1982

State of Utah v. Thomas Garcia : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, Plaintiff-Respondent v. THOMAS GARCIA, Defendant-Appellant	:	Case No. 18126

BRIEF OF APPELLANT

An appeal from the conviction of Criminal Homicide, Murder in the Second Degree, a First Degree Felony, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Peter F. Leary, Judge presiding.

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a conviction of Criminal Homicide, Murder in the Second Degree, a First Degree Felony, in violation of Utah Code Ann. §76-5-203(a)(b)(c) (1953 as amended) in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Peter F. Leary, Judge presiding.

DISPOSITION IN THE LOWER COURT

The appellant, Thomas Garcia, was charged by Information with the offense of Criminal Homicide, Murder in the Second Degree, a First Degree Felony, in violation of Utah Code Ann. §76-5-203(a)(b)(c) (1953 as amended). On October 28, 1981 the appellant was convicted by a jury of the offense charged in the Information. On November 9, 1981 the appellant was sentenced by the above entitled court, the Honorable Peter F. Leary, Judge presiding, to five years to life at the Utah State Prison.

RELIEF SOUGHT ON APPEAL

The appellant, Thomas Garcia, seeks reversal of the judgment of guilt entered against him and a remand of the instant case to the trial court for new trial.

STATEMENT OF THE FACTS

At trial, the evidence showed that in the early morning hours of March 15, 1981, Officer Ryan Nielsen was returning home from the University of Utah, where he is a police officer. His attention was directed to a parked vehicle and three people near the East High School parking lot on Sunnyside Avenue in Salt Lake City. In particular he noticed one of the individuals, the appellant, was not wearing a shirt. Officer Nielsen drove past the vehicle, made a U-turn, and drove by again. He again saw the appellant, making eye-contact as he observed the appellant pulling a body out of the vehicle. (T.6) The appellant appeared to have blood on his person.

Officer Nielsen then drove west to a nearby Seven-Eleven Store, to summon help. The clerk there had earlier seen the vehicle driving east on Eighth South (Sunnyside), apparently having engine trouble. While in the parking lot he saw the vehicle in question proceed west on Eighth South Street, he pursued it some eight blocks, when the three individuals seen earlier exited the vehicle.

Officer Nielsen exited his vehicle. He observed the three individuals and immediately felt they were impaired by drugs and/or alcohol. He ordered them to freeze and lie on the ground. Two of the individuals (Mary Holloway and Charles

Crick) did so. The appellant lied down, but then ran and was tackled by Officer Nielsen. The officer and the appellant wrestled on the ground (T. 13) during which time the appellant allegedly threatened both the officer and a passerby whom the officer had requested to call the police (T. 15). The other two individuals in the vehicle left the scene. The appellant was very agitated and wanted to fight.

The victim had been dead for sometime before his body had been dumped at the East High parking lot. Rigor mortis had begun to set in, and the body was cold when paramedics arrived. Very little blood was present. (T. 39) The cause of death was fifteen stab wounds (T. 65). In addition, the body had ben beaten in the head with a blunt object, and showed bruises on the hand consistent with very recent fighting. Several drugs, including phenobarbital, methadone, dalmene, diazepan, and nordiazipan, were found in the blood, in therapuetically substantial quantities, as well as an alcohol content of .19% (T. 69).

The scene of the homicide was found to be an apartment where Mary Holloway and Charles Crick resided (T. 82). The victim had been staying there temporarily. Blood matching the types of both the appellant and the victim, was found on walls and a mattress. The blood was diluted by attempts by Holloway and Crick to wash it away (T. 97). A knife, probably the murder weapon, had been found near the body at the East High parking lot.

Diana Poor testified that she had visited the appellant in jail in mid May of 1981. There, the appellant stated he had fought with the victim when the victim mistreated a puppy. He stated that he threw punches only. Crick and Holloway then joined in, beating the victim with a mug and numchucks (T 118). The appellant denied stabbing anyone. He also indicated no one cared for him, and that he had no one, while Crick and Holloway had each other and a future. Therefore, Crick, Holloway and the appellant agreed that appellant would take the blame for the homicide. (T. 123)

On a second jail visit some two months later, appellant asked Ms. Poor if she knew where his knife was, as he was afraid someone might have taken it. (T. 121)

Crick and Holloway were tried separately and convicted of Second Degree Murder. Both were called by the State, but in effect but did not testify.

ARGUMENT

POINT I

ERROR TO ADMIT HEARSAY AS TO APPELLANT'S ALLEGED THREATS AFTER HIS ARREST.

Testimony was received, over appellant's objection, which was sustained, that while appellant was wrestling with Officer Ryan he threatened a bystander, whom the officer had requested to summon the police, by stating:

"I will kill you." (T. 15)

The statement was clearly hearsay, inadmissible under Rule 63, Utah Rules of Evidence. Moreover, the eliciting of such testimony painted appellant as an evil, violent person,

likely or predisposed to commit murder, so that the introduction of such evidence violated Rules 45, 47 and 55 of the Utah Rules of Evidence.

Rule 45 states:

> . . . the judge may in his discretion exclude evidence if he finds its probative value is substantially outweighed by the risk that its admission will . . . (b) create substantial danger of undue prejudice or of confusing the jury, . . .
>
> Rule 45, Utah Rules of Evidence

The alleged threats made during appellant's arrest were irrelevant to the case. Even if one assumes some minimal relevance, the overwhelming danger of undue prejudice required excluding such evidence. The purpose of introducing such evidence was to paint appellant as an evil, quarrelsome person; one who would easily resort to deadly force, because he would easily resort to verbal threats.

Such evidence misled the jury to the conclusion that appellant was a man of violent character. Under Rule 45 the trial court's failure to exclude such evidence was an abuse of discretion and reversible error.

The admission of such evidence also violated Rule 47, which sets the standard for admission of character evidence, when relevant, pursuant to Rule 46, except

> . . . that (a) evidence of specific instances of conduct other than evidence of conviction of a crime which tends to prove the conduct had shall be inadmissible, and (b) in a criminal action evidence of an accused's character . . . (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 47, Emphasis supplied.

The admission of the evidence violated Rule 47 in two respects. A specific instance of bad conduct was admitted, and it was not a conviction of a crime. Further, appellant never offered evidence of his good character.

Rule 55 was violated as well. That rule states:

> 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, subejct to Rule 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. Rule 55, Utah Rules of Evidence.

By its own terms, Rule 55 is subject to Rules 45 and 47. Even if one assumes, arguendo, that the evidence did not violate Rules 45 and 47, it was nevertheless not relevant to prove any material fact of the instant homicide. The evidence was irrelevant to motive, intent , preparation, accident, mistake, knowledge, or identity. Nor was it relevant to impeaching appellant's testimony (see State v. Goodliffe, 578 P.2d 1288 (Utah 1978) disucssed infra.)

In State v. Goodliffe, supra, defendant had been convicted of forcible sexual abuse of a six year old girl. After the State had rested, two of defendant's co-workers testified in his behalf as to his reputation for truth and veracity. Defendant testified in his own behalf. In rebuttal the State presented evidence of three similar sexual abuse incidents, allegedly perpetrated by defendant. The Supreme Court of Utah reversed defendant's conviction.

> "The rules of evidence require rejection of evidence of specific behavior to prove a character trait except conviction of a crime. . . .
>
> [The record reveals that the trial court admitted the evidence for the purpose of rebutting defendant's evidence of his truthfulness and veracity]; 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. . . .
>
> The admission of such evidence without further explanation could only have caused the jury to speculate about defendant's propensity to commit such crimes and confuse the issues, all to the prejudice of defendant, which necessitates a new trial."
>
> (578 P.2d at 1290, original emphasis)

In the instant case, the introduction of the alleged threats was similarly an attempt to show that appellant had a propensity for violent criminal acts, and was prejudicial to him. As the Court stated in State v. Green 578 P.2d 512 (Utah 1978)

> ". . . in the interest of justice the defendant is entitled to be tried on the charge against him, and without having any prejudice aroused by attempting to disgrace him, or show a disposition to commit crime." (578 P.2d at 513-514)

The effect of such evidence as was here introduced was to inflame and prejudice the jury and to deny appellant a fair trial.

In State v. Dickson, 12 Utah (2d 8, 361 P.2d 412 (1961), the Court reversed defendant's conviction of robbery. The Court indicated that allowing cross-examination of defendant as to details of a prior felony conviction was reversible error, but apparently based its reversal on a "matter of graver importance." During cross-examination of defendant, the prosecutor was allowed to elicit testimony of a "disturbance" in Texas, where defendant

had been shot, and later charged, but not tried, on the offense of being an accessory to a robbery. The Court found the Texas incident to be irrelevant to modus operandi.

> ". . . the Texas incident would have no legitimate probative value as to defendant's complicity in the robbery charged here. It's only effect would be to cast aspersions upon the defendant and to imply that because he was involved in the Texas trouble he is a person of evil character who would be likely to commit such a crime as here charged. The very purpose of excluding such evidence is to prevent the prosecution from smearing an accused by showing a bad reputation and relying on that for a conviction, rather than being required to produce adequate proof of the crime in question."
> (361 P.2d at 412)

State v. Kazda, 14 Utah (2d) 266, 382 P.2d 407 (1963) is in accord.

In the case at bar the prosecution has resorted to smearing appellant with evidence of an isolated incident, taken out of context, in order to gain a conviction.

State v. Putzell, 40 Wash. 2d 174, 242 P.2d 180 (1952) is of interest, there defendant was convicted of first degree murder. Defendant, in addition to pleading not guilty, entered a plea of insanity or mental irresponsibility. The evidence showed that defendant entered a tavern, approached deceased and fired several shots, one of which hit deceased. Deceased then ran outside, got in a cab, and stated he wanted to go to the hospital. Defendant followed deceased to the cab, and pulled deceased, as he lie on his back. A police officer arrived and disarmed defendant. Defendant stated to the officer:

> "Leave me alone. I have been after this guy for a long time and I'm going to get him."
> (242 P.2d at 182)

At the trial, defendant testified in his own behalf. He stated that some two years before the homicide, deceased had assaulted him without provocation, and that deceased had struck him on the head with a fire hose nozzle. Defendant stated that as a result of this assault, he was unconscious for a period of some thirteen hours; that surgery was required, in which pieces of skull were removed; that he had become extremely nervous and unable to sleep; that he suffered blackouts, fear of busses and planes; and that his head felt as though ants were crawling in it and an iron band was exerting pressure on it.

During cross-examination of defendant, he denied that he had carried a gun on the night of the assault two years before the homicide. The state rebutted over defendant's objection with two witnesses who testified that while defendant had been unconscious, they had removed a pistol and knife from his pocket. The trial court held that the evidence was proper rebuttal to defendant's testimony that he was a peaceful, lawabiding citizen, and that it was not impeaching on a collateral matter.

The Supreme Court of Washington reversed. The court noted that defendant did not deny the shooting, and that his main defense was lack of mental responsibility, caused by deceased's previous aggressive attack. The court recognized that it was proper for the state to show that defendant, not the deceased, had been the aggressor, but that the evidence which the State had presented on that issue was not probative of it.

> " . . . such testimony was not relevant or material as to the issue of whether or not appellant was the aggressor, and tended to invite the jury to guess, speculate and conjecture."
> (242 P.2d at 185)

As to whether the evidence was proper rebuttal to defendant's testimony of his law abiding nature, the court noted that it was defendant who had raised the issue initially (unlike the instant case), but held nevertheless that the state could not rebut defendant's testimony by showing specific acts of misconduct, stating:

> "'No rule permits the general character of the defendant, even when directly put in issue, to be impeached by showing the commission by him of a specific crime, other than the one for which he is on trial.'" (242 P.2d at 185)

A fortiori, when the character of a defendant is not in issue, it is improper to attempt to show his bad character by specific acts.

The court in Putzell, supra also held the matter to be collateral and therefore inadmissible to impeach defendant's testimony, whereas in the instant case, appellant did not testify.

Finally, (and perhaps most significantly), the court stated:

> "Conceding, for the sake of argument, that the rebuttal testimony in question might have been material, still it should not have been admitted because its inflammatory nature so far outweighed any materiality it might have had as to be prejudicial. Here was a man being tried on a charge of first degree murder. His defense was that he was mentally irresponsible as the result of a prior unprovoked assault on him by the deceased, and in which occurrence he was not the aggressor. The state, to rebut that contention, introduced evidence of finding a gun and a knife in his pocket. The purpose of that testimony was to portray him as a vicious,

quarrelsome man. The very inflammatory nature of this testimony leaves no margin for speculation as to whether or not the jury was swayed by it."
(242 P.2d at 186)

In the case at bar, the testimony as to the alleged threats, elicted on direct examination was also for the purpose of showing appellant to be vicious and quarrelsome. It was neither relevant nor material. Note: The trial court here sustained an objection to this evidence (T. 15), but nevertheless the evidence was before the jury. The evidence was clearly inflammatory and prejudicial, and should have been excluded. Since it was not, appellant was denied a fair trial, and is entitled to a new one.

POINT II

ERROR TO ADMIT INFLAMMATORY PHOTOGRAPHS OF THE VICTIM'S BODY.

Numerous color photographs of the victim's body were admitted into evidence over the objection of appellant.

In State v. Poe, 21 Utah (2d) 113, 441 P.2d 512 (1968), 24 Utah (2d) 355, 471 P.2d 870 (1970) the Court held the introduction into evidence of color autopsy slides to be an abuse of discretion. The introduction of photos of the scene of the crime was held to be proper, where such photos were probative of several issues, including defendant's presence at the scene, and the mental element of a depraved mind. In reversing, the Court noted:

"All the material facts which could conceivably have been adduced from a viewing of the slides had been established by uncontradicted lay and medical testimony. The only purpose served was to inflame and arouse the jury."
(441 P.2d at 515)

In the instant case, the photos has no probative value. The identity of the deceased was known. The cause of death was established by medical testimony. The photos were probative of no element of criminal homicide that was not provable by other competent evidence. The photos were not of the scene of the crime, but rather where the body was found. Admitting the photos served only to arouse and inflame the passions of the jury.

The Supreme Court of Pennsylvania espoused a rule similar to Poe, supra, in Commonwealth v. Scaramuzzio, 317 A.2d 225 (Pa. 1974):

> "At the outset it should be noted that the practice of admitting photographs of the body of the deceased, unless they have essential evidentiary value, is condemned." (217 A.2d at 226, emphasis supplied)
>
> " . . . they should not be resorted to where the witness can clearly convey the facts to the jury without their use. These slides were simply cummulative to the pathologists' testimony as to the position, number, and severity of the wounds."
> (317 A.2d at 227)

The photos in the instant case were similarly cummulative to the testimony of the police officers and the State Medical Examiner.

The case of State v. Wells, 603 P.2d 810 (1979), is of interest. In that case, as here, the cause of death was not disputed, and established by medical testimony. This court stated:

> We do not condone the admission of the photographs in this case, since we are able to find no evidentiary vlaue for the photographs other than the hoped-for emotional impact on the jurv.
> (603 P.2d at 813, emphasis supplied)

In Wells, supra, while the court found error, it held the error to be not prejudicial, because the photographs were neither gruesome or offensive. In the case at bar, the photographs were both gruesome and offensive,

> "such that there exists a reasonable probability or likelihood that there would have been a result more favorable to the defendant in absence of the error." (603 P.2d at 813)

The photos here were hardly of "essential evidentiary value." Indeed they were of no probative value whatsoever, and went to not relevant or material issue which could not be established by testimony. Their only effect was to inflame and prejudice the jury by the showing of a gruesome scene. In such a case as here, where the evidence against appellant is so minimal, they should have been excluded. Their admission denied appellant a fair trial.

POINT III

THE JURY'S VERDICT WAS UNSUPPORTED BY THE EVIDENCE.

The evidence adduced at trial is set out supra in the STATEMENT OF THE FACTS. In fact, no evidence exists linking appellant to the murder of the victim, except that he was seen pulling the victim's body from a vehicle, some time after the death, and he admitted fighting with fists only, with the victim. While there was blood on appellant's person after moving the body, no one looked for blood on Crick and Holloway, who were also convicted of the murder in question. No evidence of a conspiracy to commit murder exists.

Clearly, the burden is on the State to prove the identity of the murder. State v. Green, 229 P.2d 318 (Wash. 1951). While an inference of guilt may be drawn from concealing the victim's body, that inference is "by no means strong enough of itself", to warrant conviction. Cagle v. State, 507 S.W. 2d 121, 129 (Tenn. Cr. App. 1973).

Cagle, supra, is closely on point. There, the court held the record supported the jury's verdict. In addition to evidence of the defendant's concealing the victim's body, there was evidence of numerous inconsistent statements as to the defendant's secreting himself in the victim's home, his whereabouts when the murder occurred, his activities on the days in question, his designs to have sexual relations with the victim, and whether in fact he had sexual relations with her.

In addition, he named as a "fellow employee" a man for whom he was searching on the day in question, when in fact no such person seemed to exist. He stated he had been at a hospital emergency room for treatment, yet no such record existed, and no one employed in the emergency room ever saw him. When questioned by police, he inquired whether the victim's body being found outside of the county would clear him. (This was before the body had been found and the police knew the victim was dead).

The body was found in a quarry with strips of cloth around the neck. The victim had suffered blows to the head, but the cause of death was strangulation. It was impossible to determine whether there had been a sexual assault.

The victim had bleached hair. Bleached hair was found in defendant's car.

At the time of defendant's arrest, he asked if the body had been found.

While in jail, defendant had several times denied (to other inmates) that he had killed the victim. Reading newspaper accounts of the incident would enrage him. After reading such an account defendant stated, "yeah, I killed the damned bitch." He then went on to explain how he intended to bury the body, but abandoned that plan when he throught he heard someone else in the quarry. He then inquired of his fellow inmates whether the material around the victim's neck would yield fingerprints after "so long". Additionally, he stated he had not had sex with the victim, and then said he had.

In the case at bar, however, there is the fact that appellant pulled the body of the victim from a car, and his statement that he had a fist fight with him earlier. There was also appellant's statement that following the fist fight, Crick and Holloway set upon the victim. The victim's blood was found at Crick and Holloway's apartment, after Crick and Holloway tried to wash it away. Blood was also found there matching the appellant's. (No blood tests were ever run on Crick and Holloway). (T.100) The condition of the victim's fists was consistent with a recent fist fight. Appellant had asked, months after the homicide, whether his knife was still in his effects, fearing that someone may have removed it.

This evidence simply does not rise to the level of proof beyond a reasonable doubt that appellant committed murder.

Indeed, it indicates that the prejudicial impact of the erroneously admitted photographs and alleged threats resulted in appellant's conviction, and therefore said conviction must be reversed.

CONCLUSION

Appellant's conviction was the result of the inflamed passion and prejudice of the jury. The enumerated errors in Points I and II not only served separately to deny appellant a fair trial, but they also worked in a cummulative fashion, to the prejudice of appellant.

Because appellant was convicted on the basis of a bad and evil character; and because of inflamed passions, and because the State also failed to prove his guilt beyond a reasoanble doubt, his conviction must be reversed.

DATED this 21 day of June, 1982.

JOHN W. EBERT
Attorney for Appellant

DELIVERED a copy of the foregoing to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Utah, this 21 day of June, 1982.