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The State of Utah v. Rick Keith Hickman : Brief of Respondent

Utah Supreme Court

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BRIEF

880305

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :
 Plaintiff-Respondent, : Case No. 880305
 v. :
 RICK KEITH HICKMAN, : Priority No. 2
 Defendant-Appellant. :

BRIEF OF RESPONDENT

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APPEAL FROM A CONVICTION OF A FIRST DEGREE
FELONY IN THE THIRD DISTRICT COURT, IN AND
FOR SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE SCOTT DANIELS, JUDGE, PRESIDING.

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of a first degree felony in the Third District Court. This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2-2(3)(h)(1987).

STATEMENT OF ISSUE PRESENTED ON APPEAL

1. Whether defendant should have been allowed to withdraw his guilty plea on the ground that the trial court failed to establish a factual basis for aggravated robbery where the court explained the facts to defendant at the time he entered his plea.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann. § 76-4-101 (1953):

Attempt-Elements of offense.

(1) For purposes of this part a person is guilty of an attempt to commit a crime, if, acting with the kind of culpability otherwise required for the commission of the offense, he engages in conduct constituting a substantial step toward commission of the offense.

(2) For purposes of this part, conduct does not constitute a substantial step unless

it is strongly corroborative of the actor's intent to commit the offense.

(3) No defense to the offense of attempt shall arise:

(a) Because the offense attempted was actually committed; or

(b) Due to factual or legal impossibility if the offense could have been committed had the attendant circumstances been as the actor believed them to be.

Utah Code Ann. § 76-6-301 (1953):

Robbery.

(1) Robbery is the unlawful and intentional taking of personal property in the possession of another from his person, or immediate presence, against his will, accomplished by means of force or fear.

(2) Robbery is a felony of the second degree.

Utah Code Ann. § 76-6-302 (1953):

Aggravated robbery.

(1) A person commits aggravated robbery if in the course of committing robbery, he:

(a) Uses a firearm or a facsimile of a firearm, knife or a facsimile of a knife or a deadly weapon; or

(b) Causes serious bodily injury upon another.

(2) Aggravated robbery is a felony of the first degree.

(3) For the purposes of this part, an act shall be deemed to be "in the course of committing a robbery" if it occurs in an attempt to commit, during the commission of, or in the immediate flight after the attempt or commission of a robbery.

STATEMENT OF THE CASE

Defendant was charged with attempted first degree murder, a first degree felony, in violation of Utah Code Ann. § 76-5-202 (1978); aggravated burglary, a first degree felony, in violation of Utah Code Ann. § 76-6-203 (1978); and aggravated robbery, a first degree felony, in violation of Utah Code Ann. § 76-6-302 (1978) (R. 14-15). On January 18, 1985, defendant

appeared before Judge Scott Daniels in the Third District Court and pled guilty to aggravated robbery pursuant to a plea bargain agreement that, inter alia, dismissed the other two counts (R. 239).

Defendant, who waived his right to be sentenced at a later date and did not wish to have a presentence report, requested immediate sentencing (R. 239 at 9). Judge Daniels sentenced defendant to a term of five years to life in the Utah State Prison (R. 238 at 9).

Defendant moved to withdraw his guilty plea on July 6, 1988 (R. 52-84). Judge Daniels denied the motion on August 11, 1988 (R. 117-18). Defendant appeals from the denial of that motion.

STATEMENT OF FACTS

The relevant facts are contained in the Statement of the Case above and in the Argument portion of this brief.

SUMMARY OF ARGUMENT

Defendant's guilty plea was voluntary, knowing and intelligent because Judge Daniels described to defendant the factual bases of the plea required to establish the elements of aggravated robbery. Defendant's belated claim that no property was taken does not invalidate his plea where he expressly admitted to taking property on the record. The record as a whole also establishes that defendant was not threatened or promised anything to induce his plea. For these reasons, Judge Daniels did not abuse his discretion in refusing to allow defendant to withdraw his plea.

ARGUMENT

POINT I

DEFENDANT KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY PLED GUILTY AND THE TRIAL COURT PROPERLY DENIED HIS MOTION TO WITHDRAW HIS PLEA.

Defendant moved to withdraw his guilty plea claiming that it was unknowing, involuntary and unintelligent and taken in violation of Rule 11 of the Code of Criminal Procedure and Rule 3.6 of the Rules of Practice in District Courts. Specifically, defendant asserted that Judge Daniels did not establish a factual basis for his plea to aggravated robbery. A review of the transcript of the arraignment reveals that defendant's claim is meritless.

Initially, it should be noted that this Court will not overturn an order denying a motion to withdraw a guilty plea unless it is a clear abuse of discretion. State v. Mildenhall, 747 P.2d 422 (Utah 1987). This is especially true where the plea is the result of plea bargaining. State v. Yeck, 566 P.2d 1248 (Utah 1977). Judge Daniels did not abuse his discretion in denying defendant's motion because he did advise defendant of the facts in relation to the elements of aggravated robbery.

During the arraignment the following occurred:

THE COURT: Okay. Before you do that, I want to go over again the elements of the offense. What they'd have to prove before the jury could find you guilty and have to prove each element beyond a reasonable doubt. They'd have to prove that at 965 South 2200 East in Salt Lake County on or about November 1, 1984 you unlawfully and intentionally took personal property in the possession of A.W. Kelson from his immediate presence against his will using some sort of a deadly weapon.

They'd have to prove all those things. They'd have to prove against his will, you did intentionally, you used some sort of a deadly weapon, prove it was in Salt Lake County, prove about the time it was. Each one of those things they'd have to prove beyond a reasonable doubt. Do you understand that?

MR. HICKMAN: Yes, sir.

THE COURT: And then my question is are you pleading guilty because you are in fact guilty?

MR. HICKMAN: Yes, Sir.

(R. 239 at 5-6). This passage clearly contained a sufficient factual basis for a conviction of aggravated robbery which is defined in Utah Code Ann. §§ 76-6-301 and -302 (1978) as "the unlawful and intentional taking of personal property in the possession of another from his person, or immediate presence, against his will, accomplished by means of force or fear" by use of a "deadly weapon."

Defendant more specifically alleges that he could not have been found guilty of aggravated robbery because no property was actually taken and that he should not have been allowed to plead guilty (App. Brief at 12). Because defendant pled guilty after Judge Daniels explained to him that an element of the offense was the taking of property, said that he understood the elements and said he was pleading guilty because he was guilty, (see R. 239 at 6), he should not now be heard to complain that the facts as described by the trial court are not the actual facts of the case. United States v. Doyle, 348 F.2d 715, 718-19 (2nd Cir. 1965), cert. denied 382 U.S. 843 (1965)(guilty plea waives all nonjurisdictional claims); c.f. State v. Beck, 584

P.2d 870 (Utah 1978)(guilty plea waives right to appeal lack of jury trial) and State v. Yeck, 566 P.2d 1248 (Utah 1977)(guilty plea waives claim of lack of probable cause for arrest warrant).

Even if this Court does review the merits of defendant's claim that the facts do not support his conviction, defendant is not entitled to withdraw his plea. Section 76-6-302(3) provides that a person is guilty of aggravated robbery if in the course of an attempt to commit robbery he uses a deadly weapon. Thus, the completed offense of aggravated robbery does not require that property actually be taken only that the actor intentionally engaged in conduct constituting a substantial step toward commission of a robbery using a deadly weapon. See Utah Code Ann. § 76-4-101 (1978)(attempt defined)(quoted above at 1).

Defendant also claims that Judge Daniels erred in failing to determine that his plea was not the result of threats or other inducements (App. Brief at 5). Judge Daniels did not expressly rule on this issue, however, defendant's motion to withdraw does contain a reference to the Rule 11 requirement that the judge determine that his plea was not the result of threats or promises (R. 56). Thus, Judge Daniels implicitly ruled that the issue did not support withdrawal of the plea when he found that his plea was voluntary (R. 117).

Judge Daniels specifically asked defendant at the time of his plea if he had been threatened or otherwise induced to plead guilty (R. 239 at 7). Judge Daniels also received a full explanation of the plea agreement in open court (R. 239 at 2-3). He also established that defendant pled guilty because he was

guilty (R. 239 at 6); leading to a logical inference that defendant was not pleading guilty due to threats or inducements. Finally, defendant executed an affidavit in open court that specifically states that "[n]o promises or threats of any kind have been made to induce me to plead guilty." (R. 23).

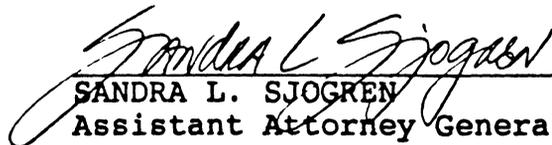
Because defendant ignores what actually occurred at the arraignment his claim is meritless and his conviction should be affirmed.

CONCLUSION

Based upon the foregoing, the State requests this Court to affirm the decision of the lower court and deny defendant's request to withdraw his guilty plea.

DATED this 10th day of March, 1989.

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CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Respondent was mailed, postage prepaid, to Rick Keith Hickman, pro se, P.O. Box 250, Draper, Utah 84020, this 10th day of March, 1989.

