

1972

The State of Utah v. Eugene Myers : Brief of Appellant

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In The Supreme Court of the State of Utah

THE STATE OF UTAH,

Plaintiff-Respondent,

-vs-

EUGENE MEYERS,

Defendant-Appellant.

} Case No.
12738

BRIEF OF APPELLANT

Appeal from the judgment and sentence entered against him by the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Joseph G. Jeppson, presiding.

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FILED

DEC 10 1972

Clerk, Supreme Court, Utah

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In The Supreme Court of the State of Utah

THE STATE OF UTAH,

Plaintiff-Respondent,

-vs-

EUGENE MEYERS,

Defendant-Appellant.

} Case No.
12738

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Eugene Meyers, appeals from a judgment and sentence entered against him in the Third Judicial District Court convicting him of forgery.

DISPOSITION IN THE LOWER COURT

Appellant was tried and convicted of forgery on December 22, 1971. On January 4, 1972, Judge Joseph G. Jeppson committed appellant to Utah State Prison to serve a sentence of one to twenty years.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the lower court and remand for a new trial.

STATEMENT OF THE FACTS

Appellant was charged with forging a check on the account of Royal Bell. Trial was held on December 16, 1971, December 17, 1971 and December 22, 1971. Appellant was present at his trial the first two days, but failed to appear on December 22, 1971. (R. 68) The state moved that the trial continue even though appellant was not present. (R. 65) Counsel for appellant asked that a mistrial be declared and that the trial be rescheduled and tried upon appellant being arrested upon a bench warrant. (R. 66) The court granted the motion to continue (R. 66) and then required defense to rest. (R. 67)

After the jury retired, counsel for appellant excepted to instructing the jury without the presence of the appellant, and further objected to any further proceedings in appellant's absence. (R. 69) The jury returned a verdict of guilty (R. 71) and sentencing was set for December 29, 1971 (R. 72), but was held January 4, 1972.

ARGUMENT

POINT I

THE COURT BELOW ERRED IN CONTINUING THE TRIAL IN DEFENDANT'S ABSENCE.

Appellant contends that continuing his trial in his absence was a denial of due process.

In *Hopt v. Utah*, 110 U.S. 574, 4 S.Ct. 202, 28 L.Ed.2d (1884), it was recognized that if the defendant was deprived of his life or liberty without being personally present at his trial, and if such deprivation violated the requirements of certain territorial legislation, such deprivation would be without due process of law required by the Constitution.

Although holding that the defendant's absence from certain appellate proceedings did not constitute denial of due process, in *Schwab v. Berggren*, 143 U.S. 442, 12 S.Ct. 525, 36 L.Ed.218 (1892), the court recognized that the personal presence of the accused, from the beginning to the end of a trial for a felony, involving life or liberty, as well as at the time final judgment was rendered against him, was vital to the proper conduct of his defense and could not be dispensed with, and that if an accused was deprived of his life or liberty without being so present, such deprivation would be in violation of due process.

While holding that an appellate court did not deprive the defendant of due process by taking certain action in his absence, in *Dowdell v. United States*, 221 U.S. 325, 31 S.Ct. 590, 55 L.Ed. 753 (1911), the court expressed the view that in *Hopt v. Utah* (*supra*) it had been held that due process of law required the accused to be present at every stage of the trial.

In *State v. Recd*, 65 Mont. 51, 210 P. 756 (1922), the court recognized that a defendant in a felony case has a constitutional right to be present at his trial and that a state statute also provided that he defendant must

be present. The court held that the receipt of the verdict was a part of the trial and hence the defendant had to be present. The defendant's right to be present was held not to be waivable.

Other cases have held that the defendant must be present at all stages of the trial and even voluntary absence would be a ground to set aside the verdict and grant a new trial. *State v. Smith*, 90 Mo. 37, 1 S.W. 753 (1886), *Sherrod v. State*, 93 Miss. 774, 47 So. 554 (1908), *Warfield v. State*, 96 Miss. 170, 50 So. 561 (1909).

In *State v. Mannion*, 19 U. 505, 57 P. 742 (1899), the court recognized that the Constitution of Utah provides that the accused in criminal prosecutions shall have the right to appear and defend in person. Utah statutes were also held to guarantee the right of the accused in a felony case to be present during his trial. The court also found that a defendant cannot waive this right. (See Utah Constitution, Article 1, section 12, section 7, and Utah Code Annotated 77-27-3.)

Appellant further contends that continuing his trial in his absence violated his 6th Amendment Rights of the United States Constitution.

In *United States v. Hayman*, 342 U.S. 205, 72 S. Ct. 263, 96 L.Ed. 232 (1952), the court expressed dictum to the effect that in a criminal trial where the guilt of the defendant is in issue . . . his presence is required by the Sixth Amendment.

More recently, in *Illinois v. Allen*, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970), reh den 398 U.S.

915, 90 S.Ct. 1684, 26 L.Ed.2d 80 the United States Supreme Court said that the confrontation clause of the 6th Amendment provides that in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him, and that one of the most basic of the rights guaranteed by the confrontation clause is the accused's right to be present in the courtroom at every stage of his trial. The court went on to say that a disruptive defendant could be removed from the court and his trial continued in his absence. However, the appellant is not in the same position as *Allen*. Rather, appellant was absent from a part of his trial and he was not removed from the court for being unruly. *Allen* deals with unruly defendants and grants the court the right to remove them and proceed without such defendants being present. *Allen*, however, recognizes that defendants who are not unruly have to be present during trial.

CONCLUSION

For the reasons above stated, that appellant was denied due process of law and that his Sixth Amendment rights were violated when the court continued his trial in absentia, appellant respectfully submits that the judgment of the court below be reversed and that his case be remanded.

Respectfully submitted,

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