2001

State of Utah v. Harry Maestas : Brief of Appellant

Utah Supreme Court

Vernon B. Romney; Attorneys for Respondent.
D. Gilbert Athay; Attorney for Appellant.

IN THE SUPREME COURT

OF THE STATE OF UTAH

STATE OF UTAH, :

Plaintiff-Respondent, :

vs. : No. 13751

HARRY MAESTAS, :

Defendant-Appellant. :

BRIEF OF APPELLANT

Appeal from a jury verdict of the Second Judicial District Court for Weber County, State of Utah, the Honorable Thornley K. Swan, Presiding.

D. GILBERT ATHAY
321 South Sixth East
Salt Lake City, Utah 84102

Attorney for Appellant

VERNON B. ROMNEY
Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorney for Respondent

IN THE SUPREME COURT

OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
vs.	:	No. 13751
HARRY MAESTAS,	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

Appeal from a jury verdict of the Second Judicial District Court for Weber County, State of Utah, the Honorable Thornley K. Swan, Presiding.

D. GILBERT ATHAY
321 South Sixth East
Salt Lake City, Utah 84102

Attorney for Appellant

VERNON B. ROMNEY
Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorney for Respondent

TABLE OF CONTENTS

CASES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
vs.	:	No. 13751
HARRY MAESTAS,	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is a criminal action charging appellant with the offense of murder.

DISPOSITION IN LOWER COURT

The case was tried to a jury. From a verdict of guilty to the charge of murder in the second degree, the defendant appeals.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the judgment, and to be granted a new trial. The specific relief sought is release from the Utah State Prison pending retrial.

STATEMENT OF FACTS

Appellant was charged with first degree murder for the shooting of Rosemary Matteucci on December 31, 1973.

A jury was selected and impaneled to try the facts of the case on June 20, 1974. This jury included one Vern

D. Carpenter, who occupied seat number 12 in the jury box. After the jury was impaneled, but before any evidence was presented to the jury, a hearing was conducted in chambers on June 21, 1974, concerning juror Carpenter. At this hearing (Tr. 124-140), it was disclosed that juror Carpenter has discussed the case on two occasions with his son-in-law, Bradley Dee, a television reporter with KCPX covering the trial. The first dicussion occurred sometime shortly after the killing occurred, and the second took place on the evening of June 20, 1974, after the jury had been impaneled. Based on these discussions, a mistrial was requested, which was denied by the court. (Tr. 143-148).

Evidence was introduced and received over the continuing objection of counsel as to other crimes allegedly committed by appellant, in particular an armed robbery which occurred on December 28, 1973. Five witnesses testified in regards to the alleged robery: Sheryl Cheever, the victim of the robbery (Tr. 182-207); Deloy Kimball White, a police officer investigating the robbery (Tr. 259-264); Willard Craigen, another investigating police officer (Tr. 282-294, 299, 312-313); Phil K. Bodily, a police officer who arrested appellant for the armed robery (Tr. 323); and Patricia Ann Ratley, an admitted accomplice in the robbery (Tr. 445-456). The evidence of other crimes was extensive, and included identification in court, and the introduction and admission into evidence of photographs of appellant previously identified as the suspect. All objections to the receipt of such

testimony and evidence were denied by the court.

Numerous objections and motions were made as to the evidence presented on behalf of defendant, which were denied as is documented in Point III of this brief. These rulings are discussed in terms of their cumulative effect.

POINT I

THE TRIAL COURT BELOW COMMITTED REVERSIBLE ERROR IN DENYING APPELLANT'S MOTION FOR MISTRIAL ON THE BASIS OF JURY MISCONDUCT.

The leading case concerning the question of a stranger's communication with a juror in a criminal case is Remmer v. United States, 347 U.S. 227 (1954), in which the court vacated a judgment of guilty for wilful evasion of payment of federal income taxes. The record presented to the court did not disclose whether the outside contact was harmful or harmless, but the court stressed that the integrity of jury proceedings must not be jeopordized by any unauthorized invasions.

> "In a criminal case, any private communication, contact, or tampering, directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions the court made during the trial, with full knowledge of the parties. The presumption is not conclusive, but the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant. Mattox v. United States, 146 U.S. 140, 148-150, 36 L.Ed. 917, 920, 921, 13 S. Ct. 50; Wheaton v. United States (CA 8th SD), 133 F.2d 522, 527. Id, at 229."

Although a standard for overcoming the burden has not been delineated, one decision found that a juror informing the court of the communication, and stating that he could decide the case as if the incident had not occurred was not sufficient, Stone v. United States, 113 F.2d 70 (6th Cir. 1940). The court recognized, in rejecting the jurors assertion that he could weigh the facts fairly, that jurors are human and not always conscious to what extent they are in fact biased or prejudiced and their inward sentiments cannot always be ascertained.

> "The question is, not whether any actual wrong resulted from the conversation. . .with the juror. . .but whether it created a condition from which prejudice might arise or from which the general public would suspect that the jury might be influenced to reach a verdict on the ground of bias or prejudice. When the judgment is weak, prejudice is strong, and it is essential to faith in the jury system that jurors shall determine the facts submitted to them wholly on the evidence offered in open court, unbiased and uninfluenced by anything they may have seen or heard outside of the actual trial of the case. Id, at 77."

This decision was followed in United States v. Ferguson, 486 F.2d 968 (6th Cir. 1973), in which the juror was removed, but not until after he had discussed the case with other members of the jury. Although the remaining juror assured the court that he still had an open mind on the case, it was held that the presumption of prejudice was not overcome.

> "The burden was on the Government to show that no prejudice resulted from the communication. Our insistence on this high standard was

> necessary, not only to insure that the defendant received a fair trial by impartial jurors, but also to maintain the integrity of the jury system. Id, at 971."

One other case is pertinent to the issues presented. In People v. Thomas, 120 Cal. Rptr. 637, 47 Cal. App. 3d 178 (1975) four jurors disclosed that they had read a newspaper story concerning the case, but each stated that he was not influenced. The court, placing special emphasis on the fact that the jury had been impaneled but that no testimony had yet been received when the disclosure was made, held it to be an abuse of discretion to deny a motion for mistrial.

Turning to the facts of the instant case, the record discloses that the jury, after being impaneled, was expressly instructed by the court "that it is your duty not to converse with nor allow yourselves to be addressed by anyone or any subject of the trial." (Tr. 123 In. 27-30). Subsequently, but before any evidence was presented, it was disclosed that juror Carpenter discussed the case on two occasions with his son-in-law, a television reporter covering the case. The first discussion occurred several months before the trial, but juror Carpenter did not disclose this information to the court during the jury selection process in response to direct questioning by Judge Swan as to prior knowledge of the case. (Tr. 41-48). The second discussion occurred after the court's instruction not to discuss the case, which was disclosed to the court only after it was brought to its

attention by Bradley Dee, the son-in-law who conversed with juror Carpenter about the case, at the hearing. (Tr. 124-140). The State prosecutor, in attempting to meet its burden of showing the contact to be harmless, elicited the opinion of juror Carpenter that he could be an impartial juror and give the defendant a fair trial (Tr. 130-135). However, juror Carpenter also stated that, if in the hypothetical that he and the defendant were to switch positions, he would "probably not" want a jury sitting which knew what he knew, and discussed what he had discussed. (Tr. 130 In. 7-21). Bradley Dee who testified at the hearing, disclosed that in the discussions with juror Carpenter he related information from police reports on the case, and that his opinion was liased in favor of the police, that the defendant would be guilty. (Tr. 138-140). Juror Carpenter confirmed that Bradley Dee thought the defendant to be guilty. (Tr. 127-128).

Appellant submits that the State had the burden to show that the communication with juror Carpenter was harmless, and in no event prejudicial. This burden was not satisfied by the mere assertion by the juror that he would not let the discussions influence his deliberation of the verdict, especially in view of the circumstances presented. It is also significant to note the point of the proceedings at which the irregularity was discovered. The jury had been impaneled, but no evidence had been presented, and there was an alternate juror sitting on the case. Under these additional circumstances, appellant submits that it was both error and an abuse of discretion not to discharge juror Carpenter.

POINT II

THE TRIAL COURT BELOW COMMITTED REVERSIBLE ERROR WHEN IT ALLOWED EVIDENCE OF OTHER CRIMES TO BE ADMITTED INTO EVIDENCE.

In reviewing the transcript (see Statement of Facts for page citations), five witnesses testified as to an armed robbery allegedly committed by appellant. Photographic evidence (Exhibits M and N) was introduced and received. It would be fair to say that the prosecution, in trying appellant for homicide, presented a prima facie case for a crime of which appellant was not properly before the court. The amount of evidence presented seems to indicate that the prosecution was trying to prove appellant guilty of armed robbery beyond a reasonable doubt, rather than to introduce evidence of other crimes for an admissible purpose.

The rule in Utah as to when evidence of crimes other than the one at trial are admissible is well summarized in State v. Lopez, 22 U.2d 257, 451 P.2d 775 (1969). This Court ruled in that case as follows:

> "[E]vidence of other crimes is not admissible if the purpose is to disgrace the defendant as a person of evil character with a propensity to commit crime and thus likely to have committed the crime charged. However, if the evidence has relevancy to explain the circumstances surrounding the instant crime, it is admissible for that purpose, and the fact that it may tend to connect the defendant with another crime will not render it incompetent. Such harm as there may be in receiving evidence concerning another crime is to be weighed against the necessity of full inquiry into the facts relating to the issues. Id, at 775."

The evidence introduced in the instant case falls within the general rule of State v. Lopez, as it was unnecessary to explain the surrounding circumstances of the crime charged, nor was it relevant to the issues of the charge. Thus the purpose of introducing such evidence could only have a purpose to disgrace appellant and make him look like a man of evil character likely to commit the crime charged. Alternatively, even if this Court should find some relevance to the evidence of other crimes, the degree and extent to which the prosecution placed upon such evidence was so great as to unduly prejudice appellant. The substantial prejudice of such extensive introduction of evidence, when taken together, creates a situation where it cannot be said with any degree of assurance that there would not have been a different result in the verdict by the absence of such evidence.

Additional Utah case law demonstrates the inappropriateness of the introduction of evidence going to other crimes (or alternatively to the degree of such introduction). In State v. Kazda, 14 U.2d 266, 382 P.2d 407 (1963), this Court in noting the extent of testimony regarding crimes not proven against that defendant, ruled such introduction to be prejudicial despite an admonition to the jury to disregard offenses related in the testimony. In State v. Dickson, 12 U.2d 8, 361 P.2d 412 (1961), questions were asked going into detail regarding another crime for which that defendant had not been tried. This Court, in reversing the conviction and granting a new trial, rejected justification for introducing

such evidence under a modus operanti theory or for impeachment purposes. In State v. Peterson, 23 U.2d 58 457 P.2d 532 (1969), that defendant was charged with selling an illegal drug. This Court held it to be prejudicial for the prosecution to interrogate him as to his use of other narcotics, and that such an error could be corrected only by remanding the case for a new trial. In State v. Gillan, 23 U.2d 372, 463 P.2d 811 (1970), this Court reversed a conviction where evidence was introduced to show a prior threatening incident made by the defendant to a person other than the victim. This Court stated that evidence of other crimes must have a special relevancy in proving the crime charged, rather than a tendency for a particular characteristic.

Other Utah case law is adverse to appellant, but can be distinguished for similar reasons; see State v. Baran, 25 U.2d 16, 474 P.2d 728 (1970), State v. Johnson, 25 U.2d 160, 478 P.2d 491 (1970), and Olsen v. Swapp, 535 P.2d 1232 (Ut. 1975). In each of these cases, the evidence of other crimes were similar in nature to the crime charged. Individually, one case allowed evidence as to similar crimes committed on the same evening (Baran), and another involved evidence of a similar crime where the subject was introduced into trial by the defendant (Olsen). In the present case, the crime charged is criminal homicide, which is not a similar crime to robbery, nor was the alleged robbery committed proximately close to the commission of the offense charged, nor was it introduced into evidence by the appellant.

Therefore, it is submitted that these cases are not in point, and that resolution of this case is better established under the principles of State v. Kazda, supra.

While this Court has stated on occasion that evidence of other crimes may be admissible to show motive, it has not had an opportunity to delineate as to what a proper case would be for such an admission, and what the limits on the introduction of other crime evidence would be. Recent case law in other jurisdictions on this narrow subject is abundant, and appellant would submit the principles of two representative cases for guidance. In United States v. Clemons, 503 F.2d 486 (8th Cir. 1974), the following guidelines were enunciated as to evidence of other crimes.

> "Before any such evidence is admitted, however, it must be shown that (1) an issue on which other crime evidence may be received is raised; (2) that the proffered evidence is relevant to that issue; (3) that the evidence is clear and convincing; and (4) that the probative worth outweighs the probable prejudicial impact."

In that case considerable time at trial was devoted to the "other crime," and photographs were introduced in support of such evidence. The attention given to this evidence was held to be prejudicial and the case was reversed and remanded. In United States v. Ring, 513 F.2d 1001 (6th Cir. 1975), the court noted that even where other crimes evidence has substantial independent relevancy, it should be excluded when its probative value for the purpose offered is outweighed by the danger that it will stir such passion in

the jury as to sweep them beyond a rational consideration of guilt of innocence of the crime on trial. The court noted that evidence of prior bad acts may not be introduced unnecessarily as a pretext for placing highly prejudicial evidence of bad character before the jury, and that the mere recitation by the prosecution that evidence of bad acts is offered under an exception is not sufficient for its admission. Accordingly, the conviction was reversed and remanded.

Turning again to the facts and circumstances of the instant case in view of the cited authority, the probative worth of the other crimes evidence did not outweigh the prejudicial impact. This is especially true when examining the degree to which such evidence was stressed to the jury. Such degree was unnecessary, and can only be regarded as a pretext for placing bad character before the jury. While the prosecution claimed the other crime evidence to be admissible for showing motive, a justification not conceded by appellant in this case, the prosecution did not elaborate beyond the mere recitation of the justification, and then proceded to present voluminous evidence going to the prior robbery. Thus, even if the evidence would have been justified for admission, said justification was lost when the prejudicial impact was compounded by extensive and unnecessary detail.

POINT III

THE CUMULATIVE EFFECT OF THE COURT'S RULINGS ON THE EVIDENCE PRESENTED AT TRIAL CONSTITUTED REVERSIBLE ERROR.

The following is an index of objections and motions made by defense counsel which were overruled by the trial court:

Transcript Page	Description
143-145	Motion for Mistrial on Basis of Jury Misconduct (Denied at 147-148)
150-151	Objection to Relevency of Continuing Line of Questioning
152	Objection to Question as leading
153	Objection to Statement as Conclusory
153	Hearsay Objection
157	Hearsay Objection
184-188	Objection to Evidence of other Crimes as Admissible
212-213	Four Objections to Questions Leading or repetitious
216	Objection to Question as Leading
233-235	Motion for Mistrial on Basis of Information not Released by Police
238	Hearsay Objection
259	Continuing Objection to Evidence of other Crimes
260	Hearsay Objection
264-313	Objection to Admission of Photographs into Evidence
280	Objection to Opinion or Speculative
283	Hearsay Objection
284-287	Motion for Mistrial on Basis of Evidence of Other Crimes
291	Hearsay Objection

292-294	Three Motions to Strike
293	Objection to Question as Leading
329	Objection to Statement as Conclusory
345-346	Objection to Question as assuming fact not in Evidence
367	Objection to Question as Calling for Speculative Opinion
416	Objection to Use of Document
423	Objection to Question as Speculative
447-448	Hersay Objection
453	Relevancy Objection
457	Hearsay Objection
459	Objection to Question as Leading
461	Objection to Question
471	Objection to Question as Leading
472	Hearsay Objection
484	Objection to Question
489	Relevancy Objection
567	Foundation Objection
572	Probativeness Objection
587	Foundation Objection
618	Objection to Condition Resting at Case by Prosecution
622-649	Six Motions Made and Argued
650	Objection to Reopening of Case by Prosecution
668-675	Four Objections to Witness Reading Document
681, 692	Foundation Objection
690-691	Two Objections to Questions as Improper Redirect

704	Hearsay Objection
705	Objection to Question as Leading
725	Motions Made and Argued at 622-649 Renewed
744	Objection to Question
869-870	Objection to Admission of Gun into Evidence
873-877	Renewed Motions plus Additional Motions Made and Argued
878-879	Exceptions to Jury Instructions
879-882	Objection to Requested Jury Instructions Not Given

The objections and motions which were denied incorporate issues argued in Points I and II, as well as others. Appellant submits that the comulative effect of these rulings requires that he be granted a new trial.

The leading case in Utah concerning the cumulative effect of the ruling upon the evidence is State v. St. Clair, 3 U.2d 230, 282 P.2d 323 (1955), in which the defendant, convicted of murder, was granted a new trial. This Court recognized the validity, upon appellate review, to consider the cumulative effects of the trial court's evidentiary rulings.

> "None of the rulings on evidence, considered singly, may seem of any great import. But the defendant is nevertheless entitled to have them considered cumulatively and as part of the over-all picture in determining whether he had a fair opportunity to present his defense. Id, at 328."

This Court went on to hold that not only could the ruling on evidence be considered cumulatively, but that the cumulative effect could be such as to require a new trial,

and cited prior decisions of the Court consistent with that position.

> "The proposition for us to decide here is not whether any of the irregularities herein discussed would separately have been such as to constitute prejudicial error and require a new trial. It is recognized that a combination of errors which, when singly considered might be thought insufficient to warrant a reversal, might in their cumulative effect do so. State v. Vasquez, 101 U. 444, 121 P.2d 903, 140 A.L.R. 755 (1942); see State v. Moore, 111 U. 458, 183 P.2d 973 (1947). Id, at 332 (Footnote added)."

In that case this Court found sufficient evidence to support a conviction, but nevertheless granted a new trial, in part because of uncertainty as to whether the degree of the crime found in the verdict was tainted by the cumulative effects of the trial court's rulings on the evidence.

> "Under such circumstances, we cannot affirm with confidence that the result would have been the same in the absence of the irregularities mentioned. We are, therefore, impelled to the conclusion that there is substantial doubt that the defendant was properly convicted, which doubt should be resolved in his favor, so that we are conscientiously bound to grant a new trial. Id. at 332."

Appellant submits that the present case is squarely within the St. Clair decision.

The adverse rulings to appellant were many, but the major ones should be reiterated. First as argued in Point I, was the retention of Juror Carpenter to sit on the jury despite his misconduct in violation of the court's admonition. Second, as argued in Point II, was the evidence

admitted as to other crimes allegedly committed by appellant. Again, the degree to which such evidence was introduced is the subject for complaint. The testimony of the eyewitness-victim to the robbery, the police testimony, and the two photographs introduced in evidence went far beyond whatever legitimate purpose for such testimony and evidence. The revelation during the course of trial that information was not released by police to defense counsel of a potentially exculpatory character. The motions argued near the conclusion of trial to dismiss the more serious charges against appellant. The exceptions and objections to the jury instructions. All of these points, plus the others documented in the index demonstrate the cumulative effect upon the fairness of appellant's conviction. It cannot be said with confidence that the trial result would have been the same had not the irregularities occurred; it can be said that there is substantial doubt whether appellant was properly convicted. For all these reasons, this Court should grant appellant a new trial, under the controlling mandate of State v. St. Clair, Supra.

CONCLUSION

As argued, the misconduct of juror Carpenter necessitated his discharge from the trying of the case. The failure to exclude this juror, and/or to declare a mistrial, was error.

The admission into evidence of other crime

evidence, because of the degree of such admission and its character, was error. The prejudicial import of such evidence outweighed its probative worth.

Even if the conviction is not reversible under the two specific contentions, the trial court made numerous rulings on the evidence presented, which in their comulative effect substantially prejudiced the appellant, whether or not the individual rulings were sufficient error. For each and all of these reasons, appellant prays that the conviction be reversed and the matter be remanded for a new trial.

Respectfully submitted,

D. Gilbert Athay
Attorney for Appellant