1980

State of Utah v. William Luis Forsyth : Brief of Defendant-Appellant

Utah Supreme Court

Stephen R. Madsen; Attorney for Defendant-Appellant;
Robert Wallace; Attorney for Plaintiff-Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
vs.	:	Supreme Court No. 16,636
WILLIAM LUIS FORSYTH,	:	
Defendant-Appellant.	:	

BRIEF OF DEFENDANT-APPELLANT

APPEAL FROM THE JUDGMENT OF THE
FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
HONORABLE GEORGE E. BALLIF, PRESIDING

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BRIEF OF DEFENDANT-APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This was a criminal prosecution on five counts of theft by deception, second degree felonies in violation of Title 76, Chapter 6, Section 405, Utah Code Annotated (1953, as amended).

DISPOSITION IN THE LOWER COURT

This case was tried by a jury on June 25, 26 and 27, 1979, before the Honorable George E. Ballif, Judge of the Fourth Judicial District Court, in and for the State of Utah, Provo, Utah County, Utah. Count V of the information was dismissed during the trial and a verdict of guilty was returned by the jury on the remaining four counts on June 27, 1979, from which verdict the defendant appeals.

RELIEF SOUGHT ON APPEAL

Defendant-appellant prays that this Court dismiss the information or grant the defendant a new trial.

STATEMENT OF FACTS

Defendant was the organizer and officer of a Utah corporation. Investors entered into an agreement with the corporation to invest funds. In exchange, the investor received a written contract from the corporation to have certain items performed including the repayment of the investment within a certain time. The four investors set forth in the information invested $5,000 each. The written contract stated that the funds were to be repaid out of future membership sales, which were to commence after certain physical facilities were built. There was approximately $300,000 of funds available to the corporation before and after the investors invested such $20,000.

The physical facilities were commenced but never finished and the corporation became insolvent and did not pay such debts. There were other promises, opinions, and representations made in conjunction with the execution of the written contracts. Because the venture failed, many of these oral promises, etc., were not performed.

During the trial, the trial Judge allowed other investors not listed in the information and in fact some investors that invested in other corporations to testify that they did not receive their money back. One investor was a widow who invested her life savings. However, she never talked with the defendant or one of his agents before such investment. There were a total of

ten other investors that were allowed to testify that they did not receive their money back, in addition to the four investors set forth in the information.

POINT I

DEFENDANT DID NOT RECEIVE A FAIR TRIAL BECAUSE OF THE ADMISSION OF EVIDENCE WHICH TENDED TO SHOW THAT HE HAD COMMITTED OTHER CRIMES OR CIVIL WRONGS.

This case involves the single issue of whether the defendant was denied the right to a fair trial by the admission into evidence of the testimony of investors other than the alleged victims in a case of theft by deception, where the testimony of those witnesses as to alleged civil wrongs did not come within the exceptions of Rule 55 of the Utah Rules of Civil Procedure and was highly prejudicial to the defendant.

At the trial, the Court admitted over objection, the testimony of nine witnesses who were investors, but who were not among the four witnesses listed in the information as "alleged victims". The Court admitted the testimony to show the over-all pattern or scheme or design of the defendant. (T. 252, L. 2-9). Rule 55, Utah Rules of Evidence, prohibits generally the admission of evidence of other crimes or civil wrongs, except when relevant to prove some other material fact such as, inter alia, the plan of the defendant.

The admission of such evidence was contrary to the principle set forth by this Court; namely, that the issue in a criminal trial

should be whether the defendant is guilty of the specific offense charged in the information. Other evidence of crimes, criminal conduct, or wrongdoing should not be admitted for the purpose of disgracing the defendant or of showing defendant's propensity to commit a crime. State of Utah v. Vira Mason, 530 P.2d 795, 1 Whartons Criminal Evidence, SECS. 233, et seq. (Twelfth Ed. 1955); State v. Dickson, 12 U.2d 8, 264 P.2d 412. (emphasis added).

The general rule is that in a criminal case, evidence which shows or tends to show that the defendant had committed other crimes in addition to that for which he is on trial is inadmissabl Olson v. Swapp, 535 P.2d 1232 (1975). (emphasis added).

In State of Utah v. Daniels, 584 P.2d 880, the Court stated as follows: "This Court has stated on numerous occasions that evidence of other crimes allegedly committed by the defendant is not admissable if the purpose is to disgrace the defendant as a person of evil character with a propensity to commit crime and th likely to have committed the crime charged."

The Court has also stated that there must be "...some legitimate purpose to be served by the evidence which is otherwise competent and relevant." State v. Mason, 530 P.2d 795.

In the present case, the State represented to the Court tha the evidence of other investors should be admitted for the expre purpose of showing a common plan or scheme.

This Court has set a specific standard for receiving such evidence. Such evidence is admissable only if it will "show a common scheme or plan embracing commission of similar crimes so related to each other that the proof of one tends to establish the crime for which the defendant is on trial." Olson v. Swapp, Supra. (emphasis added).

In the present case, the evidence from the other investors did not meet the standard for the exception set forth by Rule 55 as defined by this Court. On the contrary, such evidence tended to show the defendant had the propensity to commit other civil wrongs or crimes and was grossly prejudicial. Such evidence, as a matter of law, did not show a common scheme or plan.

Other than the "alleged victims" in this business endeavor, the State called nine other investors to testify. Their testimony did not show a common plan or scheme, but did grossly prejudice the defendant's right to a fair trial by parading witness after witness before the jury who complained, not of any misrepresentations by the defendant, but that they didn't get their money back from their investment.

Perhaps the most damaging example of this was the testimony of Helen Evans. Mrs. Evans testified that she invested in June, 1973. However, she didn't even meet the defendant until January, 1974. (T. 259, L. 12-17). The defendant made no representations to her prior to her investment (T. 257, L. 19-28), but Mrs. Evans

relied on the representations of a relative. (T. 256). The sum and substance of her testimony, though, was that she was a widow (T. 260, L. 17-18) who invested her $12,500 and didn't get a dime back. (T. 263, L. 17-21). This testimony of a civil wrong allegedly done by defendant was highly inflammatory and prejudicial to the defendant.

Three other witnesses also were allowed to testify that they put their money in but didn't get it back, even though they, too, had not even spoken to the defendant about the investment prior to making it. One of these was Ralph Ladle, the "alleged victim" of Count V of the information, which count was dismissed (T. 396) after Ladle testified that he had no conversations with defendant prior to investing. (T. 269, L. 24-29). Yet, he was still allowed to testify that he didn't get his money back (T. 275, 276). Armstrong also testified the defendant made no representations prior to his investment (T. 293, L. 10-17), as did Hewitt (T. 296, L. 4-18, 25-30).

Other witnesses included Brown, who gave no evidence of fraud or a common scheme or plan, but testified he did not get his money back (T. 287, L. 23-25); Park, who also gave no evidence of a common scheme, but did not get his money back (T. 306, L. 2-4); Thorell, again no evidence of the common scheme, but didn't get his money back (T. 311, L. 30; 312, L. 1); Taylor, with no evidence of a

common scheme, but who didn't get his money back (T. 319, L. 20-21); Terry, with no evidence of a common scheme or plan, but who also got no money back (T. 327, L. 11-12); and Brothers, with no evidence of a common plan or scheme and who got no money back (T. 347, L. 29-30).

The sheer weight of the numbers of witnesses put on by the State for the purpose of showing that many people didn't get their money back from this investment, even though not showing the common scheme or plan by the defendant to commit the crimes with which he was charged, shifted the burden to the defendant, inflamed the jury, and denied the defendant the right to a fair trial on the information before the jury.

This evidence showed the defendant's propensity to commit the crimes charged, rather than that he committed the specific acts alleged in the information. The evidence was introduced, received and viewed by the jury for purposes other than the exception to the general rule as set forth by the trial Court.

CONCLUSION

The trial Court committed reversable error in overruling defendant's objections to the introduction of evidence of other crimes or civil wrongs contrary to Rule 55. Having allowed the evidence before the jury, the trial Court should have considered the prejudicial effect of such evidence on the defendant's ability

to obtain a fair trial and should not have denied defendant's motions to dismiss and for a directed verdict.

Respectfully submitted this 8 day of August, 1980.

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CERTIFICATE OF MAILING

This is to certify that two true and exact copies of the foregoing Brief of Defendant-Appellant were mailed to Robert Wallace, Assistant Attorney General, Attorney for Plaintiff-Respondent, 236 State Capitol, Salt Lake City, Utah 84114, postage prepaid, this 8 day of August, 1980.