1964

State of Utah v. Leo J. Nuttall : Brief of Appellant

Utah Supreme Court

A. Pratt Kesler; Attorney for Respondent;
Dale S. Stratford; Attorney for Appellant;

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff & Respondent,	:	
vs	:	CASE NO.
LEO J. NUTTALL Defendent & Appellant.	:	10189

BRIEF OF APPELLANT

Appeal from the FIRST JUDICIAL DISTRICT COURT

Cache County, Hon. LEWIS H. JONES, presiding.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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BRIEF OF APPELLANT

STATEMENT OF CASE

This case arises from an appeal of a conviction in the First District Court, Cache County, wherein the defendant, appellant, was convicted of the charge of obtaining a Chose in Action under false pretenses, which case was heard in the First District Court in Logan, Utah and judgment was rendered on the 27th day of April, 1964, with the honorable Lewis H. Jones, District Judge, presiding.

DISPOSITION IN LOWER COURT

The verdict of

the jury and ordered a judgment of guilty be entered against the defendant and appellant herein.

RELIEF SOUGHT UPON APPEAL

Defendant and appellant herein seeks a reversal of the judgment of the lower court as a matter of law and a dismissal of this action by this court; or failing that, that the defendant and appellant herin be granted a new trial which trial to be heard without prejudicial error to the defendant and appellant.

STATEMENT OF FACTS

This case arises out of the following facts: That the defendant, appellant, entered into a contract with Richard B. Gittens, the complaining witness, for the purpose of allowing the appellant to use his name to obtain the financing to purchase a tractor, which tractor was to be leased in a rental business, and that Mr. Gittens would have no control or supervision of any

Mr. Gittens signed a Conditional Sales Contract for the purchase of a ford tractor, and a lease back to appellant for such tractor; which tractor, after purchase, was to be used for rental purposes and that Richard B. Gittens was not purchaas ing a tractor from himself. He was only allowing the use of his name to obtain the necessary equipment, in that Mr. Gittens upon completion of the contract payments was to receive the sum of $27.50 per month until the termination of his 5 year lease, and this for the use of his name upon the contract of purchase. No payments were to be made to Mr. Gittens for a period of at least two (2) years from the date of the agreement, which agreement was dated the 25th day of October, 1962. Mr. Gittens was not required to pay any money down and would only receive money at the end of the stated period. Mr. Gittens had at no time been required to make any apyments upon the purchase of a tractor, nor at any time had he, nor at the time of [illegible] two (2) year period

elapsed, when he was to receive benefit from his contract. Mr. Gittens, the complaining witness at the time of signing the complaint had in fact suffered no damage, nor had he changed his position from the date of the signing of the contract and lease. Mr. Gittens was aware at the time of signing the contract that the contract must be sold to a finance company in order that the intent of the parties could be carried out and that monthly payments would have to be paid to such finance company.

STATEMENT OF POINTS

POINT I : The District Court erred in denying appellants motion for dismissal of the action upon the grounds that no fraud had been shown to have been committed.

POINT II : The District Court erred in allowing State to produce other witnesses to testify concerning other contracts, when no actual fraud had in fact been shown.

POINT III : The District Court erred in allowing

the State to present evidence of the payment status of the other contracts put into evidence.

POINT IV : The District Court erred in its instructions to the jury, in that the Court by Commenting upon the evidence expressed an opinion to the jury as to the Courts belief in connection with the ultimate fact to be determined by the jury.

ARGUMENT

POINT I : The District Court erred in denying appellants motion for dismissal of the action upon the grounds that no fraud had been shown to have been committed because in order for fraud to be committed under the Statutes of the State, and under the Statute upon which this action is based it is necessary that four items be proven: viz: (1) there must be an intent to cheat or defraud, (2) An actual fraud must be committed, (3) there must be a fraudulent representation of a false pretense for the purpoe of purpetrating the fraud and

of obtaining the property of another, (4) the fraudulent representation or false pretense must be the cause which induced the owner to part with his property. (State v Howd, 55 Ut. 527, 188 Pac 628, p.630), This court has gone further and said " Than an essential element of the crime so defined by Statute is that an actual fraud be committed."(supra, State v Howd) This court also in State v Howd approved the language found in 25 C.J. 608, which says

> "While the statutes do not in the express language require that the person from whom the property is obtained should be defrauded thereby, but that it is obtained with the intent to defraud him, never the less it is held as a general rule that a crime is not committed if the prosecutor gets out of the transaction what he bargained for."

The court further elaborated upon the requirement than an actual fraud be committed as follows: "That a pretense false in fact in actual fraud resulting in prejudice are essential elements of the crime in question and must be proved to establish guilt are general principals

of law which we recognize and approve. The actual fraud and prejudice required however, is determined according to the situation of the victim, immediately after he parts with his property, if he gets what was pretended and what he bargained for, there is no fraud, or prejudice,***(emphasis added). The Court also in State v Fisher (79 Ut 115, 8 Pac 2d 589, p.590) has held "While, so far as appears, in the Howd or the Synder case was the sufficiency of the information questioned, yet as will be observed, both of these cases stand for the proposition that one of the essential elements of the crime of obtaining money or property by false pretenses is that the victim did not get what was pretended and what he bargained for, one who gets what he bargained for cannot be said to be defrauded. The failure to receive what was bargained for being an essectial element of the crime of obtaining money or property by false pretenses."

This Court in State v Casperson (71 Ut 68, 262 Pac 294 (Appeal of Snyder) has said

"Such statutes, (fraud) like all other criminal ones, must be construed strictly as against accused persons, and liberally in their favor, and nothing not within their words are held to be within their meaning (2 Bishop Crim Law(9 Ed) §415)."

In the instant case that is considered here it appears that Mr. Gittens, the complaining witness got all that he bargained for, inasmuch as he signed the contract and lease with the intent of not having a tractor but money at the end of the term, an investment, as can be seen from Page 11 of the record,

"Q. Now did you have any conversation with the defendant preceding your signing of these documents, before signing the document? (1.9)

A. Yes, sir. (1.10)

Q. Who was present at that conversation?(1.11)

A. Just Val Lower and myself (Mr. Gittens) and Leo. Mr. Nuttall. (1.13)

Q. Now would you tell us to the best of your recollection about what these conversations were between your and the defendant preceding the signing of these documents? (1.20-22)

A. Mr. Nuttall said that he had something there which would in time make us some money and take no investment, that he would put these -- sell us the tractor in our name, the paper, and he stressed that we would never have to make a payment. (1. 25-28)

Page 15 of the Record:

Q. What were you to receive after the 3 years?(1.21

A. Money.

Page 16 of record: (1. 3-16)

Q. Then the only way you would get any money out of this at all would be after the tractor was paid for and after the payments had been made as provided by these lease, isn't it?

A. Yes, sir.

Q. And at this point, under the terms of this lease you are still not supposed to receive any money are you?

A. No, sir.

Q. You never paid one dime to anybody on this tractor, have you?

A. No, sir.

Q. You've never paid one monthly payment to

anybody, have you?

A. No, sir.

Q. At this point have you lost anything in the way of tangible goods, such as money?

A. No money.

So, until such time as Mr. Gittens fails to get what he bargained for in the beginning he has not in fact been defrauded, in that by his own testimony his original contract with the appellant still has not been breeched and to this point Mr. Gittens has obtained every thing that he in fact contracted to receive.

POINT II : The District Court erred in allowing the State to produce other witnesses prior to the proof that a crime had been committed in that the Corpus delicti or the fact that a crime was committed was never shown. In order that the State prove the Corpus delicti the State must show (1) the existence of a certain act or result forming the basis of the charge

and (2) the existence of the criminal agency as the cause of the act or result. The Corpus delicti can not be presumed as the Corpus delicti must be established by legal evidence sufficient to show the commission of the crime charged. (State v Erwin 101 Ut 365, 120 P 2d 285) The law demands that only the best proof of the Corpus delicti and as a general rule extra judicial statements, declarations or confessions are not sufficient of themselves to establish the Corpus delicti. 23 CJS [Crim Law] §916 (3); State v Johnson 95 Ut 572, 83 Pac 2d 1010)

The purpose of the rule that the Corpus delicti must be established independent of admissions of accused is to protect against possibility of fabricated testimony which might wrongfully establish crime and perpetrator. (People v Cullen 234 Pac 2d 1, 37 Cal 2d 614)

In the case at bar there was no showing that there was no tractor, in fact a tractor

was produced at trial, and there is no showing that the complaining witness would not have received what he contracted for and the court by allowing the introduction of all other contracts allowed the state to attempt to connect the appellant to an act not proven to be a crime by a series of other acts having no more basis in fact to being a crime than the case at bar. The introduction of all other contracts over a period of several months, by their very number and existence, would tend to divert the jury's mind from the facts which should control their verdict. (U.S. v Krulewitch 145 Fed 2d 76, 156 ALR 337) The general law provides that a person when placed upon trial for the commission of an offense against the criminal law, is to be convicted, if at all, on evidence showing his guilt of the particular offense charged in the information against him; it is well established at common law that in a criminal prosecution proof which shows or tends to show that the accused is guilty of the commission of other

crimes and offenses at other times, even though they are of the same nature as to the one charged in the information is incompetant and inadmissible for the purpose of showing the commission of the particular crime charged. (Faust v U.S. 163 US 452, 41 L Ed 224, 16 S Ct 1112), unless the other offenses are connected with the offense for which he is on trial, in other words, it is not competant to prove that the defendant committed other crimes of a like nature for the purpose of showing that he would be likely to commit the crime charged in the information. (Hall v U.S. 150 US 76, 37 L Ed 1003, 14S ct 22) In the matter at bar the use of other contracts to prove appellants intent was far outweighed by the fact that the jury were left to their conclusions that the appellant would be likely to commit such a crime as charged rather than consider only the charge in the information, hence guilt by association.

POINT III : The District Court erred in allowing the State to present evidence of the payment status of other contracts sold by the appellant to the Pacific Finance Company in as much as such evidence was immaterial and irrelevant for the consideration at hand, that of the status of the account of Mr. Gittens, such evidence could only be admissible if it would rationally contribute to the solution of the charge in the information, and such evidence would only confuse and divert the jury frmm the facts which should control their verdict. (supra, US. v Krulewitch)

POINT IV : The District Court erred by its comments to the jury by way of instruction wherein the Court expressed an opinion to the jury as to the courts belief in connection with the ultimate fact to be determined by the jury, in that the presiding judge by his comments as reflected on Page 85 of the Record did say as follows:

" Now I'm talking about that all-important intent business, because it isn't enough to find, as I've discussed in other cases, that the signatures were obtained. There must be an affirmative finding of a seperate evil intent to defraud at the time the signature of Mr. Gittens was obtained upon these papers. Now, there are enough facts and circumstances here, if you accept the inferences and the theory of the State, to sustain that. But if you don't accept the inferences and all of the elements which council will discuss, then of course the state has failed to prove its case." (emphasis added) (lines 19 - 27)

The Court by its language indicates that the court has accepted the inferences and theory of the State and that there are sufficient facts and circumstances to justify returning a verdict of guilty in the case at bar. Under constitutional provisions and statutes or rules of the courts the trial judge may not comment upon the testimony or express an opinion upon the evidence given in a case, and if the trial judge in violation of these provisions gives instructions commenting upon the weight of the evidence or expressing his opinion upon disputed facts, such error is generally held to constitute reversible error, unless it appears that the statement was

not substantially prejudicial to the party complaining (3 Am Jur, [Appeal & error] §1055 and §1099) (emphasis added). Typical provisions prohibit a judge in giving instructions to a petit jury from charging with respect to matter of fact (Hopt V Utah 110 US 574, 28 L Ed 262, 4 S Ct 202, referring to old Utah Statute) and from commenting upon the weight of the evidence and from giving an opinion as to whether a fact is proved, or from expressing an opinion upon issues of fact arising in the case, although such statutes permit the statement of evidence. The manifest object of the prohibition is to give the parties the full benefit of the judgment of the jury, unaffected by the opinion of the judge, and no essential element of the right of jury trial is impaired thereby. (Am Jur [trial 591] 467, 466) (80 ALR 890). Such comment is objectionable to instruct the jury what evidence is sufficient to establish any ultimate fact.

(98 Alr 607, Walter v State 208 Ind 231, 195 NE 268)

"EXPRESSIONS INDICATING COURTS OPINION - The judge may refer to certain evidence as "tending" to prove the fact in dispute, and in some jurisdictions there is statutory permission for charging that there is or is not evidence, indicating it, : "tending to establish or rebut a specific fact." But a judge may not say that the evidence shows the existence of any fact, and may properly refuse a request askigg him to state that the evidence indicates a fact. A charge that "even should you find for the plaintiff" is bad, since it carries with it an intimation of the court's opinion that it is not probably that the jury will find for the plaintiff. And it's near the border line of error to tell a jury that they should give the testimony of each witness such weight and credit, and only such weight and credit as they deem it entitled to receive." (53 Am Jur [trial] § 594). (emphasis added)

It is an invasion of the jury's province to state as a fact a matter to be determined by the jury (86 ALR 892), and to state that a fact is established where the evidence is conflicting and to instruct the jury what evidence is sufficient to establish an ultimate fact is error (8 ALR 607).

Utah rules of civil procedure, which rules have included the prior statute upon comments to the jury by the judge in criminal cases, provide as follows: **** The Court shall not comment on the evidence in the case*** (Rules of Civil Procedure 51, UCA, 1953)

Under the previous statute the court in the case of State v Green (77 U 580, 6 Pac 2d 177) held as follows: "In capital cases the right to a jury trial extends to each and all of the facts which might be found to be present to constitute the crime charged — such right may not be invaded by the presiding judge indicating to the jury that any such facts are established by the evidence, the constitutional provision may not be disregarded."

CONCLUSION

In light of the errors in the original trial of the appellant, and upon the facts represented to the court the verdict of guilty should be set aside as entered by the trial court and the charge against the appellant be

dismissed and the appellant be discharged, but failing that the appellant be granted a new trial free from prejudicial error.

Respectfully Submitted,

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