

1977

State of Utah v. De Vere Cooley : Supplement To Appellant's Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

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

SUPPLEMENT TO APPELLANT'S BRIEF

APPEAL FROM THE JUDGMENT OF THE SIXTH
JUDICIAL DISTRICT COURT, IN AND FOR
GARFIELD COUNTY, STATE OF UTAH, THE
HONORABLE DON V. TIBBS, JUDGE, PRESIDING

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FILED

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STATUTES

Utah Code Ann. § 76-1-403, 1953 1

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Utah Code Ann. § 76-1-402(2), 1953 3

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COMES NOW the Appellant and supplements its brief previously filed herein as follows, to-wit:

A R G U M E N T

POINT NO. III: INAPPLICABILITY OF "SINGLE CRIMINAL EPISODE" STATUTE

Appellant expresses awareness of this Court's recent opinion in the case State of Utah vs. Edward Lane Cornish, filed September 1, 1977, and also its recent opinion in the case State of Utah vs. Steven A. Ireland, filed October 4, 1977. Absent a stipulation by counsel, these decisions would dictate the conclusion that the offenses in question were not part of a "single criminal episode" since neither the requirement of closeness in time nor the requirement of sole criminal objective have been met.

POINT NO. IV: THE STATUTORY PROSCRIPTION AGAINST "SUBSEQUENT PROSECUTIONS" HAS NO APPLICATION IN THE CASE AT BAR.

The statute in question, 76-1-403, Utah Code Annotated, 1953, talks in terms of a "subsequent prosecution" and in terms of a "former prosecution." After the former prosecution has terminated as per the statutory guidelines, then there cannot be a subsequent prosecution. The provisions prevent what in some jurisdictions is a common practice of "wearing a defendant

down" by filing a new charge after the jury has returned a verdict of acquittal.

The controlling factor in determining the applicability of the statute under discussion rests on what is meant by a "subsequent prosecution."

Section 76-1-302(2) provides that:

"A prosecution is commenced upon the finding and filing of an indictment by a grand jury or upon the filing of a complaint or information."
(Emphasis added)

In the subject case the Defendant was charged by the arresting officer with three separate offenses. All were commenced simultaneously and, of primary significance, all were active prosecutions before a disposition as to any one was reached. It would seem, therefore, that any discussion about "former prosecution" or "subsequent prosecution" is rendered inapplicable as to these three offenses. The Defendant, as was his right, appeared and plead guilty on two of the offenses and not guilty on the third offense. The State, as was its right, sought then to continue prosecution on the third offense.

If the Court were to adopt a position contrary to the one advanced herein, the net result would be to allow a defendant to choose among the offenses charged, race to the justice of the peace, plead guilty to the favored one, and thereby summarily conclude the entire matter against him. Such an absurd result is not contemplated by the statutes nor would it foster

any useful or substantive purpose or right to which either the defendant or the state is entitled.

The suggested construction leaves fully intact the protection which the statutes seem designed to afford a defendant who commits more than one criminal offense in a single criminal episode. In such cases the defendant knows he cannot be subjected to separate trials for multiple offenses [Section 76-1-402(2)] and, with certain limited exceptions, a defendant knows that when he goes to trial the charges against him are fixed and there cannot be a "subsequent prosecution." [Section 76-1-403(1)]

The thrust of the statutes when read together and given fair construction requires the prosecution to file all offenses within its knowledge growing out of a single criminal episode prior to the trial on any of such offenses and assures the defendant that he can neither be subjected to a "multiplicity of suits" nor to a "subsequent prosecution" after the filed charges have been disposed of. As such the statutes are consistent with fair play and serve salutary objectives, benefiting not only the defendant but the Court in its effort to handle criminal matters in an orderly, expeditious manner. To the contrary, the position advanced by the respondent would serve no useful purpose, would tend to make a game out of the administration of justice, and would tend to require a defendant to plead guilty on all charges or not guilty on all charges. Such would disrupt the defendant's right to acknowledge his guilt as to some but not all. While the concept is rarely given voice,

the right to plead guilty is equally as important as the right to plead not guilty. The State is without entitlement to coerce or unduly limit either right.

S U M M A R Y

Absent the stipulation of counsel the case would be disposed of under the principles announced in the Cornish and Ireland decisions. Beyond the concern of those cases is the threshold question of whether or not there is a "subsequent prosecution." If the answer to that question is in the negative, as it must be here, then the point previously raised by appellant concerning the jurisdiction of a single court need not be reached. All prosecutions herein had been commenced and all were active before any were disposed of, hence any inquiry re exceptions to the "subsequent prosecution" proscription would be moot.