehensive. Further, the court held that there was no showing that the statement was involuntarily made and thus the conclusion that the statement was an admission was not necessary to the decision of that case.

In the present case, even assuming the statement to be an admission, it is much too comprehensive to be governed by the Karumai case.

Further, the Karumai case was decided before the case of State v. Crank, 105 Utah 332, 142 P. 2d 178 (1943). The Karumai case appears to have only considered the rule that the state need only establish a prima facie case of voluntariness.

That Crank case however imposes the obligation upon the court to consider all evidence of voluntariness before a confession is admitted. Although the Crank case does not specifically say that this

new rule shall also apply to admissions, the reasoning

behind it clearly dictates that it should apply to a statement like the one in the present case.

The alleged statement in question (R. 79) specifically admits every element of second degree burglary, except it doesn't contain the statement that defendant intended to commit larceny or a felony when he entered the building. However, the statement clearly implies that element and is consistent only with that conclusion. It is thus a confession. But even assuming that lack of express words of intent renders the statement an admission, it must be treated like a confession under the reasoning of the Crank case. Otherwise, even torture could be used upon a defendant up to the point where he admitted all elements, but one, and that element one which can legally be implied or inferred. See State v. Hopkins 11 Utah 2d 363, 359 P 2d 486 (1961).

Further, defendant in an out of court hearing may be able to establish that he in fact did confess to the missing element, thus bringing the alleged

stat

the rule of the Crank

case and then further establish that the whole confession was involuntary. To require defendant to establish before a jury that his confession was complete in order to show that it was not an admission, would require defendant to prosecute himself.

POINT 2

A STATEMENT OF COUNSEL IS NOT THE EQUIVALENT OF AN OUT OF COURT HEARING.

Respondent in Point 1. B. of its brief raises the rather startling point that since appellant's attorney indicated to the court what the testimony would be at the out of court hearing on the question of voluntariness and that the court then determined to submit the evidence to the jury, that appellant has had all he is entitled to. If this is the law, then in effect it allows the court to say that he would not believe appellant if he testified, so he might as well not waste time. This is not the law. Under the rule of the Crank case, supra, the trial judge is required to determine for himself whether or not he believes the confession to be voluntary.

"This does not mean merely a prima facie showing but must satisfy the mind of the court in the light of all the evidence given by both state and defense."

Although the Crank case says the court decides the question as a matter of law, the court is nevertheless to exercise its honest judgment as to whether the court finds the confession to be voluntary and not whether it finds that some one else could reasonably find it to be voluntary, otherwise a "prima facie showing" would be enough because by definition it means enough evidence to sustain a finding of voluntariness.

POINT 3

APPELLANT'S OBJECTION TO THE COURT'S PROCEDURE WITH REGARD TO THE ALLEGED CONFESSION WAS SUFFICIENTLY CLEAR.

Respondent in Point 1, C. of its brief raises the point that appellant was not sufficiently clear, at page 72 of the record, that he was objecting to the court's procedure with regard to the alleged confession. It is submitted that a fair analysis of the transcript indicates that appellant was objecting to the court's

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proc ~~CONFES~~ sion and the search

and seizure question.

POINT 4

A MOTEL MANAGER DOES NOT HAVE
AUTHORITY TO AUTHORIZE A SEARCH OF
A MOTEL ROOM WHICH HAS BEEN RENTED
TO TENANTS.

Respondent, at page 12 of its brief, cites Varon, Searches and Seizures, Vol. 1, p.439 (1961) as authority for its apparent position that the motel manager was authorized to allow the search. At page 441 of the same volume it is said:

"An innkeeper or person running a rooming house or hotel certainly has the right to invite a police officer upon the premises, but does not have the right to permit the police officer to enter upon the room or premises which may be leased to a hotel guest, roomer or patron. By so doing, the rooming house owner or hotel manager or innkeeper in effect waives the personal constitutional rights of the hotel guest, roomer or patron against unreasonable search and seizure."

Thus, to hold that a motel manager has given valid authority to consent to a search is to hold that the tenants have waived their "personal constitutional rights". Waiver is an affirmative defense which must be pleaded and proved. Likewise, in a criminal

should have the duty of proving a waiver. Appellant is not seeking affirmative relief in the sense of trying to obtain the return of the property. The unlawful search and seizure was established unless there was a waiver. The State must prove its case and must prove a waiver if it claims such, and all of the elements thereof, including knowledge. The admission of the State's exhibits was highly prejudicial to defendant, especially admission of the pistol because of the serial number.

CONCLUSION

Thus despite new material raised by respondent in its brief, it clearly appears that prejudicial error was committed, and the conviction and sentence of the trial court should be reversed.