

2001

# State of Utah v. Rudy Dominguez : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

14703 R

IN THE SUPREME COURT OF THE  
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

RUDY DOMINGUEZ,

Defendant-Appellant.

Case No.  
14703

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE SEVENTH  
JUDICIAL DISTRICT COURT, IN AND FOR  
CARBON COUNTY, STATE OF UTAH, THE  
HONORABLE EDWARD SHEYA, JUDGE, PRESIDING

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DEC 7 - 1976

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

----- : -----  
STATE OF UTAH, :  
Plaintiff-Respondent, : Case No.  
-vs- : 14703  
RUDY DOMINGUEZ, :  
Defendant-Appellant. :  
----- : -----

BRIEF OF RESPONDENT  
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STATEMENT OF THE NATURE OF THE CASE

This is a criminal action in which appellant was charged with the crime of aggravated assault.

DISPOSITION IN THE LOWER COURT

The case was tried before a jury in the Seventh Judicial District Court, Carbon County, State of Utah, the Honorable Edward Sheya, Judge, presiding. Appellant was found guilty as charged and sentenced to the indeterminate term of zero to five years in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Respondent asks that appellant's conviction be affirmed.

STATEMENT OF FACTS

Respondent stipulates to appellant's statement of facts.

## ARGUMENT

### POINT I

THE LOWER COURT ACTED CORRECTLY IN ALLOWING APPELLANT TO REPRESENT HIMSELF WITHOUT THE AID OF COUNSEL AT TRIAL.

At his trial, appellant made the decision to stand on his right to defend himself. The Court granted that right. Now, on appeal, he alleges that the Court committed reversible error in granting his motion for self defense. The questions then, before this Court, are:

1. Does the accused have the right to defend himself without the aid of counsel?
2. Are there any restrictions on this right?
3. Do any of these restrictions apply in this case?

Respondent submits that the Courts and Constitutions of both the United States and Utah require that a defendant be granted the right of self-representation within certain limitations inapplicable to the instant case.

1. The Courts and Constitutions of both Utah and the United States require that an accused be allowed to represent himself.

Article I, Section 12 of the Utah State Constitution grants to an accused in all criminal prosecutions the right to appear and defend himself in person. This language is almost identical to that of the Sixth Amendment to the United States Constitution. The United States Supreme Court, commenting upon this right, said:

"The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.' Although not stated in the Amendment in so many words, the right to self-representation--to make one's own defense personally--is thus necessarily implied by the structure of the amendment." Faretta v. California, 422 U.S. 806, 45 L.Ed.2d 562, 572, 95 S.Ct. 2525 (1975). (Emphasis added.)

Furthermore:

"The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails." 45 L.Ed.2d at 573. (Emphasis added.)

Thus, the United States Supreme Court has interpreted the Sixth Amendment to require a court to allow an accused the right to defend himself.

The Utah State Supreme Court has also spoken out for the right of an accused to defend himself without a lawyer:

"It is generally, if not universally held that the accused in a criminal proceeding who is sui juris and not mentally incompetent has the right to conduct his own defense without the aid of counsel." State v. Penderville, 2 Utah 2d 281, 288, 272 P.2d 195 (1954).

2. Are there any limitations on the right to self representation?

As the quote from the Utah case, supra, indicates, the Utah Courts have indicated that an accused must be "sui juris and not mentally incompetent," 2 Utah 2d at 288, in order to be allowed to represent himself. The term "sui juris" simply means that one is capable of entering into a contract, or that he possesses his social and civil rights; in other words, that he is not under any legal guardianship. See Ballentine's Law Dictionary, 3rd Ed. 1969, page 1236, or Black's Law Dictionary, 4th Ed., 1968, page 1602. In addition to these requirements, the federal case asks that the accused knowingly and intelligently



waive his right to counsel and that the accused be made aware of the dangers of self-representation.

Faretta, supra, 45 L.Ed.2d at 581-582.

3. Do any of these limitations apply here?

Respondent submits that the present appeal is without merit since none of the above limitations apply in the present case. In the first place, there is no question but that defendant was sui juris. He was of age and under no legal guardianship. Appellant has failed to show, or even allege, any evidence to the contrary. Secondly, there is no showing that appellant did not knowingly waive his right to counsel. On the contrary, in a minute entry dated June 22, 1976, it is recorded that appellant was made fully aware, by the Court, of the consequences of self-representation. Third, appellant has failed to show that he was not made aware of the dangers inherent in self-representation. Again on the contrary, the minute entry reports that the Court fully advised the appellant as to the procedures involved in representing himself, and what the consequences could be. See Record on Appeal, un-numbered page. As the Supreme Court pointed out, whether or not an accused possesses technical legal knowledge is not relevant to the

to the question of whether or not he knowingly chose to represent himself. Faretta, supra at 582. Finally, appellant has failed to adequately prove that he was not mentally competent to defend himself. Appellant argues that if he was insane at the time of the crime, then it is arguable that he might have been at least incompetent at the time of trial. The problem here is that the jury found that appellant was not insane.

In conclusion, there was absolutely no justification for the trial judge to withhold appellant's right to defend himself.

Appellant would argue, however, that he did not have enough time to prepare and that he was illiterate, implying that these facts would be a substantial basis for denying his self-representation rights. Respondent would submit that there is no foundation in any of the cases for such an implication. Neither the Utah Court or the United States Supreme Court require that a man must be literate in order to defend himself, and as for being prepared, this is not the same as if appellant had brought a new lawyer into the case. Appellant had at least as much experience with this as his attorney.

If the above were not enough, respondent has two further arguments for affirming appellant's conviction. First, this is not a case wherein a man defends himself entirely alone. The court appointed a Mr. Jensen to be "stand-by" counsel for appellant. Numerous times during the trial Mr. Jensen interrupted in order to assist appellant in his defense (T.5,9,12,14,15,21,22,30,31,37,39,42,47,57, et al.). At times, Mr. Jensen took over the examination of witnesses (T.58). He objected to instructions (T.88) and even argued the case to the jury (T.88). In other words, appellant was protected, guided and assisted most of the time by a lawyer. Therefore, this is not an ordinary case of total self-representation and this Court should take that into consideration. Secondly, in Utah, an appellant may not induce error and then use it as a method of obtaining a new trial. If there was any error in allowing appellant to represent himself it was clearly self-induced; therefore, his appeal must fail. State v. Fair, 28 Utah 2d 242, 501 P.2d 107 (1972).

#### POINT II

IF ERROR, THE JURY INSTRUCTIONS WERE HARMLESS  
ERROR.

Appellant alleges that he was damaged by the instructions that were given to the jury on the issue of insanity. He claims that the instructions should have been that he could be found not guilty by reason of insanity if he "lacked the substantial capacity to appreciate the wrongfulness of his actions." As it was, the instruction was that he could be found not guilty by reason of insanity only if he did not know that what he was doing was wrong.

Respondent submits that if there is any error in the instruction as given, it is harmless. Harmless error may not be the basis for a new trial or reversal. State v. Winkle, 535 P.2d 82 (Utah 1975).

The judge said appellant could be found guilty if he knew that he had a knife and if he knew it was wrong to use it (Instruction No. 4, second paragraph). Therefore, if a jury felt that he partly knew, but not fully, he could be found innocent. That would be exactly the same as if the judge had instructed that insanity means he could not fully appreciate the wrong. Both instructions are the same in that they do not require an absolute knowledge.

CONCLUSION

Because the trial court acted correctly in allowing appellant to represent himself, and because the trial judge gave the correct instruction, the conviction of appellant should be affirmed.

Respectfully submitted,

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