

SUPREME COURT OF WYOMING

Bryan Allan Temen v. The State of Wyoming

Temen v. State, 2009 WY 25 · No. S-08-0071 · Decided February 25, 2009

SUMMARY

The Supreme Court of Wyoming affirmed Bryan Allan Temen's convictions for robbery and misdemeanor credit card fraud. The court held that the district court did not abuse its discretion by permitting the State to amend the information during trial to reduce the credit card fraud charge from a felony to a misdemeanor, or by admitting the defendant's prior forgery conviction under W.R.E. 404(b).

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Hill, Justice; Voigt, C.J.; Golden, J.; Hill, J.; Kite, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	February 25, 2009
DOCKET	S-08-0071
DISPOSITION	affirmed
PROCEDURAL POSTURE	Temen appealed convictions for robbery and misdemeanor credit card fraud, challenging the midtrial amendment of the information and admission of prior-forgery evidence under W.R.E. 404(b).
STANDARD OF REVIEW	The amendment of an information is reviewed for abuse of discretion, including whether the amendment charged an additional or different offense or prejudiced substantial rights. Admission of W.R.E. 404(b) evidence is reviewed for abuse of discretion, and the ruling will not be reversed absent a clear abuse of discretion. Any alleged error in the district court's limited analysis of the 404(b) factors was also considered under harmless-error principles.
PRECEDENTIAL VALUE	published
PARTIES	Bryan Allan Temen v. The State of Wyoming

TOPICS

- criminal procedure
- appellate procedure
- evidence
- character evidence
- standard of review

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court erred by permitting the State to amend the information during trial to reduce the credit card fraud charge from a felony to a misdemeanor.
2. Whether the district court erred by admitting Temen's prior forgery conviction under W.R.E. 404(b) to establish intent and absence of mistake or accident.

HOLDINGS

1. The district court did not abuse its discretion by permitting the State to amend the information before verdict to reduce the credit card fraud charge from a felony to a misdemeanor because no additional or different offense was charged and Temen's substantial rights were not prejudiced.
2. The district court did not abuse its discretion by admitting Temen's prior forgery conviction for the limited purposes of proving intent and absence of mistake or accident.

KEY QUOTATIONS

"The district court is to determine the admission of proffered evidence under this rule by applying the following test:" (§ 16)

"Evidence is unfairly prejudicial if it tempts the jury to decide the case on an improper basis." (§ 17)

"The judgment and sentence of the district court are affirmed in all respects." (§ 24)

FACTUAL BACKGROUND

After Bryan Temen and another person were identified on surveillance video using Anthony Flores's stolen debit card, the investigation showed \$939.80 in unauthorized charges and \$672.32 in attempted purchases. Witnesses told police that Temen admitted assaulting Flores, taking his wallet and card, and using the card. Temen was charged with robbery and felony credit card fraud, but the trial evidence established an amount below the \$1,000 felony threshold. The district court also admitted evidence that Temen had been convicted of forgery less than a year earlier to show intent and absence of mistake or accident.

PROCEDURAL HISTORY

Temen was charged by information with robbery and felony credit card fraud. During trial, after the evidence showed unauthorized charges below the \$1,000 felony threshold, the district court permitted the State to amend the credit-card-fraud count to misdemeanor credit card fraud. The jury convicted Temen on both amended counts, the district court entered judgment and sentence, and Temen timely appealed. The Wyoming Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Wilkening v. State, 2005 WY 127, ¶ 25, 120 P.3d 680, 688 (Wyo. 2005)
- Burton v. State, 2002 WY 71, ¶ 44, 46 P.3d 309, 320-21 (Wyo. 2002)
- Sanville v. State, 593 P.2d 1340, 1345 (Wyo. 1979)
- Trevino v. State, 2006 WY 113, ¶¶ 17-18, 142 P.3d 214, 219-20 (Wyo. 2006)
- Bromley v. State, 2007 WY 20, ¶ 8, 150 P.3d 1202, 1206-07 (Wyo. 2007)
- Gleason v. State, 2002 WY 161, ¶¶ 18, 26-28, 57 P.3d 332, 340, 342-43 (Wyo. 2002)
- Harris v. State, 2008 WY 23, ¶¶ 5-6, 177 P.3d 1166, 1168 (Wyo. 2008)
- Rigler, 941 P.2d at 737-38
- Dean, 865 P.2d at 609-10 n. 2