1984

State of Utah v. Jose Dejesus : Brief of Respondent

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.David L. Wilkinson and Dave B. Thompson; Attorneys for Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 19014
JOSE DEJESUS,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT RENDERED IN THE THIRD JUDICIAL DISTRICT COURT, THE HONORABLE HOMER F. WILKINSON, JUDGE, PRESIDING.

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TABLE OF CONTENTS

CASES CITED

STATUTES CITED

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STATEMENT OF THE NATURE OF THE CASE

Appellant, Jose DeJesus, was charged with aggravated robbery, a first degree felony, under Utah Code Ann. § 76-6-302 (1978).

DISPOSITION IN THE LOWER COURT

After a jury trial on January 17 and 18, 1983 in the Third Judicial District Court in and for Salt Lake County, the Honorable Homer F. Wilkinson, Judge, presiding, appellant was found guilty of aggravated robbery. Appellant was sentenced to the Utah State Prison for a term of not less than five years to life and fined $1000.00.

RELIEF SOUGHT ON APPEAL

Respondent seeks an order of this Court affirming the judgment and sentence of the trial court.

STATEMENT OF FACTS

On the afternoon of May 3, 1982, Miriam Davis and her daughter, Shauna, were working in Fankhauswer Jewelry, a store in Salt Lake City (T. 14-15, 60-61). Appellant and two male companions appeared outside the store and looked in through the window (T. 23-25, 64). As the men entered the store, appellant pulled a shotgun from underneath his coat, pointed it at Miriam Davis, and exclaimed, "This is a holdup" (T. 26, 66-67). After asking where the "big diamonds" were, appellant ordered Miriam and a customer to lie down on the floor and then directed Shauna to unlock several showcases so that his companions could remove the merchandise (T. 26, 67-69). Appellant also forced Shauna to show him where the cash drawer was (T. 67, 80). The robbers remained in the store for approximately ten minutes and then left (T. 29).

Shortly thereafter, police responded to a silent alarm triggered when appellant and his accomplices entered the store (T. 29). A large amount of merchandise and the contents of the cash drawer had been taken (T. 30-32). The police recovered from several of the display counters latent palmprints and fingerprints that matched appellant's (T. 87-88, 107-110). Three days after the robbery, Miriam Davis identified appellant in a photo lineup (T. 45, 58).

At trial, both Miriam and Shauna Davis positively identified appellant as the man armed with a shotgun who entered the jewelry store and robbed it (T. 26-26, 66). In an

effort to establish an alibi, appellant introduced into evidence an airline ticket allegedly purchased by appellant in New York City two weeks after the robbery occurred (T. 179-180, 182-183).

ARGUMENT

POINT I

THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.

When considering a challenge to the sufficiency of the evidence supporting a conviction, this Court has applied the following standard of review:

> This Court will not lightly overturn the findings of a jury. We must view the evidence properly presented at trial in the light most favorable to the jury's verdict, and will only interfere when the evidence is so lacking and insubstantial that a reasonable man could not possibly have reached a verdict beyond a reasonable doubt. We also view in a light most favorable to the jury's verdict those facts which can be reasonably inferred from the evidence presented to it.

State v. McCardell, Utah, 652 P.2d 942, 945 (1982) (citations omitted).

Appellant's contention that the evidence was insufficient as a matter of law to support the verdict is entirely without merit. He claims that the evidence he presented with respect to an airline ticket purchased in New York City on May 17, 1982, two weeks after the robbery, must

have raised a reasonable doubt as to his presence in Salt Lake City on May 3, 1982, the date of the robbery. This argument is based on two erroneous assumptions -- (1) that the evidence established that the airline ticket was actually purchased by appellant, and (2) that the evidence of the purchase eliminated the possibility that appellant was in Salt Lake City on May 3. A representative of United Airlines, the airline that sold the ticket, testified that the ticket was issued to an "I." or "J." DeJesus and that there was no way of knowing whether it was actually issued to appellant (T. 182-183, 188). Moreover, even if appellant did purchase the ticket on May 17, that certainly did not preclude his presence in Salt Lake City on May 3. The trier of fact simply was was not obligated to believe the evidence most favorable to appellant rather than that presented in opposition by the State; and the existence of contradictory evidence or of conflicting inferences does not warrant upsetting the verdict. State v. Howell, Utah, 649 P.2d 91, 97 (1982).

The positive in-court identification of appellant as the robber by the two victims and the photo lineup identification of appellant by one of the victims, coupled with the recovery of appellant's palmprints and fingerprints at the scene of the crime, constituted sufficient evidence to support a finding beyond a reasonable doubt that appellant was in the jewelry store on the date in question and that he

committed the crime charged. The evidence simply was not so lacking and insubstantial that a reasonable person could not possibly have found appellant guilty beyond a reasonable doubt.

POINT II

THE TRIAL COURT PROPERLY REFUSED TO GIVE APPELLANT'S REQUESTED JURY INSTRUCTION ON EYEWITNESS IDENTIFICATION.

Appellant's requested jury instruction on eyewitness identification (R. 59-61) is modeled after that recommended in United States v. Telfaire, 469 F.2d 552 (D.C. Cir. 1972). This Court has repeatedly held that a "Telfaire" instruction is not mandatory in all instances where eyewitness identification is crucial to the case. Instead, the decision of whether to give a Telfaire instruction is discretionary with the trial court. See State v. Bingham, Utah, ___P.2d___, No. 18774 (decided June 13, 1984); State v. Reedy, Utah, 681 P.2d 1251 (1984); State v. Malmrose, Utah, 649 P.2d 56 (1982). As noted in Bingham:

> Jury instructions must be considered as a whole. "When taken as a whole if they fairly tender the case to the jury, the fact that one or more of the instructions, standing alone, are not as full or accurate as they might have been is not reversible error." State v. Brooks, Utah, 638 P.2d 537, 542 (1981) (citation omitted).

Slip op. at p. 3.

The trial court's instructions in appellant's case (see, particularly, Instructions No. 3 and 7 (R. 67, 70)) fully informed the jury that the State had the burden of proving every element of the offense charged beyond a reasonable doubt. Instruction No. 10 (R. 73) instructed the jurors that they were the sole judges of the credibility of the witnesses and set forth specific guidelines for determining a witness's credibility. As in Bingham, the instructions, taken as a whole, "adequately advised the jury on the law pertaining to this case." Bingham, slip op. at p. 4, citing State v. Schaffer, Utah, 638 P.2d 1185, 1187 (1981). Significantly, two eyewitnesses (i.e., Miriam and Shauna Davis) positively identified appellant as the robber; and there was additional physical evidence linking appellant to the crime (i.e., appellant's palmprints and fingerprints found at the scene of the crime). Thus, this does not appear to be the kind of case identified by Justice Durham in her concurring opinion in State v. Newton, Utah, 681 P.2d 833 (1984), where "an instruction on the dangers of eyewitness identification is most appropriate." 681 P.2d at 834.

CONCLUSION

The evidence adduced at trial was sufficient to support the jury's guilty verdict. Further, based on this court's recent decisions concerning "Telfaire" instructions, the trial court's refusal to give appellant's requested eyewitness identification instruction to the jury was not error.

Therefore, the judgment of the trial court should be affirmed.

RESPECTFULLY submitted this 16th day of August, 1984.

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CERTIFICATE OF MAILING

I hereby certify that I mailed two true and exact copies of the foregoing Brief, postage prepaid, to Brooke C. Wells, Attorney for Appellant, Salt Lake Legal Defender Assn., 333 South 200 East, Salt Lake City, Utah 84111, this 16th day of August, 1984.

Kathleen Dugan Kellersberger