

1984

The State of Utah v. Richard Louis Smith : Brief of Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff-Respondent :
- - - :
RICHARD LOUIS SMITH, : Case No. 19103
Defendant-Appellant :

BRIEF OF APPELLANT

Appeal from a jury conviction and judgment of Theft by Receiving, a Second Degree Felony, and Theft by Deception, a Class A Misdemeanor, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Ernest P. Baldwin, Jr., Judge, presiding.

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff-Respondent :
-v- :
RICHARD LOUIS SMITH, : Case No. 19103
Defendant-Appellant :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, RICHARD LOUIS SMITH, appeals from a conviction and judgment of Theft by Receiving, a Second Degree Felony, and Theft by Deception, a Class A Misdemeanor, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Ernest F. Baldwin, Jr., Judge, presiding.

DISPOSITION IN THE LOWER COURT

The appellant, RICHARD LOUIS SMITH, was charged with Theft by Receiving, a Second Degree Felony, in violation of Utah Code Ann. §76-6-408 (1953 as amended), and Theft by Deception, a Class A Misdemeanor, in violation of Utah Code Ann. §76-6-405 (1953 as amended). He was convicted as charged on a jury trial and was sentenced to incarceration at the Utah State Prison for the indeterminate term as provided by law.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of both convictions and judgments rendered below and to have the case remanded to the Third Judicial District Court for a new trial.

STATEMENT OF FACTS

On or about June 7, 1982, the residence of Steven Page was burglarized. Two rifles were among the property listed as taken (T.5), as well as jewelry, money, and stereo equipment (T.12).

On that same day Appellant went to the Pawnee and Sportsman's Discount pawnshops and pawned a rifle at each place using his pictured prison identification card to complete both transactions. The pawn shop operators testified that Appellant made no efforts to disguise or distort his identity, signature, or thumb print which were required for the transactions (T.30, T.59).

At trial, Appellant testified that he was not aware the rifles were stolen when he pawned them. He said he received the rifles from his nephew, Ron Peterson, the morning he pawned them (T.99). Peterson testified that Appellant was aware that the rifles were obtained in a burglary. Peterson admitted participating in the Page residence burglary, but denied taking the guns (T.Supp.10). He said Appellant took them.

ARGUMENT

POINT I

THE COURT ERRONEOUSLY EXCLUDED RELEVANT EVIDENCE OF THE EFFECT OF INCARCERATION ON APPELLANT'S HEALTH, AND OF THE BELIEF APPELLANT HAD REGARDING THE POWERS OF HIS PAROLE OFFICER, AS IT RELATED TO THE LIKELIHOOD OF APPELLANT COMMITTING THE OFFENSES CHARGED.

Appellant contends the trial judge erroneously excluded evidence that was relevant and probative. The standard for admissibility of evidence is stated in Terry v. Zions Co-op Mercantile Institution, 605 P.2d 314, 322 (Utah 1979).

Relevant evidence is evidence that in some degree advances the inquiry and thus has probable value and is prima facie admissible.

Rule 1(2), Utah Rules of Evidence (July 1971), in effect during Appellant's trial, defines relevant evidence as "evidence having any tendency in reason to prove or disprove the existence of any material fact."

Rule 401, Utah Rules of Evidence (August 1983) which would be in effect during Appellant's new trial, defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Rule 402, Utah Rules of Evidence (August 1983) states "All relevant evidence is admissible..."

The judge did not let Appellant testify about the detrimental and severe effects incarceration had previously had on his health. The Court also disallowed testimony about what Appellant believed the powers of his parole officer were regarding incarcerating him. Both of these inquiries, had they been allowed, would have served to disprove the elements of the offenses charged insofar as Appellant's mens rea was concerned.

The Theft by Receiving statute, Utah Code Ann. §76-6-408, (1953 as amended) requires the element of knowledge or existence of probability that the receiver knew the property was stolen. The possession of the property invokes a presumption which the prosecution may use to fulfill the knowledge requirement for the offense, as provided for in Utah Code Ann. §76-6-402, (1953 as amended). Appellant's evidence would have related to that element and should have been allowed to rebut a presumption. The evidence helped explain why Appellant would not knowingly be involved with stolen property.

The proffered evidence was relevant because it would have advanced the inquiry into Appellant's state of mind and would have been probative as to his credibility and the likelihood that he would have intentionally committed the offenses.

Appellant's testimony was that the prospect of incarceration was an overwhelming deterrance from intentional criminal behavior on his part. He was on parole and feared that his parole officer would at any time detain him in jail for at least 15 days if he even suspected Appellant was involved in any criminal activity. Appellant

suffered particularly severe emphysema and tuberculosis attacks whenever he had previously been jailed and the torment and sickness incarceration caused him was a valid reason he had for avoiding criminal activity. The jury should have been allowed to know about this aspect of Appellant's frame of mind and point of reference. His actions at the pawn shops were consistent with an innocent mind. The jury was deprived of this relevant evidence which was consistent with Appellant's innocent mind. It also was probative of his mentality and insightful regarding his credibility.

Appellant did not deny that he pawned what were, in fact, stolen rifles. The only question for the jury was whether Appellant possessed the necessary knowledge and criminal intent when he did so. This evidence went to a material fact, was of consequence, would have aided the jury, and was prima facie admissible. Thus, the Court's ruling was erroneous and prejudicial to Appellant. It severely curtailed his defense of lack of mens rea.

The Court may exclude relevant evidence if the situation so warrants. This principle was codified in Rule 45, Utah Rules of Evidence, which governed and which provided:

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 a jury, or (c) unfairly and harmfully surprise a party who has not had reasonable opportunity to anticipate that such evidence would be offered.

Rule 403, Utah Rules of Evidence (August 1983) is essentially the same in substance and differs only in that it includes unfair prejudice and needless presentation of cumulative evidence.

The Court abused its discretion because none of the factors mentioned were present. The trial itself moved briskly along and was completed sooner than expected. The testimony was not prejudicial. It would have confused nothing, would not have misled the jury, nor surprised anyone, nor was it cumulative. It was revealing and an integral part of Appellant's defense. The standard for the Court was that the probative value be substantially outweighed by the risk of the presence of one or more of the aforementioned factors. The general principle that the usefulness of the evidence be more than counterbalanced by it's disadvantageous effects in confusing the issues before the jury, or in creating an undue prejudice in excess of its legitimate probative weight was not applicable here. Since the evidence was relevant it was admissible. Relevance is not always enough, however, so the question remains, is it worth what it costs? Here it was worth a great deal to the Appellant, had potential value to the jury, and it would have cost nothing. As this court stated in Terry (Supra):

It is generally conceded the trial court is more competent, in the exercise of this discretion, to judge the exigencies of a particular case and, therefore, when exercised within normal limits, the discretion should not be disturbed. The general rule followed by this court will not be reversed unless it is shown that the discretion exercised therein has been abused. (605 P.2d 322)

Appellant contends that because none of the counter-balancing factors which may move the Court to exclude relevant evidence if they substantially outweigh its probative value were present in this case, the Court abused its discretion by excluding the evidence.

Ron Peterson, who admitted participation in the Page burglary but denied any involvement with the guns, testified contrary and adverse to Appellant. Buzz Palmer corroborated Appellant's account. In light of the adversity of Peterson's testimony, basic fairness would have dictated that Appellant have the opportunity to present all of his evidence for jury consideration.

CONCLUSION

In summary, Appellant respectfully submits that he was denied a fair trial through the erroneous exclusion of probative evidence. Since his defense was grounded in the lack of mens rea required for the offense, he was effectively denied the right to present that defense. The Court abused its discretion in excluding the evidence since no counter-balancing factors calling for exclusion were present.

Appellant respectfully moves this Court to reverse this conclusion and order a new trial wherein Appellant can present his case and defense to a jury.

RESPECTFULLY SUBMITTED this ____ day of August, 1984.


MANNY GARCIA
Attorney for Appellant

