

Chan v. State

Charlie Chan is charged with theft of a 1987 Plymouth Horizon from Jessica Fletcher. Assume theft of a motor vehicle valued at over \$1,000 (grand theft auto) is a Class D Felony, and theft of a motor vehicle valued at under \$1,000 (petty theft auto) is a Class A Misdemeanor.

The prosecution presented the testimony of Chan's next door neighbor, Frank Cannon. Cannon testified that he saw Chan driving the car and parking the car behind his (Chan's) house. Chan attempted to impeach Cannon with the fact that Cannon was an ex-convict, having been previously convicted of car theft. The record showed that Cannon had been convicted ten years ago and had served sixteen months in prison after his last conviction, so the trial judge excluded the evidence.

Officer Joe Friday testified that he found the car in Chan's back yard. He investigated, and arrested Chan and read him his Miranda rights. Chan then said, "I ain't saying nothing, you pigs would just twist anything I say." Chan's lawyer objected to testimony of what Chan had said, but the trial judge let it in. Jessica Fletcher testified she had received the car as a gift from Joe Mannix. She testified that the car would be worth \$510 if she tried to sell it, but \$2,500 if she wanted to buy a comparable car from a car lot. On cross-examination, she testified that she got these values from the Car Geek web page. She had no independent knowledge of the value of her car. Chan's lawyer unsuccessfully moved to strike her testimony.

The prosecution rested. Chan's lawyer moved for a directed verdict on the felony charge on the basis that there was no proof that the value of the car was at least \$1,000. The judge denied the motion. Chan's lawyer also made a general motion to dismiss the charges entirely.

Chan took the stand and denied having stolen the car. He testified he suspected his next-door neighbor, Cannon, was the real thief, but he couldn't prove it.

Chan proffered the testimony of Hercule Poirot and Shelby Woo that Cannon had a reputation in the community as a car thief. The judge excluded this testimony under Rule 403.

The jury convicted Chan of grand theft auto. Two weeks later, American Journal investigated upheaval in the used car market and traced it to a nine year old kid who published the Car Geek web page. It turns out that the kid had no idea of the prices of automobiles and randomly generated prices instead. Chan's lawyer filed a motion for new trial based on newly discovered evidence.

ARKANSAS RULES OF EVIDENCE

Rule 103. RULINGS ON EVIDENCE

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury. Injury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Errors Affecting Substantial Rights. Nothing in this rule precludes taking notice of errors affecting substantial rights although they were not brought to the attention of the court.

Rule 401. DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 403. EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT, EXCEPTIONS - OTHER CRIMES

(a) Character Evidence Generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible

to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. METHODS OF PROVING CHARACTER

(a) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct

Rule 512. COMMENT UPON OR INFERENCE FROM CLAIM OF PRIVILEGE - INSTRUCTION

(a) Comment or Inference Not Permitted. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

(b) Claiming Privilege Without Knowledge of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Jury Instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim or privilege is entitled to an instruction that no inference may be drawn therefrom.

Rule 608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or

untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Rule 609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted but only if the crime (1) was punishable by death or imprisonment in excess of one [1] year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to a party or a witness, or (2) involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten [10] years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one [1] year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. Except as otherwise provided by statute, however, the court may in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 704. OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Rule 801. DEFINITIONS

The following definitions apply under this Article: (a) Statement. A "statement" is (1) An oral or written assertion; or

(2) Nonverbal conduct of a person, if it is intended by him as an assertion. (b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at

the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements Which Are Not Hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (i) inconsistent with his testimony and, if offered in a criminal proceeding, was given under oath and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a disposition [deposition], or (ii) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (iii) one of identification of a person made after perceiving him; or

(2) Admission by party-opponent. The statement is offered against a party and is (i) his own statement, in either his individual or a representative capacity, (ii) a statement of which he has manifested his adoption or belief in its truth, (iii) a statement by a person authorized by him to make a statement concerning the subject, (iv) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (v) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.