1984

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

IN THE SUPREME COURT OF THE STATE OF UTAH

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

BRIEF OF RESPONDENT

APPEAL FROM A CONVICTION FOR BURGLARY AND THEFT IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE SCOTT DANIELS, PRESIDING.

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STATEMENT OF THE NATURE OF THE CASE

Appellant, Jerry L. Locke, was charged with Burglary, a Second Degree Felony, in violation of Utah Code Ann. § 76-6-202 (1978), and Theft, a Class A Misdemenaor in violation of Utah Code Ann. § 76-6-404 (1978)

DISPOSITION IN THE LOWER COURT

Appellant was tried by the court and convicted of Burglary and Theft on February 9, 1983 in the Third Judicial District Court, the Honorable Scott Daniels, Judge, presiding. Appellant was sentenced on February 9, 1983 to an indeterminate term of one to fifteen years imprisonment.

RELIEF SOUGHT ON APPEAL

Respondent seeks an order of this Court affirming the conviction and sentence of Appellant.

STATEMENT OF THE FACTS

Mr. Wendell Hibler and Mrs. Carol Hibler resided for thirty years in a home located at 4341 West 5415 South, Salt Lake County. They lived there with their son, Philip Hibler, and their grandson, Timothy Hibler (T. 29). Mr. Wendell Hibler has since passed away, dying one week prior to the date of trial (T. 51).

On Sunday, December 6, 1981 Mr. and Mrs. Hibler left their home at 3:30 p.m. to attend a dinner engagement in Salt Lake City. Neither their son nor their grandson was at home (T. 35). Before departing they had locked all the doors and windows in the house. They returned home at 10:00 p.m. that same evening (T. 35, 36). Mrs. Hibler, upon entering the house, immediately became aware of the cold temperature inside and proceeded to investigate (T. 37). When she entered their bedroom she observed that the inside storm window had been pushed asise and that the outside bedroom window was open (T. 38). The window was of the type that swings in and out when cranked by a handle on the inside (T. 34). The window was damaged and the window arm later had to be replaced (T. 80, 81). The window appeared to have been sprung (T. 100). Outside and below the open window was a three foot high stool that was normally kept elsewhere (T. 39, 40). Inside the bedroom there was evidence that a plant had been moved. Clothing belonging to Mr. Hibler was found lying on the floor. Pieces of that clothing had been torn (T. 42). The dresser

drawers were partly opened (T. 99). Missing from the home were several dollars in currency, a savings bank containing approximately $30.00 in coin, and a silver necklace valued at $124.00 (T. 44, 45, 48).

During a subsequent sheriff's investigation, Deputy John Bell, an indentification technician with the Salt Lake County Sheriff's Office, was called to the scene. Officer Bell began an investigation of the crime area by dusting for latent fingerprints. Fresh smudges were visible on the outside of the open bedroom window (T. 113, 119), and several clear latent prints were lifted from the lower right inside corner of the window. The window was hinged on the left (T. 120, 121). These latent prints were later compared with a known ink impression of the fingerprints of appellant, Jerry L. Locke (T. 124, 125). The result was a positive matching of the latent prints lifted from the crime scene with fingerprints from a finger on both the right and left hands of appellant (T. 132, 133, 135).

Investigation further revealed that at approximately 8:30 p.m. on Sunday, December 6, 1981 a neighbor of the Hiblers, Geri Winkler, passed a male who resembled appellant on the sidewalk several doors from the Hibler Home (T. 66, 67, 71).

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY ALLOWED AN EXPERT WITNESS, OUALIFIED IN THE SCIENCE OF FINGERPRINT IDENTIFICATION, TO GIVE TESTIMONY UNDER RULE 702, UTAH RULES OF EVIDENCE.

Appellant claims that the trial court erred when it permitted Officer Bell of the Salt Lake County Sheriff's Office, a technician trained in the science of fingerprint identification, to testify that appellant's fingerprints matched those found at the scene of the crime because Officer Bell's training was purportedly inadequate.

Rule 702, Utah Rules of Evidence provides:

> 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.

Respondent submits that Officer Bell was qualified as an expert pursuant to Rule 702 and that the trial court properly acted within its discretion in allowing Officer Bell's testimony at trial. When Officer Bell testified at trial, he had five years experince in law enforcement with 1 1/2 years of experience as an identification technician. He had graduated from the Institute of Applied Science in fingerprint identification after completing a thirteen month home study

course. And he had completed a forty hour advance latent print course given by the Federal Bureau of Investigation. Officer Bell was an experienced technician having rolled on the average five sets of prints a week for a year and a half. He had been lifting latent prints for 1 1/2 years and had been involved in over 1,100 different cases. And he had compared approximately five latent prints a week against known fingerprint impressions. Officer Bell is a member of the International Association for Identification and he keeps abreast of his profession by studying the monthly literature sent out by that organization (T. 107, 108, 110, 115, 116).

The question of a witness' qualification as an expert has traditionally been left to the sound discretion of the trial judge. "It is within the discretion of the trial court to determine the suitability of expert testimony in a case and the qualifications of the proposed expert witness." State v. Clayton, Utah, 646 P.2d 723, 726 (1982). "Because of his position as the authority in charge of the trial, the trial judge should be allowed a reasonable latitude of discretion both as to the necessity for such expert testimony and as to the qualification of the witness to give it." Marsh v. Irvine, 22 Utah 2d 154, 158, 449 P.2d 996, 999 (1969). The trial judge in the instant case scrutinized Officer Bell's credentials, found them acceptable and allowed him to testify. In doing so the trial judge did no more than exercise reasonable discretion as was his prerogative and duty.

The standard for reversal of a trial judge's decision to allow expert testimony was articulated in Lamb v. Bangart, Utah, 525 P.2d 602 (1974). "The trial court is allowed considerable latitude of discretion in the admissibility of expert testimony, and in the absence of a clear showing of abuse, this Court will not reverse." Lamb at 607-608. This Court has further stated, "[t]he rulings of the district court on the admissibility of such testimony are not lightly disturbed on appeal, nor at all, unless it clearly appears that the judge was in error." Maltby v. Cox Const. Co., Inc., Utah, 598 P.2d 336, 340 (1979), cert. denied 444 U.S. 945 (1979). Appellant fails to show any error or abuse of discretion, or to cite any case in support of his complaint that it was error or abuse of discretion for the trial court to allow Officer Bell to testify. Indeed, the facts of this case demonstrate the contrary to be true. Officer Bell by both training and experince was qualified to testify regarding fingerprint identification.

The cases from neighboring jurisdicitons cited by appeallant fully support the correctness of the trial court's decision in the present case. In Hardison v. State, Nevada, 437 P.2d 868 (1968) no error or abuse of discretion was found where a police officer with similar training to that of Officer Bell was allowed to testify as an expert witness. The officer in that case had six months training from the Institute of Applied Science in fingerprint identification,

one year and four months on the job experience and studied the monthly F.B.I. bulletins. He had lifted approximately 1,000 latent prints, had compared approximately 600 latent fingerprints with those in police files and had made fifteen positive comparisons. In the case at bar Officer Bell had completed thirteen months training from the Institute of Applied Science as well as an advanced F.B.I. course. He had 1 1/2 years experience and had been involved in more than 1,100 cases (T. 107, 108, 110). In Collins v. State, Nevada, 488 P.2d 544 (1971) an officer who had completed a home study course in fingerprint identification with the Institute of Applied Science who had two years on the job experience, and who had made 1,000 fingerprint comparisons was held to have sufficient experience to testify as an expert witness. Officer Bell's experience is comparable to that of the officer in Collins. Nor was any error or abuse of discretion found in State v. Thomas, Washington, 533 P.2d 1357 (1976) where an officer was held qualified to give expert testimony who had 1 1/2 years experience in the identification department, had lifted several hundred sets of fingerprints, and who possessed a two year college degree in law enforcement. Officer Bell's experience compares favorably with that of the officer in Thomas.

Furthermore, "a challenge to the reliability of such expert testimony will be considered as not involving its competency but its weight and credibility, which is a matter

for the jury to determine." Lamb v. Bangart, Utah, 525 P.2d 602, 608 (1974). As long as a reasonable basis can be found to support the trial court's decision to allow the witness to testify as an expert, the testimony will be permitted as competent evidence. The witness' qualification then becomes a matter of the weight to be given the evidence which is decided by the trier of fact. Webb v. Olin Mathison Chem. Corp., Utah, 342 P.2d 1094 (1959). It is not a function of a reviewing court to weigh the evidence or credibility of witnesses. State in Interest of M----S----,Utah, 584 P.2d 914 (1978); State v. Logan, Utah, 563 P.2d 811 (1977). Officer Bell clearly had sufficient education and experience for the trial court to have a reasonable basis to allow the testimony. The reliability of his testimony if in doubt is a matter of the weight to be given his evidence by the trier of the fact. Appellant on cross-examination had every opportunity to illuminate any weakness in Officer Bell's testimony or in his credentials as an expert witness. The court after hearing all of the evidence believed Officer Bell. Appellant has had a fair trial and was convicted on competent evidence which was properly admitted.

CONCLUSION

Officer Bell possessed the requisite skill and knowledge to qualify as an expert in the field of fingerprint identification. The trial court acted properly and within its discretion in permitting Officer Bell to testify.

Furthermore, the reliability of Officer Bell's testimony is a matter of weight to be determined by the trier of fact.

RESPECTFULLY submitted this 21st day of June, 1984.

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CERTIFICATE OF MAILING

I hereby certify that I mailed a true exact copy of the foregoing Brief, postage prepaid to Brooke Wells, attorney for appellant, 333 South 2nd East, Salt Lake City, Utah 84111, this 21st day of June, 1984

Kathleen Dugan Bellshaw