

1964

State of Utah v. Virgil Lee Wood and Robert Colvin : Brief of Appellants

Utah Supreme Court

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Galen Ross; Mitsunaga and Ross; Attorneys for Appellants;

A. Pratt Kesler; Attorney General;

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JUN 30 1964
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COURT

OF THE
STATE OF UTAH

STATE OF UTAH,

Respondent,

Case No.

FILED
MAY 25 1964

--VS--

VIRGIL LEE WOOD and
ROBERT COLVIN,

Supreme Court, Utah

10080

~~9734~~

Appellants.

BRIEF OF APPELLANTS

Appeal from the Judgment of the
3rd District Court for Salt Lake County
Hon. Aldon J. Anderson, Judge

UNIVERSITY OF UTAH

APR 23 1965

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GALEN ROSS of
Mitsunaga and Ross
Attorneys for Appellants
231 East 400 South
Salt Lake City, Utah

A. PRATT KESLER
Attorney General
Utah State Capitol
Salt Lake City, Utah

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IN THE SUPREME COURT

OF THE

STATE OF UTAH

STATE OF UTAH,)	
Respondent,)	Case No.
--vs--)	
)	9734
VIRGIL LEE WOOD and)	
ROBERT COLVIN,)	
Appellants.)	

BRIEF OF APPELLANTS

STATEMENT OF THE KIND OF CASE

Appellants were convicted after being tried jointly for Grand Larceny and Robbery.

DISPOSITION OF LOWER AND SUPREME COURTS

Appellants were convicted by a jury. They appealed, and the Utah Supreme Court held that the appeal was premature. State v.

Wood, 14 Utah², 192, 381, P², 278, because ad-
motions for a new trial had not been disposed
of. The case was resitted for argument, and
the Honorable Aldon J. Anderson, held that
there was no basis for a new trial.

RELIEF SOUGHT ON APPEAL

The Lower Court's denial of a new trial
be reversed.

APPEAL STATEMENT OF FACTS

On April 3, 1962, around 7:30 p.m., an
Billy C. Mower received a phone call, (R. 7,
1.9). The voice inquired if Mr. Mower, a
coin collector, would be interested in looking
at coins the caller possessed. An appoint-
ment was arranged at Mr. Mower's home. Some-
time after 9:00 p.m. there was a knock, which
Mr. Mower answered. There were two men on
the porch. One was dressed in a blue coat.
One walked around behind Mr. Mower into his
living room. (R. 9, 1. 22). One man was

carrying a brown package. Mr. Mower turned around and saw one man pointing a sawed-off shotgun at his stomach. Mr. Mower was required to lie face down on a couch, then he and Mrs. Mower were ordered into their bedroom and required to lie down on the bed with their hands behind them. The couple was bound and relieved of their wallets, (R. 13, 1.24).

Appellants were convicted, and moved for a new trial. The motion was based on an Affidavit wherein the foreman of the jury disclosed that he had found the Appellants guilty because he had seen, sometime before the trial, Appellant Wood wearing a blue coat; and Wood had testified at the trial that he did not own a blue coat.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN NOT GRANTING APPELLANTS' MOTION FOR A NEW TRIAL.

The trial Court erred in denying a new trial when it was shown that the jury foreman had based his determination of the truthfulness of the accused upon an extra judicial determination.

Before the trial convenes the jurors take the following oath:

"You and each of you swear that you will well and truly try the matter in issue and a true verdict render, (according to the evidence), and instructions of the Court."

The jury foreman failed to comply with the oath which he took as a juror to render verdict according to the evidence. The out of court evidence, which impeached the testimony of Appellant Wood, was, by its nature, unable to be counteracted by the defense.

Not granting a new trial would be holding that the oath is a meaningless ritual to be

dispensed with if expedient to uphold a conviction. This Court has held otherwise.

(Spangler v. District Court of Salt Lake County,
140 Pac. 2nd, 755). Failure to give the oath is prejudicial; an admitted disregard of that same oath could be no less.

The jury foreman was in essence a witness against the defense. A witness who silently testified in the jury room as he swayed the minds of the jury. A witness who did not come forward with the out of court evidence; evidence which he only possessed so that the appellants could have been confronted by the witness against them and rebut or cross-examine them in order that the truth could prevail. As such Appellants' right to confrontation was denied. (Utah Const., Art. I, sec. 12). (U. S. Const., VI Amendment).

CONCLUSION

By allowing a jury to convict on evidence not produced in Court, we are allowing the jury to violate its oath. Further, we are violating a man's constitutional right of confrontation.

Respectfully submitted,

GALEN ROSS of
Mitsunaga and Ross
Attorneys for Appellants
231 East 400 South
Salt Lake City, Utah