North Dakota Law Review

Volume 36 | Number 1 Article 10

1960

Evidence - Admission against Interest - Use of Plea of Guilty against Defendant in Subsequent Civil Action

Curtis A. Nordhaugen

Most courts do not exclude logically relevant evidence of other transactions merely because it tends to show the defendant is guilty of another crime.[10] On the other hand, and of primary importance, despite a general relaxation of the rule, many courts still exclude this evidence where its probative value does not outweigh its prejudical effect.[11] From the decisions discussed it is possible to conclude that the court in the instant case may not have weighed this relationship properly.

Irrespective of this and taking into consideration the points thus far enumerated, it is clear that in an accusatorial system of justice, such as ours, the specific crime in issue must at all costs be the focal point about which proof is to be marshalled.[12]

RICHARD H. SKJERVEN

EVIDENCE — ADMISSION AGAINST INTEREST —USE OF PLEA OF GUILTY AGAINST DEFENDANT IN SUBSEQUENT CIVIL ACTION — Plaintiff brought an action to recover damages for personal injuries sustained in an upset of an automobile while riding as a guest of the defendant. The Trial Court granted a verdict for the defendant and the plaintiff appealed alleging that the court erred in giving instructions that defendant's admission of plea of guilty in a prior criminal action, arising out of the same accident, could only bear upon the defendant's credibility. The Supreme Court of North Dakota *held* that instructions limiting evidentiary effect of host's plea of guilty to his credibility was erroneous and prejudicial. *Borstad v. La Roque,* 98 N.W.2d 16 (N.D. 1959).

There is authority holding that a plea of guilty in a criminal case is an admission against the party thereto in a subsequent civil case when the civil action involves the same offense for which the criminal prosecution was instituted.[1] However, the plea of guilty is not conclusive and may be explained.[2] Some courts hold that defendant's plea of guilty is only an admission against his interest, and cannot be used as proof of the facts alleged in the civil action.[3] It has been held that defendant's plea of guilty is admissible against him in a subsequent civil action even though defendant withdrew his plea of guilty and pleaded not guilty,[4] because the admission tends to some extent to support the plaintiff's charges.[5] A plea of Nolo Contendere, however, which is generally defined as an implied confession (as distinguished from a

---

it one — In a very real sense a defendant starts his life afresh when he stands before a jury, a prisoner at the bar."

10. People v. Carmelo, 94 Cal. App. 2d 301, 210 P.2d 538 (1949); Turner v. State, 187 Tenn. 309, 213 S.W.2d 281 (1948).

11. Harris v. State, 88 Okla. Crim. 422, 204 P.2d 305 (1949); Day v. Commonwealth, 196 Va. 907, 86 S.E.2d 23 (1955).

12. See People v. Molineaux, 168 N.Y. 264, 61 N.E. 286 (1901); State v. Emanuel, 42 Wash. 1, 253 P.2d 386 (1953).

1. Motley v. Page, 250 Ala. 265, 34 So.2d 201 (1948); Odian v. Habernicht, 133 Cal.2d 201, 283 P.2d 756 (1955); see Konshuk v. Hayes, 150 Wash. 565, 273 Pac. 957 (1929).

2. Moulin v. Bergeron, 135 Conn. 443, 65 A.2d 478 (1949); Utt v. Herold, 127 W. Va. 719, 34 S.E.2d 357 (1945).

3. Ralston v. Ralston, 45 Del. 305, 72 A.2d 441 (1950); see Rednall v. Thompson, 108 Cal.2d 662, 239 P.2d 693 (1952).

4. Morrissey v. Powell, 304 Mass. 268, 23 N.E.2d 411 (1939) (Withdrawal of plea of guilty does not amount to complete destruction of force and effect of prior plea of guilty).

5. Vaughn v. Jonas, 31 Cal.2d 586, 191 P.2d 432 (1948).

direct admission) of guilt, does not constitute such an admission of guilt, that it will be permitted in evidence in a civil action.[6] North Dakota holds that defendant's plea of guilty in a criminal action can be used as evidence against him in a subsequent civil action, not only as an admission against interest, but also as affecting credibility.[7]

CURTIS A. NORDHAUGEN

JOINT TENANCY — JOINT ACCOUNTS IN SAVINGS BANKS — INTENT TO MAKE A VALID GIFT. — The administrator brought an action to recover funds deposited in a joint account of decedent and defendants. In 1950, a bank signature card was executed which authorized defendant to draw on decedent's account. In late 1954, the account, with survivorship agreement, was created and remained in effect until decedent's death in December 1955. Decedent, an attorney, had given defendants, his nephew and wife, a farm and several other gifts during his life. The district court held that the joint account was executed for business convenience and necessity, and that it was not the intention of the decedent to vest ownership in the defendants. On appeal, the Supreme Court of Idaho *held*, two justices dissenting, that the judgment be affirmed. *Idaho First Nat. Bank v. First Nat. Bank of Caldwell*,[1] 340 P.2d 1103 (Idaho 1959).

The majority relied on *Shurrum v. Watts*,[2] in which the court held that during the lifetime of the parties, the presumption of joint tenancy and right of survivorship is rebuttable. Idaho has joined that group of states that hold such an account may effect a gift, and that the execution of such an account raises a presumption of a valid joint teanancy.[3] However, the majority holding, by making the intent of the depositor the determinative factor, places the burden of proof on the survivor, and leaves the survivorship agreement without force or effect.[4]

The dissenting judges relied on *Gray v. Gray*,[5] in which the court established the validity of joint accounts in Idaho, holding that where the essentials of a valid joint tenancy as set out in the statute[6] are present, the right of the survivor vested at the time the account was created. The dissent further states that the agreement should be conclusive evidence of an intent to make

6. Federal Deposit Ins. Corp. v. Cloonan, 165 Kan. 68, 193 P.2d 656 (1948); Louisiana State Bar Ass'n v. Connally, 206 La. 883, 20 So2d 168 (1944); see Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954).

7. Clark v. Josephson, 66 N.W.2d 539 (N.D. 1954) (admission against interest); Engstrom v. Nelson, 41 N.D. 530, 171 N.W. 90 (1919) (admission against interest); Schnase v. Goetz, 18 N.D. 594, 120 N.W. 553 (1909) (credibility).

1. Contra, Gray v. Gray, 78 Idaho 439, 304 P.2d 650, 654, 655 (1956).

2. 80 Idaho 44, 324 P.2d 380, 383 (1958).

3. Gray v. Gray, 78 Idaho 439, 304 P.2d 650, 654 (1956). (Some hold intention to make a gift is supplied by a presumption from the form of the deposit. Others deny this presumption. Idaho, in Gray v. Gray, *supra*, followed the former, but in the instant case the court has completely reversed itself).

4. In the instant case the dissent stated that the majority rule would permit such an act to be challenged in virtually every instance, and force the survivor to prove the decedent did precisely what he unequivocally stated in writing that he did. *Compare with* O'Brian v. Biegger, 233 Iowa 1179, 11 N.W.2d 412 (1943).

5. 78 Idaho 439, 304 P.2d 650 (1956).

6. Idaho Code Ann., § 26-1014 (1959) (Provides that when a deposit has been made in two or more names payable to any of such persons or to the survivor, it may be paid to any of said persons, whether the other be living or not, and such payment shall discharge the bank making the payment from its obligation to the depositors).