1982

The State of Utah v. David Allen Patterson : Brief of Respondents

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No.
DAVID ALLEN PATTERSON,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

Appeal from judgment and [illegible] Forged Check in the Fourth Judicial [illegible] Utah County, the Honorable Allen B. [illegible] presiding.

[illegible]

SHELDEN R. CARTER
YOUNG, BACKLUND, HARRIS & CARTER
350 East Center Street
Provo, UT 84601

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 17610
DAVID ALLEN PATTERSON,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

Appeal from judgment and conviction of Uttering a Forged Check in the Fourth Judicial District Court in and for Utah County, the Honorable Allen B. Sorensen, Judge, presiding.

DAVID L. WILKINSON
Attorney General
ROBERT N. PARRISH
Assistant Attorney General
236 State Capitol
Salt Lake City, UT 84114
Attorneys for Respondent

SHELDEN R. CARTER
YOUNG, BACKLUND, HARRIS & CARTER
350 East Center Street
Provo, UT 84601
Attorney for Appellant

TABLE OF CONTENTS

Cases Cited

Authorities Cited

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Defendant-Appellant.	:	

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with forgery in violation of Utah Code Ann., § 76-6-501(1)(b) (1978) in the Fourth Judicial District Court in and for Utah County, the Honorable Allen B. Sorenson, Judge, presiding.

DISPOSITION IN THE LOWER COURT

Appellant was tried before a jury and was found guilty of one count of forgery on February 11, 1981. On February 27, 1981 the trial court sentenced appellant to an indeterminate term of not less then one year nor more than fifteen years.

RELIEF SOUGHT ON APPEAL

Respondent seeks a judgment and order of this Court affirming the jury verdict and sentence of the lower court.

STATEMENT OF FACTS

On November 20, 1980, appellant, David Allen Patterson, and James Matheos drove to Morris Motors in Provo, Utah, to rent a car (T. 91). James Matheos, originally a co-defendant and later a witness for the prosecution in the case, was appellant's friend and had lived next door to appellant's brother, Carl Patterson (T. 87). According to the written rental agreement, appellant signed for the car at about 10:20 a.m. (T. 30). Matheos, however, testified that the two rented the car at 8:30 or 9:00 a.m. at the latest. Originally, Matheos attempted to rent the car, but was unsuccessful (T. 69, 76). Appellant then represented himself to be, and used the identification of, "Micah Roy Woodward" to rent the car (T. 29, 30, 69, 108). Woodward, the true owner of the driver's license and identification, testified that he had lost the license and identification earlier that year, and that he did not authorize appellant to use Woodward's name and identification or to represent himself to be Woodward (T. 81).

Appellant and Matheos drove the car, a copper-colored AMC Concord, to Springville, Utah (T. 30, 33, 76). They reconnoitered several houses in the hills around Hobble Creek Canyon (T. 70, 75). The third of fourth house they stopped at belonged to Mr. Leon Swenson (T. 71, 76). By coincidence, Mr. Swenson unexpectedly returned home about 10:15 or 11:00 a.m., shortly after appellant and Matheos

arrived (T. 36-38). Mr. Swenson asked appellant what he was looking for and appellant said he was looking for "Dale Dixon" (T. 37). Informed that Dale Dixon did not live at that residence, the two left and drove east of the Canyon Road toward the house of Mr. Stanley Burningham (T. 37, 70).

Appellant entered Mr. Burningham's home while Matheos waited outside in the rented car (T. 70, 74-75). Appellant returned to the car with some checks and savings bonds belonging to Mr. Burningham (T. 71, 75). Mr. Burningham discovered and reported the theft later that afternoon (T. 46-49).

Following the burglary of the Burningham home, appellant and Matheos drove to First Security Bank in Springville, Utah, to cash one of the checks they had stolen (T. 72). Appellant asked Matheos to write out the front of the check and discussed the amount, $2,666.00, with him (T. 73). Matheos signed Burningham's name to the check, made it payable to "Roy Woodward," and dated it (T. 72). Appellant went into the bank to cash the check (T. 73).

Inside the bank, appellant endorsed the check in the teller's presence and presented it to be cashed (T. 50-51). The teller noticed the signatures on the check were irregular and consulted the bank manager (T. 59). After discussing the check with appellant, the bank manager refused to cash the check (T. 62-63). In attempting to cash the forged check

appellant represented himself to be "Roy Woodward" to both Leslee Hansen, the bank teller, and Roger Williams, the bank manager (T. 52, 62, 64-65).

Having failed to cash the forged check, the pair drove to a drive-in hamburger restaurant in Spanish Fork, Utah, and disposed of the checkbook in a trash dumpster (T. 73). The next day, Matheos assisted Detective Fox of the Uta County Sheriff's Department in recovering the checkbook from the dumpster (T. 73, 83). Fingerprints taken from the checkbook matched appellant's (T. 119-125).

The written rental agreement indicated that appellant and Matheos returned the rented car to Morris Motors about 1:30 that afternoon (T. 21, 30). Matheos, however, testified that they returned the car at 4:30 or 5:00 p.m. (T. 74). The pair then left Morris Motors in appellant's Grand Prix (T. 34).

Appellant's version of the events which occurred on November 20, 1980 was substantially different from the facts presented above and was supported by the testimony of appellant's mother, Kay Lue Patterson, his brother, Carl Patterson, and his girlfriend, Judy Stubbs. Many of the contradictory statements of these witnesses are set out in the Statement of Facts in Appellant's Brief. However, appellant does not raise a claim of insufficiency of the evidence or any other claim that would turn on the conflicting testimony in this case.

Appellant's claim arises from the cross-examination of James Matheos at trial. The trial judge sustained the prosecution's objections to defense counsel's questions directed to Matheos concerning the number and nature of felonies matheos had previously been convicted of, and the number of burglary charges the prosecution had agreed to dismiss in exchange for Matheos' testimony in the instant case (T. 77-78). On appeal, appellant claims the trial court thereby unduly restricted his right of cross-examination.

ARGUMENT

THE TRIAL COURT DID NOT UNDULY RESTRICT APPELLANT'S RIGHT OF CROSS-EXAMINATION.

Appellant asserts that the trial court unduly restricted the right of cross-examination afforded him by Article I, Section 12 of the Utah Constitution and the Sixth and Fourteenth Amendments of the United States constitution which assure the right of confrontation. Specifically, appellant was restricted in his cross-examination of James Matheos, a witness for the State, concerning the number of felonies Matheos had previously been convicted of, the nature of the felony(ies), and the number of currently pending charges the State had agreed to dismiss if Matheos testified in the instant case. The following is the pertinent dialogue between appellant's counsel, Matheos and the trial

judge:

Q. What time did you do this burglary at Mr. Burningham's residence?

A. I believe it was 9:00--between 9:00 and 10:00.

Q. Could have been later?

A. I don't know, sir. I don't think so.

Q. Have you ever been convicted of a felony, Mr. Matheos?

A. Yes, sir.

Q. Where at?

A. Virginia.

MR. WATSON: I will object.

THE COURT: Sustained.

Q. (By Mr. Carter) What was the nature of the accusation you were convicted of?

MR. WATSON: I object.

THE COURT: Sustained. His answer to the first question may remain.

Q. (By Mr. Carter) How many felonies have you been convicted of?

MR. WATSON: I object.

THE COURT: Sustained.

Q. (By Mr. Carter) Tell me about your deal you made with Mr. Watson.

A. He just--when I first got pulled over at American Fork I went down. They asked me, you know, about everything that went on and I wouldn't say nothing. And then I come out and told them everything I knew.

Q. How many burglaries is he going to dismiss for your testimony?

MR. WATSON: Your Honor, I object.

THE COURT: Sustained. I will have to give you a caution, Mr. Carter.

MR. CARTER: Your Honor, I would like to make a proffer at this point.

(T. 77-78). According to appellant, the object of the cross-examination was to elicit evidence indicating Matheos's possible bias and motive for testifying as he had. This was to be done, in part, by requiring Matheos to divulge the number and nature of the felony(ies) for which he had been convicted prior to his involvement in the instant case, and also by disclosing to the jury the plea bargain the State had made with Matheos.

Many cases have held that the extent of cross-examination is a matter which rests in the sound discretion of the trial judge. State v. Starks, Utah, 581 P.2d 1015, 1017 (1978); State v. Maestas, Utah, 564 P.2d 1386, 1388 (1977); State v. Anderson, 27 Utah 2d 276, 495 P.2d 804, 806 (1972). The record does not disclose in detail the basis for the trial court's decision, but does indicate that the trial judge curtailed the cross-examination, in part, on the basis of Rule

45, Utah Rules of Evidence[1] and the fact that the plea bargain was already before the jury (T. 76, 67-68). The only matters the jury was not directly informed of during cross-examination of Matheos were the number and nature of felony(ies) he had been convicted of. Respondent agrees that generally a threshhold inquiry into the number and nature of felony(ies) of which a witness has been convicted is allowed. State v. Kazda, 14 Utah 2d 266, 382 P.2d 407, 409 (1963). Under the facts and circumstances of this case, however, neither the trial court's restriction of appellant's cross-examination pertaining to the number and nature of felony convictions, nor the curtailment of the disclosure of the details of the plea bargain made between the State and Matheos, whether considered separately or together, requires reversal of the unanimous guilty verdict.

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[1]Utah Rules of Evidence, Rule 45 provides:

> Except as in these rules otherwise provided, the judge may in his discretion exclude evidence if he finds that its probative value is substantially outweighed by the risk that its admission will (a) necessitate undue consumption of time, or (b) create substantial danger of undue prejudice or of confusing the issues or of misleading the jury, or (c) unfairly and harmfully surprise a party who has not had reasonable opportunity to anticipate that such evidence would be offered.

State v. Chesnut, Utah, 621 P.2d 1228 (1980), set forth the appropriate standard of review for claims of improper restriction of the right of cross-examination:

> Since the trial court unduly restricted defendant in the exercise of his constitutional right of cross-examination, the review thereof is controlled by the constitutional harmless error standard of Chapman v. California. This standard compels reversal unless the reviewing court can declare a belief that the error was harmless beyond a reasonable doubt [Footnote omitted].

Id. at 1233. Not all constitutional errors, nor all restrictions of a defendant's right of cross-examination, however, impair the defendant's cause to the extent requiring reversal. The United States Supreme Court, in Chapman v. California, 386 U.S. 18 (1967), stated:

> We conclude that there may be some constitutional errors which in the setting of a particular case are so unimportant and insignificant that they may, consistent with the Federal Constitution, be deemed harmless, not requiring the automatic reversal of the conviction.

Id. at 22. The above statement was re-emphasized in Mr. Justice Stewart's concurrence in Davis v. Alaska, 415 U.S. 308 (1974):

> The Court holds that, in the circumstances of this case, the Sixth and Fourteenth Amendments conferred the right to cross-examine a particular prosecution witness

> about his delinquency adjudication for burglary and his status as a probationer. Such cross-examination was necessary in this case in order "to show the existence of possible bias and prejudice . . .," ante, at 317. In joining the Court's opinion, I would emphasize that the Court neither holds nor suggests that the Constitution confers a right in every case to impeach the general credibility of a witness through cross-examination about his past delinquency adjudications or criminal convictions.

Id. at 321. Also in agreement is State v. Scandrett, 24 Utah 2d 202, 468 P.2d 639 (1970), where this Court stated:

> There certainly are conceivable circumstances where the violation of a constitutional right could have no possible bearing upon any unfairness or imposition upon the defendant, or upon a correct determination of his guilt or innocence. We think the correct view, and the one which is both practical and in keeping with the desired objective of fundamental fairness and due process of law, is that there is a presumption that such error is prejudicial, but that it can be overcome when the court is convinced beyond a reasonable doubt that it had no such prejudicial effect upon the proceedings. Correlative to this it is also true that when the guilt is shown by other untainted evidence so overwhelming that there is no likelihood whatsoever of a different result in the absence of such error or irregularity, there should be no reversal [Footnotes omitted].

Id. at 643. Respondent submits that there are several factors in the instant case which, when considered in sum, establish that the alleged error was harmless beyond a reasonable doubt.

The first of these factors involves the fact that even if appellant was unable to fully explore the details of the plea bargain Matheos made with the State by cross-examining Matheos, the matter had already been effectively presented to the jury. During direct examination Matheos testified that he was originally a co-defendant in the case, that he had been allowed to enter a plea of guilty to a lesser included offense and that the plea bargain he had made with the State would not influence his testimony:

> Q. Mr. Matheos, you were originally charged as a co-defendant in the matter presently before the Court, were you not?
>
> A. Yes, sir.
>
> Q. As a result of plea negotiations between yourself and the State of Utah you have been permitted to enter a plea of guilty to a lesser included offense, have you not?
>
> A. Yes, sir.
>
> Q. You have done so?
>
> A. Yes, sir.
>
> Q. Tell the Court and the jury if your testimony here today is going to be based upon the fact that you have just taken an oath or upon any deal you have made with the State of Utah?
>
> THE COURT: I don't think he understands. You had better put that in Anglo-Saxon English, Mr. Watson.
>
> Q. (By Mr. Watson) Is your testimony here going to be the truth?

A. Yes, sir.

Q. Is it going to be based upon your observations made on the 20th of November, 1980?

A. Yes, sir.

Q. Is your testimony going to be influenced in any fashion by the fact that the State of Utah and you have made a deal concerning the entry of plea in this matter?

A. No, sir.

(T. 67-68). Because evidence of Matheos's involvement in the crime and the plea bargain entered into with the State had already been presented to the jury for their consideration, further questioning on the subject would have added little, if anything, to appellant's defense and would have constituted the type of repetitive questioning which was recognized by this Court as being a qualification or limitation of the right to cross-examine an adverse witness in State v. Chesnut, Utah, 621 P.2d 1228, 1233 (1980). Impeachment evidence which is merely cumulative to other impeachment evidence may be properly excluded even if it is otherwise admissible. State v. Maestas, Utah, 564 P.2d 1386, 1389 (1977); State v. Oniskor, 29 Utah 2d 395, 510 P.2d 929 (1973); People v. Bliss, 222 N.E.2d 57, 59 (Ill. App. 1966).

Second, appellant's questions on cross-examination themselves, although unanswered, implied appellant's

contentions. In State v. Maestas, Utah, 564 P.2d 1386, 1388 (1977), this Court addressed the question of restriction of cross-examination and made note of State v. Chance, 185 S.E.2d 227 (N.C. 1971), where the court found that the "defendant by his question carried the full force and implication of his contention." Id. at 234. In the instant case, the jury was able to draw the intended inference as to Matheos's past criminal activity from the unanswered questions pertaining to the number and nature of felonies for which he had previously been convicted. Thus appellant's contentions were adequately presented to the jury and the lack of specific answers had no significant detrimental effect on appellant's defense.

Third, at trial the State produced "evidence so overwhelming that there is no likelihood whatsoever of a different result in the absence of such error or irregularity." Scandrett, supra, at 643; See also: State v. Oniskor, 29 Utah 2d 395, 510 P.2d 929 (1973) at 931. Notably, appellant has not argued his innocence, nor challenged the sufficiency of the evidence in this case. Appellant was not convicted by virtue of Matheos's testimony alone. Both the teller and the manager at First Security Bank where appellant uttered the forged check testified that appellant represented himself to be "Roy Woodward." In addition to the forged check itself, fingerprints lifted from the stolen checkbook from which the forged check was taken matched appellant's. This

and other evidence produced at trial was sufficient, absent Matheos's testimony, to convict appellant. Because of the overwhelming evidence in this case, the alleged error fails to provide a reasonable possibility that the outcome would have been different.

Finally, appellant has made no showing of how the expected answers to the questions Matheos was not allowed to answer would have bolstered his defense beyond what was actually brought out, either directly or indirectly, before the jury. The benefit to appellant, if any, would have been slight. The fact that the effect of the alleged error has not been adequately demonstrated suggests that the alleged error was not prejudicial and had no significant effect on the outcome of the trial.

During cross-examination appellant established that Matheos had previously been convicted of a felony and that he had made a deal with the State which was contingent upon his testifying in this case. The three specific areas of questions that appellant was not allowed to pursue on cross-examination were adequately adduced before the jury either during direct examination by the State, or indirectly by the implications of appellant's questions themselves. The above facts, when considered in conjunction with the overwhelming evidence other than Matheos's testimony produced at trial, and the fact that appellant has not demonstrated how his cause was

damaged by the alleged error, establish that the restriction of cross-examination in this case was harmless beyond a reasonable doubt. Appellant was effectively given the opportunity to adduce before the jury facts sufficient to support his contentions regarding Matheos's purported bias and motive in testifying.

CONCLUSION

For the reasons stated above, the conviction and sentence should be affirmed.

Respectfully submitted this 9th day of July, 1982.

DAVID L. WILKINSON
Attorney General

Robert N. Parrish

ROBERT N. PARRISH
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and exact copies of the foregoing Brief, postage prepaid, to Shelden R. Carter, Attorney for Appellant, 350 East Center Street, Provo, Utah, 84601, this 9th day of July, 1982.

Peter L. Ruggeri