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The State of Utah v. Michael Paul Adams : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

MICHAEL PAUL ADAMS,

Defendant-Appellant.

BRIEF

APPEAL FROM THE
JUDICIAL DISTRICT
SALT LAKE COUNTY
HONORABLE JUDGE

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

MICHAEL PAUL ADAMS,

Defendant-Appellant.

Case No.
15353

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Michael Paul Adams, was charged with murder in the second degree.

DISPOSITION IN THE LOWER COURT

The appellant was found guilty of the lesser and included offense of manslaughter and sentenced to a term of not less than one nor more than fifteen years in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

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

STATEMENT OF FACTS

On June 21, 1976, the appellant, Michael Paul Adams, entered the Crest Club in Murray, Utah, with Sharon Blood (T.65). The Crest Club is a private club with a bar where liquor is served to members. At the time the appellant and Sharon Blood arrived, other club members were present in the bar area, including Charles Goodman and Gerald Braithwaite (T.63-64). The appellant and Blood were acquainted with Goodman, and they sat near him at the bar and had a conversation with him. Initially, appellant and Goodman discussed phone calls that appellant's wife had allegedly made to Goodman's wife. Goodman testified that the conversation went no further (T.76, 85-87), but several other witnesses testified that Goodman claimed, in vulgar language, to have had sexual intercourse with appellant's wife (T.192,223,228,271-275,318). Appellant then left Goodman, but when he returned he pointed a loaded revolver at Goodman's head and stated, "I am going to kill you, you son-of-a-bitch." (T.70,116,152-153,175,192,240, 276,323,335). The threat was repeated several times. After Goodman was unable to persuade the appellant to put the gun down, he turned his back to the appellant and faced the bar (T.71). Appellant then struck Goodman behind his right ear

with the gun (T.71,118,175,241,337-338). Goodman was dazed by the blow, and appellant again pointed his gun at Goodman and said, "Now you're a dead son-of-a-bitch." (T.71,118). Three events then occurred in rapid succession: Gerry Braithwaite came between the appellant and Goodman in an attempt to halt the fight (T.154,176,224-225), the appellant's gun went off and inflicted a fatal wound on Braithwaite (T.55-56,71-72,120,154,176,258), and Ken Bates, an off-duty, unarmed Deputy Salt Lake County Sheriff threw a heavy, sharp-edged, glass ashtray at the appellant (T.118-119, 177,243-244). The ashtray struck the appellant on the right side of his face and caused severe damage to his right eye (T.201-203,339). After the first shot had been fired, Goodman fled from the club, and the appellant fired two more shots in Goodman's direction (T.50,71-72,122-123,157,178,194).

Appellant testified in his own behalf, and admitted pointing the loaded weapon at Goodman and threatening to kill him (T.323,335). Appellant claimed, however, that he did not intend to shoot Goodman and that he was afraid Goodman had a gun and would try to harm appellant's wife, Carol, who was coming to the club (T.324). Appellant testified that he did not intentionally pull the trigger of the murder weapon and that he had no memory of firing the gun (T.339-341).

During the State's case in chief, Lieutenant Oscar Hendrickson of the Salt Lake City Police, a firearm's expert, testified that the trigger on the murder weapon was harder to pull than on an average double-action revolver (T.165-166). In response to a hypothetical question, the witness gave his opinion that it was not reasonable to believe that the trigger could have been unintentionally pulled through reflex (T.170). Additionally, two of the State's witnesses testified that the first shot was fired before the ashtry struck the appellant (T.177,243-244).

The State sought to introduce rebuttal evidence of a statement made by the appellant to the officer who arrested him, Joel Riet (T.372). Appellant objected to the proposed evidence because there was an insufficient foundation to show that appellant's constitutional rights were explained to him or that the statements were made voluntarily in view of the injury to appellant's eye (T.373). The state offered to lay this foundation, and the appellant requested that it be done out of the presence of the jury (T.374,375). The request was granted, and Officer Riet was examined out of the jury's presence (T.378-384). The appellant then renewed his objection to the evidence, and the objection was overruled (T.384). The court did grant appellant's request that the trial be continued to the following morning.

Id. When trial resumed, the appellant offered two further objections to the evidence: first, appellant claimed surprise because of the prosecutions' failure to honor an informal agreement to provide all witnesses' statements, and second, appellant was denied his right against self-incrimination because he took the stand unaware of the State's rebuttal evidence (T.386). The court denied the motion to suppress the evidence on both grounds (T.391). Appellant then moved the court for a hearing out of the jury's presence on the voluntariness of the appellant's statement. Id. The prosecutor stated that he had no objection to further questioning of Officer Riet out of the jury's presence (T.398). Appellant rejected this offer, and stated that he desired a hearing with additional witnesses. Id. The court held that the statement was made voluntarily, and denied the request for further hearings (T.404). However, the appellant cross-examined Officer Riet out of the jury's presence before his testimony was put before the jury (T.405-413). In the presence of the jury, the officer testified that he had asked appellant what had happened, and that appellant had replied, "Well, I had to shoot the man. They were coming at me all at once. And I can handle one or two at a time but I can't handle five at once." (T.416-417). The trial court ruled that this statement was not a confession (T.450).

The appellant proposed no instructions on the subject of the weight to be given the officer's testimony, and stated that he would not except to the court's failure to give one (T.450-451). During closing argument, the prosecutor commented on the appellant's explanation of his actions (T.483). The appellant did not object at that time, but later moved for a mistrial on the grounds that the statement commented on the failure of appellant's wife to testify (T.538). The motion was denied. Id. The jury returned a verdict of guilty to the lesser included offense of manslaughter, and it is from this conviction that this appeal is taken.

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ERR IN LIMITING THE HEARING ON THE VOLUNTARINESS OF APPELLANT'S ADMISSION TO OFFICER RIET'S TESTIMONY.

A. APPELLANT WAS NOT ENTITLED TO A PRELIMINARY DETERMINATION OF VOLUNTARINESS BECAUSE HIS STATEMENT WAS AN "ADMISSION" AND NOT A "CONFESSION."

In State v. Masato Karumai, 101 Utah 592, 602, 126 P.2d 1047, 1052 (1942), this Court defined admission and confessions:

"A confession is an admission of guilt by the defendant of all the necessary elements of the crime of which he is charged, including the necessary acts and intent. An admission merely admits some fact which connects or tends to connect the defendant with the offense but not with all the elements of the crime."

The courts of other jurisdictions have also adopted these "well drawn distinctions" and have cited Masato with approval. Fletcher v. State, 352 N.E.2d 517, 522 (Ind. App. 1976). Appellant's statement contained a claim of self-defense and did not admit all elements of the offense, and is therefore not a confession. At trial, the court held that the statement was not a confession (T.450), and appellant's counsel conceded it was not a confession (T.392). The cases cited by appellant refer only to confessions and are therefore not in point. As this Court noted in Masato, supra at 602, 126 P.2d at 1052:

". . . The great weight of authority and the better reasoned cases hold that before receiving an admission--as distinguished from a confession--in evidence, it is not necessary that a preliminary showing be made to the effect that the statement was voluntary."

This holding was followed in State v. Hymas, 102 Utah 371, 374, 131 P.2d 791, 793 (1942). Respondent submits that the court below did not err in admitting appellant's admission in evidence.

B. THE APPELLANT WAS ALLOWED TO PRESENT ALL RELEVANT EVIDENCE TO THE COURT BEFORE THE ADMISSION WAS GIVEN TO THE JURY.

This Court thoroughly discussed the principles that govern the review of a trial court's determination that an admission was voluntary in State v. Louden, 15 Utah 2d 64, 68-69, 387 P.2d 240, 243-244 (1963), vacated on other grounds, 379 U.S. 1 (1964):

"But the procedure for determining voluntariness is open to some question.

It should be born firmly in mind that it would be the receipt of such unreliable evidence, and not the variation from some suggested method for determining its reliability, which would constitute prejudicial error. There is no statutory mandate as to the procedure to be followed. Nor should there be any rigid and inviolable one. The duty which devolves upon the trial court is to adopt and follow some procedure which will guard against the admission of spurious confessions or admissions. How this is done may vary somewhat depending upon the circumstances of each case, and the court should have considerable latitude of discretion as to how to protect the right of the defendant in that regard. If that purpose is served, the fact that the course adopted may vary from some other procedure which may also have been deemed permissible, should not result in the reversal of the conviction.

It must be borne in mind that the court has not only the duty mentioned to the defendant, it must also safeguard the rights of the State. Furthermore, it has the responsibility of seeing that the trial moves forward in an orderly manner with such reasonable expedition as can be achieved consistent with looking after the interests of both sides of the controversy.

It would be quite impractical to halt the main trial, excuse the jury, and conduct a collateral trial on the question of voluntariness of an admission or a confession every time defense counsel might make an objection. While this has indeed been approved as proper procedure under circumstances which require it, it should be done only when there is presented such a genuine and substantial issue as to voluntariness that in the court's judgment there is some real possibility that permitting the jury to hear the evidence would so prejudice their minds that the defendant could not have a fair trial."

In this case, the appellant requested the trial court to halt the trial after both sides had presented their case in chief, and conduct a hearing on the voluntariness of the admission that would include testimony by the arresting officer, the appellant, and all other officers involved in the case (T.391). Appellant's counsel expected the hearing to be extensive, and to involve a number of witnesses (T.392). Appellant was not granted the extended hearing he requested, but was allowed to question the arresting officer on voir dire and to cross-examine him (T.378-384,405-413). The appellant himself testified that he could not remember making the statement (T.442-445). There is no evidence in the record that anyone other than the appellant and the arresting officer was present when the statement was made (T.399). Appellant's only proffer of proof as to what he hoped to establish from the other officer's testimony was the fact

that they had also asked appellant for a statement and that they had never known that Officer Riet had taken a statement from the appellant. Id. While this testimony might be relevant to the issue of whether the admission was made at all, respondent submits that it would have been irrelevant to the issue of whether the admission was made voluntarily. Respondent submits that the court below gave appellant an opportunity to explore all relevant evidence going to the voluntariness of the admission and refused to exclude the admission as involuntary (T.373,384,303). The court's finding is supported by substantial evidence; the officer testified that appellant stated he understood his constitutional rights, appeared to be coherent, and refused to answer further questions after the statement was made (T.380). Respondent submits that the trial court did not err either in limiting the hearing to Officer Riet's testimony, or in finding that the admission was made voluntarily. The court adopted a procedure that protected defendant's rights, and the court's finding is supported by substantial evidence.

POINT II

THE COURT BELOW DID NOT ERR IN FAILING TO GIVE A SPECIFIC INSTRUCTION ON THE OFFICER'S CREDIBILITY AS A WITNESS.

A. THE CLAIMED ERROR WAS INVITED BY APPELLANT.

Appellant's counsel stated that he had no instructions to offer on the subject of the appellant's admission or the officer's testimony, that he would take no exception to the court's failure to give an instruction, and that the court's procedure in instructing the jury on this point was proper (T.450-451). Appellant may not take advantage of a claimed error that he has invited. State v. Olsson, No. 15040 (Utah, October 31, 1977). Appellant's point II on appeal is, therefore, not a grounds for reversal.

B. THE COURT CORRECTLY INSTRUCTED THE JURY ON ITS DUTY TO DETERMINE THE WEIGHT AND CREDIBILITY OF THE OFFICER'S TESTIMONY.

The competency of an admission as evidence is a question for the court, but the weight to be given an admission is a question for the jury. State v. Crank, 105 Utah 332, 142 P.2d 178 (1943). The jury members in this case were instructed that they were the sole and final judges of all questions of fact, and that they had the duty to decide how much weight should be given to each witnesses' testimony (R.77,123). Appellant contends that these instructions are inadequate, however, because the jury was

not instructed that it had the duty to determine the weight of the officer's testimony regarding appellant's admission. In State v. Vaughn, 554 P.2d 210, 211 (Utah 1976), this Court held that it was not error to refuse a request for an instruction on credibility of a particular witness and stated:

"The trial court is in the best position to determine what lengths of specificity or emphasis he will indulge with each particular witness of this type, and anyway and after all the jury analyzes and inventories what degree of credibility it will attach to a witness."

Respondent submits that Vaughn controls this case, and that it was not error to fail sua sponte to give a specific instruction on the credibility of the officer's testimony. Further, respondent submits that appellant could have presented any evidence he may have had that the admission was involuntary to the jury (T.398). Appellant can claim no error that evidence of the admission's voluntariness was not given to the jury. Respondent asserts that the court and jury properly performed their respective roles, as outlined in Crank, supra. The court found the evidence competent (T.384,404), and the jury was instructed to weigh all the evidence and determine which witnesses were truthful (R.77,123). The conviction should be affirmed.

POINT III

THE COURT BELOW DID NOT ERR IN OVERRULING APPELLANT'S OBJECTION TO THE STATE'S REBUTTAL EVIDENCE ON THE GROUNDS OF SURPRISE.

Appellant objected to the introduction of Officer Riet's rebuttal evidence on the ground of surprise, and the court overruled the objection (T.386,391). Respondent avers that this ruling was correct because the prosecution was under no duty to reveal the rebuttal evidence to the defense prior to trial. No duty to disclose existed because the evidence was not favorable to the defense, it was used only on rebuttal, and no specific request for disclosure had been made.

As to the first point, respondent asserts that the prosecution is only obligated to disclose evidence that is favorable to the defense. Appellant has cited United States v. Bryant, 439 F.2d 642, 649 (D.C. Cir. 1972), for the proposition that the prosecution must disclose all evidence "crucial to the question of appellant's guilt or innocence." (Brief of appellant, page 20). The quotation from Bryant, supra, is incomplete; the court actually said that the evidence was:

" . . . crucial to the question of appellant's guilt or innocence. That fact, coupled with the unavoidable possibility that the [evidence] might have been significantly 'favorable' to the accused is enough to bring these cases within constitutional concern." Bryant at 648. (Emphasis added.)

Although Bryant discusses constitutional rights, an examination of the case shows that the holding was based, at least in part, on Rule 16, Fed. R. Crim. P., and the Jencks Act, 18 U.S.C. § 3500 (1970). Utah has no analogous statute or rule. Respondent submits that Bryant is of no aid to appellant. To the contrary, respondent concludes that this issue is controlled by this Court's discussion in State v. Dowell, 30 Utah 2d 323, 517 P.2d 1016, appeal dismissed and cert. denied 417 U.S. 962 (1974), where this Court explained the cases requiring disclosure of prosecution evidence:

" . . . the court stated that it knew of no constitutional requirement that the prosecution must make a complete and detailed accounting to the defense of all police investigatory work on a case. The court explained that suppression by the prosecution of evidence favorable to an accused upon a defense production request violated due process. . . . The court cited the following factors by which the conduct of the prosecution was to be measured: . . . (b) The evidence's favorable character to the defense. . . ." Dowell at 326, 517 P.2d at 1018.

Respondent submits that the prosecution was under no duty to disclose the evidence because it was not favorable to the defense.

Second, respondent submits that there was no prosecution duty to disclose because the evidence was not used in the State's case in chief, but only to rebut appellant's claim that the shooting was accidental. In State v. Harris, 14 Wash.App. 414, 542 P.2d 122, 126 (1975), the Court observed that:

"The prosecution is not required . . . to anticipate all facets of the defendant's case and prepare for its rebuttal case in advance of trial, and it is under no obligation to unearth statements made to possible rebuttal witnesses and furnish them on demand." (Emphasis in original.)

Respondent submits that the prosecution was not bound to disclose possible rebuttal evidence prior to trial.

Thirdly, respondent contends that the informal agreement between the prosecution and the appellant's counsel was too general and vague to be enforced. The prosecutor understood the agreement differently than appellant's counsel and did not believe that he had violated it (T.388-389). Assuming, however, that appellant's description of the agreement was accurate, it required the prosecution to disclose "all evidence that he intended to use at trial." (Brief of Appellant, page 18, T.389). The appellant could not have asked the trial court to order discovery that broad. "A defendant's motion for discovery

must . . . describe the requested information with at least some degree of specificity and must be sustained by plausible justification." People v. Superior Court, 70 Cal.Rptr. 480, 484 (1968); State v. Sims, 30 Utah 2d 357, 517 P.2d 1315, cert. denied 418 U.S. 970, reh. denied 419 U.S. 887 (1974). If the trial court could not have ordered this kind of a "fishing expedition" in the first instance, a fortiori it cannot indirectly enforce it by penalizing the prosecution for failure to provide all the material requested. Further, the requested material would have been exempt from any pre-trial discovery. "Reports compiled by law enforcement authorities in the course of their investigation constitute the work product of the state, and, as such, are privileged from pre-trial discovery." State ex rel. Corbin v. Superior Court, 99 Ariz. 382, 409 P.2d 547, 548 (1966). Even assuming that the report was not exempt from discovery, appellant's failure to make a specific request for disclosure defeats this claim of error.

If the failure to make a pre-trial disclosure is considered error, respondent submits that the error is harmless. Any prejudice appellant may have suffered due to surprise could have been remedied by a continuance of the trial. The record does not contain a request for

a continuance, and appellant does not challenge any failure to grant a continuance as error. Appellant cannot legitimately complain of prejudice due to surprise. Further, limiting the prejudice that might have resulted from non-disclosure is the fact that Officer Riet had always been listed as a State's witness in this case (T.389). The substance of his testimony could have been discovered through reasonable diligence, and a timely specific request for discovery of the officer's report could have, therefore, been made. Also, appellant's counsel was given access to the report at the time of trial, and he used the report effectively in cross-examining Officer Riet (T.417-439).

Appellant claims that if he had known about his prior statement contained in Officer Riet's report, he might have remained off of the witness stand. However, a criminal defendant always runs the risk that he might be contradicted or attacked through evidence of a prior inconsistent statement if he takes the stand. The rebuttal evidence in this case presented no unique possibilities of prejudice, and, therefore, did not undermine the appellant's right against self-incrimination. Appellant has cited no authority for his proposition that unexpected rebuttal evidence abridges the right against self-incrimination, and respondent submits that no such authority exists.

In conclusion, respondent submits that the prosecution was under no duty to disclose the rebuttal evidence prior to trial, and that appellant has demonstrated no undue prejudice due to the non-disclosure. The court below did not err in admitting the statement in evidence.

POINT IV

THE COURT BELOW DID NOT ERR IN DENYING APPELLANT'S MOTION FOR A MISTRIAL ON THE GROUNDS OF AN ALLEGED COMMENT ON THE FAILURE OF THE APPELLANT'S WIFE TO TESTIFY.

A. MISTRIAL WAS AN INAPPROPRIATE REMEDY.

The allegedly prejudicial remark occurred at page 483 of the transcript. The appellant did not, at that time, object to the remark, request that it be stricken, or ask the court for a cautionary admonition. The appellant later made a motion for a mistrial which was denied (T.538). The appellant rested on that motion and made no request for a cautionary admonition. Respondent avers that appellant's failure to use a less drastic means of limiting the possible prejudice to himself defeats his claim of error.

Mistrial is a drastic remedy that should only be resorted to when other, less drastic, means of limiting

possible prejudice are unavailable. State v. Vaughn, supra. If the prosecutor had commented on the failure of the appellant's wife to testify, a cautionary instruction would have been appropriate and would have cured any possible prejudice. State v. Trusty, 28 Utah 2d 317, 502 P.2d 113 (1972); Utah Rules of Evidence 39. ". . . it is possible for the trial judge to correct this error by a timely and adequate admonition to the jury to disregard the prosecutor's statements and in support of the privileges not to testify at trial." (Brief of Appellant, page 23.) In short, the alleged error could have been corrected without declaring a mistrial, but appellant made no attempt to do so. This failure defeats his claim of error.

B. THE PROSECUTOR'S STATEMENT DID NOT COMMENT ON THE FAILURE OF APPELLANT'S WIFE TO TESTIFY.

Appellant's explanation for his act of pointing a loaded gun at the intended victim Goodman was that he feared Goodman had a gun and would harm his wife, who was coming to the club (T.324). The appellant testified that he had called his wife and asked her not to come to the club, but that he had been unable to dissuade her (T.321). In closing argument, the prosecutor attempted to show that this testimony was inherently incredible:

"He warned Carol over the phone. Could have--he said he talked to her. 'Well, she's coming over.' What did he tell her? He could tell her, 'Carol, don't come. I think Charlie's got a gun and by God he's going to come in here and kill you. You're crazy for coming.' Well, we don't know what he told her. I suppose we'll never know what he said to his wife." (T.483).

The remark was intended by the prosecutor to point out gaps and inconsistencies in the appellant's testimony, not to refer to the fact that appellant's wife did not testify. Appellant could have testified about what was said over the phone; there was no need to call his wife to testify. Respondent submits that no reasonable jury could infer from the prosecutor's statement that appellant had kept his wife off the stand. The prosecutor's statement was not an express comment on the appellant's wife's failure to testify, such as was involved in State v. Trusty, supra, and State v. Brown, 14 Utah 2d 324, 383 P.2d 930 (1963). Respondent submits that the prosecutor's statement was not a comment on the appellant's exercise of an evidentiary privilege.

CONCLUSION

Based on the foregoing points and authorities, respondent submits that the judgment and sentence rendered

below should be affirmed.

Respectfully submitted,

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