

1969

William Coleman v. State of Utah : Brief of Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM COLEMAN,)

Defendant and APPELLANT,)

VS.)

Case No. 117

STATE OF UTAH)

Plaintiff and APPELEE.)

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF THE SECOND JUDICIAL
COURT FOR WEBER COUNTY, BEING GRANTED

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FILED

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IN THE SUPREME COURT

OF THE

STATE OF UTAH

WILLIAM COLEMAN,

Defendant-Appellant,

VS.

No. _____

STATE OF UTAH,

Plaintiff-Appellee

BRIEF OF THE APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a judgment and conviction after a trial by jury, in the Second Judicial District Court of Weber County State of Utah, on April 18, 1969, Appellant was convicted of the Crime of Assault with a Deadly Weapon with the Intent to do Bodily Harm, in - Case No. 8966.

DISPOSITION BY THE LOWER COURT

Appellant William Coleman, was tried before a jury on April 18, 1969, in the Second Judicial District Court of Weber County State of Utah, for the Crime of Assault with Intent to Commit Murder, in violation of Utah Code Annotated 1953, Section 76-30-14. Before the Honorable Edward Sheva, Presiding Judge.

(DISPOSITION BY THE LOWER COURT CONT.)

Appellant was convicted of the lesser included offense of Assault with a Deadly Weapon with the Intent to do Bodily Harm, in violation of Utah Code Annotated 1-53, Section 70-7-6. In Case No. 8966.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the lower Courts decision, or in the alternative a "New Trial."

STATEMENT OF FACTS

Appellant was Arraigned before the City Court of Ogden City, County of Weber, State of Utah, the Honorable Ronald C. Hyde, Sitting as a Magistrate. Upon a Complaint signed by Detective Gary E. Barnes, a Detective of Ogden, Police Department, Ogden, Utah. Stating:

"That said defendant did Assault LINDA MARTIN with intent to murder."

The said Complaint failed to satisfactorily state the specific time and place of the commission of said offense.

Appellant requested a preliminary examination after obtaining Counsel Richard Richards, a practicing Attorney of Ogden, Utah, appeared again before the Honorable Ronald C. Hyde, a Committing Magistrate on November 4, 1968. For preliminary examination and the case was continued until November 7, 1968. The matter was again continued until November 14, 1968.

(STATEMENT OF FACTS CONT.)

Appellant appeared with Counsel on November 14, 1968, for preliminary examination this time the Honorable - Glen J. Mecham, was setting as Magistrate.

Appellant was bound over to face the charged offense of Assault with intent to commit murder, in the Second - Judicial District Court of Weber County, State of Utah. The Court failing to ascertain the degrees of such - offense.

Upon Arraignment in the Second Judicial District - Court of Weber County, State of Utah. Appellant was - accused in an Information as follows: Case No. 8966-3

"WILLIAM COLEMAN, having heretofore been duly committed by GLEN J. MECHAM, a committing - magistrate of this County to this Court, to answer this charge, is accused by the District Attorney of this Judicial District, by this information, of the crime of ASSAULT WITH - INTENT TO COMMIT MURDER, committed as follows to-wit:"

"That said defendant did assault Linda Martin with intent to murder."

Said Information failing to state how the offense was alleged to have been committed or whether a weapon was - used, nor the time and the place of the alleged commission of said offense as required by law.

(STATEMENT OF FACTS CONT.)

Appellant appeared before the Honorable Parley E. -
Norseth, presiding Judge of the Second Judicial District
Court of Weber County, State of Utah, and entered a Plea
of Not Guilty and Not Guilty by Reason of Temporary -
Insanity, the case was ordered to be transferred to the
trial calander, to be set for trial.

On February 24, 1969. Appellant appeared before the
Honorable Parley E. Norseth, and was ordered to be -
committed to the Utah State Mental Hospital, at Provo,
Utah, (or to be evaluated by a psychiatrist) and commitment
to the Utah State Mental Hospital for a thirty day period
of Observation on March 3, 1969. Trial was continued.

On March 17, 1969. The time set for the hearing of
report from the State Hospital. The State of Utah, was
represented by Gary Gale, Assistant District Attorney.
The Defendant (Your Appellant) was not present nor represented
by Counsel.

On December 9, 1968, Counsel was appointed to take
over Defendant's case and represent him during the trial
stages.

Defendant (Your Appellant) was not provided with a
full transcript of the trial transcript setting forth the
transcript of testimony at trial, and is therefore -
handicapped and prevented from preparing an adequate brief.

(STATEMENT OF FACTS CONT.)

Court Appointed Counsel Mr. Ronald L. Rencher, upon Appellants conviction withdrew from the case - without preparing a notice of appeal. On May 9, 1969.

ARGUMENT POINT 1.

APPELLANT WAS DEPRIVED OF A SEPERATE HEARING ON THE ISSUE OF SANITY

Appellant submits that he was denied due process and equal protection of the law, for the reason that he was not afforded a seperate hearing on the issue of - sanity. Inasmuch as he was neither present nor represented by Counsel at the time the trial court entertained the report of the Utah State Mental Hospital. The Court is referred to Holmes v. United States, 363 F. 2d 281, 2 CLB No. 6, p. 38.

ARGUMENT POINT 2.

APPELLANT WAS DEPRIVED OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW THROUGH THE TRIAL COURTS FAILURE TO PROVIDE HIM WITH A TRANSCRIPT OF THE TRIAL CONTAINING THE TESTIMONY OF WITNESSES

Appellant submits that the United States Supreme Court has ruled that an indigent as a matter of due process and equal protection of the law, is entitled to a free transcript see: Griffin v. People of the State of Illinois, 351 U.S. 12 (1956), James v. United States, 366 U.S. 213 (1961).

ARGUMENT POINT 3.


APPELLANT WAS NOT AFFORDED THE EFFECTIVE AID AND ASSISTANCE OF COUNSEL DURING EACH OF THE CRITICLE STAGES OF THE PROCEEDINGS AGAINST HIM UP TO AND INCLUDING APPEAL PROCEDURE

Appellant submits that the record is clear on the fact that he was not represented by Counsel during each stage of the proceedings against him, and of the fact that Court Appointed Counsel failed to File a Notice of Appeal as would in the case at bar be required under the provisions of Utah Code Section 77-64-1. And decided cases and authorities.

CONCLUSION

WHEREFORE: For the foregoing reasons the Appellant submits that he is entitled to a Reversal and Discharge from his unlawful and unconstitutional confinement. Or in the alternative a New Trial.

RESPECTFULLY SUBMITTED


WILLIAM COLEMAN
P.O. Box 250
Draper, Utah 84020

Dated this ___ day of October 1969.

COPY SENT TO
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