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Plea of Guily as an Admission

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PLEA OF GUILTY AS AN ADMISSION

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This case note is the result of the comment of E. B. Hamilton of Durango upon the very terse statements of this author in his cryptic annual review of evidence (*Dicta,* Vol. XXXIII, No. 1, Page 32), in discussing *Ripple v. Brack,* C.B.A. Ad. Sh., Vol. VII, Page 446, 1955.

The treatment of the case which received the criticism, reads as follows:

> "In a civil damage action it was error to allow counsel for Plaintiff to cross-examine the patrol officer concerning the plea entered by the Defendant in a criminal case tried before a justice of the peace. Such questions are immaterial in a civil action and are, of course, highly prejudicial."

The criticism of Mr. Hamilton, which was addressed to the editor of Dicta, is interesting and is worthy of full mention here. Mr. Hamilton stated:

> "We view with some surprise the comment of the Honorable William Doyle to the case above cited. Although the Court's opinion does not conclusively so indicate, the defendant in this case did plead guilty to a traffic violation. In the vast majority of the states, such a plea, when made by a party, is an admission which may properly be admitted into evidence.
>
> "The Court relied on CRS 13-4-140, 'No *record* of the conviction of any person for any violation of this article shall be admissible in any court in any civil action. Certainly the plain meaning of this statute does not interfere with the introduction of a record of conviction which prejudices a jury by permitting it to consider the conclusions of some other trier of the facts.
>
> "Regardless of Mr. Doyle's opinion as to what the law should be, this case, which stands nearly alone in the field of evidence, and which is one of first impression in Colorado, is worthy of comment of more than two sentences."

Ordinarily, brevity is a desirable virtue, but it can be, and undoubtedly in this instance was, carried too far. Mr. Hamilton is correct in his statement that the case is sufficiently interesting to warrant extended comment. Mr. Hamilton's other criticism is also well taken. He is quite right in his assertion that as a general rule, a plea of guilty in a criminal case is admissible as an admission against the party making it where it is material to the issue which is being tried.

There is, however, one other interesting question, and that is whether the statutory provision, *C.R.S.* 13-4-140, should be narrowly construed so as to exclude a record of conviction, but at the same time allowing the introduction of a plea of guilty as an admission.

Although reasonable legal minds could differ on this, my own viewpoint is that when the legislature declares a policy calling for the exclusion of convictions, full effect should be given to it, and a *plea of guilty* should be held to come within the legislative declaration. There are good reasons for so holding. *First,* a plea of guilty is a conviction. Once the plea is received and recorded, the only thing remaining for the Court to do in order to make this a final judgment is to pronounce sentence. A taking of evidence is not a necessary requisite. See *C.R.S.* 39-7-8 and see also *Lacomy v. People.*[1] The *second reason* for so construing the statute is that many people plead guilty to traffic offenses in order to avoid the trouble and embarrassment of a trial and, therefore, the legislature could very well recognize that such a plea of guilty has no probative value and this would be more true of a plea of guilty than a conviction. Consequently, in the light of this reason, there is more basis for excluding a conviction following a plea of not-guilty.

In the *Ripple case,* the Plaintiff had apparently tendered a plea of guilty into evidence although this is not apparent from the record. Insofar as the Court held that the statute applied to convictions based upon pleas of guilty it is believed that the opinion is correct.

There is one other feature about the decision which is interesting, and that is that neither the plea of guilty nor the record of conviction were received in evidence and yet the Supreme Court held that the case should be reversed because of the conduct of counsel in *offering* the testimony. It is doubtful whether the prohibition of the statute extends to mere tendering of the evidence, particularly under the circumstances which are revealed by this record. The objectionable question was propounded by counsel for the Plaintiff while examining a patrolman. This, together with statements of counsel, reads as follows:

> "Q. Do you remember when we took your deposition in Golden, you were going to check and see what plea Mr. Ripple entered on the charge that you filed against him in the Justice of Peace Court; did you do that?
>
> "Mr. O'Dell: Just a minute. We object to that.
>
> "Q. He said in his deposition that he would do it. If that is objectionable, we can get it with another witness.
>
> "Mr. O'Dell: We would like to be heard on that, may it please the Court.
>
> "Q. If you are going to take up a lot of time, I will get it somewhere else."
>
> *****
>
> "Q. Did your investigation show that Mr. Ripple had been

[1] 66 Colo. 19, 178 P. 571.

on the wrong side of the road?

"A. Yes, Sir.

"Q. You charged him with a traffic violation?

"A. I charged—

"Mr. O'Dell: Objection. If it please the Court, I think we had better take this up in the chambers.

"Q. I can still get it from another witness.

"The Court: Are you withdrawing it?

"Q. All right, now you gave some—

"Mr. O'Dell: If it please the Court, there is still a matter here I would like to take up in the chambers.

"Q. I will withdraw the question.

"The Court: Then there is nothing before the Court. You may proceed."

Even if the plea of guilty had been admissible, it would seem that it should not be introduced in the manner which was employed in this case. The patrolman could not competently testify to the matter ascertained by the Court record. Furthermore, whether a traffic charge was *filed* could not be material under the circumstances.

Was it incumbent upon the trial court to strike the questions from the record and instruct the jury to disregard them, and was its failure to do so, prejudicial error? It is submitted that counsel for the Plaintiff should have made a motion asking the Court to instruct the jury to disregard the statements of counsel if he were to use it as a basis for reversal and the trial judge was not required to do more than he did.

In the *Ripple case*, the Supreme Court relied upon the case of *Warren v. Marsh*.[2] In that case, the Plaintiff had pleaded guilty before a justice of the peace. In the trial of the civil action, the Plaintiff was asked if he had entered such a plea and the testimony was admitted over the objection of the Plaintiff. However, later the trial court granted a motion for new trial based upon his error. The Defendant elected to appeal this decision. The Supreme Court of Minnesota affirmed the decision granting a motion for a new trial. The Minnesota Court said that apart from statute, such an

[2] 215 Minn. 615, 11 N.W. (2d) 528.

admission would be competent evidence. They further stated, however, that the legislature had closed the door to this inquiry. The Minnesota Court reasoned that the statute was undoubtedly passed because of the fact that pleas of guilty to traffic offenses do not necessarily mean that the Defendant was guilty. Drivers often plead guilty, prefering to pay a small fine to becoming involved in a contested court case. The Minnesota Court also pointed out that the issues in a civil case are quite different from those which are present in a criminal case.

Whether the Minnesota Court would have taken the same view of the matter if, as in the principle case, the question had been withdrawn, is a matter of speculation. In the Minnesota case, the objectionable evidence was received and undoubtedly the jury was influenced by it. However, it would seem to me that this factor provids a basis for distinguishing the Minnesota decision and that it is not persuasive authority.

In any event, if there has been a question in the past as to whether a plea of guilty is a conviction within the meaning of 13-4-140, 1953, CRS, the question has now been resolved, although the opinion does not clearly reveal, that the matter which was offered in *Ripple v. Brack* was a plea of guilty. This fact is to be gleaned from the briefs of counsel in the case. Furthermore, if there has been some question in the past as to whether the mere effort on the part of counsel to inject such a matter in the record constitutes prejudicial error, that question has been also unequivocably answered. The desirability, however, of this latter rule is open to some question. It would seem that the punishment is somewhat drastic especially in view of the fact that the complaining party was somewhat less than diligent in making his record and in his efforts to correct the error.

Whether or not the mere asking of improper questions is to be considered prejudicial, ought to be left to the trial judge who is in a better position to evaluate such an effect than a reviewing court.

It is interesting to note that the question of admissibility of a conviction was again considered by the Court in the recent case of *Brown v. Moyle.*[3] Here in an automobile case, the Plaintiff introduced, and the Court received copies of an information charging the Defendant with manslaughter and a copy of the verdict finding him guilty. Here the Court made a distinction between a conviction and a plea of guilty holding that since, in the *Brown case,* the evidence received was that of a conviction and not a plea of guilty, it constituted prejudicial error. It is interesting to note also that the statute which was the basis for the Court's action in *Ripple v. Brack,* did come into play in *Brown v. Moyle.* The Court stated in pertinent part as follows:

> "At the trial copies of an information charging Brown with manslaughter in the killing of Moyle, and a copy of the verdict finding defendant guilty of manslaughter were admitted over the objection of defendant. This was error.[4] The Courts are

[3] Vol. VIII, C.B.A. Ad. Sh., No. 4, Page 131, December 12, 1955.
[4] 31 A.L.R. 261

> almost unanimous in ruling that such evidence, being evidence of the conviction of a traffic charge of manslaughter based on the operation of an automobile in a civil case is inadmissible. It is to be noted that defendant did not plead guilty in the criminal action."

and then said:

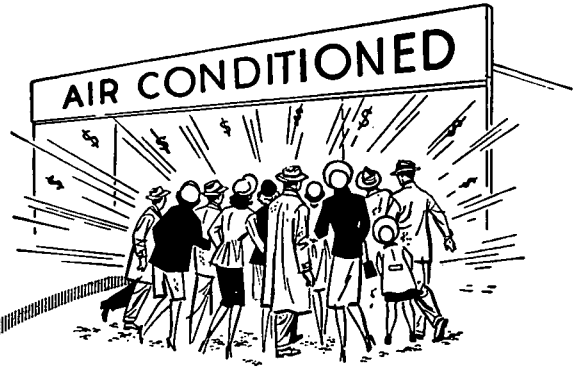
> "We believe sufficient has been said to support a reversal of the judgment herein without a discussion of other errors that may have some merit.***"

It could be argued that the statute in question excluding convictions, applies to manslaughter which is the result of an automobile accident. However, the Court would not invoke the statute and it carefully noted that the defendant had not entered a plea of guilty, thus indicating that a distinction is to be drawn between a plea of guilty and another type of conviction. The Court's recognition that there may possibly be a distinction, makes the reversal in *Ripple v. Brack* all the more questionable because it points up the fact that the legal question is a close one and that a lawyer could very easily make a good faith mistake in tendering in evidence a plea of guilty. Needless to say, reversal is too drastic under such circumstances.

It is submitted that matters which are peculiarly related to the trial of the case, should be left to the sound discretion of the trial judge, and where, as in *Ripple v. Brack*, the trial judge did not find that there was prejudice, it would seem that this should not be disturbed upon review.

As to the statute, it is this writer's viewpoint that it expresses a salutary policy and that it should, therefore, be given a broad construction.

Thanks are expressed to Mr. Hamilton for calling attention to this problem and assurances are herewith given that in the future, the annual review of evidence task will be performed with more care.



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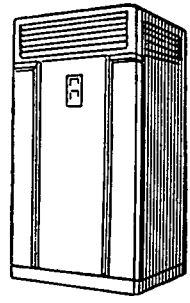

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