2002

The State of Utah, Plaintiff/Appelle v. Korry Barlow Smedley, Defendant/Appellant : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,	:	
	:	
Plaintiff/Appellee,	:	
	:	
v.	:	
	:	
KORRY BARLOW SMEDLEY,	:	Case No. 20020171-CA
	:	
Defendant/Appellant.	:	

REPLY BRIEF OF APPELLANT

Appeal from a judgment of conviction for four counts of aggravated sexual abuse of a child, first degree felony offenses in violation of Utah Code Ann. § 76-5-404.1(3) (1999), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Paul G. Maughan, Judge, presiding.

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Defendant/Appellant Korry Smedley is appealing from a judgment of conviction for four counts of aggravated sexual abuse of a child. On appeal, he maintains that the trial court erred in allowing the state to present evidence at trial that Smedley inquired into a plea "deal" during an interrogation with police. The testimony violated Rules 401, 402, 408 and 410, Utah Rules of Evidence. (Brief of Appellant.)

In response to Smedley's arguments on appeal, the state claims that Smedley failed in part to properly preserve the issue for review. (See State's Brief of Appellee ("State's Brief") at 8-11.) That is incorrect. In this matter, counsel for Smedley twice objected to the evidence as improper. The objections together with the trial court's ruling preserved the matter for resolution on the merits under the pertinent provisions.

In this reply brief, Smedley has responded to the state's preservation argument. See Utah R. App. P. 24(c) (2002) (reply brief shall answer new matter set forth in appellee's opposing brief). Inasmuch as the state's brief otherwise does not raise any new matter, this Court may now decide the issues on appeal.

ARGUMENT

THE ISSUES WERE PROPERLY PRESERVED FOR APPEAL.

Smedley was charged and convicted by a jury of four counts of aggravated sexual abuse of a child. On appeal, Smedley has challenged the admissibility at trial of evidence relating to plea discussions. The evidence concerned the following. Officers interrogated Smedley in connection with allegations of child sex abuse. Detective Rackley testified that during the interrogation, and after Smedley denied any wrongdoing, Smedley wanted to talk about a plea deal with the officers. (R. 277:170.) Rackley did not tell Smedley what the charges would be, she did not discuss penalties or punishment, and she did not state whether she wanted to make a deal or could make a deal with Smedley. (R. 277:171.) According to Rackley, Smedley told her "[s]everal times" that he wanted to discuss a plea deal. "He kept asking what kind of a deal could he get, How long am I looking at?" (R. 277:171.)

Thereafter, a second officer, Detective Roberts, advised Smedley that "[w]e don't make deals with people, that's not our job, that's not our position." (R. 277:171.) According to the record, once the officers made that statement to Smedley, he did not make any further comment about a plea "deal." (See R. 277:171-72.)

On appeal, Smedley maintains that the testimony presented at trial regarding a plea deal was inadmissible under Rules 401, 402, 408 and 410, Utah Rules of Evidence. Rules 401 and 402 prohibit the admissibility at trial of evidence that is irrelevant. Under

Rules 408 and 410, evidence of compromise negotiations and plea discussions is inadmissible because such evidence is irrelevant and it does not constitute an admission of guilt. The evidence here regarding plea discussions was irrelevant and had no bearing on any element of the crimes charged. (Brief of Appellant, dated August 19, 2002.)

In response to Smedley's arguments on appeal, the state claims that the defense failed at trial to properly preserve the arguments as they relate to Rules 408 and 410, Utah Rules of Evidence. (State's Brief of Appellee at 8-11.)[1] The state is incorrect.

To explain, after the state filed charges in the matter (R. 27-31), the case proceeded to trial. (R. 272, 273.) During the first trial, defense counsel objected to the detective's testimony about a possible "deal"on the grounds that the testimony was irrelevant and did not constitute an admission that could be used against Smedley. (R. 272:182-86.) Also, according to counsel, Smedley's inquiry into plea negotiations constituted a "typical question that detectives talk with clients a lot about, whether or not they'll go easier on them if they talk now and that sort of thing. It's not an admission of guilt." (R. 272:185-86; see also id. at 182-83.) The trial court considered the objection to be timely and overruled it. (R. 272:185-86.) The testimony regarding a possible deal came into evidence. (R. 272:182-83.) The jury could not arrive at a verdict in the first

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1 The state does not dispute that the issues were properly preserved under Rules 401, 402, and State v. Pearson, 818 P.2d 581, 583 (Utah Ct. App. 1991) (ruling that public policy precludes the admission into evidence of "plea discussions in which the defendant participated"). Consequently, in this Reply Brief, Smedley focuses on the preservation of the issues under Rules 408 and 410.

trial and it resulted in a mistrial. (R. 273:279-80.)

During pretrial proceedings for the second trial, defense counsel "renewed" his objections to the plea discussions, and he made specific reference to the objection in the first trial. (R. 277:78-79.) He stated, "Your Honor, you'd made a ruling that the State could go into a statement that was made by my client. And the statement was basically just that Detective Rackley – and she did testify at our last trial, that when they went to interview him he asked her what kind of deal he could get if he pled guilty. And I'm renewing my objection that that come in basically because it's irrelevant." (Id.)

The state responded by saying, "*As before*, Your Honor, it's highly relevant because it's an admission of guilt . . . ." (R. 277:80 (emphasis added).) Thereafter, the trial court made note of the objections and specifically declined to reconsider its earlier ruling. (R. 277:80.) The state then proceeded to present evidence at trial about a possible plea deal. (R. 277:170-72.) While the testimony about a deal was improper, the procedure was sufficient to preserve the matter under Rules 408 and 410 for appeal.

Specifically, the objection at the first trial that the evidence was irrelevant and did not constitute an admission of guilt (R. 272:185-86) implicated the policy considerations underlying Rules 408 and 410 (as well as the relevancy rules, 401 and 402), Utah R. Evid. According to public policy, Rules 408 and 410 encourage negotiations between parties. They are essential to the criminal justice system, and fairness dictates that discussions between defendant and the prosecution about a possible deal should be excluded from

evidence. If such evidence could be admitted at trial, it would undermine the benefits achieved through use of the negotiation process. (Brief of Appellant at 9-15.)

Also, comments to the comparable federal rules of evidence recognize that discussions about possible plea deals are inadmissible where such discussions *are irrelevant* and *do not constitute an admission of liability*. See Fed. R. Evid. 408, Advisory Committee Note (such evidence "is irrelevant, since the offer may be motivated by a desire for peace rather than from any concession of weakness of position"; and "[a]s a matter of general agreement, evidence of an offer to compromise a claim is not receivable in evidence as an admission of, as the case may be, the validity or invalidity of the claim"); see also State v. Gray, 717 P.2d 1313, 1317 (Utah 1986) (in construing Utah rules courts will look to federal law).

In this case, counsel made his objection to the evidence at the first trial by articulating the policy reasons that make such evidence inadmissible under Rules 408 and 410. Counsel objected to any conversation about "a deal," on the grounds that the evidence was "irrelevan[t]," "*it wasn't an admission of guilt* of this crime, it was a typical question that detectives talk with clients a lot about, whether or not they'll go easier on them if they talk now and that sort of thing. *It's not an admission of guilt.*" (R. 272:185-86 (emphasis added).) The argument alerted the trial court to the substance of the objection under Rules 401, 402, 408 and 410. See State v. Larsen, 865 P.2d 1355, 1363 n.12 (Utah 1993) ("counsel must state clearly and specifically all grounds for

objection"); State v. Bryant, 965 P.2d 539, 546 (Utah Ct. App. 1998) (an objection must "'be specific enough to give the trial court notice of the very error' of which counsel claims") (citing Tolman v. Winchester Hills Water Co., 912 P.2d 457, 460 (Utah Ct. App. 1996)). The trial court ruled on the merits in the first trial. (R. 272:185-86.)

In the second trial, counsel made reference again to the "deal" discussions, and he "renew[ed]" his objection from the first trial, thereby calling the trial court's attention to the arguments made in the earlier proceedings. (R. 277:78-79.) Counsel argued that statements -- concerning "what kind of deal" Smedley could get -- were irrelevant to the determination of guilt in the case. (R. 277:79.) The prosecutor also made reference to the earlier proceedings, and stated, "*As before*," the evidence was relevant and it constituted "an admission of guilt." (R. 277:79 (emphasis added).) The statements of both defense counsel and the prosecutor implicated the substance of Rules 408 and 410, and the policy considerations underlying those rules. During the second trial, the court noted the objections and refused to reconsider its earlier ruling on the matter. (R. 277:80.) The proceedings properly preserved the issue for review on appeal.[2]

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2 In support of its claim that Smedley failed under Rules 408 and 410 to preserve the arguments in the second trial, the state cites to State v. Lloyd, 662 P.2d 28, 28 (Utah 1983). (State's Brief of Appellee at 9 n.3.) In that case, the defendant was charged with burglary. During trial, he "filed a motion in limine asking suppression of a damaged padlock in evidence, which motion was denied." Id. The case ended in a mistrial. During the second trial, the defendant wholly failed to renew his motion in limine and he made no objection "to the introduction of the padlock and other tools, which an expert testified were commonly employed as burglary tools." Id. On that basis, the supreme

"A matter is sufficiently raised if it is submitted to the trial court, and the court is afforded an opportunity to rule on the issue." Hart v. Salt Lake County Comm'n, 945 P.2d 125, 129 (Utah Ct. App. 1997) (quotations and citation omitted), cert. denied, 953 P.2d 449 (Utah 1997); S.L.C. v. Holtman, 806 P.2d 235, 237 and n.2 (Utah Ct. App. 1991) (identifying federal cases that support once the court has ruled on an objection the first time, it is preserved).

In sum, defense counsel objected to testimony regarding a possible plea deal. (R. 272:185-86; 277:78-79); see Utah R. Evid. 408 and 410 (providing that plea discussions/ negotiations are inadmissible at trial). He specified that the evidence was irrelevant. (R. 272:185-86; 277:78-79); see Fed. R. Evid. 408, Advisory Committee Notes (recognizing that plea discussions are irrelevant); Utah R. Evid. 408 (similar to federal rules); 410; 401 and 402 (relevancy rules). And it did not constitute an admission of guilt. (R. 272:185-86; 277:78-79); see Fed. R. Evid. 408, Advisory Committee Notes (recognizing that negotiations do not constitute an admission of liability). The trial court overruled the grounds for the objection in the first trial. (R. 272:182.) Defense counsel "renew[ed]" the

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court refused to address the merits.

Those facts do not exist in Smedley's case. Where Smedley's counsel specifically renewed the motion at the second trial, where the prosecutor and defense counsel identified the policy reasons underlying the rules in connection with Smedley's objections, and where the trial court specifically refused to reconsider its earlier ruling, the issue was properly preserved in the second trial, as it was in the first. The supreme court's ruling in Lloyd is inapplicable here.

objection at the beginning of the second trial. (R. 277:78-79.) Since the trial court was already well aware of the grounds for the objections, the renewal was sufficient to preserve the matter for appeal. Holtman, 806 P.2d at 237 and n.2 (once the trial court has ruled on an objection/motion, it is properly preserved).

The issue was properly preserved under Rules 401, 402, 408 and 410, as identified on appeal. On that basis, Smedley urges this Court to reach the issues on the merits, and to find that the evidence was unlawfully admitted at trial, resulting in reversible error.

CONCLUSION

As set forth in the Brief of Appellant and herein, Smedley respectfully requests that this Court reverse and remand this case to the trial court for a new trial.

SUBMITTED this 6th day of January, 2003.

LINDA M. JONES
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Attorneys for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, LINDA M. JONES, hereby certify that I have caused to be hand delivered an original and 7 copies of the foregoing to the Utah Court of Appeals, 450 South State, 5th Floor, 140230, Salt Lake City, Utah 84114-0230 and 4 copies to the Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P.O. Box 140854, this 6th day of January, 2003.

Linda M. Jones
LINDA M. JONES

DELIVERED to the Utah Attorney General's Office and the Utah Court of Appeals as indicated above this __ day of _____, 2003.

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