1984

The State of Utah v. Jerry L. Locke : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Respondent,	:	
-v-	:	
JERRY L. LOCKE,	:	Case No. 19067
Defendant/Appellant.	:	

BRIEF OF APPELLANT

Appeal from a judgment and conviction of Burglary, a Second Degree Felony, and Theft, a Class A Misdemeanor, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Scott Daniels presiding.

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The Appellant, JERRY L. LOCKE, was convicted in a criminal proceeding of the offenses of Burglary, a Second Degree Felony, and Theft, a Class A Misdemeanor, before the Honorable Scott Daniels, Judge of the Third Judicial District Court, in and for Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

The Appellant was convicted in a trial to the bench of Burglary, a Second Degree Felony, in violation of §76-6-202, Utah Code Annotated (1953 as amended), and Theft, a Class A Misdemeanor, in violation of §76-6-404, Utah Code Annotated (1953 as amended).

He was sentenced to incarceration at the Utah State Prison for the indeterminate term of one to fifteen years for the Second Degree Felony, and for the term of one year for the Class A Misdemeanor. The sentences were ordered to run concurrently with each other and also concurrently with sentences for other convictions the Appellant is presently serving at the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the convictions and the judgments rendered below, and requests the Court remand the case to the trial court for entry of an order not inconsistent with the opinion of this Court upon a finding of insufficient evidence.

STATEMENT OF THE FACTS

On or about December 6, 1981, at 4341 West 5415 South, Salt Lake County, State of Utah, the Appellant allegedly burglarized the home of Carol L. and Wendell Hibler and stole property belonging to them, the value of said property being more than $100.00 but less then $250.00 (T.29). The testimony adduced from Mrs. Carol L. Hibler was that upon returning to her home at 10:00 p.m. she noted that it was cold in the interior of the house and that a window in a back bedroom was open (T.41). Upon looking out the window, Mrs. Hibler and her husband, who has since passed away, saw a stool belonging to them underneath the window (T.39). The open window was of the type that could only be opened by cranking a lever from the inside (T.41). There was no evidence of any glass having been broken or any portion of the window or accompanying storm screen having been pushed back.

Further investigation indicated to the Hiblers that a penny bank, (T.44), three one-dollar bills (T.45), and a silver necklace (T.45) were missing from the dresser area of the bedroom. The value of the necklace was approximately $120.00 (T.48). A subsequent police investigation consisted of a Salt Lake County Sheriff's Office Deputy coming to the address and dusting for fingerprints. Two single latent prints removed from the outside pane of the open window by a Salt Lake County Sheriff I.D. Technician, John Bell, were subsequently compared to and identified as being those of the Appellant, Jerry L. Locke (T.107). Over defense counsel's objection at trial, Bell testified as to his conclusions that the latent prints were those of the Appellant (T.114-9).

The testimony of a neighbor, Geri Winkler, was that although she passed a male individual walking from the general direction of the Hibler residence, she could only say the Appellant "resembled him." (T.71.) Mrs. Winkler also acknowledged that at the Preliminary Hearing she did not identify the Appellant as the individual she passed the evening of December 6, 1981 (T.75).

ARGUMENT

THE TRIAL COURT COMMITTED ERROR BY ALLOWING THE TESTIMONY OF AN EXPERT WHO WAS UNQUALIFIED UNDER RULE 702, UTAH RULES OF EVIDENCE.

Rule 702, Utah Rules of Evidence, states the following concerning testimony by experts:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence, or to determine a fact in

> issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. (Emphasis added)

Application of this rule is, however, by definition not absolute. It is limited by the restriction that before receiving the conclusions or opinions of an "expert," a determination must be made as to whether the expert is qualified by knowledge, skill, experience, training, or education.

Appellant contends the expert offered by the State, whose testimony provided the only evidence against the Defendant, was unqualified by education and experience to render an opinion as to the latent fingerprints found.

Generally, a trial court has wide discretion in passing upon the qualification of a witness offered as an expert. People v. Chambers, 328 P.2d 236 (Cal. 1958); and, the Utah Supreme Court has held that law enforcement officers, if experienced, are competent to render opinions, State v. Fort, 572 P.2d 1387 (Utah 1977).

However, in those cases where Appellate review by other state supreme courts has specifically addressed the question of competence of individuals to testify concerning fingerprint evidence, each court has looked directly at the individual qualifications relating to the education, experience, and training of the person offered as the expert before determining the correctness of the trial court's ruling.

The relevant question, then, becomes, "What are the minimum standards which must be met by a witness offered as an expert in the area of fingerprint analysis before being allowed to testify and render an opinion?"

Salt Lake County Deputy Sheriff, John Bell, testified to the following experiences, which the State argued qualified him as an expert in the area of fingerprint identification, and therefore, made him a competent witness. He testified that:

1) He had been, at the time of trial, February 9, 1983, in the identification section of the Sheriff's Department for one and a half years (T.107); 2) He had graduated from the Institute of Applied Science in July, 1980 (T.107); 3) He had graduated from a 40-hour advanced FBI latent fingerprint course in May, 1982 (T.108); 4) At the time of trial, he had rolled approximately five sets of known prints per week and had been doing so 18 months prior to his testimony (T.108); 5) At the time of Appellant's trial, he had lifted over 1,100 latent prints (T.110); 6) He is a member of the International Association for Identification and receives monthly periodicals (T.110); and 7) At the time of trial he compared, per week, approximately 5 latent prints against known inked impressions (T.110).

Yet, before rendering a conclusion concerning print identification, defense counsel through voir dire questioning and cross examination gleaned further information as to the extensiveness of the qualifications of the proposed expert: 1) Only 75 percent of the witness' time in the Identification Division is spent in the area of fingerprint work (T.114); 2) Fourteen months had elapsed between the time the witness completed the correspondence course and his being placed in the Identification Division (T.115), and that the witness had been an ID Technician only two weeks at the

time of the Hibler burglary (T.140); 3) The applied science course consisted of 13 lesson plans completed over a 13-month period during which the witness never met with an instructor (T.117); 4) The only reading the witness had done, outside from the monthly sheet distributed within his department, was from the FBI handbook (T.118); 5) The witness had read "bits and pieces" of other books which he could not name (T.118); 6) The witness was unable to articulate the name of but one author of an article concerning some area of fingerprinting, but was unable to say what the article was about and admitted to not having read it in its entirety (T.120).

Concerning the fingerprint evidence offered against the Appellant, cross examination further revealed that the witness could not testify as to when he compared the latent prints found at the Hibler home with a known inked impression of the Appellant (T.136); that he could not find his report concerning Appellant's case (T.136); Appellant's name was suggested for comparison by the investigating detective and did not result from an independent classification comparison (T.138); the witness had made no diagram depicting the location of the latent prints on the window and had no report at trial to rely on for refreshing his memory (T.145); although other fingerprint smudges were found suggesting the possibility of other or different prints on the window, no notes were made or kept by the witness (T.148); a latent print of a person other than the Appellant and the Hiblers was found but not compared with any other individuals' known prints (T.155).

Despite this testimony, the trial court overruled defense counsel's motion objecting to the rendering of a conclusion by the witness, thereby committing prejudicial error.

The issue of qualification has been raised before and in each case, where the appellate courts determined to uphold the trial court's ruling it was based on qualifications far stronger than those of Bell. In Hardison v. State, 437 P.2d 868 (Nev. 1968), the court ruled admissible the testimony of an officer after it found a background of 6 months formal training on fingerprint classification and identification methods, 16 months of in-service training, and the lifting of 1,000 latent prints by the time of the witness' involvement in the Hardison case. Another Nevada case, Collins v. State, 488 P.2d 544 (Nev. 1971), found the witness qualified where a home-study course was finished, but where there had been a minimum of 24 months in-service training, with over 1,000 comparisons made. The issue of completion of the FBI training course was addressed in State v. Thomas, 553 P.2d 1357 (Wash. 1976). This training, when coupled with 9 years experience as a law enforcement officer with 1 1/2 years in the Identification Division and a college degree in law enforcement, was deemed sufficient.

In the case of State v. Watson, 587 P.2d 835 (Idaho 1978), the Supreme Court of Idaho was asked to find unqualified a police officer with 250 hours of schooling in fingerprint identification who had read extensively in the field of fingerprinting and had processed 20,000 sets during his career.

Although in the cited cases each appellant was unsuccessful in convincing the court of the lack of education and experience of that witness, the facts addressed by the Idaho Court reveal a witness brought into question who was far more qualified than Deputy Bell. Appellant argues that Bell is even less educated and under-qualified than the witnesses whose testimonies were accepted.

The California case of People v. Chambers, supra, stands for the principle that, despite the general rule, trial courts are not bound to accept the testimony of expert witnesses if the court determines they are unqualified. For example, a proposed witness, although not a police officer, had a college degree in criminology, read books on the subject of fingerprinting, discussed the subject with people in the field, and had lifted latent prints and made comparisons with known prints. His testimony was stricken as incompetent despite the offering party's reliance on such authorities as Fricke on California Criminal Evidence, 3d.Ed., 141-3, and cases cited therein to the effect that, although a witness has not had any personal experience, he may still be qualified to testify on a subject which he is shown to be familiar as a result of study, reading, and education.

The above cases are distinquishable and the rulings, thereby, inapplicable except as to provide a means by which to measure Bell's qualifications.

CONCLUSION

Although the trial judge was also the trier of fact, the conclusions reached by a witness so inexperienced, uneducated, and unprepared as was Officer Bell, could not have been convincing beyond a reasonable doubt and it is only fair to conclude that the trial judge, once having made an evidentiary ruling, felt bound by that ruling. Prejudicial error was committed requiring that the Defendant's convictions be overturned.

RESPECTFULLY SUBMITTED this 5 day of May, 1984.

Brooke Wells

BROOKE C. WELLS
Attorney for Defendant/Appellant

DELIVERED two copies of the foregoing to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Utah, 84114, this 5 day of May, 1984.

Carma Johnson