1978

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

Utah Supreme Court

Joseph C. Fratto, Jr.; Attorney for AppellantRobert B Hansen; Attorney for Respondent

IN THE SUPREME COURT OF THE

STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

ROBERT GLEN BROWN,

Defendant-Appellant.

Case No.
15[illegible]

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE
JUDICIAL DISTRICT COURT IN AND
SALT LAKE COUNTY, STATE OF UTAH
HONORABLE JAMES S. SAWAYA, PRESIDING

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Attorney [illegible]

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OTHER AUTHORITIES CITED

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IN THE SUPREME COURT OF THE

STATE OF UTAH

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

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with the crimes of theft by receiving, theft by deception, and selling a motor vehicle with an altered vehicle identification number in violation of Utah Code Ann. §§ 76-6-408, 76-6-405, and 41-1-120 (1953), as amended.

DISPOSITION IN LOWER COURT

Appellant was tried by jury, the Honorable James S. Sawaya, District Judge, presiding. The jury returned a verdict of guilty as to all three counts, and the court placed appellant on probation on condition he serve six months in the county jail and make full restitution to the victim.

RELIEF SOUGHT ON APPEAL

Respondent seeks an order of this Court affirming the judgment below.

STATEMENT OF FACTS

On October 14, 1976, a bronze and white, three-quarter ton, 1974 Chevrolet pickup truck was stolen from Marvin J. Butler (T.8-9). On November 4, 1976, Jesse Labrum sold the appellant a wrecked 1974 half-ton Chevrolet pickup truck without cab, bed, or engine (T.22-25,32). As part of the sale, the witness Labrum delivered a certificate of title to the appellant bearing the name Robert Greene (T.34-35). The appellant sold Larry Lindsay a 1974 Chevrolet pickup truck (T.53-54). The appellant described the truck as a half-ton truck, but it was actually a three-quarter ton truck (T.67). As part of the sale, appellant delivered to Lindsay a certificate of title for a one-half ton pickup truck bearing the name of Robert Greene (T.55-56). On November 15, 1976, Marvin Butler observed a truck in the yard of the Lindsay home, and identified it as the truck stolen from him (T.9-10). The Vehicle Identification Number (VIN) had been ground off of the engine, and a plate bearing the VIN had been removed from the left door frame (T.11-12). A fictitious, hand-stamp

VIN had been placed on the engine (T.80). Hal Vincent, a Special Agent of the National Automobile Theft Bureau, determined that the vehicle's original VIN identified the truck as the one stolen from Butler, and that the fictitious VIN stamped on the engine matched the VIN of the wrecked truck appellant had purchased from Labrum (T.80-81,86-87). At trial, the defense theory of the case was that the appellant was innocently involved with the criminal actions of his son (T.105). In rebuttal, the State presented evidence that appellant had purchased a wrecked 1976 Granada from Labrum (T.201). A 1976 Granada was stolen from Gunnar Mortensen (T.208). When the stolen car was recovered, it was determined that certain parts had been replaced from the wreck owned by the appellant so that it would appear that the stolen car's VIN was the VIN of the wrecked car owned by the appellant (T.212-213). It was also established that appellant had sold a 1976 Granada to his mother (T.135-136).

Appellant objected to the introduction of this evidence on rebuttal (T.200).

ARGUMENT

THE TRIAL COURT PROPERLY ADMITTED EVIDENCE OF ANOTHER CRIMINAL ACT.

Utah Rules of Evidence, Rule 55, provides that evidence of the commission of a crime is admissible when relevant to prove intent, knowledge or absence of mistake or accident. In this case, appellant claims that his involvement with the stolen truck was wholly innocent, without guilty knowledge or criminal intent, and that his son was the true culprit. By raising this defense, appellant had clearly put into issue his own knowledge and intent, and evidence tending to prove the commission of another offense would therefore be properly admitted if it tended to prove criminal intent or knowledge. The criminal act with which appellant was charged is the theft of a truck, the sale of a stolen truck, and the attempt to conceal the crime by altering the VIN of the stolen truck to match that of a wrecked vehicle owned by the appellant. Evidence of an offense extrinsic to the offense charged was offered by the State that tended to establish the theft of a car, the sale of a stolen car, and an attempt to conceal the crime by replacing parts bearing VIN numbers on the stolen car with parts from a wrecked car purchased by the appellant. Both criminal acts (the charged offense and the extrinsic offense) reveal a strikingly similar modus operandi, and evidence that appellant was involved in one act is probative

of his criminal intent in the other. The evidence of the extrinsic offense was probative on a relevant issue and therefore admissible.

The authority cited by appellant is readily distinguishable. Appellant has cited a group of federal circuit court cases for the proposition that a high standard of similarity must be met before evidence of extrinsic offenses can be admitted. Assuming that this high standard is applicable in this State, respondent submits that an examination of the facts in those cases shows that the standard has been met here. In United States v. Spica, 413 F.2d 129 (8th Cir. 1969), the court held that evidence that defendant cashed other stolen checks was admissible to prove that defendant transported a stolen check in interstate commerce. In United States v. Beechum, 555 F.2d 487 (5th Cir. 1977), the Court held that evidence that defendant possessed credit cards not in his own name was not sufficiently similar to the charged offense of stealing a silver dollar from the mails to be admissible. In Kraft v. United States, 238 F.2d 794 (8th Cir. 1956), defendant was charged with fraud in the mail order of geraniums. The court held that an earlier transaction which occurred more than five years prior to the charged offense, where several customers complained that defendant was dilatory

in forwarding tulip bulbs and refunds, was not sufficiently related to the charged offense to be admissible. Finally, in United States v. Broadway, 477 F.2d 991 (5th Cir. 1973), the court held that evidence that the defendant endorsed other securities was not sufficiently related to the charge of transporting forged securities to be admissible. The court intimated that if the government could prove encashment or passing of the other securities they would be admissible. Broadway at 995. Judge Gee has observed that Broadway is the "most extreme" Fifth Circuit case imposing restrictions on the admission of extrinsic offense evidence. United States v. Beechum, supra at 509 (Gee, J. dissenting). A serious argument can be made that the Broadway "clear and convincing" standard is inconsistent with the Federal Rules of Evidence. Beechum at 514 (Gee, J. dissenting). Assuming, however, that the Broadway standard is applicable to this case, respondent submits that the similarity between the charged offense and the extrinsic offense is clear and convincing, and evidence of the extrinsic evidence was properly admitted on rebuttal.

Assuming that the clear and convincing standard had not been met in this case, respondent avers that Broadway theshold requirements to the admission of extrinsic offense evidence is not the law of this jurisdiction. Rule 55 of the

Utah Rules of Evidence contains no threshold requirements for admission of extrinsic offense evidence other than relevancy to a material fact. In State v. Schieving, 535 P.2d 1233 (Utah 1975), this Court held that when a defendant has been charged with mishandling public money, evidence of other shortages within the defendant's department are admissible even though it has not been shown how those shortages occurred. In Schieving, this Court upheld the admission of evidence that the defendant had committed other crimes than the one charged when that evidence was relevant to prove a material fact without imposing further restrictions on the admissiblity of the evidence. Evidence that appellant was involved in the Granada transaction was probative of his claim that his involvement with the pickup was without criminal intent or guilty knowledge. Because evidence of the Granada offense was probative of a material fact, the evidence was properly admitted under Schieving, supra.

CONCLUSION

Respondent submits that the court below did not err in admitting evidence of an offense other than the offense charged because the evidence was probative of a material fact. The charged offense and the extrinsic offense

were similar enough that the probative value outweighed any prejudice to the appellant. Appellant's conviction should be affirmed.

Respectfully submitted,

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