

1977

State of Utah v. De Vere Cooley : Respondent's Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,)	
Plaintiff and Appellant,)	
vs.)	Case No. 15339
DE VERE COOLEY,)	
Defendant and Respondent.)	

RESPONDENT'S BRIEF

STATEMENT OF NATURE
OF THE CASE

As generally stated by the Appellant, this case arises out of an attempt of the State of Utah in Garfield County to prosecute on a charge of failure to stop at the command of a police officer, alleging violation of Section 41-6-169.10, Utah Code Annotated, 1953, as amended, and the ramifications of Title 76-1-401, and the following sections of Utah Code Annotated, 1953, as amended, pertaining to a single criminal episode and what the legislature meant in

the Title 76-1-401 and following sections. And at the same time the arrest was made for failing to stop the vehicle at the command of a police officer, defendant was also arrested for having no tail lights on a boat trailer that he was pulling and for driving a vehicle improperly under a restricted license.

DISPOSITION IN THE LOWER COURT

This matter was argued before the District Court of Garfield County, Utah, on the 16th day of June, 1977, upon defendant's motion asking that the information on file be dismissed with prejudice, inasmuch as prosecution on same was barred under the provisions of Title 76-1-403, Utah Code Annotated, 1953, as amended. The motion was allowed on the 16th of June, 1977. A written order was executed by the Honorable Don V. Tibbs, District Judge, on the 27th of June, 1977, and was filed with the Clerk of the Court on the 29th of June, 1977.

RELIEF SOUGHT ON APPEAL

Respondent desires to have the action of the District Court affirmed.

STATEMENT OF FACTS

The statement of facts as set forth by the Appellant is correct as far as it goes, but does not completely tell the fact situation. In addition to those items set forth by Appellant, the defendant appeared before the Honorable Jess Pollock, Justice of the Peace of Panguitch Precinct, Garfield County, Utah, on the 25th day of May, 1977, and entered a plea of guilty to the two offenses of no tail lights on a boat trailer and driving under an improper or restricted license and was fined \$25.00 and paid the fine. At the same hearing and before the same Justice of the Peace, the defendant waived Preliminary Hearing on the item of which this appeal is concerned and was bound over to District Court. The information on same was dated the 26th of May, 1977.

ARGUMENT

POINT I.

APPELLANT'S POINT NO. I IS PROPER.

In the opinion of the undersigned, Point I, as stated by the State and the Appellant, correctly states the law, and this defendant and respondent has no desire to argue this particular point.

POINT II.

THE TRIAL COURT'S ACTION WAS PROPER.

Bearing in mind that there are very few cases that interpret this statute or statutes similar to this that are known to the undersigned, and apparently there are more known to the undersigned than there are to either the Attorney General or the County Attorney of Garfield County, whether or not this is an instant prosecution being in a single Court cannot be a very serious question, inasmuch as not only were the tickets all taken to the same Justice of the Peace, but that Justice of the Peace bound this item over, and that all action in the Justice of the Peace's Court, including payment of the fine on the two misdemeanors, happened in the same session. While without any question the Justice of the Peace does not have authority to try a Class A Misdemeanor, at the same time, that is the place where the prosecution was actually initiated on same.

We often wonder what is meant by the legislature in some of the question, and this, of course, has the same unsolved problems of legislative pronouncement in that sometimes we see, what does the following mean: "(a) The offenses are within the jurisdiction of a single court.." (76-1-402(1) Utah Code Annotated, 1953, as amended.) .

Many of us do not know what this means, and the case of State v. Krech, 252 N.W. 2d 269, does not answer this question, but is probably the best case to throw a light on what other jurisdictions have done with a similar statute.

Probably what the legislature of the State of Utah meant in saying the two separate courts might be in one offense punishable in a City Court and another punishable in the State Court system. Possibly we could say the same that one offense was punishable in a juvenile court and one in the regular court system. I doubt if any of us really know exactly what that particular item meant, and at the same time the Krech case cited above, does throw some light on this particular situation.

POINT III.

THE STATUTE IS INTENDED TO AVOID MULTIPLE PROSECUTIONS OR PILING ON.

There is no question that at times a defendant can irritate an officer to the point that several charges are forthcoming. Apparently that happened in this case, inasmuch as the first ticket was written on the charge of failing to stop at the command of a police officer. Apparently the police officer was somewhat irritated, inasmuch as at the same session after writing this ticket, he then on the next

ticket put two charges, no tail lights on a boat trailer and driving under an improper or restricted license. In all probability the officer was not aware of the driving under the restricted license until after the defendant had stopped and had exhibited a driver's license. Thereafter; they were all processed together.

The Krech case cited above at 252 N.W. 2d 269, decided on 1 April, 1977, is a very similar case. The defendant was driving at speeds over 80 m.p.h.; when the red light came on, he accelerated, failed to stop for a stop sign, turned into a dead end road and squad cars were positioned to prevent further movement, then tried to run down an officer with the car, which was prevented only by a second officer ramming defendant's automobile with a squad car. As has happened in the instant case, in the Krech case in Minnesota, defendant was charged with aggravated assault, obstructing legal process and various traffic offenses. Apparently, it was processed the same. The defendant entered a guilty plea to the misdemeanor traffic offenses, and was sentenced to 60 days in jail, which were suspended on conditions of probation for one year and various alcohol treatments. As in the instant case, the District Court granted defendant's motion to dismiss the charges of aggravated assault and obstructing legal process in view of the defendant's plea of guilty to the lesser

offenses. The Minnesota Supreme Court took the attitude that where a defendant's conduct constitutes more than one offense under the laws of the State, he may be punished for only one of such offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them. The Minnesota Supreme Court suggests that if the State wishes to charge a defendant with more than one offense, it should all be done in one prosecution, stating each offense as a separate count.

In the opinion of the undersigned, there is some difference in the statutes of the State of Utah and the statutes of Minnesota. However, it appears that the problem is the same, and the State of Minnesota has affirmed the District Court in the dismissals as we have in the instant case.

CONCLUSION

That the action of the District Judge of the Sixth Judicial District in and for Garfield County in dismissing the information with prejudice should be affirmed.

Respectfully submitted,

PATRICK H. FENTON
Attorney for Respondent