State of Connecticut v. Stephen Barnes

Appellate Court of Connecticut

547 A.2d 584

September 20, 1988, Decided

OPINIONBY: SPALLONE

The defendants, Stephen Barnes and Donald Bradley, appeal from their convictions, following a jury trial, of the crime of aiding the commission of a burglary in the second degree in violation of General Statutes @@ 53a-8 and 53a-102. The cases against the defendants were joined for trial and each has filed a separate appeal. This opinion will serve as our decision in both appeals.

The defendants claim that the trial court erred (1) in denying their motions to dismiss, which alleged an illegal arrest or seizure, and their motions to suppress evidence, identifications and certain statements, alleged to be the fruits of such illegality, (2) in restricting the scope of voir dire during jury selection, (3) in refusing to suppress a witness' pretrial out-of-court identification of the defendants as unnecessarily suggestive or unreliable and by permitting the witness to make an in-court identification of the defendants, and (4) in instructing the jury on the use of inferences, in commenting on the evidence and by reading back to the jury the direct testimony of a state's witness.

The jury could reasonably have found the following facts. In December, 1984, Cynthia Carroll and her roommate shared an apartment on Fountain Street in the Westville section of New Haven. At approximately 1 a.m. on December 26, 1984, Carroll and her fiance, Glenn Ifill, were engaged in a conversation in the apartment when they heard noises emanating from the living room and, assuming it was Carroll's roommate, called out to her. When no one answered, Ifill walked into the living room where he observed Christmas gifts, which previously had been neatly arranged, scattered about the room. He also noticed that a window overlooking a small courtyard, which had been closed, was open. Ifill then proceeded to the open window and observed two black males in the courtyard, their backs toward him. The men were about seven feet away and appeared to be carrying Christmas gifts and packages. Ifill called out, whereupon both men turned and looked directly at him. They then turned away and ran toward Central Avenue. Ifill jumped from the window, but fell and was unable to give chase. He returned to the apartment and, at his request, Carroll called the police.

At about the same time, Officer James Kelley of the New Haven police department was alone in a marked police cruiser patrolling the Westville area. As Kelley was driving east on Whalley Avenue, he observed two black males laden with Christmas gifts and packages run across

Whalley Avenue. The men had come from the direction of Central Avenue and were looking back over their shoulders. After crossing the street, the two men first ran in the direction of the cruiser, then turned and ran into the driveway of a commercial building. Kelley followed the men into the driveway. When the men again looked back toward him, he recognized one of them as the defendant Barnes, a person Kelley knew as "Mousie."

The two men threw down the packages they were carrying and continued running. After Kelley drove as far into the driveway as he was able, he exited his vehicle and watched the men run down an embankment and scale a fence. At that point, having lost sight of the men, Kelly abandoned the squad car and ran back out to Whalley Avenue. There he regained sight of the defendants as they ran across Whalley Avenue and entered a nearby convenience store. Believing that the two men he had seen running into the store were the same men he had been chasing, Kelley, alone and without backup, entered the store with his gun drawn. Once inside, he saw Barnes and another man, later identified as the defendant Bradley, breathing heavily and sweating.

Kelley detained the defendants until the arrival of Officer Michael Criscuolo some five to ten minutes later. A pat down of each defendant for weapons revealed nothing. The officers then brought the defendants back to the location where the squad car was parked and where the gifts had been discarded. While in the process of gathering the packages, Kelley received notice over the police radio of the burglary complaint that had been filed by Carroll. The officers then transported the defendants, along with the packages, to Fountain Street, arriving about fifteen minutes after the crime had been committed. Following a discussion with Carroll and Ifill, Kelley told them "he had the stuff and the individuals who took it." Upon Kelley's request, Carroll and Ifill went outside where Carroll identified the gifts, now located in the squad car, as those taken from her apartment, and Ifill positively identified the defendants as the men he had seen in the courtyard twenty minutes earlier. As the defendants were being removed, Bradley asked Kelley to lock up Bradley's car which he said was nearby on Tour Avenue. The car was located where Bradley said it would be.

The defendants were subsequently tried to a jury and convicted of the crime of aiding the commission of a burglary in the second degree. From their convictions, they now appeal.

We will first address the defendants' second claim of error, that the trial court erred by restricting the scope of voir dire. We agree and, therefore, conclude that a new trial must be held.

During the voir dire of the first three prospective jurors, counsel for the defendant Bradley asked each of them whether, "for religious or other reasons," the fact that the burglary occurred the day after Christmas would affect their ability to be fair. Prior to the voir dire, the court informed the panel of the date of the burglary, December 26, but not the time, 1 a.m. After two jurors had been seated, and one excused by Barnes' attorney, the state objected to the question about Christmas. The court sustained the state's objection and asserted that defense counsel had

"injected" Christmas into the trial. The court ordered her to "just leave Christmas out of it. Let's not get into Christmas or Santa Claus or anything like that. It has nothing to do with the charge." The court posited that because the word "Christmas" did not appear in the information, the crime simply "did not happen at Christmas." The court also stated that it would not permit the voir dire question because it would "arouse people's emotions." Defense counsel urged upon the court the necessity of exploring the topic of Christmas, took exception to the court's ruling and made it clear that, but for the court's blanket prohibition, each potential juror would have been asked the question. Following the court's refusal to allow defense counsel to mention Christmas, defense counsel moved that the state be ordered to refrain from the mention of Christmas or Christmas gifts in the presence of the jury. The motion was denied and an exception was taken. n1 We agree with the defendants that the trial court erred in limiting the scope of the voir dire to exclude any reference to Christmas.

Our state constitution provides that in all civil and criminal actions tried before a jury, the parties shall have the right to challenge jurors peremptorily, with the number of such challenges to be established by law. Conn. Const., art. I, @ 19. In addition, there is a statutory right to a voir dire examination of each prospective juror in a criminal action. n2 It is settled law in

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n1 In the presence of the jury, the prosecutor and his three witnesses made no fewer than thirty-three references to Christmas, Christmas tree, Christmas tree lights, Christmas gifts and Christmas packages. In addition, the prosecutor referred to the subject of Christmas thirteen times in its summation, and the court referred to Christmas three times in its marshalling of the evidence during its charge to the jury.

n2 "[General Statutes] Sec. 54-82f. VOIR DIRE EXAMINATION. In any criminal action tried before a jury, either party shall have the right to examine, personally or by his counsel, each juror outside the presence of other prospective jurors as to his qualifications to sit as a juror in the action, or as to his interest, if any, in the subject matter of the action, or as to his relations with the parties thereto. If the judge before whom the examination is held is of the opinion from the examination that any juror would be unable to render a fair and impartial verdict, the juror shall be excused by the judge from any further service upon the panel, or in the action, as the judge determines. The right of such examination shall not be abridged by requiring questions to be put to any juror in writing and submitted in advance of the commencement of said action."

"[General Statutes] Sec. 54-82g. (Formerly Sec. 51-242). PEREMPTORY CHALLENGES IN CRIMINAL PROSECUTION. The accused may challenge peremptorily, in any criminal trial before the superior court for any offense punishable by death, twenty-five jurors; for any offense punishable by imprisonment for life, fifteen jurors; for any offense the punishment for which may be imprisonment for more than one year and for less than life, six jurors; and for any other offense, three jurors. In any criminal trial in which the accused is charged with more than one count on the information or where there is more than one information, the number of challenges is determined by the count carrying the highest maximum punishment. The state, on the trial of any criminal prosecution, may challenge peremptorily the same number of jurors as the accused."

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Connecticut that "[t]he right to question each juror individually by counsel shall be inviolate." Although the extent of the voir dire rests largely within the discretion of the trial court, and the exercise of such discretion will not constitute reversible error unless it clearly has been abused or harmful prejudice appears to have resulted; nevertheless, in exercising such discretion the court should grant such latitude as is reasonably necessary to accomplish the twofold purpose of voir dire: to permit the trial court to determine whether a prospective juror is qualified to serve, and to aid the parties in exercising their right to peremptory challenges. Therefore, "'if there is any likelihood that some prejudice is in the juror's mind which will even subconsciously affect his decision of the case, the party who may be adversely affected should be permitted questions designed to uncover that prejudice. This is particularly true with reference to the defendant in a criminal case.'

The Christmas holiday is an event that is conspicuously celebrated to a greater or lesser degree throughout this country. Such celebration is manifest in many ways ranging from quiet reflection to overt public jubilation and covering the entire spectrum in between. "Christmas is a national holiday, celebrated by nonobservant Christians and many non-Christians, as well as by believing Christians." Lynch v. Donnelly, 465 U.S. 668, 680, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984). It is that holiday which is universally associated with "a friendly community spirit of good will."

The distinctive air of brotherhood and goodwill is especially highlighted in the exchange of greetings and gifts during the Christmas season. The charges in this case, that the defendants stole Christmas gifts from under a Christmas tree, may to some be considered extremely offensive and may color their ability to be fair, while it may not affect the perspective of others in any manner. Clearly, however, the potential exists that a prospective juror, by the very nature of the allegations, may be unable to assess dispassionately the guilt or innocence of the accused. The very essence of the voir dire is to unearth any latent bias or prejudice which may be present in the mind of a juror that would impact negatively on his or her ability to determine fairly the issues in a case. The prospective juror's attitude toward Christmas and whether a crime, which appears to run counter to the Christmas spirit, affects the juror's ability to hear the case, are reasonable, logical and natural questions to be asked at voir dire. Any juror who expressed an inability to render a fair and impartial verdict because of either strong religious feelings about Christmas, or because of an especially strong sense of outrage at the burglary of Christmas gifts from under a Christmas tree would have been unqualified for jury service under General Statutes @ 54-82f, and thus susceptible to being excused for cause by the court. Further, had the question been allowed, defense counsel would have been in a position to gauge any hesitation or reluctance in the juror's responses or detect any inclination in the juror to reach a verdict based on emotional factors. Although a juror's answers may not have risen to a level requiring removal for cause, the information elicited from the juror's responses would have allowed defense counsel an opportunity to exercise intelligently her client's constitutional right peremptorily to challenge potential jurors. The court's order denying this line of questioning abridged the defendants' right to a fair trial and constitutes harmful error.