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State of Utah v. Denon Jones : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff and Respondent,

vs.

Case No.
15705

DENON JONES,

Defendant and Appellant.

BRIEF OF APPELLANT

Appeal from the jury verdict of the Second Judicial District Court for Weber County, State of Utah, the Honorable Calvin Gould presiding.

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Defendant and Appellant

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The Appellant was charged by information with the crime of "Distribution for Value a Controlled Substance," a second-degree Felony under Title 58-37-8 (1)(a)(ii), Utah Code Annotated, 1953.

DISPOSITION IN THE LOWER COURT

The case was tried to a jury with the Honorable Calvin Gould presiding. The appellant was found guilty of the offense charged in the information, and was sentenced to the Utah State Prison for a term not to exceed fifteen (15) years.

RELIEF SOUGHT ON APPEAL

The appellant requests that the verdict be set aside and the District Court be ordered to dismiss the charge. In the alternative, the appellant requests a new trial.

STATEMENT OF FACTS

The appellant was charged with selling a quantity of heroin to Annette Stubbs on October 17, 1977. Annette Stubbs was an undercover agent for the Ogden City Police Department, and the alleged transaction was set up to be a controlled buy.

The State's Evidence, in substance, was that Annette Stubbs met with six police officers at about 10:30 p.m. on October 17, 1977. The two female officers conducted a strip search of Annette Stubbs. After the search, Annette was given two 3-cc syringes and sixty (\$60.00) dollars. Annette then made a phone call which she claimed was to the appellant and supposedly received permission to come down to his house. Annette was dropped off at a location approximately a block and a half from the appellant's home, and she walked the rest of the way. She entered Mr. Jones' home at 11:37 p.m., exited at 11:52 p.m., and walked back to where she had been dropped off. When she met with the police, she returned the two syringes. One of them contained a substance later identified

as heroin. (Tr. 14-32) None of the police officers were able to testify as to what went on inside the appellant's home (Tr., 36, 47, 54, 61). The only evidence in the trial that implicated the appellant was the testimony of Annette Stubbs.

FACTS CONCERNING ANNETTE STUBBS

At the time of the trial, Annette Stubbs was 18 years of age (Tr. 69). She is an admitted prostitute and heroin addict (Tr. 73). At the age of 12, she started running away from home (Tr. 71), and she spent two years, off and on, in the State Hospital at Provo after she turned 12 (Tr. 102). At the age of 15, she was committed to the State Industrial School (Tr. 15).

In March of 1977, Annette went to Pocatello, Idaho, with Colleen Searle and Richard Cottrell. The purpose of the trip was to get her started as a prostitute. She claims that it was during that trip that she first started to use heroin (Tr. 102-104). During 1977, Annette was arrested twice for prostitution.

In August of 1977, Ms. Stubbs met Gerald Burnette at a restaurant in Ogden. At the time of the meeting, she did not know he was a police officer, but during their first conversation, Mr. Burnette informed her that he worked for the Narcotics Division of the Ogden Police Department. He also informed her that she should get off the streets and stop prostituting; and that if she didn't stop, he would put the

word that she was a police informant. At the conclusion of their initial conversation, Mr. Burnette rented a motel room for the weekend for Ms. Stubbs' use, with the understanding that she would "clean up her act" and go home to her parents. She did neither, and on September 21, 1977, Mr. Burnette saw her again and made an appointment to talk to her later that night. She missed the appointment, but went to the police station the next night and agreed to become an undercover agent (Tr. 143-145). The Police Department agreed to pay her \$150.00 for every person she could bust. In addition, they covered her living expenses. The total amount expended on this operation up to the date of the trial was \$6,400.00, and the Department still owed Annette \$900.00, less amounts advanced of \$224.00 on her fee (Tr. 167-169).

Ms. Stubbs further acknowledged that, while working under cover, she continued to buy and shoot heroin without telling the police about it. She said she saved part of her grocery allowance to buy heroin (Tr. 93). She further testified that she did not tell the police about shooting heroin while working for them until she was tripped up in Court (Tr. 126-127).

Annette's testimony about the alleged buy on October 17, 1977, was that she went in the house, bought two balloons of heroin from Mr. Jones, prepared a syringe, and shot a port

of it into her arm and saved some for analysis (Tr. 80-87). She further acknowledged that her prior contacts with Mr. Jones were such that she had many opportunities to plant heroin in his house (Tr. 131).

ARGUMENT

POINT I

THE STATE OFFERED AND THE COURT ADMITTED EVIDENCE OF ALLEGED ACTS OF THE APPELLANT UNREALTED TO THE CHARGE FOR WHICH HE WAS BEING TRIED, AND IN DOING SO, THE STATE AND THE COURT DEGRADED THE CHARACTER OF THE APPELLANT IN THE EYES OF THE JURY.

Prior to the commencement of the trial, the prosecuting attorney was aware that his entire case turned on the testimony of Annette Stubbs and her credibility. From that standpoint, the prosecution made every effort to degrade and humiliate the appellant in an attempt to make Annette Stubbs look better than she was.

The tone of the trial started with Mr. Gladwell's opening statement when he stated, "The sale of heroin is an obnoxious, disgusting activity. It is an offense to you and I. It is a blight on our community." (Tr. 4). True as Mr. Gladwell's statement may have been, it was an inappropriate and impermissible argument to be making in an opening statement.

Appellant's Counsel was aware of the Prosecution's intent to try to degrade the character of the appellant through the testimony of Annette Stubbs. Therefore, prior to her testimony, a Motion was made to the Court to limit such testimony and to have the prosecution make a proffer as to its intent and purpose. The Court denied the Motion for a Limitation Order (Tr. 62-68). As a part of that Motion, the appellant acknowledged that there was no issue of Entrapment (Tr. 62-63). Mr. Gladwell acknowledged that his proposed evidence might have a tendency to inflame the jury (Tr. 66).

Following the denial of the Motion and at the point in Ms. Stubbs' testimony where it became relevant, appellant's objection was again made and denied (Tr. 77).

Ms. Stubbs then testified that she started buying drugs from Mr. Jones when she first met him (Tr. 77), and that other people around his house were involved in heroin addiction (Tr. 79). Then, the prosecution embarked on the following line of questioning involving prostitution (starting at Tr. 79 line 21):

" Q. Did you ever conduct yourself as a prostitute in his residence?

A. I did.

Mr. SHARP: Well, now, I am going to object on that point, Your Honor. At this point heroin is one thing, but trying to bring in other offenses that are unrelated to the charge is just an attempt to inflame the minds of the jury, and that's all the prosecution is doing, trying to in effect say

Mr. Jones is a sinful person and if he didn't do this on this day, you ought to convict him anyway because of all the other stuff he did. I contend it is prejudicial, improper, and he shouldn't be allowed to go into it.

MR. GLADWELL: That's not the case, your Honor.

THE COURT: Well, Mr. Gladwell, he has my ruling and he is overruled.

MR. GLADWELL: Thank you.

Q. And on how many occasions did that--did you act as a prostitute in his residence?

A. Four or five times.

Q. Now just how would that occur? Would you bring the individuals to his-home?

A. Yes, I would.

Q. And then what would happen once you reached the residence?

A. We would go in the back bedroom, and I would give Denon Jones \$5.00.

Q. What would you give him \$5.00 for?

A. For the room, to use the room. And then after I was done, with the money that I had got from the man that I was with, I would buy heroin, if he had it.

Q. How long did this relationship that you had with Denon Jones continue?

A. Up until the arrests were made."

Appellant contends that the admission into evidence of the above statements were prejudicial to the appellant and were in violation of Rules 47 and 55 of the Rules of Evidence, which read as follows:

"RULE 47. CHARACTER TRAIT AS PROOF OF CONDUCT

Subject to Rule 48, when a trait of a person's character is relevant as tending to prove his conduct on a specified occasion, such trait may be proved in the same manner as provided by Rule 46, except that (a) evidence of specific instances of conduct other than evidence of conviction of a crime which tends to prove the trait to be bad shall be inadmissible, and (b) in a criminal action evidence of a trait in an accused's character as tending to prove his guilt or innocence of the offense charged, (i) may not be excluded by the judge under Rule 45 if offered by the accused to prove his innocence, and (ii) if offered by the prosecution to prove his guilt, may be admitted only after the accused has introduced evidence of his good character.

RULE 55 OTHER CRIMES OR CIVIL WRONGS

Subject to Rule 47 evidence that a person committed a crime or civil wrong on a specified occasion, is inadmissible to prove his disposition to commit crime or civil wrong as the basis for an inference that he committed another crime or civil wrong on another specified occasion but, subject to Rules 45 and 48, such evidence is admissible when relevant to prove some other material fact including absence of mistake or accident, motive, opportunity, intent, preparation, plan, knowledge, or identity."

As noted in the last sentence of Rule 47, such evidence is not admissible unless the accused has introduced evidence of his good character. At the point of Annette Stubbs' testimony, the defendant had not testified or put on any evidence. In fact, as a part of the Motion in Limitation the appellant's Counsel acknowledged to the Court that a final decision had not been made as to whether or not the defendant would testify (Tr. 67).

As to the exceptions noted in Rule 55, to-wit:
absence of mistake, accident, motive, opportunity, intent,
preparation, plan, knowledge, or identity, Ms. Stubbs'
testimony about prostitution had nothing to do with any
of the above exceptions.

This Court has further noted a further exception
to the general rule when entrapment is raised as a defense
State v. Perkins, 19 Utah 2d 421, 432 P2d 50, 1967, however,
as a part of the Motion in Limitation, Counsel for appellant
specifically disclaimed an entrapment defense (Tr. 62-63).

The Case Law in Utah is very supportive of Appellant's
position:

In State v. Torgerson, 4 Utah 2d 52, 286 P2d 800,
1955, this Court said,

"The rule on that subject in this state is
that such evidence which has probative
value to prove a material issue is admissible
unless offered only to show evil or criminal
disposition."

One of the exceptions referred to in the Rules is
when there is an identity issue, and as noted in State v.
McHenry, 7 Utah 2d 289, 323 P2d 710, 1958, wherein this
Court noted:

"It is true evidence of a prior crime is as a
general rule not admissible in the prosecution of
an accused for a charged offense.¹ An exception
to this rule exists in instances when such
evidence tends to aid in the identification of

of the defendant presently charged. The caveat is made, however, that if identity can be clearly shown without such evidence it should not be admitted as its only effect would then be to prejudice the jury, inferring present guilt from past unrelated activity."

It should be noted that as a part of the Motion in Limitation, Counsel for appellant acknowledged that there was no issue of identity in that Ms. Stubbs and Mr. Jones knew each other very well. Therefore, there was no identity issue.

The general rule again relied upon by this Court in State v. Dickson, 12 Utah 2d 8, 361 P 2d 412, 1961, reversed the trial Court. Also in support of this position, see State v. Lopez, 22 Utah 2nd 257, 451 P 2d 772, 1969; State v. Masor, _____ Utah 2d _____, 530 P2d 795, 1975; State v. Brown, _____ Utah 2d _____, 577 P 2d 135, 1978; State v. Green, _____ Utah _____, 579 P 2d 512, 1978.

Appellant feels that State v. Goodliffe, _____ Utah _____, _____ P2d _____. (Case No. 15363 filed May 1, 1978) is very much in line with appellant's contention, wherein the Court says"

"The rules of evidence require rejection of evidence of specific behavior to prove a character trait except evidence of conviction of crime.² The Rule, of Course, is different where the evidence of other crimes or civil wrongs is relevant to prove some other material fact such as motive, opportunity, intent,³ preparation, plan, knowledge or identity."

In the instant case, the State made no contention at trial that it sought to admit evidence of prior "complaints" for any purpose other than to rebut defendant's evidence of his truthfulness and veracity. The record also reveals that the Court admitted into evidence for that purpose; yet, the clear implication of the testimony was that it was an attempt to demonstrate defendant's propensity to commit sexual crimes of the nature he is presently charged with.

Bare, unproven allegations or "complaints" of prior incidents of similar conduct have no relevancy to the issue of defendant's truthfulness or veracity. The admission of such evidence without further explanation could only have caused the jury to speculate about defendant's propensities to commit such crimes and confuse the issues, all to the prejudice of defendant, which necessitates a new trial."

After the State rested, a decision was made to have appellant testify partially in an attempt to let him defend his own character, which had been extremely damaged by the unsupported allegations of Annette Stubbs.

In his testimony he acknowledged that he had been a resident of Ogden since 1955, and had held a job at Hill Air Force Base for 23 years. He did befriend Annette Stubbs, and he tried to get her off heroin, which Annette also acknowledged (Tr. 113). He also gave her money to go home to her parents so she could get away from the people with whom she was associating (Tr. 180). Annette did acknowledge taking money from him to go home on, but said it was for a visit. Mr. Jones further denied being involved in selling any heroin to Annette, or to anyone else.

CONCLUSION

Appellant contends that he was so improperly prejudiced by the unsupported allegations of the prosecution witness that he could not possibly receive a fair trial. WHEREFORE, the appellant prays that the Court reverse the trial and order the matter dismissed, or in the alternative, to order a new trial.

Respectfully submitted by the Attorney for the appellant,

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