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State of Utah v. Roberts Glen Brown : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
Plaintiff-Respondent,

-v-

ROBERT GLEN BROWN,
Defendant-Appellant.

Case No. 15328

BRIEF OF APPELLANT

Appeal from the judgment of the Third Judicial District Court
for Salt Lake County, Utah, the Honorable James S. Sawaya, presiding.

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Clk. Supreme Court, Utah

TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	
<u>THE TRIAL COURT ERRED IN ADMITTING REBUTTAL EVIDENCE</u> <u>OF AN ALLEGED PRIOR OFFENSE LACKING SUFFICIENT</u> <u>PROBATIVE VALUE TO OUTWEIGH THE PREJUDICIAL EFFECT</u>	5
CONCLUSION	8

CASES CITED

<u>Kraft v. United States</u> , 238 F.2d 794 (C.A. 8, 1956) . . .	7
<u>State v. Cauble</u> , 563 P.2d 775 (Utah, 1977).	6
<u>State v. Dickson</u> , 12 Utah 2d 8, 361 P.2d 412 (1961) . . .	5
<u>State v. Kappas</u> , 100 Utah 265, 114 P.2d 205 (1941) . . .	6
<u>State v. Kazda</u> , 14 Utah 2d 266, 382 P.2d 407 (1963) . . .	6
<u>State v. Lopez</u> , 22 Utah 2d 257, 451 P.2d 772 (1969) . . .	5
<u>State v. Schieving</u> , 535 P.2d 1232 (Utah, 1975).	6
<u>State v. Torgerson</u> , 4 Utah 2d 52, 286 P.2d 800 (1955) . .	5,6,7
<u>United States v. Beechum</u> , 555 F.2d 487 (C.A. 5, 1977) . .	7
<u>United States v. Broadway</u> , 477 F.2d 991 (C.A. 5, 1973). .	7
<u>United States v. Spica</u> , 413 F.2d 129 (C.A. 8, 1969) . . .	7

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff-Respondent,	:	
	:	
-v-	:	
	:	
ROBERT GLEN BROWN,	:	Case No. 15328
	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is a criminal proceeding in which the appellant, ROBERT GLEN BROWN, was charged with the crimes of Theft by Deception, Theft by Receiving and Transferring a Motor Vehicle with an Altered Vehicle Identification Number in the Third Judicial District Court of Salt Lake County, State of Utah.

DISPOSITION IN LOWER COURT

Appellant was tried by jury before the Honorable James S. Sawaya, District Court Judge on May 12, 16 and 17, 1977, and found guilty of Theft by Deception, Theft by Receiving and Transferring a Motor Vehicle with an Altered Vehicle Identification Number. Appellant was sentenced to the indeterminant terms as provided by law and placed on probation. As terms of that probation, appellant is required to serve a term of six months in the County Jail and pay restitution to the victim in the amount of Five Thousand Dollars (\$5,000).

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of his conviction or in the alternative, a new trial in the District Court.

STATEMENT OF FACTS

Between 10:30 p.m. on October 14, 1976, and the morning of October 15, 1976, a 1974 Chevrolet three-quarter ton pick-up truck with a sleeper shell on the back was stolen from the driveway of Marvin J. Butler (T. 8-9). Butler reported the theft to the police who were unable to locate the vehicle (T. 9). On November 15, 1976, Butler saw a Chevrolet pick-up parked at the residence of Duane W. Lindsay of Sandy and notified the police.

This pick-up truck was later identified as the vehicle stolen from Butler (T. 10 - 12).

At the trial, Duane Lindsay testified that he helped his son, Larry, purchase a 1974 Chevrolet pick-up truck from the appellant, Robert Glen Brown (T. 52 - 55). Mr. Lindsay encountered the appellant at a construction site where the appellant told him about the vehicle which he desired to sell (T. 52). The appellant sold Lindsay the truck for Three Thousand Dollars (\$3,000) and delivered the title which indicated that Robert Greene was the previous owner (T. 54- 56).

Jesse Labrum, owner of Labrum Auto Wrecking, testified that he knew the appellant and had transacted business with him (T. 21 - 23). Mr. Labrum stated that the appellant purchased a wrecked 1974 Chevrolet half-ton truck from him in November, 1976, after the appellant's son had seen the truck in Labrum's yard two days earlier (T. 23 - 24). The wrecked truck was missing the motor, transmission and hood, and

the understanding was that the appellant purchased the frame and running gears of the vehicle, less the cab and bed (T. 34). Labrum testified that the appellant told him he had a cab and other parts which he wanted to put on the truck and Labrum believed the truck could be repaired in this way (T. 38). At the time of the sale, the appellant received the Certificate of Title to the wrecked truck which was made out to Robert Greene (T. 29).

Hal Vincent, Special Agent with the National Automobile Theft Bureau, testified that the vehicle identification number (VIN) plate was missing from the stolen 1974 pick-up truck found at the Lindsay residence (T. 75, 76 - 77) and that the VIN derivative which is normally stamped on the frame in the engine compartment was fictitious (T. 79). Vincent stated that the original VIN derivative number had been ground off the frame of the truck (T. 79 - 80). By use of a potentiometer and acid solution, Vincent was able to identify the original number stamped on the frame at the factory (T. 80 - 82). Vincent testified that the VIN which he reconstructed after determining the original derivative number stamped on the frame matched the VIN of the truck stolen from Mr. Butler (T. 85, 88).

Robert Glen Brown, Jr., the son of the appellant, testified that he worked with his father and that he contacted Mr. Labrum with respect to purchasing a wrecked 1974 Chevrolet pick-up in the early part of November (T. 106, 109) and that his father subsequently purchased that truck. Brown, Jr. admitted that he painted the pick-up truck sold to Lindsay approximately a week before the sale without telling his father (T. 113 - 114). He further testified that the appellant gave him a Promissory Note and Eight Hundred Dollars (\$800)

cash to pay to one John Reynolds and that he never delivered the note to John Reynolds but kept it hidden in his own truck until he returned it to his father. Brown, Jr. plead the Fifth Amendment privilege to an inquiry as to when he first saw the truck which was sold to Lindsay and testified that the appellant first saw the truck when the witness brought it to the shop approximately a week and a half before the sale (T. 126 A - 127). At the time the son brought the truck to his father, it needed a paint job and was missing the tailgate. Brown, Jr. stated on the stand that the Certificate of Title which he gave to his father when he brought the pick-up to the shop was phony and that he later destroyed it and substituted the title of the wrecked truck acquired from Labrum in its place (T. 144 - 145). The son subsequently admitted to changing the VIN number on the Lindsay pick-up truck without the knowledge of his father, the appellant (T. 147 - 148).

The appellant testified that he purchased the 1974 Chevrolet pick-up truck through his son on October 25, 1976. He stated that he first saw the truck when his son brought it to the shop after he purchased it (T. 153). The appellant stated that he did not check the title and the VIN on the pick-up when he received it (T. 156). The appellant testified concerning the sale of the truck to Lindsay's son on November 8 or 9, 1976 (T. 156 - 157). He further testified that he bought a wrecked truck from Labrum on November 4, 1976. The appellant stated he had cab and transmission parts and access to a motor and that he believed he could acquire the other necessary parts to rebuild the truck and make a profit (T. 161 - 163).

On rebuttal, Jesse Labrum testified that on June 24, 1976, the appellant purchased a wrecked 1976 Granada from him for Eight Hundred and Ninety Two Dollars (\$892) and that the appellant's son had

initially seen the wrecked vehicle and then returned with the appellant a few days later to pay a deposit on it (T. 201, 203). The wrecked Granada and the Certificate of Title thereto were delivered to appellant (T. 201).

Gunner Mortensen testified that the 1976 Ford Granada which was leased by his employer for his use was stolen from his driveway in Salt Lake City on July 14, 1976 and never recovered (T. 205, 208).

Hal Vincent testified concerning the examination of a totally burned and wrecked 1976 Granada in Las Vegas, Nevada on November 11, 1976. Vincent found the VIN plate attached to the top of the dash. Further examination of the wrecked automobile revealed a conflicting VIN at a hidden location from which Vincent concluded that the whole dash of the wrecked vehicle with the VIN plate intact and the engine had been transferred and installed in the vehicle which he examined (T. 210, 212, 213). The VIN taken from the hidden location identified the vehicle as stolen according to the National Crime Information Center (T. 210). The VIN shown on the dash plate of the stolen vehicle matched the VIN of the 1976 Granada sold by Labrum to the appellant (T. 213).

ARGUMENT

THE TRIAL COURT ERRED IN ADMITTING REBUTTAL EVIDENCE OF AN ALLEGED PRIOR OFFENSE LACKING SUFFICIENT PROBATIVE VALUE TO OUTWEIGH THE PREJUDICIAL EFFECT

The rule in Utah is that evidence of other offenses alleged to have been committed by the defendant is inadmissible at trial unless shown that it has a special relevancy to prove an element of the crime charged. State v. Lopez, 22 Utah 2d 257, 451 P.2d 772 (1969), State v. Dickson, 12 Utah 2d 8, 361 P.2d 412 (1961), State v. Torgerson, 4

Utah 2d 52, 286 P.2d 800 (1955).

The problem engendered by the use of evidence of other crimes is that the trier of fact, being aware that a defendant has previously broken the law, may conclude that a person who once manifests antisocial behavior is likely to do so on another occasion. Thus, use of such evidence may result in a conviction based on a thin thread of prior wrongdoing. The policy of exclusion of such evidence is set forth in Rule 55 of the Utah Rules of Evidence which also lists types of material facts which might justify use of evidence of other crimes. The purpose of the rule is to avoid the degradation of the defendant and the implication that the defendant has a propensity for crime. State v. Kazda, 14 Utah 2d 266, 382 P.2d 407 (1963).

This case is markedly distinguishable from others decided by this Court where the evidence of other alleged crimes was deemed admissible. In State v. Kappas, 100 Utah 265, 114 P.2d 205 (1941), the defendants were charged with stealing sheep belonging to the Bastis and the defendants claimed they did not know there were any stray or stolen sheep in their herd. The Court ruled the testimony of a witness concerning another similar loss of sheep later found in the defendants' herd was admissible to show that the act was not done innocently or by mistake. In State v. Schieving, 535 P.2d 1232 (Utah 1975), the defendant was convicted of mishandling public monies and the Court held that the admission of evidence of another shortage within the Traffic Violations Bureau was not error. More recently, this Court held that evidence of other sales proceeds taken by the defendant was admissible to show a common scheme or plan where the defendant was charged with theft of monies from his employer. State v. Cauble, 563 P.2d 775 (Utah 1977). In each of these instances, the defendants

failed to present concrete evidence in support of their claims of lack of knowledge or mistake.

In this case, the State submitted, over the appellant's objection, evidence concerning a 1976 Ford Granada stolen in July, 1976 and a 1976 Granada purchased by the appellant from Labrum to rebut the defense of lack of knowledge (T. 137, 200). This evidence was presented after the appellant's son testified that he substituted the title and changed the vehicle identification number on the stolen pick-up without the appellant's knowledge. In appellant's case, the surrounding circumstances were revealed by the most definitive and exculpatory evidence, the son's confession. Therefore, the rebuttal evidence only served to prejudice the jury and suggest that the defendant had a criminal disposition. State v. Torgerson, supra.

Further, the evidence of the alleged prior offense bore no more distinctive marks tying the appellant to that wrongdoing than were present in the offense charged given the fact that the appellant was in the business of buying, repairing and selling automobiles. The United States Court of Appeals for the Fifth Circuit has adopted the clear and convincing standard of proof for allegedly similar offenses, which the appellant believes should be applied to the instant case. United States v. Beechum, 555 F.2d 487 (C.A. 5, 1977), United States v. Broadway, 477 F.2d 991 (C.A. 5, 1973). The same standard is used by the Eighth Circuit. United States v. Spica, 413 F.2d 129 (C.A. 8, 1969), Kraft v. United States, 238 F.2d 794 (C.A. 8, 1956). In Broadway, the defendant was charged with transporting and causing

to be transported in interstate commerce a falsely made and forged money order. At the trial, the court allowed additional money order signed by the defendant to be received in evidence for the purpose of showing intent and guilty knowledge. The Court of Appeals stated:

By the requirement that evidence of other crimes be plain, clear and conclusive, the probative value of the evidence is held to outweigh the possibility of prejudice to the defendant. We see no reason for the rule to differ as to the nature of the proof required [in] a situation where the proof of other offenses is offered to shore up a weak case as to intent and guilty knowledge, as in the case at bar. [477 F.2d at 995.]

The Court of Appeals went on to hold the evidence was inadmissible and the defendant entitled to a reversal, stating:

Our holding is simply that when proof of an assertedly similar offense is tendered to establish necessary intent, the other offense proved must include the essential physical elements of the offense charged, and these physical elements, but not the mental ingredients of the offenses must be clearly shown by competent evidence. [447 F.2d at 995.]

In this case, the evidence showed only that appellant purchased a wrecked Granada from Labrum and parts of that vehicle were found on a Granada stolen from Salt Lake City. There was no proof that the appellant exercised control of the stolen Granada which could prove his guilt or knowledge of the offense charged and thus the rebuttal evidence lacked probative value with respect to the charged offenses and was inadmissible.

CONCLUSION

The trial court committed prejudicial error in admitting the rebuttal evidence of the possible prior wrongdoing of appellant for two reasons. First, the classic circumstance for admission of prior bad acts is in rebuttal to the defense of lack of knowledge or intent.

But, because appellant's son confessed to the commission of the offense, during the trial, the appellant's defense became more than just lack of knowledge. In the face of such a defense it was improper to admit evidence of those prior acts. Secondly, the proof or substantiation of the prior crime was no more substantial than the evidence presented at trial. This, coupled with the fact that appellant is in the business of buying, repairing and selling automobiles means that the prosecution was using the innuendo of wrongdoing from one transaction to cure defects in their present case.

Respectfully submitted,

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