1969

William Coleman v. State of Utah : Brief of Respondent

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

... OF UTAH,

Plaintiff-Resp...

vs.

... COLEMAN,

Defendant-App...

BRIEF OF ...

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STATE OF UTAH

STATE OF UTAH, *Plaintiff-Respondent,* vs. WILLIAM COLEMAN, *Defendant-Appellant.*	Case No. 11722

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant, William Coleman, was charged with assault with intent to commit murder in violation of Utah Code Ann. § 76-30-14 (1953). The appellant appeals from his conviction of the crime of assault with a deadly weapon with intent to do bodily harm in violation of Utah Code Ann. § 76-7-6 (1953).

DISPOSITION IN THE LOWER COURT

The appellant was found guilty after a jury trial of the crime of assault with a deadly weapon with intent to do bodily harm. The jury returned its verdict on April 18, 1969. The trial was presided over by the Honorable Edward Sheya, Judge, Second Judicial District Court, in and for Weber County, State of Utah, who sentenced the appel-

lant on the 8th day of May, 1969, to a term not to exceed five years in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

The respondent submits that the conviction of the appellant should be affirmed and asks this Court to hold that the trial court did not commit reversible error.

STATEMENT OF FACTS

The respondent agrees with the statement of facts as set out in the appellant's brief on page. 3. It should be emphasized, however, that the appellant was charged with assault with intent to commit murder but was convicted of a lesser included offense, to-wit: assault with a deadly weapon with intent to do bodily harm.

ARGUMENT

POINT 1.

THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR BY INSTRUCTING THE JURY TO DISREGARD THE OPINIONS OF THE WITNESSES AND THE DEFENDANT.

The respondent agrees with the appellant that the origin of jury Instruction No. 5 (R. 17) is found in the discussion between the trial court and counsel concerning a letter sent by the complaining witness, Linda Martin, to the appellant subsequent to the shooting and prior to the trial. The letter in question states what is obviously the

opinion of the complaining witness, i.e., that she felt the shooting was an accident. The trial court correctly ruled that Miss Martin's opinion as to what happened on the night in question was immaterial and would not be particularly helpful to the jury. It is clear that neither an expert nor a non-expert witness is permitted to state the legal result or effect of a particular transaction. *State* v. *Merritt*, 138 Mont. 546, 357 P. 2d 683 (1960). The instruction as it pertains to this particular complaining witness was, then, not error. The only other opinion testimony presented at the trial was that of Newell G. Knight (T. 235), and Roscoe E. Grover (T. 249).

The appellant's brief makes it clear that he is claiming error on the ground that Instruction No. 5 is so broad that it excludes from jury consideration the expert opinion testimony of Mr. Knight and Mr. Grover. Newell Knight testified as an expert on the physiological effects of alcohol, and Roscoe Grover testified as an expert on firearms (T. 235; 249). Both were called as defense witnesses. The testimony of Mr. Grover was mere speculation because the gun actually used by the defendant was not shown to be faulty. There was no showing that this witness had examined the gun used by the defendant, and the trial judge correctly pointed out that this witness testified only as to possibilities (T. 252). Even if the jury did disregard this testimony, the appellant would not be prejudiced thereby. This is especially true in light of the overwhelming testimony connecting the appellant to the crime. This Court cannot reverse for mere technicalities which do not affect the sub-

stantial rights of the parties, Utah Code Ann. § 77-42-1 (1953).

The testimony of Mr. Knight concerned the effect of alcohol on the human body. His testimony was based on a formula whereby the size of the man and the amount of alcohol over a certain period of time are calculated (T. 239). He testified that Mr. Coleman would probably have been impaired to some degree, but he was not sure just how much. The appellant cannot claim that the jury disregarded Mr. Knight's testimony. The appellant was charged with intent to commit murder which carries a five to life penalty. The jury convicted the appellant of the lesser included offense of assault with a deadly weapon with intent to do bodily harm. The lesser offense imposes a penalty of not more than five years in the Utah State Prison. Evidently, the jury did not disregard Mr. Knight's testimony. Moreover, the judge instructed the jury on the effects of alcohol.

> "Our law provides that 'no act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition.' This means that such a condition, if shown by the evidence to have existed in the defendant at the time when allegedly he committed the crime charged, is not of itself a defense. It may throw light on the occurrence and aid you in determining what took place; but when a person in a state of intoxication, voluntarily produced in himself, commits a crime, the law does not permit him to use his own vice as a shelter against the normal, legal consequences of his conduct.

> However, when the existence of any particular motive, purpose or intent is a necessary element to constitute a particular kind or degree of crime, the jury, in determining whether or not such motive, purpose or intent existed in the mind of the accused, must take into consideration the evidence offered to prove that the accused was intoxicated at the time when the crime allegedly was committed.
>
> This fact requires an inquiry into the state of mind under which the defendant committed the act charged, if he did commit it. In pursuing that inquiry, it is proper to consider whether he was intoxicated at the time of the alleged offense. *The weight to be given the evidence on that question and the significance to attach to it, in relation to all the other evidence, are exclusively within your province*" (R. 17, Instruction No. 7). (Emphasis added.)

This instruction shows that the judge's intention was not to instruct the jury to disregard the opinions of all the witnesses. In any event, Instruction No. 5 did not constitute error in light of all the facts and circumstances presented in this brief.

In this case, a reading of the entire record shows beyond a reasonable doubt that the appellant was properly convicted. Not only is there no reasonable doubt, there is no doubt at all. Several witnesses saw the appellant shoot the victim, Linda Martin. In fact, the defense counsel stipulated that the appellant fired the gun which injured Miss

Martin. In *State* v. *Valdez*, 19 Utah 2d 426, 432 P. 2d 53 (1967), the court stated that once a fair trial has been afforded the appellant, and a verdict supported by the evidence has been rendered, ". . . the proceedings are presumed to be valid; and we are not disposed to reverse for mere technicalities or irregularities unless they put the defendant at some *substantial* disadvantage or had some material bearing on the fairness of the proceedings or its outcome." *Id.* at 429, 434 P. 2d at 55. (Emphasis added.)

Utah Code Ann. § 77-42-1 (1953) is in accord:

> "After hearing an appeal, the court must give judgment without regard to errors or defects which do not affect the substantial rights of the parties. If error has been committed, it shall not be presumed to have resulted in prejudice. The court must be satisfied that it has that effect before it is warranted in reversing the judgment."

The appellant has failed to show any substantial prejudice and therefore the presumption of validity must stand. The appellant was given a fair trial, and the jury rendered a guilty verdict supported by clear and convincing evidence. Notwithstanding Instruction No. 5, the appellant cannot claim prejudice because the jury returned a verdict of a lesser included offense. There is no other alternative but to conclude that this verdict was based upon the opinion testimony of Mr. Newell Knight. The jury did take into consideration his opinion on the effects of alcohol on the appellant.

The Supreme Court has ruled that an error committed by the trial court does not constitute automatic reversal.

Chapman v. *California*, 386 U. S. 18 (1967); *Harrington* v. *California*, 395 U. S. 250 (1969).

> "A defendant is entitled to a fair trial but not a perfect one." *Lutwak* v. *United States*, 344 U. S. 604 (1953).

The substantial rights of the appellant were not affected in this case.

POINT II.

THE APPELLANT WAS GIVEN A FAIR TRIAL AND WAS NOT DENIED DUE PROCESS OR EQUAL PROTECTION OF LAW AT ANY STAGE OF THE PROCEEDINGS.

The appellant filed a pro se brief to this court in addition to the brief filed by his attorney. The respondent wishes to answer these arguments briefly.

The appellant first claims that he was deprived of a separate hearing on the issue of sanity. The record makes it clear that the appellant was given a continuance so that he could obtain the services of a psychiatrist (R. 8). The appellant thereafter entered a plea of not guilty by reason of temporary insanity (R. 10). He was taken from the Weber County jail and transported to the Utah State Hospital. Following an examination at the Hospital, Dr. Roger S. Kiger, M.D. and senior psychiatrist reported to Judge Norseth that the appellant was competent to stand trial (R. 11). No hearing need be held if the judge does not think it expedient. Utah Code Ann. § 78-48-4 (1953). Evidently, there was no necessity for a hearing in this instance.

The examination report was sent to Mr. Coleman's attorney, and the appellant cannot claim a denial of due process on the basis that no sanity hearing was held.

Secondly, the appellant claims that he was denied due process and equal protection of law because the trial court refused to provide him with a transcript of his trial. This is a factual question and not a proper question to be raised on appeal. In any event the appellant cannot claim prejudice even if no transcript was given to him personally. The appellant is having his case appealed at this time. A record and transcript was prepared at Mr. Coleman's request (R. 1-3). The Supreme Court also appointed Mr. Gerald G. Gundry to prepare a brief and argue Mr. Coleman's case before the court. Obviously, appellant's second point is without merit.

The appellant also claims that he was denied the effective assistance of counsel. The record indicates, however, that Mr. Coleman was adequately represented throughout every critical proceeding. A Notice of Appeal was timely filed and appellant cannot claim prejudice. There has been no showing of ineffective counsel, and this court has no other alternative but to deny appellant's Point III of the pro se brief.

CONCLUSION

The respondent asks this Court to affirm the judgment of the trial court and hold that the trial judge did not commit reversible error in giving Instruction No. 5.

Respectfully submitted,

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