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State of Utah v. Raymond Joe Vigil : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff-Respondent, :
-v- :
RAYMOND JOE VIGIL, : Case No. 18118
Defendant-Appellant. :

BRIEF OF APPELLANT

An appeal by the defendant, RAYMOND JOE VIGIL, from a jury verdict of guilty of Aggravated Robbery and Attempted Criminal Homicide, in the Third District Court of the Third Judicial District in and for the County of Salt Lake, State of Utah, the Honorable Peter F. Leary, presiding.

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-v- :
RAYMOND JOE VIGIL, : Case No. 18118
Defendant-Appellant. :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Raymond Joe Vigil, appeals from his conviction of the crimes of Aggravated Robbery, a first degree felony, and Attempted Criminal Homicide, a second degree felony, and the judgments thereof in the District Court of the Third Judicial District, in and for the County of Salt Lake, State of Utah, the Honorable Peter F. Leary, presiding.

DISPOSITION IN THE LOWER COURT

The appellant, Raymond Joe Vigil, was tried and convicted by a jury of Aggravated Robbery, a first degree felony, and Attempted Criminal Homicide, a second degree felony. Appellant was sentenced to an indeterminate term of five years to life, and an indeterminate term of one year to five years, such sentences to run concurrently.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the judgment rendered by the Court below and a new trial.

STATEMENT OF THE FACTS

On or about July 26, 1981, at about 10:30 p.m., the Winchell's Doughnut Shop located at 1465 South State Street in Salt Lake City, Utah, was robbed by two Mexican-American men, one of whom carried a firearm. The two men were seen exiting a yellow Pinto automobile with Idaho license plates prior to their entry into the store. Testimony at trial was that the driver of the automobile remained in the car. Some moments later, after the incident had been reported to the Salt Lake City Police, a Salt Lake City Police car followed and subsequently pursued a yellow Pinto with Idaho license plates being driven by the appellant Raymond Joe Vigil, while it was proceeding west on 17th South Street. The automobile made a right-hand turn onto a side street and stopped at the command of the officer. Back-up police units then arrived and the officers emerged from the police cars with shotguns and service revolvers pointed at the Pinto automobile. As one of the occupants of the automobile attempted to get out of the car, the officers told all occupants to remain in the car. The Pinto then drove away at a high rate of speed toward the end of the dead-end street it had entered. Two Salt Lake City Police cars then blocked the pathway of the

vehicle. As the vehicle made a U-turn and turned towards the police cars, gunfire ensued, the Pinto stopped, and the occupants exited the car and fled. The appellant, Raymond Vigil, was arrested having been located in a backyard in the general vicinity. A gun was located in another yard, and subsequently two suspects, Rudy Duran and Leo Duran, were arrested in the vicinity, one suspect being in possession of money believed to have been stolen from Winchell's. At the preliminary hearing of the three defendants, Rudy Duran and Leo Duran were positively identified by the employee of Winchell's Doughnuts as the persons who committed the robbery. Appellant was not identified by the Winchell's employee as having been a participant in the robbery nor was the appellant identified by a witness in the parking lot who claims to have seen three men in the Pinto prior to two of the men getting out of the car and going around to the front of Winchell's Doughnuts. Prior to the beginning of the trial scheduled for all three defendants, defendants Leo Duran and Rudy Duran, both parolees from the Utah State Prison, entered pleas of guilty to Attempted Criminal Homicide, felonies of the second degree, as a result of plea negotiations, and were sentenced to the Utah State Prison for terms of from one to fifteen years rather than for sentences of from five to life as mandated if their pleas had been to the first degree felony of Aggravated Robbery. Appellant then stood trial alone.

Defense counsel presented the testimony of Leo Duran, who indicated that he and his brother, Rudy, had committed the

armed robbery of Winchell's Doughnut shop, after having borrowed a car belonging to appellant's girlfriend. Duran testified that after having committed the robbery, they returned to a party nearby which was being attended by Mr. Vigil, and asked him to accompany them. It was after having picked up Mr. Vigil that the encounter with the police officers occurred. Mr. Duran further testified that Mr. Vigil began driving the car after he was picked up at the party and that he, Mr. Duran, was the only person involved in an exchange of gunfire with police officers.

At trial, during closing arguments, defense counsel sought to comment about the plea bargain entered into by the Durans insofar as it affected the evidence against the appellant. The prosecutor objected to this line of argument and was sustained. Then, in rebuttal, the prosecutor commented on the same plea bargain stating that, because a guilty plea had been entered, that the jury could consider that as an admission of guilt; that such a crime was in fact committed. Defense counsel objected and was overruled. Counsel then made a motion for a mistrial based on the prosecutor's argument which was denied.

ARGUMENT

POINT I

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY ALLOWING THE PROSECUTOR TO COMMENT ON THE GUILTY PLEA OF THE CO-DEFENDANTS WHILE NOT ALLOWING THE DEFENSE COUNSEL TO ALSO COMMENT ON THE PLEA.

Evidence of a plea bargain was brought out at trial by the testimony of Leo Duran. He testified that he and Rudy Duran accepted a plea bargain wherein they would plead guilty to the second degree felony, Attempted Criminal Homicide, and in doing so, the first degree felony Aggravated Robbery would be dropped.

In State v. Valdez, 30 Utah 2d 54, 513 P.2d 422 (1973), the Utah court discussed the right of both sides to argue the evidence from their respective standpoints:

Counsel for both sides have considerable latitude in their arguments to the jury; they have a right to discuss fully from their standpoints the evidence and the inferences and deductions arising therefrom. The test of whether the remarks made by counsel are so objectionable as to merit a reversal in a criminal case is, did the remarks call to the attention of the jurors matters which they would not be justified in considering in determining their verdict, and were they, under the circumstances of the particular case, probably influenced by those remarks. The determination of whether the improper remarks have influenced a verdict is within the sound discretion of the trial court on motion for a new trial. 513 P.2d at 426.

This view was re-emphasized in State v. Gaxiola, 550 P.2d 1298, 1301 (Utah 1976). In Gaxiola, the prosecutor's statements were found to be in response to the strong advocacy of defense counsel in his closing argument, and were within the range of reasonable inferences which could be drawn from the evidence.

In the instant case, defense counsel was prevented from commenting as to the plea bargain entered into by the Durans, as testified to by Leo Duran. Appellant stood trial alone after the

pleas taken by the Durans, even though he was also offered the opportunity to enter a plea of guilty to the second degree offense of Attempted Criminal Homicide. Therefore, the circumstances leading up to the pleas of the Durans with the resulting sentencing ramifications were definitely important factors bearing on the appellant's stance at his trial.

Charged with Aggravated Robbery and Attempted Criminal Homicide, the Durans pled guilty to the latter charge, a second degree felony. It was obvious from the testimony of Leo Duran that he and Rudy Duran had committed the armed robbery yet a plea was offered and accepted resulting in the dismissal of the first degree felony charge altogether. It is perfectly reasonable to assume, and from a defense point of view, a reasonable inference and deduction to be drawn, that the plea bargain was accepted by the Durans because the Aggravated Robbery, the first degree felony, would be dismissed, resulting in the lesser maximum penalty of from 1 to 15 years. Considering the evidence against the Durans, having the first degree felony dismissed was certainly a bargain. More importantly, considering the lack of evidence against the appellant for the robbery and the disputed facts regarding the Attempted Criminal Homicide, defendant's right to explain the ramifications of the plea bargain in closing was very important. Defense counsel should have been allowed to tell the jury how those pleas affected the evidence, or lack of evidence, against the appellant. This turns out to be most important in light of the prosecutor's subsequent comments.

Valdez states that both sides have the right to argue fully the evidence and the inferences and deductions arising

therefrom. This means defense counsel had the right to alert the jury as to the motivation the Durans had in entering the guilty plea. Without such an explanation, the jury might well think the guilty plea only meant they were undoubtedly guilty. This is misleading and may well have influenced the verdict against the appellant. Appellant had the right to inform the jury that other reasons may well have prompted the plea such as the assurance that the Durans would not be facing a conviction for a first degree felony.

It is common knowledge that plea bargains are offered to defendants not because the State is benevolent and forgiving, but because of weaknesses or problems in the case. If the State had a strong case against each of the defendants charged, it presumably would not have made such an offer. Dismissal of a first degree felony is a significant gesture.

The prosecutor's comment did exactly what Valdez cautions against. By commenting that the plea meant the crime had in fact been committed, that remark called to the jurors' attention a matter which was not necessarily justified, and which probably influenced their decision in assessing the evidence against the appellant -- the same evidence that prompted the State to offer a plea and drop the Aggravated Robbery charge. By allowing the prosecutor to make this comment, and not allowing defense counsel to comment regarding another inference or deduction that could be drawn from the plea, the court committed reversible error causing prejudice to appellant.

In Lewis v. State, 569 P.2d 486, 489 (Okla. 1977), defendants' conviction was reversed because the prosecutor suggested, among other things, that the mere fact that the defendants had the stolen credit cards in their possession or control created the presumption that they were guilty. There, the prosecutor neglected to include other portions of the applicable rule of law that would have clarified his misstatement. Lewis is analogous to the present situation. Here, the prosecutor suggested to the jury that the guilty plea was conclusive that the crime had been committed. He neglected to tell the jury about the ramifications of the Durans' respective pleas. In effect, he misstated what the plea really meant. Defense counsel attempted to insure that the jury was fully informed but was prevented from doing so. The prosecutor cannot be blamed for hesitating to make a defense-oriented statement, but defense counsel was perfectly willing -- and should have been allowed -- to present the reasonable deduction arising from Leo Duran's testimony about the guilty plea.

Other courts have spoken on the importance of fair arguments. In Hafen v. People, 492 P.2d 847 (Colo. 1970), the district attorney's remarks were found to be a fair response to defense counsel's arguments. The court said the provoked arguments were permissible. Here, the prosecutor's comment was initial, not provoked. Defense counsel was prevented from making the argument that would have "provoked" the prosecutor's comment.

In Green v. State, 611 P.2d 262 (Okla. 1980), the court said that both sides may discuss fully from their standpoints the

evidence and inferences and deductions arising therefrom. However, that right does not permit the prosecutor to bolster his argument by implications which are unsupported by competent evidence offered at trial. Here, the prosecutor improperly bolstered his argument. While it is true that guilty pleas have the same effect as an admission of guilt, there was no competent evidence in this case that the Durans pled guilty because they admitted the offense. The only evidence on the subject was Duran's testimony that indicated they pled to get the robbery charge dropped.

The jury received only one side of the story in the closing arguments. Defense counsel elicited from Leo Duran the fact of the plea bargain and that the robbery was dismissed. This was not objectionable. Although the plea did not involve the defendant (in fact, he rejected the offer), it nevertheless had an effect on the evidence the jury considered in convicting him. Counsel should have been allowed to incorporate that evidence into her closing argument and argue the reasonable inferences that followed from it.

If the court was correct in disallowing defense counsel's comment, then it erred in allowing the prosecutor to comment on the opposing side of the argument. If it was correct in allowing the prosecutor's comment, then it erred in disallowing defense counsel's comment. In either instance, the court erred.

CONCLUSION

Valdez allows each side to argue the reasonable inferences and deductions to be drawn from the evidence. Here, defense counsel was prevented from doing so while the prosecutor was allowed to do so. The effect was prejudicial because the jury heard only the state's inferences and deductions and was prevented from hearing the defense's inferences and deductions. The obvious error in this situation mandates that the conviction be set aside since the one-sided comment had an effect on the evidence that the jury considered in reaching their verdict.

DATED this 28 day of June, 1982.

Respectfully submitted,



BROOKE C. WELLS

Attorney for Defendant-Appellant

I hereby certify that I delivered two (2) copies of the foregoing Brief to the Attorney General, 236 State Capitol Building, Salt Lake City, Utah, 84114, this 28 day of June, 1982.

Deanne Wells