1964

State of Utah v. Wayne Pearson : Brief of Appellant

IN THE SUPREME COURT

OF THE

STATE OF UTAH

OF UTAH,)

Respendent,)

--)

PEARSON,)

Appellant.)

BRIEF OF APPELLANT

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TABLE OF CONTENTS

CASES CITED

STATUTES CITED

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STATE OF UTAH

STATE OF UTAH,)

Respondent,)

--vs--) Case No. 10057

WAYNE PEARSON,)

Appellant.)

BRIEF OF APPELLANT

STATEMENT OF THE CASE

Appellant was charged pursuant to an information charging him of violation of Title 76, Chapter 50, Section 2, Utah Code Annotated, 1953, Escape from the Utah State Prison. He was tried on the 7th day of October, 1963, in

the Third Judicial District Court in front of Judge and jury.

DISPOSITION MADE BY THE LOWER COURT

The jury rendered a verdict of guilty. The Appellant was sentenced for not less than one year and not more than ten years to commence at the expiration of the sentence for which he is now incarcerated.

RELIEF SOUGHT ON APPEAL

Reversal of Trial Court's judgment.

STATEMENT OF FACTS

On May 22, 1963, in broad daylight, Appellant escaped from the Utah State Prison, climbing two fences amid gunfire, and driving away in a visitor's auto. The next day he surrendered to the Assistant Warden (T-18).

Appellant testified in his own behalf (T-20). He stated that two weeks before he had had a fight with an inmate over a radio, which Appellant had accidently broken. A

few days later he, "was beat up," (T-21).

Appellant reported this incident to officer Cole, a guard, and Lieutenant Coleman (T-22). He had tried to see the Warden (T-23); tried to be put in isolation (T-23); thought his life was in danger (T-23). He was informed that he could not be moved until the Deputy Warden's okay came through (T-23).

After being beaten up again by five individuals, he again contacted a guard; but the guard on duty could not contact Lieutenant Coleman (T-24, 25). On another occasion he was informed that he could not be moved "without cause," and was told he should kick out a window. He was beaten up again (T-25).

Immediately before Appellant escaped, he was knifed (T-26), and told by two or three inmates, "We'll kill you!" He then ran through the Chapel, hiding there a few minutes from

his pursuers (T-28-34), and proceeded across the fences (T-28-34).

During cross-examination, Appellant stated that he had not been planning the escape for a considerable time, but only that night. He said that he had thought about escaping with the three beatings, but left only when "that knife came out," (T-29).

The court refused to allow Appellant to answer the question whether he felt that if he did not escape that he would be killed (T-32). The court, taking the position that the Appellant had to be pursued by someone at the instance that he escaped before the defense of coercion could be raised, further stated (in front of the jury), "If I am cornered, and I have to go over the fence to escape with my life, that is justification. If I am threatened over a period of three days, I don't think that

is. The defense then established that the time was ten minutes after Appellant was knifed (T-32) that he went over the fence.

Appellant admitted that after going over the first fence he could have stopped, but did not. The reason given was that he was only thinking of getting away (T-35).

After the defense rested, the trial judge, on motion of the prosecutor, instructed the jury to disregard the Appellant's testimony as to coercion and duress. The Court further refused Appellant's proposed jury instruction in this regard.

STATEMENT OF POINTS

POINT ONE:

THE COURT ERRED IN STRICKING APPELLANT'S TESTIMONY AS TO COERCION.

POINT TWO:

THE COURT ERRED IN REFUSING TO INSTRUCT THE JURY AS TO COERCION.

ARGUEMENT OF THE POINTS

Even though there are two points of appeal, they are both concerning the trial court's attitude toward the defense of coercion; and the same law applies. They will be treated together for the purpose of this brief.

Utah Code Annotated, 76-1-41, provides,

> "All persons are capable of committing crimes except those belonging to the following classes: . . . 9:
>
> 'Persons, unless the crime is punishable with death, who commit the act or make the omission charged under threats or menaces sufficient to show that they have reasonable cause to believe, and do believe, their lives will be endangered if they refuse.'"

Appellant's Instruction No. 1, refused by the trial judge, stated:

> "A person is not capable of committing a crime when the action done was done under threats or means sufficient to show that the defendant had reasonable cause to believe and did believe that his life would be endangered if he refused."

May it be noted that the Instruction quotes the statute; hence, arguement to the effect that the Instruction, if not the law, would not be well taken.

Generally the courts have said that by common law the defense of coercion is available except in capital cases, but that to constitute the defense the coercion must be present, imminent, and impending, and of such a nature as to induce a well-grounded apprehension of death or serious bodily injury if the act is not done.

This court must decide if under our statute there must be imminentness. Our legislature seems to base the criteria on "reasonableness" rather than imminentness. Reasonableness is a much better criteria, which might include imminentness, but which is broader. However, even where imminentness is required the courts

have held that coercion is a jury question except in cases where imminentness is obviously lacking.

State v St. Clair, (Mo., 1953), 262, SW 2nd, 25, was a robbery case, the Classical one; defendant claimed if he did not go along, he would be killed. The court, in a very good decision, goes into the law stating imminentness as the criteria, and whether or not defendant could have avoided the criminal act. The court reversed and remanded stating that the question is one for the jury.

In White v State, (Tex., 1947), 203 P 2nd, 222, again the Classical robbery case where defendant feared death if he did not participate, the court states:

> "Whether (the defendant) was under duress or merely pretended to be was a question of fact to be solved by the jury."

The case held the trial court in error for not so instructing.

The courts have more trouble when they get away from the case book example. In Commonwealth v Reffitt, (Ky., 1912), 149 Ky. 300, 148 SW 48, the defendant sold pooled tobacco and claimed that he originally joined the pool because he was afraid of the "Night Raiders," a local pooled tobacco group that had done some burning and whipping in the area. The court held that coercion was a jury question. It is noted that imminentness is not gone into in this case, nor were defendant's fears overt. The threat was a silent one coming from the "Raiders'" actions to other non-pooled farmers. The court felt that the question of duress was best left to the jury. Perhaps the local citizenry knew more about the "Night Raiders" than did the

judges. The sutle threats of the "Night Raiders" might be compared to the sutle threats of idle inmates at the Utah State Prison, who have been known to fulfill their threats by severing a man's head, (State v Garcia, 11 Ut. 2nd 67, 355 Pac. 2nd, 57), and cutting them in half, (State v Langley, unreported).

People v McClinton, (Mich., 1916), 160 NW, 465, was a perjury action where the defendant claimed that he lied the first time he testified because of police officers' threats. The court reversed saying the defense of coercion is a jury question.

In People v Otis, (Cal., 1959), 344 P 2, 242, the defendant was found guilty of possession of a knife in prison. His defense was that being in prison he was afraid that other prisoners

might harm him; and he needed the protection of a knife. The Supreme Court of California felt that this was not imminent. However, it is pointed out that the trial court did give an instruction on duress in this case; but not as liberal as the defense desired.

The defense of duress and coercion should not be limited to the classical case where a man holds a gun on the defendant and orders him to commit a crime. Duress and coercion may be subtle, for example, where the defendant is left with no other alternative to save his life, but to commit a crime. Self preservation may lead us to do an act which not under such coercion would be criminal. At least the defendant should be able to put his theory of the case to a jury and let them determine whether or not his story is reasonable.

CONCLUSION

The defense of coercion and duress, as asked for in Appellant's instructions was a way perhaps of saying that the Appellant has a right to the defense of self-defense. Appellant had the right to kill his agressor, (a crime); hence, he should be able to commit a lessor crime to escape from his agressor. If one were to jay walk or run a stop sign to get away from an agressor, no one would critize. The fact that this Appellant climbed a fence at the Utah State Prison should not be any different.

Respectfully submitted,

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