

COURT OF APPEALS OF GEORGIA

Kendrick v. State

156 Ga. App. 27 (Ga. Ct. App. 1980) · Decided October 7, 1980

SUMMARY

The Georgia Court of Appeals affirmed L. D. Kendrick’s conviction for theft by receiving stolen property. It held that the trial court did not err in finding a neighboring juror qualified and impartial or in admitting evidence of other cow thefts and sales because the evidence was independently relevant to knowledge and intent.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Smith; McMurray; Banke
JURISDICTION	Georgia
DECIDED	October 7, 1980
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a jury conviction and sentence for theft by receiving stolen property.
STANDARD OF REVIEW	The appellate court reviewed the trial court's determination that the juror was qualified and impartial for error and examined the admission of character-related evidence for legal error.
PRECEDENTIAL VALUE	Published opinion
PARTIES	L. D. Kendrick v. State

TOPICS

- jury selection
- character evidence
- evidence
- criminal procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- evidence

QUESTIONS PRESENTED

1. Whether the trial court erred in denying Kendrick's motion to strike for cause a juror who lived next door to the District Attorney and had incidental, non-case-related contact with him before trial.

2. Whether the trial court erred in admitting evidence of other cow thefts and other cow sales because the evidence placed Kendrick's character in issue.

HOLDINGS

1. The trial court did not err in finding the juror qualified and impartial and denying the motion to strike for cause; Kendrick showed no harm warranting reversal.
2. Evidence that incidentally placed Kendrick's character in issue was admissible because it was independently relevant to show knowledge, intent, motive, plan, scheme, or identity; the trial court therefore did not err in admitting evidence of other cow thefts and sales.

KEY QUOTATIONS

“Evidence which incidentally may place a criminal defendant’s character in issue is admissible if independently relevant, such as to show knowledge, motive, plans, intent, scheme or identity.” (28)

FACTUAL BACKGROUND

Over approximately three months, the victim, Mr. Wingard, reported numerous missing cows while Kendrick was selling cows at two nearby livestock auctions. Some of the cows were identified as stolen from Wingard, and cash receipts from the sales barns traced the cows to Kendrick. Kendrick challenged a juror who lived next door to the District Attorney and had incidental contact with him before trial, and he also challenged evidence concerning other cow thefts and sales.

PROCEDURAL HISTORY

Kendrick was convicted by a jury of theft by receiving stolen property and sentenced. The trial court denied his motion to strike a juror for cause after conducting an evidentiary hearing concerning the juror's contact with the District Attorney, and admitted evidence concerning other cattle thefts and cattle sales. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Dill v. State, 222 Ga. 793 (1), 152 S.E.2d 741 (1966)
- Garrett v. State, 153 Ga. App. 366, 370, 265 S.E.2d 304 (1980)
- Hanson v. State, 143 Ga. App. 200, 237 S.E.2d 699 (1977)
- Harden v. State, 81 Ga. App. 638, 59 S.E.2d 563 (1950)

OPINION

SMITH, J.

Smith, Judge. The appellant, L. D. Kendrick, was convicted by a jury and sentenced for theft by receiving stolen property in what appears to have been cattle rustling. He alleges that one juror should have been disqualified for favor and that the trial court erred in letting the state put his character in issue.

We affirm. One juror resided next door to the District Attorney. The District Attorney had cautioned the juror that there should be no communication between them concerning cases. On the evening before trial, the District Attorney borrowed an edger from the juror's father.

The juror came out and volunteered instruction on how to use the edger. There was no reference to the pending trial or any matter before the court. The trial court conducted an evidentiary hearing concerning the *28exchange between the District Attorney and the juror. He made a determination that the juror was qualified and impartial and there is no evidence to the contrary.

Appellant's motion to strike the juror from service for cause was denied. After the hearing, both the state and the appellant exhausted their peremptory challenges before the juror was called. The juror was not stricken.

The appellant has shown no harm to himself, *Dill v. State*, 222 Ga. 793 (1) (152 SE2d 741) (1966), and we find no basis upon which to reverse the ruling of the trial court. *Garrett v. State*, 153 Ga. App. 366, 370 (265 SE2d 304) (1980).

We find this enumeration to be without merit. Argued July 1, 1980 Decided October 7, 1980. C. B. King, for appellant. Gary Christie, District Attorney, for appellee. In the appellant's other enumeration, he alleges "The trial court erred in failing to sustain Appellant's objection to testimony solicited by the State which put Appellant's character in issue in violation of Ga. Code Ann. § 38-202 and his right of a fair and impartial trial." Over a three month period, the victim, Mr. Wingard, was missing numerous cows.

During the same period, the appellant was selling cows at two nearby livestock auctions. Some of the cows were identified as being stolen from Mr. Wingard. The cows were traced by cash receipts from the sales barns to the appellant. Appellant's knowledge that the cows were stolen and his intent to deprive their owner of them were issues in his trial. Evidence which incidentally may place a criminal defendant's character in issue is admissible if independently relevant, such as to show knowledge, motive, plans, intent, scheme or identity.

Hanson v. State, 143 Ga. App. 200 (237 SE2d 699) (1977). The trial court did not err in admitting evidence of theft of cows on other occasions and other cow sales by the appellant. *Harden v. State*, 81 Ga. App. 638 (59 SE2d 563) (1950). Judgment affirmed. McMurray, P. J., and Banke, J., concur.