1976

Utah v. William Andrews : Brief of Appellant

Utah Supreme Court

John T. Caine; Attorney for Appellant.
Vernon B. Romney; Attorney General; Attorney for Respondent.

IN THE SUPREME COURT

OF THE STATE OF UTAH

STATE OF UTAH,)

Plaintiff-Respondent,)

vs.) No. ~~13903~~ 13902

WILLIAM ANDREWS,)

Defendant-Appellant.)

BRIEF OF APPELLANT

Appeal from the Second Judicial District in and for Davis County, State of Utah, the Honorable John F. Wahlquist, Presiding.

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vs.) No. 13903

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TABLE OF CONTENTS

CASES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	)	
Plaintiff-Respondent,	)	
vs.	)	Case No. 13903
WILLIAM ANDREWS,	)	
Defendant-Appellant.	)	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is a criminal proceeding brought by the State of Utah against William Andrews, charging him with three counts of criminal homecide, murder in the first degree in violation of Section 76-5-202, Utah Code Annotated (Supp. 1953) and two counts of aggravated robbery in violation of Section 76-6-302, Utah Code Annotated (Supp. 1973).

DISPOSITION IN THE LOWER COURT

In the District Court of the Second Judicial District in and for Davis County, State of Utah, on November 15, 1974, after a trial by jury, the defendant was found guilty of three counts of first degree murder and two counts of aggravated robbery. On November 20, 1974, after a hearing on the sentence, the jury recommended that the defendant be sentenced to death on all three counts of first degree

murder. On November 24, 1974, Judge John F. Wahlquist sentenced the defendant to death by shooting at 7:47 A.M., January 21, 1975, on all three counts of first degree murder and sentenced the defendant to an indefinite term of not less than five years to life imprisonment in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Appellant seeks an order of this Court reversing the judgment rendered at the trial and or hearing on sentence of this cause, and a ruling remanding the cause to the trial court for a new trial, or in the alternative, an Order setting aside the sentence of death and remanding the case to the trial court for the imposition of the sentence of life imprisonment.

STATEMENT OF FACTS

The appellant, William Andrews, concurs with the statement of the facts on pages 2 to 6 of appellant, Dale S. Pierre's brief on appeal with the following additions. Orrin W. Walker, the states chief witness, and an eye witness to the commission of the crime itself, testified that the defendant, William Andrews, was present and standing at the bottom of the stairs of the HiFi Shop basement when he entered on the night of April 22. He further testified that both defendant Andrews and defendant Pierre had weapons. Subsequent to his intial confrontation with the two defendants, Walker testified that the defendant Pierre's gun discharged, and that defendant Andrews said, "What did you do that for, man?" (Tr. 3174) Mr.

Walker further testified that during the time that the defendant Pierre and Andrews were administering the caustic fluid and prior to the time that defendant Pierre fired the shots, that the two defendants engaged on numerous occasions in conversation and that defendant Andrews appeared to be nervous and upset (Tr. 3176-77). Furthermore, Walker testified that at one point subsequent to the administration of the liquid but prior to the shooting, Andrews said, "I can't do it, I'm scared!" (TR. 3174, 3183). Finally, Walker testified that prior to Pierre committing the rape of Michelle Ansley and before any shots were fired at any of the victims, defendant Andrews went up the back stairs, out the back door, shut the door behind him and never re-entered the HiFi Shop again (Tr. 3187-88).

ARGUMENT POINT I

APPELLANT ANDREWS CONCURS WITH AND RE-ARGUES POINTS NUMBERS 1, 2, 3, 4, 5, 6, 7, & 8 OF THE BRIEF OF APPELLANT, DALE S. PIERRE.

Defendant-Appellant Pierre's brief has exhaustively and authoritatively presented for this court arguements concerning the unconsitutionality of the death penalty, the denial of a fair trial and violation of due process clause because of prejudicial pre-trial publicity, the abuse of discretion and reversable error created by the court and the courts failure to grant appellants motion for change of venue and for separate trials and for allowing the testimony of Dr. Bryon H. Naisbett to be witnessed by the jury. The attorney for defendant Andrews, on numerous occassions prior to the trial

and during the course of the trial, made appropriate motions concerning the above issues. That at all times said motions were denied. That the cases submitted in the brief of defendant Dale Pierre in support of the issues raised therein gave the court the most concise and conclusive support for Defendant Andrews position. Counsel for defendant, Andrews, has found no other cases than those already before the court which would assist the court in resolving these issues and therefore respectfully urges the court to consider those issues referred above as re-argued and submitted on behalf of Defendant Andrews and rebutted.

ARGUEMENT POINT II

THE TRIAL COURTS FAILURE TO GRANT APPELLANT'S MOTION FOR SEQUESTRATION OF THE JURY, BETWEEN THE PERIOD OF NOVEMBER 15, 1974, TO NOVEMBER 20, 1974, WAS AN ABUSE OF DISCRETION AND REVERSIBLE ERROR IN LIGHT OF THE ADVERSE PUBLICITY AND PREJUDICIAL ATMOSPHERE SURROUNDING APPEALLANT'S TRIAL.

Prior to the commencement of the trial on November 15, 1974, defendant's attorney, along with the attorneys for defendant, Pierre, and defendant, Roberts move the trial court that the jury be sequestered for the duration of the trial so that prejudicial pre-trial publicity would be avoided and that a fair trial be given all the defendants. Judge John F. Wahlquist denied the defendant's motion saying that he felt proper decorum could be observed and that every precautions would be taken so that the jury would not be influenced by outside sources. (The court should take

careful note of Page 39 of defendant Pierre's brief on appeal, as evidence that even the best precautions were not sufficient). On November 15, 1974, defendant, Andrews, was found guilty of three counts of first degree murder, and at that time requested that the court grant, pursuant to Utah Code Annotated, 76-3-207 (1) a hearing on whether or not the death sentence or life imprisonment would be imposed and that the decision thereon be made by the jury. Because of the length of the trial, which had already taken four weeks, and the necessity of counsel obtaining additional witnesses for the sentencing hearing the trial judge ordered that the hearing be held on November 20, 1974, five days later. At this time, defendant's counsel renewed a request for sequestration of the jury for this five day period (Tr. 4114) contending that the jury members could be subjected to great pressure over the five day period from outside sources, which pressure could affect the sentence. Again, Judge John F. Wahlquist denied appellant's motion.

It is clear that in light of all of the surrounding circumstances, that the jury should have been suquestered during the five day period between the rendering of the verdict and the sentencing hearing. While it is true that sequestration is discretionary with the judge, and that many factors must be considered, to-wit: expense to the State, time involved, inconvenience to the jury, that these types of considerations must necessarily be viewed in light of the more serious effects that failure to sequester a jury can have in a case of this nature. As has been noted in appellant Dale Pierre's brief and reaffirmed here, not only was this

a trial involving a capitol offense, wherein a potential death sentence was at issue, but was beyond a doubt the most widely publicized homecide case in recent Utah history. The trial judge admitted that the pre-trial publicity was so pervasive that he was certain there was no one who did not have some familarity with the case. By the time the jury's verdict was entered, four weeks of testimony had transpired, and had been graphically protrayed daily to the public by both written and electronic media. Although the trial judge frequently warned jurors not to expose themselves to media reports, the sheer volume of news coupled with the public reaction could not have been barred from even the most conscientious juror. The obvious remedy for the court to protect both the defendant and the jurors was sequestration. The trial judge; however, chose to ignore the obvious, under the shield of "judicial disgression". In the case of Shepherd vs. Maxwell, 384 U. S. 363, the United States Supreme Court indicated that where there is a reasonable liklihood of prejudicial news coverage attentant to a trial which will prevent a fair trial, the jury should be sequestered and in fact that the sequestration of the jury was something that should be raised sua sponte by the court. Therefore it is clear that the Supreme Court intended that complete "judicial discretion" in the area of sequestration be tempered by the surrounding circumstances. It is inconceivable that the type of pressure brought about by the publicity of this case could not have effected the jurors during the five day

period between the verdict and the sentencing. Not only were newspapers and electronic media filled with stories about the trial during this period of time, but no doubt jurors were subjected to close scrutiny by friends, neighbors and other acquaintances. While the logistics of sequestering a jury for four to five weeks is something that the court should and apparently did give great weight, sequestration for only a five day period was not a great sacrifice on the part of the state and whatever expense wpi;d be incurred was outweighed by the inherently prejudicial effect of non-sequestration at that time. The trial judge should have sequestered the jury to protect its members from the influence of both the constant and pervasive news coverage of the trial and the attitude of the community. This failure to do so was an abuse of his discretion and denied the appellant a fair trial, and further violated his right to due process under the 14th Amendment.

CONCLUSION

On the basis of the foregoing points, the Appellant respectfully submits that the judgment rendered at trial be reversed and the case remanded to the trial court for the purpose of a new trial, or that, in the alternative, this Court should Order that the Appellant's sentence of death be set aside, and direct the trial court to impose the sentence of life imprisonment.

Respectfully submited,

JOHN T. CAINE