North Carolina v. Smith

13 N.C. App. 46 (1971) | Cited 4 times | Court of Appeals of North Carolina | December 15, 1971

Defendant contends that the trial judge committed error in failing to allow his motions for judgment of nonsuit made at the close of the evidence for the State and again at the close of all the evidence. We hold that there was ample evidence to require submission of the case to the jury.

The defendant also contends that the trial judge committed error in failing to require the defendant's witness, Elwood Newman, to answer the following questions propounded to him by the defendant's attorney, in the absence of the jury, after the witness had refused to answer the question, "Were you in an automobile at this particular time?" on the grounds "that it might tend to incriminate" him:

"And ask Mr. Newman, if the defendant Lafayette Smith, was in an automobile with him on the fifth day of March 1971?

Mr. Newman, if you did take LaFayette Smith up on the fifth day of March, where did you then proceed?

Did you stop your automobile at the location of 307 Davis Street on this particular day in question?

Did you, Mr. Newman, at any time see the defendant,

Lafayette Smith, have in his possession any object wrapped in tinfoil?

Where was the defendant Lafayette Smith, when he was a passenger in the car described by the State's witness, where was he seated in the automobile?

Did you have a conversation with Mr. Bentley, on the day of March 5th, in the close proximity of the automobile?

Did you ever see Officer Bentley go from the left side of the Lincoln automobile, around the front of the Lincoln automobile, to the right hand side of the automobile?

Did you ever see Office Bentley pick up any objects, wrapped in tinfoil, from the close proximity of the automobile or the close proximity of Lafayette Smith?

Did Officer Bentley ever tell you where he found the objects that were wrapped in tinfoil?

Did you, Mr. Newman, hold a flashlight, at the request of Mr. Bentley, on him, hold a flashlight upon the person of Lafayette Smith, while Officer Bentley searched the person of Lafayette Smith?

When were you charged with the possession of these same narcotics?

Will you describe the windows and doors of the 1969 Lincoln Continental that you owned on March 5th, 1971?"

The witness Newman testified that he was under indictment for the transportation, on the same date, of the same three packages of heroin that the defendant was charged with possessing. Newman's lawyer was present in the courtroom, and from time to time during his interrogation by defendant's counsel, Newman was permitted to consult with his lawyer before responding to questions. To each of the foregoing questions, Newman

replied that he refused to answer on the grounds that the answer might tend to incriminate him. The judge declined to require that he answer them and defendant excepted. The defendant also excepted to the following typical findings of the trial judge in holding that the witness Newman would not be required to answer the questions:

"At this juncture, having heard all of the State's evidence and having heard that the evidence tends to show that Elwood Newman was the driver of the automobile which did go to the residence of this defendant, picked him up, drove him to the Davis Street residence, 206, and that the evidence tends to show that they were in there in each others company at all times of the hours in question, that there they were in the same vehicle for (sic) which the defendant alighted and from whose body State Exhibit Number 1, containing heroin was seen falling in front of his body or by his feet, and that the court believes that the answers to questions that would logically follow would have a tendency to incriminate him, and therefore he has claimed the privilege of refusing to answer and the Court rules that he will not be required to answer.

I hold, in view of the evidence which is of record here, that it would be a violation of his constitutional rights to require him to answer and, therefore, he will not be required to answer, for the record or in the presence of the jury."

In Hoffman v. U.S., 341 U.S. 479, 95 L. Ed. 1118, 71 S. Ct. 814 (1951), in discussing the privileges against self-incrimination granted by the Fifth Amendment to the United States Constitution, the Court said:

"* * * This provision of the Amendment must be accorded liberal construction in favor of the right it was intended to secure. Counselman v. Hitchcock, 142 U.S. 547, 562, 35 L. Ed. 1110, 1113, 12 S. Ct. 195 (1892); Arndstein v. McCarthy, 254 U.S. 71, 72, 73, 65 L. Ed. 138, 141, 142, 41 S. Ct. 26 (1920).

The privilege afforded not only extends to answers that would in themselves support a conviction under a federal

criminal statute but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime. * * * The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself -- his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified, Rogers v. United States, 340 U.S. 367, ante, 344, 71 S. Ct. 438, 19 ALR 2d 378 (1951), and to require him to answer if 'it clearly appears to the court that he is mistaken.' Temple v. Commonwealth, 75 Va. 892, 899 (1881). However, if the witness, upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result. The trial judge in appraising the claim 'must be governed as much by his personal perception of the peculiarities of the case as by the facts actually in evidence.' See Taft, J., in Ex parte Irvine, 74 F 954, 960 (CC SD Ohio 1896)."

The privilege against self-incrimination can be claimed only by the witness, and when it is claimed, it is guaranteed by the Fifth Amendment to the Constitution of the United States, as well as by Art. 1, § 23 of the Constitution of North Carolina. See State v. Morgan, 133 N.C. 743, 45 S.E. 1033 (1903).

In Emspack v. United States, 349 U.S. 190, 99 L. Ed. 997, 75 S. Ct. 687 (1955), the Court said:

"* * * The protection of the Self-Incrimination Clause is not limited to admissions that 'would subject [a witness] to criminal prosecution'; for this Court has repeatedly held that 'Whether such admissions by themselves would support a conviction under a criminal statute is immaterial' and that the privilege also extends to admissions that may only tend to incriminate. * * *"

In Allred v. Graves, 261 N.C. 31, 134 S.E.2d 186 (1964), it is said:

"It is an ancient principle of the law of evidence that a witness shall not be compelled, in any proceeding, to make disclosures or to give testimony which will tend to incriminate him or subject him to fines, penalties or forfeitures. * * * The rule against self-incrimination has existed from an early date in the English common law, and its origin has been said to be based on no statute and no judicial decision but on a general and silent acquiescence of the courts in a popular demand. * * *

The constitutional guaranties against self-incrimination should be liberally construed. Gouled v. United States, 255 U.S. 298, 65 L. Ed. 647; Quinn v. United States, 349 U.S. 155, 99 L. Ed. 964; Ullmann v. United States, 350 U.S. 422, 100 L. Ed. 511, 53 A.L.R. 2d 1008; 98 C.J.S., Witnesses, sec. 432.

The privilege against self-incrimination may be exercised by a witness in any proceeding. * * *"

We hold that on this record, Elwood Newman (offered as a witness by the defendant), in good faith and in a proper manner, claimed the privilege against self-incrimination and that the answers to the questions propounded, in the setting in which they were asked, were ones of possible self-incrimination and fall within the scope of the privilege. The able and experienced trial judge so found and properly held that the witness should not be required to answer the questions propounded. Smith v. Smith, 116 N.C. 386, 21 S.E. 196 (1895); LaFontaine v. Southern Underwriters, 83 N.C. 133 (1880); State v. Huffstetler, 1 N.C. App. 405, 161 S.E.2d 617 (1968); 8 Wigmore, Evidence, §§ 2268, 2271; 98 C.J.S., Witnesses, §§ 435, 436, 437.

Defendant also contends that the trial judge committed error in holding that the answer of the defendant's witness Newman to a question as to whether his automobile was impounded subsequent to his arrest on 5 March 1971, would not be put in the record because it could have no connection with the guilt or innocence of the defendant. This question was asked and the ruling was made in the absence of the jury. Even if it were error to fail to permit the answer of the witness to appear of record for the assigned reason, it does not appear how it could be prejudicial to the defendant. See Highway Commission v. Pearce, 261 N.C. 760, 136 S.E.2d 71 (1964).

We have examined each of the defendant's other assignments of error relating to the admission and exclusion of testimony and find no error prejudicial to the defendant.

In the trial we find no error.

No error.

Disposition

No error.