

1978

## State of Utah v. Kelvin Taylor : Brief of Respondent

Utah Supreme Court

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JUN 15

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

----- : -----  
STATE OF UTAH, :

Plaintiff-Respondent, :

-vs- :

Case No.  
15674

KELVIN TAYLOR, :

Defendant-Appellant. :

----- : -----  
BRIEF OF RESPONDENT  
-----

STATEMENT OF THE NATURE OF THE CASE

Defendant was charged with theft of a firearm in violation of Utah Code Ann. § 76-6-404 (Supp. 1977), a felony of the second degree, Utah Code Ann. § 76-6-412 (Supp. 1977).

DISPOSITION IN THE LOWER COURT

The jury returned a verdict of guilty, and the Honorable J. Robert Bullock sentenced the defendant to a term in the Utah State Prison of not less than one nor more than fifteen years.

## RELIEF SOUGHT ON APPEAL

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

## STATEMENT OF FACTS

The defendant and Mark Myers were runaways from the "halfway house" prison facility (T.20). The defendant, Mark Myers, and Myers' fiancée, Holly, took an automobile, food, and some firearms into the mountains to "hide out" from the police (T.23-27). Mark gave the defendant permission to take his car to visit some girls if he promised to return by 5:00 o'clock (T.15-16). The defendant did not return by 5:00 o'clock that evening, or by the following morning, so Mark walked from the campsite and found the defendant at a laundromat in Payson (T.16-17). Mark discovered that a citizen's band radio had been taken from the car (T.17). The defendant told Mark that it had been stolen when he was repairing a flat tire on the car (T.18). Mark later learned that a rifle had been taken from the trunk of the car (T.17). The rifle was recovered from the shop where defendant had pawned it, along with the radio and other items taken from the car (T.18-19, 38-39,

51-52). The defendant admitted pawning the rifle without permission because he had no other means of obtaining money (T.47,69). The defendant testified the money was needed to buy food (T.69-70).

Defendant's claimed error on appeal is that evidence of other crimes or civil wrongs was improperly admitted. The facts surrounding this claimed error are as follows:

After the prosecutor's opening statement, defendants moved for a mistrial on two grounds: (1) the prosecutor stated that the defendant had been in the "halfway house" before the offense was committed, implying he had been convicted of another crime, and (2) the prosecutor stated that other items had been taken from the car in addition to the rifle (T.7-8). The court denied the motion for a mistrial.

Mark testified that he had first met the defendant at the Utah State Prison, and defendant objected "on the basis of my former motion." (T.11). The court stated that defendant had a standing objection and overruled the objection (T.11). The prosecutor then asked Mark about certain girls, and Mark answered that they were runaways (T.12). Defendant moved to strike the answer. Id.

The Court answered:

"THE COURT: Well, perhaps I could handle it this way, that by instructing the Jury now that the only question that is before you for resolution is whether or not on September 9, 1977 the defendant Kelvin Taylor stole a firearm. . . . And any of the other testimony is just strictly by way of background, had no bearing upon the question as to whether or not Mr. Taylor did. But the Court rules that it is necessary for you to have an understanding of how the situation developed so that you can decide the ultimate question as to whether or not Mr. Taylor did as the state charges. And only for that purpose do I permit these questions, Mr. Carter." (T.12-13).

The defendant's counsel stated that he did not want to interrupt again, and asked if he could have a standing objection. The court stated:

"THE COURT: Yes, you may, absolutely. You have it. I'll not permit him to go further than to just give us all a picture as to the actual situation, so that the Jury can focus on the -- properly focus on the ultimate question as to whether or not the theft occurred." (T.13).

After this point in the trial, there were no further objections to questions or motions to strike witnesses' answers, but further testimony was given



that tended to imply that defendant had committed crimes. Mark was asked about the events of a certain day, and he replied that "the defendant went out and siphoned gas for us." (T.15). Evidence that the defendant had stolen items other than the rifle from Mark's car was received (T.17-18). Mark was asked what he had done after finding the gun in the pawn shop, and he answered that he called the police and that the police had told him that they had a warrant for the defendant's arrest for escape from the halfway house (T.20). On cross-examination, Mark testified that he and the defendant had planned to poach wild game (T.25). Detective Sergeant Frank Wall of the Utah County Sheriff's Department testified as to certain conversations he had with the defendant. The prosecutor asked Wall if he had inquired about the rifle, and Wall answered:

"Yes. I asked him, I said, 'Kelvin, you realize that this would violate you, being in possession and doing this with the firearm?' And he said, 'Yes.' I asked him if his probation officer had been notified, and he said, 'No.' So at that time we called his probation officer and talked with him." (T.48).

Wall was then asked to relate another conversation with the defendant, and he testified: "We had talked about his being involved in the situation, and I asked Mr. Taylor why he would want to violate his parole and take the chance again. . . ." (T.49).

Finally, Wall related a conversation he had with the defendant at the time of his arrest when the defendant stated, "Well, I guess this will put me back in prison." (T.50). Wall testified that he "had helped him (the defendant) out in previous (occasions?) and I felt that he hadn't been honest to me. . . ." (T.50-51).

At the close of the State's case, defendant renewed his motion for a mistrial, and the court denied it (T.56-57). The defendant took the stand in his own behalf (T.63-76).

#### ARGUMENT

#### POINT I

THE COURT BELOW PROPERLY ADMITTED EVIDENCE OF OTHER CRIMES.

A. EVIDENCE THAT DEFENDANT HAD STOLEN OTHER ITEMS AT THE TIME AND PLACE OF THE THEFT CHARGED IN THE INFORMATION WAS PROPERLY ADMITTED BECAUSE IT WAS RELEVANT TO ESTABLISH A COMMON PLAN OR SCHEME.

Utah Rules of Evidence 55 provide that evidence of other crimes is admissible when relevant to prove a common plan or scheme. State v. Schieving, 535 P.2d 1232 (Utah 1975); State v. Cauble, 563 P.2d 775 (Utah 1977). Evidence that the defendant had taken items other than the rifle from the car and pawned them at the same shop is relevant to prove a common plan or scheme to commit thefts of items from Mark Myers' car in order to obtain money. Respondent submits that evidence of the other thefts falls within Rule 55, and the Cauble and Schieving cases, supra, and was properly admitted by the court below.

B. THE DEFENDANT'S ADMISSION, AND THE CONVERSATION SURROUNDING DEFENDANT'S ADMISSION, WERE PROPERLY ADMITTED.

Officer Wall's testimony that the defendant stated in his presence, "Well, I guess this will put me back in prison" (T.30), was admissible hearsay because it was an admission. Utah Rules of Evidence 63(6). The statement was also admissible, even though it tended to show commission of another offense, because it was relevant to prove guilty knowledge. Utah Rules of Evidence 55.

"Statements admitting a crime by one not under arrest are admissible. The fact that he admitted other crimes at the same time does not render the statement inadmissible." Lamberson v. State, 504 S.W.2d 894, 896 (Tex. Crim. 1974). The case of Wooley v. People, 367 P.2d 903 (Colo. 1962), is in point. In Wooley, the court allowed the defendant's entire confession into evidence even though it implied that defendant had been in prison, because the confession was voluntary and in response to a proper question. In this case, defendant's admission, "Well, I guess this will put me back in prison" (T.30), was spontaneous and voluntary.

Defendant's other admissions to Officer Wall were also admissible, and because they were admissible, the jury was entitled to hear the conversational context in which they occurred, even though Officer Wall's questions implied that defendant was a probationer or parolee. "It is settled law that where a conversation is inquired into it is not error to elicit the entire conversation even though, in this fashion, such conversation incidentally reveals the commission of another offense." People v. Howard, 334 P.2d 105, 113 (Cal.App. 1959).

Respondent submits that defendant's admissions, and the conversations in which they occurred, were relevant and material to prove the offense charged, and the fact that they implied that defendant had been convicted of other crimes did not render them incompetent.

C. EVIDENCE THAT DEFENDANT HAD ESCAPED FROM A PRISON FACILITY, AIDED RUNAWAYS, AND SIPHONED GASOLINE WAS PROPERLY ADMITTED TO EXPLAIN THE CIRCUMSTANCES SURROUNDING THE CRIME AND TO DEMONSTRATE DEFENDANT'S MOTIVE.

In State v. Kasai, 27 Utah 2d 326, 329, 495 P.2d 1265, 1267 (1972), this Court explained that "relevant evidence is admissible for the purpose of explaining the circumstances surrounding the crime of which the defendant stands accused; and the fact that it may tend to connect the defendant with another crime will not render the evidence incompetent." In this case, the defendant escaped from a prison facility, and the flight to a mountain campsite, the theft of gasoline, and the pawning of the stolen rifle to obtain money for food were all connected because they related to defendant's attempt to elude the authorities. If the jury had not heard evidence of defendant's escape,

his actions would seem unconnected and inexplicable. The court below ruled that "it is necessary for you [the jury] to have an understanding of how the situation developed so that you can decide the ultimate question. . . ." (T.13). Respondent submits that this ruling is correct because the seemingly unrelated other offenses are, in reality, bound together by the single transaction of defendant's attempt to escape and elude capture. This attempt to escape provided the motive for defendant's theft: the charge in issue. Evidence of other offenses relevant to prove motive are admissible. Utah Rules of Evidence 55. In a prosecution for theft of a car, evidence of defendant's recent escape from the county jail is admissible to prove motive and as part of the res gestae. Fleming v. State, 536 P.2d 986 (Okla. Crim. 1975). Evidence of theft of an automobile is admissible in a prosecution for escape, State v. Courville, 387 P.2d 938 (Wash. 1973), and evidence that a defendant was arrested in a stolen car is admissible in a burglary prosecution. People v. Robinson, 240 N.E.2d 397 (Ill. App. 1968). Admission of this type of evidence is governed by the "complete story" test that allows the jury to hear all of the evidence surrounding an alleged offense, even if another offense is incidentally established.

State v. Allen, 111 Ariz. 546, 535 P.2d 3 (1975).

Respondent submits that the evidence submitted to the jury was relevant to an explanation of the circumstances surrounding the offense and to the defendant's motive.

#### POINT II

ASSUMING THAT EVIDENCE OF OTHER OFFENSES WAS IMPROPERLY ADMITTED, THE ERROR WAS HARMLESS AND DOES NOT REQUIRE REVERSAL.

The evidence of defendant's guilt is overwhelming. Defendant confessed that he had taken the rifle without permission to do so (T.47,69). The defendant was identified by the pawnbroker, and the defendant's signature was on the pawn ticket (T.38,39). The defendant offered a false explanation to Mark when other thefts from the car were discovered (T.18). This Court should not reverse unless the judgment below would have been different but for the error. Utah Code Ann. § 77-42-1 (1953). In view of the evidence, the judgment and verdict could not have been otherwise. The possibility of prejudice was substantially lessened by the judge's cautionary instruction that evidence of other offenses ". . . is just strictly by way of background, had no bearing upon the question as to whether or not Mr. Taylor

did [commit the offense]" (T.12-13). The possibility of prejudice was further reduced by the fact that the most damaging evidence relating to prior convictions could have been brought out anyway when the defendant took the stand in his own behalf and was therefore required to answer previous felony convictions. Utah Code Ann. § 78-24-9 (1953); State v. Bennett, 30 Utah 2d 343, 517 P.2d 1029 (1973); and Utah Rules of Evidence 21. It would be particularly unjust to reverse the conviction in this case where nearly all of the offensive evidence was introduced, not by an improper question, but because it was volunteered by an overzealous or non-responsive witness. Respondent submits that the evidence of guilt is overwhelming and the prejudice from the claimed error, if any, was slight.

#### CONCLUSION

Respondent submits that evidence of other offenses was properly admitted to prove plan, motive or guilty knowledge by an admission. If any error is found in the admission of this evidence, respondent submits that it is harmless. Accordingly, respondent asks this



Court to affirm the judgment rendered below.

Respectfully submitted,

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