

1984

## The State of Utah v. Robert Steven Smith : Reply Brief of Appellant

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- IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH, :  
Plaintiff/Respondent :  
vs. :  
ROBERT STEVEN SMITH, : Case No. 19053  
Defendant/Appellant :

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REPLY BRIEF OF APPELLANT

Appeal from a judgment and conviction of Attempted Robbery, a Third Degree Felony, and Attempted Burglary, a Third Degree Felony, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable David B. Dee, presiding.

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Clerk, Supreme Court, Utah

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TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE. . . . .	1
DISPOSITION IN THE LOWER COURT . . . . .	1
RELIEF SOUGHT ON APPEAL. . . . .	1
STATEMENT OF FACTS . . . . .	2
ARGUMENT	
<u>APPELLANT WAS AN "ACCUSED" WITHIN THE</u> <u>SIXTH AMENDMENT MEANING OF THAT WORD</u> <u>FROM OCTOBER 15, 1981, WHEN HE WAS</u> <u>ARRESTED, UNTIL THE COMPLETION OF HIS</u> <u>TRIAL.</u> . . . . .	2
CONCLUSION . . . . .	3

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REPLY BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant, ROBERT STEVEN SMITH, appeals from a judgment and conviction of Attempted Robbery, a Third Degree Felony, and Attempted Burglary, a Third Degree Felony, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable David B. Dee, Judge, presiding.

DISPOSITION IN THE LOWER COURT

Appellant was convicted by a jury of Attempted Robbery, a Third Degree Felony, and Attempted Burglary, a Third Degree Felony, in violation of §76-6-301, §76-6-202, and §76-4-101, Utah Code Ann. (1978).

RELIEF SOUGHT ON APPEAL

Appellant seeks to have the conviction and judgment entered by him reversed and the charges dismissed.

STATEMENT OF FACTS

Appellant adopts by this reference his Statement of Facts contained in his original brief.

ARGUMENT

APPELLANT WAS AN "ACCUSED" WITHIN THE SIXTH AMENDMENT MEANING OF THAT WORD FROM OCTOBER 15, 1981, WHEN HE WAS ARRESTED, UNTIL THE COMPLETION OF HIS TRIAL.

The State has argued that appellant was not an "accused" until September 7, 1982, the date the formal information in this case was filed. This argument is grounded on the assertion that on October 15, 1981, appellant was arrested only for a parole violation, and not for the crimes for which he stood trial. This argument flies in the face of the facts of this case.

On October 15, 1981, appellant was only one of four individuals arrested. Appellant was on parole on this date, as was his co-defendant. However, the two younger men arrested at the same time and place, Brian Scott Moss and Gilbert Anthony Sisneros, were not on parole. They were arrested and therefore "accused" of the substantive crimes involved in that case on the above dates. (See trial transcript for 1/14/83 at 193-196.) Appellant must have stood, a fortiori, in a similar posture.

The State's argument requires that one ignore the aspect of the arrest which vitiates their position, the arrest for the substantive crime, and asks the court to focus only on the parole violation aspect. In fact, appellant was in the unfortunate

position of being accused both of substantive crimes and violation of his parole. The fact that he was exposed to the relatively quick administrative punishment of the parole board for parole violation does not negate the fact that he additionally was facing, as an "accused," new sanctions for the alleged violation of substantive law.

This conclusion is supported by the testimony of Thomas William Judd, a detective for the South Salt Lake Police Department, at the trial of this case. At the beginning of his testimony, he indicated that his first contact with the appellant was when the appellant "was in custody" on October 15, 1981. (Trial transcript for 1/14/83 at 193). Judd went on to say that his specific responsibility with respect to the present case was "to investigate the criminal activities that they (appellant and the other three individuals arrested) were purported to be involved in." Id. at 195. His general assignment was to investigate armed robberies and robberies (Id.), not to investigate parole violations.

#### CONCLUSION

The State's assertion that appellant was not arrested on October 15, 1981 for the crimes for which he eventually stood trial, but was only arrested for parole violation and therefore was not an "accused" as the word is used in the Sixth Amendment, is based on a myopic view of the facts. Simply saying something is not enough. The facts reveal that the appellant was arrested because of suspected criminal activity, otherwise there

would have been no basis for holding Moss and Sisneros. There was a basis for holding the latter two individuals: they were "accused" of the crimes that were the subject of this case. The appellant was "accused", within the meaning of the Sixth Amendment, as well.

DATED this 6<sup>th</sup> day of September, 1984.

Respectfully submitted

  
THOMAS J. MCCORMICK  
Attorney for Appellant

DELIVERED two copies of the foregoing to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Utah 84114, this 6 day of September, 1984.

