1964

State of Utah v. James Edward Bryan : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT

of the
STATE OF UTAH

STATE OF UTAH,

Plaintiff - Respondent,

vs.

JAMES EDWARD BRYAN,

Defendant - Appellant.

Case No. 10065

BRIEF OF APPELLANT

Appeal from Conviction of Automobile Homicide in the District Court of Salt Lake County, Hon. Ray Van Cott, Jr.

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STATEMENT OF THE NATURE OF CASE

This is a criminal action. The defendant was charged with Automobile Homicide of a friend who was a passenger in the car of the defendant, wherein the wife of the deceased and the wife of the defendant were likewise passengers and killed.

DISPOSITION IN LOWER COURT

The case was tried to a jury in the District Court of Salt Lake County. Judge Ray Van Cott, Jr., presided.

The defendant was convicted and appeals.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the judgment and dismissal of the information as a matter of law; or, that failing, a new trial.

STATEMENT OF FACTS

On the 1st day of June, 1963, the defendant had driven his automobile into a flat-bed truck which was parked along side State Street in Salt Lake County. The defendant et ux and the deceased et ux had been together that evening in a social capacity. All four had been drinking whiskey. The defendant was the sole survivor of the accident.

When the investigating officers arrived at the scene, the defendant was sitting on the sidewalk near a fire hydrant *away from his automobile* (T. 8) holding a handkerchief to his forehead in aid of a laceration received in the accident which required stitches. (T. 177) *The arresting officer never saw the defendant drive the automobile or even as an occupant of it.* (T. 177) *The defendant was not arrested at the scene.* (T. 187, 196)

All four occupants of the automobile were taken to the Salt Lake County General Hospital for treatment. Among other things, the defendant was placed under *arrest* by Officer Steinfelt (T. 196, 197, 192, 212 for

the crime of Operating a Motor Vehicle While Under The Influence of Intoxicating Liquor, a *misdemeanor,* inviolation of 41-6-44(a) *U.C.A.,* 1953, *before* the blood was extracted from his person for purposes of a chemical test to determine the percentage of blood alcohol volume by weight therein.

At time of arrest, the arresting officer had no probable cause to believe a *felony* had been committed, because all four occupants were still alive and being treated (T. 190) at the hospital, though the deceased et ux and the wife of the defendant did in fact die later the next day.

Though there seems to be dispute as to proper procedure being followed with respect to chemical tests and revocation of licenses (41-6-44.10, U.C.A., 1953, as amended in 1959), there is no dispute about the arresting officer *suggesting* the defendant submit to a blood test (T 166) and arrested him *before* he submitted.

The attending intern had this to say, inter alia, concerning the *consent* of the defendant to the extraction of the blood sample after his arrest:

> "He didn't really object. He was not exactly — I would not state he was very willing, or cooperative, but he did not place any great protest against this." (T. 234)

". . . All I can remember is the general impression. There was no physical abuse, or even *marked* verbal abuse. It's just that in my impression, or terms, the patient was not exactly cooperative in this. (T. 242, 243)

". . . not without restrictions." (T. 243)

". . . did not want blood taken." (T. 243)

". . . reluctantly complied." (T. 243)

". . . could I possibly keep him here for 24 hours — meaning in the hospital — for the pur- he felt would *force* him into making some sort of a confession or statement." (T. 246, 247)

". . . asked only about blood test, no urine, no breath." (T. 244, 245)

All of which *followed* the *illegal* arrest.

After the defendant had been stitched, seized, stuck and searched, he was taken before a committing magistrate in Salt Lake County, where a complaint and warrant of arrest were first obtained for his being charged with any crime. (T. 27)

He was booked in the Salt Lake County Jail for drunk driving (T. 30), a charge which is still pending.

There was no arrest nor complaint for public intoxication. (T. 34)

A complaint for automobile homicide was signed three or four days *after* the accident and *after* and because of receipt of the results of the blood test (T.34), which was the only other evidence received after the investigation of the accident of the accident the night it happened and the signing of the felony complaint for which the defendant stood trial, was convicted and now appeals.

POINT I

(and only)

THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE THE CHEMICAL RESULTS OF A SAMPLE OF BLOOD WHICH WAS EXTRACTED FROM THE PERSON OF THE DEFENDANT FOLLOWING AN UNLAWFUL ARREST IN VIOLATION OF STATE STATUTE AND THE CONSTITUTIONAL RIGHTS OF DUE PROCESS AFFORDED APPELLANT AGAINST ILLEGAL SEARCH AND SEIZURE.

"In our state we have a *rule of reason* under Title 77-13-3, Utah Code Annotated, 1953, which allows a peace officer to arrest without warrant" (State v. Louden,..... Utah....., 1963, 387 P. 2d 240, Henroid, C. J., concurring) 1) one committing a *misdemeanor* or felony in his pres-

ence, and 3) where a *felony* has been committed and the officer has reasonable cause to believe the arrested person committed it.

Likewise, in our state we have a *rule of law* under Title 76-28-52, Utah Code Annotated, 1953, which makes it a *crime* for a police officer under *pretense* of legal authority to *arrest* any person . . . or seize . . . without a regular process or other lawful authority.

In the instant case, the defendant had been arrested for a *misdemeanor* that was *not* committed in the presence of the arresting officer. Nor did the arresting officer have probable cause to believe a *felony* had been committed *prior to his arrest* of the defendant, because no one had to that time died as a result of the accident. (T. 171, 190) Furthermore, no legal process for arrest or search had been obtained.

The arrest of the defendant was, in a word, *illegal.*

The search of the person of the defendant by extracting his blood was, in a word, *unreasonable.*

Inter alia, before a search can be reasonable, it must, as a matter of law, be incidental to a *lawful* arrest. (C. J. S., Criminal Law, Sec. 657(7), pp. 601, 602, n. 97, citing cases from Cal., Del., Fla., Ill., Ind.,, Ky., Mich., Miss., Mo., Mont., Okl., Tenn., Wash., W. Va., and Wis,;

Hurst v. People, D. C. Cal., 211 F. Supp. 387, *Rios v, United States*, 1960, 364 U. S. 253, *Miller v. United States*, 1958, 357 U. S. 301, *Accarino v. United States*, D. C. Cir. 1949, 179 F. 2d 456, *Mapp v. Ohio*, 1961, 367 U. S. 643, et al, et al, et al. See also, 49 *Iowa L. R.* 14, 1963, 55 *N. W. L. R.* 525 et al, et al, et al.)

If the arrest is in incidental to the search, and the search is *not* incidental to the lawful arrest, the evidence must be excluded. (*United States v. Block*, S. D.-N. Y., 1962, 202 F. Supp. 705.)

If the purpose of the arrest is merely to conduct the search, the evidence is inadmissible. (*Jones v. United States*, 1958, 358 U. S. 493, *Lefkowitz vs. United States*, 1932, 285 U. S. 452, *Worthington v. United States*, 6th Cir., 1948, 166 F. 2d 557, *Papani v. United States*, 9th Cir., 1936, 84 F. 2d 160, *Henry v. United States*, 1959, 361 U. S. 98, 80 S. Ct. 168, 4 L. Ed. 2d 134, *People v, Allen*, 1963, 214 C. A. 2d....., 29 C. R. 455.)

"A search or seizure made pursuant to a valid consent *before* any *illegal* police conduct occurs is obviously not a product of illegal conduct. A search and seizure made pursuant to consent secured immediately *following* an *illegal entry* or *arrest*, however, is inextricably bound up with the illegal conduct and cannot be segregated therefrom." *People v. Haven*, 1963, 59 C. 2d 713, 31 C. R. 47, 381 P. 2d 927. See also, *State v. Lounden*, Utah,

1963, 387 P. 2d 240, Henroid, C. J., concurring, page 245, wherein it is concededly reasoned that evidence discovered as to the crime charged having been seized *following* an *illegal* entry "might be inadmissible, as offensive to the American traditional sense of fair play alone, — not necessarily because of the IV Amendment or any other Amendment — although the Mapp case puts it on the latter ground . . .")

Nor can there be any consent, which must be decided as a matter of law, (*People v. Chavez,* 1962, 208 C. A. 2d 248, 24 C. R. 895, *People v. Haven*, 1963, 59 C. 2d 713, 31 C. R. 47, 381 P. 2d 927), where the defendant acts in *fear.* (T. 246, 247) (*Castaneda v. Superior Court,* 1963, 59 C. 2d 439, 30 C. R. 1, 380 P. 2d 641)

The results of the blood test was evidence in the instant case which was, in a word, *inadmissable.* The trial court erred in denying defendant's motion to suppress that evidence (T. 264) which was timely made before and during trial (T. 2, 3, 4). The trial court further erred in admitting that blood test result into evidence (T. 103, 264), in denying defendant's motion to dismiss the information and in permitting the jury to determine that issue of the case. (T. 265)

Imagine! The trial court stated that it did not think there was any issue in the instant case concerning whether or not the defendant's contitutional rights were vio-

lated in taking the blood test. (T. 195) The trial court apparently limited its concern to the propriety necessary for revocation of license when driver refuses sobriety test.

Reflected realization that the courts of our state have blindly revered antiquity in approving unison, while illegally obtained evidence slithered through the halls of justice and bolted into the rooms of jury deliberation, would cause a casual observer to understand why the trial court failed to recognize this fundamental constitutional right of the accused. Nevertheless, understanding is one thing. Tolerance is quite another. Another that cannot be — at so great an expense as the liberty and fredom of a human being. The logic and the language of United States Supreme Court in the Mapp case et al will not permit the continuation of our former state rule of admissibility of illegally obtained evidence.

"The ignoble shortcut to conviction left open to the States tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured

by the Due Process of Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more that that which the Constitution guarantees him, to the police officer no less than that which honest law enforcement is entitled to, and, to the courts, that judicial integrity so necessary in the true administration of justice." (*Mapp vs. Ohio,* 367, U.S. C. 43)

Consoling, indeed, it is that the decisions of the United States Supreme Court are accepted by the courts of our state . . . and there is "no disposition to disagree with the doctrine that where police officers have obtained evidence by *illegal* methods, such as unlawful search in violation of the IV Amendment to the Unted States Constitution and Article 1, Section 14 of our Constitution it should not be used to convict a person of a crime." (*State v. Louden,* Utah, 1963, 387 P. 2d 240, also Henroid, C. J., concurring.)

Disappointing, indeed, it is that we are expected to overlook and not rebuke law enforcement officers, at the expense of the liberty of an accused, for their unintentional violation of the law. If they are to *enforce* the law, surely they should not *violate* the law. And if the accused is "presumed to know the law," wherein it is hammered home to him that "ignorance of the law is no excuse,"

why then, pray tell, should not the same apply to the officer? Especially where he not only *violates* state law and the supreme law of our land, the Constitution of the United States, but also commits a *crime* himself by so doing!

"With respect to the instant case, our course is clear under our state statute without any Mapp to guide us." (*State v. Louden,* Utah, 1963 387 P. 2d 240, Henroid, C. J. concurring), that is, the search was incidental to an *illegal* arrest, and the evidence is *inadmissible* in the instant case.

CONCLUSION

The defendant has been denied due process of law which is guaranteed by our State and Federal Constitution and Statutes. He has been deprived of a fair trial before an impartial jury. His conviction is not substantiated by the evidence. The trial and verdict constitute a miscarriage of justice and should be reversed.

Respectfullly submitted,

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