

1968

State Of Utah v. Sylvester Scott : Brief of Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

vs.

SYLVESTER SCOTT,

Defendant-Appellant.

} Case No.
10876

BRIEF OF RESPONDENT

Appeal from a judgment in the Second District Court,
Weber County, State of Utah
Honorable John F. Wahlquist, presiding

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	}	Case No. 10876
<i>Plaintiff-Respondent,</i>		
vs.		
SYLVESTER SCOTT,		
<i>Defendant-Appellant.</i>		

BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

The appellant, Sylvester Scott, appeals from a judgment of conviction finding him guilty of burglary in the second degree.

DISPOSITION IN LOWER COURT

The appellant was found guilty by jury verdict of burglary in the second degree. The trial judge sen-

tenced the appellant to the Utah State Prison for an indeterminate term as provided by law.

RELIEF SOUGHT ON APPEAL

Respondent requests that the judgment of the trial court be affirmed.

STATEMENT OF FACTS

On or about the night of April 18, 1966, the U and I Furniture Store in Ogden, Utah was burglarized. Three television sets and a coffee table were discovered missing. Mr. Gary Bosworth, the manager of the burglarized store, testified that the appellant had come to the store several times prior to the burglary to look at a three-piece sectional couch (T-16).

On the morning of April 18, 1966, appellant entered the store with three other persons, two of whom used a restroom located in the office of the store (T-36). During the afternoon of the following day Mr. Bosworth discovered three televisions and a coffee table missing (T-19). On the day following the discovery of the theft, Mr. Bosworth found that the screen to the office restroom had been removed and that a foot mark had been left on a crushed facial tissue box on the top of the toilet tank (T-57-58).

Copeland Griffin testified that he had been approached by the appellant and one William Coleman

and asked whether he would haul some furniture for them from a place on Wall Avenue and Riverdale (T-69). Griffin testified that he told them he could not do it, but that he subsequently went to Wall Avenue and Riverdale on the night of April 18, 1966, where he observed Coleman and the appellant removing a coffee table and a television set from the store (T-69-70).

On the basis of information received from Mr. Griffin, a search warrant was issued to James Wold, Chief of Police at South Ogden, Utah, who recovered one of the television sets and what appeared to be the coffee table stolen from the U and I furniture Store from the residence of Carol Jean Craig (T-137-139).

Counsel for defense presented two witnesses, Carol Jean Craig and Annette House, who testified that they had each purchased television sets from Copeland Griffin (T-178-195).

James Wold testified that Carol Jean Craig had first told him that a person named Davis had sold her the television set, but later changed the name to O'Neal (T-186-188) and that she was married to Sylvester Scott (T-139). Miss Craig testified that the reason Scott came to her house is that she liked him a lot and that she had had his baby (T-189).

Annette House testified that she had known William Coleman for many years and that the defendants would come and stay at her house for weeks at a time (T-201).

The record discloses that the attorney for William Coleman, Robert Phillips, had entered a "Notice of Alibi" to the effect that William Coleman had been in the presence of Linda Martin and Annette House on the night of the burglary (T-201). Mr. Phillips took the witness stand and testified that his client had indicated that he had an alibi and that the names of Linda Martin and Annette House had been given to his secretary. Through some mistake, these names appeared on the "Notice of Alibi" (T-208).

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY PERMITTED COPELAND GRIFFIN TO TESTIFY.

The appellant contends that Copeland Griffin is incompetent to testify because Griffin had been found legally insane and committed to the Utah State Mental Hospital in 1962, and the trial court made no effort to determine whether he understood the nature of an oath.

File 7091 from the Second District Court shows that Copeland Griffin was adjudged legally insane by the Honorable John F. Wahlquist, November 1, 1962, and ordered committed to the Utah State Mental Hospital for an indeterminate period of time or until he recovered at which time he was to be returned to the Weber County Jail for prosecution.

By order dated November 12, 1965, a sanity hearing was ordered for Copeland Griffin to be set by the court within the next ten days. On November 30, 1965, Copeland Griffin entered a plea of guilty to a reduced charge of petty larceny. The court entered sentence and ruled that the defendant could be returned to the State Hospital at any time on a determination by the State Hospital. On December 5, 1965, the State Hospital discharged Copeland Griffin, listing his condition as "improved."

Utah Code Ann. § 77-48-5 (Supp. 1967) provides:

If upon the examination provided for herein the accused is determined to be insane, the judge making such determination shall order him committed to the state hospital, there to remain in custody until he shall become sane . . .

Upon the accused becoming sane after commitment to the state hospital the superintendent thereof shall certify such fact to the district court in and for the county from which the accused was committed, and thereupon the judge of such court shall order the accused returned to the original custody from which he was taken in execution of his commitment, and upon such return all proceedings against him suspended upon his commitment shall be resumed . . .

The record shows that Griffin was released from the state mental hospital and returned to the custody of jurisdiction from which he was taken and that the court accepted a plea of guilty to a reduced charge of petit larceny and entered judgment.

In *Smith v. Roach*, 56 Wyo. 205, 106 P.2d 536 (1940), under a statute which provided that when any person committed to the state mental hospital is declared not insane, he shall be released, the court held the fact of petitioner's sanity to be established, at least prima facie, by his discharge from the state hospital. Utah Code Ann. § 77-48-1 (1953) provides that no person while insane shall be tried, adjudged to punish or punished for a public offense.

Since the record shows that Griffin entered a plea of guilty to the reduced charge of petit larceny and was subsequently sentenced by the same trial judge who had found him to be insane, that court necessarily had to determine him sane for purposes of trial. In the absence of a showing to the contrary, it is presumed that judicial proceedings are regular in all respects. *State v. Reay*, 13 Utah2d 79, 368 P.2d 595 (1962).

Respondent submits the Copeland Griffin's sanity was established, at least prima facie, by his discharge from the state mental hospital and by the court entering judgment against him.

Respondent further submits that it is within the sound discretion of the trial court to determine the competency of a witness.

In *State v. Williams*, 11 Utah 379, 180 P.2d 551 (1947), where the competency of the alleged victim, a thirteen year old girl whose mental age was between eight and ten years, was challenged, the court held:

. . . the trial judge had the advantage of having the witness before him. He was in a position to observe not only her demeanor but the tempo of question and answer, the attitude and tone of voice of counsel and the courtroom environment. Hence, much of importance to his decision respecting the competency of the witness was available to the trial judge which the record does not reveal to us. He exercised his discretion in light of such additional factors, and we are unable to say with conviction that his ruling thereon was an abuse of such discretion.

The record shows that the trial judge in this case was the same judge who had earlier found the witness insane; it was the same trial judge who later accepted a plea of guilty from the witness and entered judgment against him. The same trial judge questioned the witness to determine whether he had the mental and physical capacity to understand and respond to questions put to him. The record is replete with questions put to the witness by all counsel and answers from the witness which cogently demonstrate the witness' ability to understand, comprehend and respond.

Respondent submits that the trial court did not abuse its discretion in permitting Copeland Griffin to testify.

POINT II

THE TRIAL COURT DID NOT ERR IN NOT INSTRUCTING THE JURY ON THE LAW OF COMPLICITY.

Appellant contends that the evidence was sufficient to require the trial court to instruct the jury concerning Utah Code Ann. § 77-31-18 (1953) which requires that the testimony of an accomplice be corroborated by other evidence.

The only testimony which might connect Griffin with the crime is that of Carol Jean Craig and Annette House. Both testified that Griffin had sold them television sets which were later identified as those stolen from the U and I Furniture Stores. Their testimony, if believed, could establish only that Griffin was in the possession of stolen goods after the burglary.

Respondent submits that there is no evidence to support the appellant's contention that a jury could find that Copeland Griffin was an accomplice.

In *People v. Chadwick*, 7 Utah 134, 25 Pac. 737 (1891), the court held that an accessory after the fact was not an accomplice within the meaning of § 5049, 2 Comp. Laws, 1888, 710, from which Utah Code Ann. § 77-31-18 (1953) is taken with minor changes. The court further held in *Chadwick* that if the witness were not an accomplice in the crime, it was not necessary that his testimony be corroborated.

In *State v. Bowman*, 92 Utah 540, 548, 70 P.2d 458, 461 (1937), the court held:

An accessory after the fact is not an accomplice, and neither is one who might be charged or convicted of some other crime not the crime for which the defendant was on trial.

Since there was no evidence that Copeland Griffin participated in the burglary, it was not error for the trial court not to have instructed the jury on the requirement under Utah law that an accomplice's testimony must be corroborated by other evidence.

Respondent further submits that the appellant should not be permitted to object to an issue raised for the first time on appeal where no instruction on the testimony of an accomplice was requested and where no objection was made when the court failed to give instructions on the testimony of an accomplice.

In *State v. Blea*, 20 Utah 2d 133, 434 P.2d 446 (1967), the court held that even if the law had been as defendant contended, he was in a poor position to complain on appeal of failure to instruct the jury thereon where he did not request any such instructions nor did he take any exceptions to the failure of the court to so instruct.

Generally, unless an instruction is requested on a special matter, failure to give it cannot be a basis of claimed prejudicial error. *State v. Owens*, 15 Utah2d 123, 388 P.2d 797 (1964).

CONCLUSION

The evidence that Copeland Griffin had been released from the State Mental Hospital and had been permitted to enter a plea of guilty to the charge of

petty larceny is sufficient to show that the trial court did not abuse its discretion in permitting him to testify.

The trial court's determination that Copeland Griffin was a competent witness is further sustained by Mr. Griffin's ability to respond coherently to questions asked by both the prosecuting and defense attorneys.

The trial court did not err in not instructing the jury on the law of complicity since the evidence did not raise that issue and the appellant did not request instructions on the law of accomplice nor did he object to the trial court not giving the instruction.

For these reasons, respondent requests that the judgment of the trial court be affirmed.

Respectfully submitted,

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