

1977

State of Utah v. De Vere Cooley : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,
Plaintiff-Appellant,
vs.
DE VERE COOLEY,
Defendant-Respondent.

BRIEF OF APPEAL

APPEAL FROM THE
JUDICIAL DISTRICT
GARFIELD COUNTY
HONORABLE DON V. THORNTON

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DISPOSITION IN THE LOWER COURT

The State's Information was dismissed by the lower Court pursuant to Defendant's Motion.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the Order of the lower Court granting Defendant's Motion to Dismiss the Informa-

STATEMENT OF THE FACTS

The facts of this case were stipulated to by the parties, and are set out briefly as follows. Defendant was arrested on May 21, 1977, by Officer Donnell R. Kidder of the Panguitch City Police Department. Officer Kidder issued two citations to the Defendant, copies of which were admitted in evidence (T3). The first ticket given to the Defendant was #607, which charged him with failing to stop his vehicle at the command of a police officer. The Officer also issued ticket #608, which charged the Defendant with two offenses, (1) no tail lights on a boat trailer, and (2) driving under an improper or restricted license. Defendant appeared in the Justice of the Peace Court of Panguitch Precinct, Garfield County, State of Utah, and entered a plea

of guilty to both offenses charged on ticket #608. The prosecution in the case before the Court is based on the offense charged in ticket #607 (T3).

ARGUMENT

POINT NO. 1: THIS IS AN APPEAL FROM A JUDGMENT OF DISMISSAL IN FAVOR OF THE DEFENDANT UPON A MOTION TO DISMISS THE INFORMATION AND IS ALLOWED UNDER UTAH CODE ANN. § 77-39-4(1), 1953.

Under present Utah Law, the State is allowed to appeal on any one of four different grounds. The grounds are: (1) from a judgment of dismissal in favor of the Defendant on a Motion to Quash the Information or Indictment; or (2) from an Order Arresting Judgment; or (3) from an Order made after judgment affecting the substantial rights of the State; or (4) from an Order of the court directing the jury to find for the Defendant. Utah Code Ann. § 77-39-4, 1953.

The Order appealed from is couched in terms of the State's case having been "dismissed" rather than "quashed". Nevertheless, a Dismissal With Prejudice amounts to a quashing of the entire proceeding, including the Information. See especially the language of Justice Crockett in his dissenting opinion in State vs. Davenport, 517 P. 2d 544, 30 Utah 2d 298(1973):

"It does not seem to me open to question but that the essential effect of the granting of the motion to dismiss by the trial court amounted to a quashing of the entire proceeding, and this of course includes the quashing of the information."

See also State vs. Rickenberg, 58 Utah 2d 270, 198 P. 767

POINT NO. II: THE COURT BELOW IMPROPERLY GRANTED DEFENDANT'S MOTION TO DISMISS, SINCE THE OFFENSE UPON WHICH THE INSTANT PROSECUTION IS BASED IS NOT WITHIN THE JURISDICTION OF A SINGLE COURT.

After reviewing Utah Code Ann. § 76-1-403, 1953 as amended, the Court below granted Defendant's Motion to Dismiss. That statute provides a bar to subsequent prosecutions for offenses arising out of a single criminal episode if certain conditions are met. Basically, former prosecutions are subjected to a two-part test to determine if subsequent prosecutions are barred. In this matter, the parties have stipulated that Defendant's conduct constitutes a single criminal episode.

For the sake of simplicity, the second part of the two-part test will be argued first herein. The second part of the test provides that a subsequent prosecution is barred if a former prosecution was terminated by any one of four different results. Those results are (1) acquittal, (2) conviction, (3) improper termination, or (4) conviction under a statute inconsistent with the one upon which the subsequent prosecution is based.

In this matter, the former prosecution resulted in conviction. The State has stipulated that the Defendant appeared and entered a plea of guilty to the two offenses.

charged in ticket #608. Therefore, the second part of the two-part test has been met.

The first part of the two-part test refers to the preceding code section. Briefly, the first part of the two-part test is that the subsequent prosecution not be for an offense that should have been tried under Utah Code Ann. § 76-1-402(2), 1953 as amended. That statute provides that a Defendant must be allowed a combined trial for all offenses arising out of a single episode if: (1) the offenses are within the jurisdiction of a single court, and (2) the offenses are known to the prosecuting attorney at the time the Defendant is arraigned. The State's position is that the offenses arising out of this criminal episode were not all within the jurisdiction of a single court.

The offense of operating a boat trailer with no tail lamps is a Class B Misdemeanor. See Utah Code Ann. §§ 41-6-120(a) and 41-6-164, 1953 as amended. The offense of operating a motor vehicle with an improper or restricted license is also a Class B Misdemeanor. See Utah Code Ann. §§ 41-2-28 and 41-2-30, 1953.

Class B Misdemeanor offenses are within the jurisdiction of the Justice Courts of this state. Utah Code Ann. § 78-5-4(1)(a), 1953 as amended.

The offense of failing to stop one's vehicle at the command of a police officer is a Class A Misdemeanor. Utah Code Ann. § 41-6-169.10, 1953 as amended.

Class A Misdemeanor offenses are within the jurisdiction of the District Courts of this state. Utah Code Ann. 78-3-4, 1953 as amended.

CONCLUSION

In summary, the State's argument is that subsequent prosecutions for offenses arising out of a single criminal episode are barred if the former prosecution meets a two-part test. The two-part test is (1) that the former prosecution resulted in acquittal, conviction, improper termination, or conviction under a statute inconsistent with the one being prosecuted, and (2) that the subsequent prosecution is for an offense which lies within the jurisdiction of a single court and is for an offense known to the prosecuting attorney at the time the Defendant is arraigned. In this case, the Defendant met the second part of the two-part test, because the former prosecution resulted in conviction. However, Defendant did not meet the first part of the two-part test, because the former prosecution was for offenses whose jurisdiction did not lie in a single court.

Respectfully submitted,

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