

1988

State of Utah v. Danny L. Pierce : Response to Petition for Rehearing

Utah Court of Appeals

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BRIEF

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DOCKET NO. 880346

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	Case No. 880346-CA
v.	:	
DANNY L. PIERCE,	:	Priority No. 2
Defendant-Appellant.	:	

RESPONSE TO PETITION FOR REHEARING

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THIS IS A RESPONSE TO A PETITION FOR REHEARING ON AN OPINION ISSUED FROM THE UTAH COURT OF APPEALS.

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FILED

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RESPONSE TO PETITION FOR REHEARING
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STATEMENT OF THE CASE

Defendant, Danny L. Pierce, was charged with presenting a false or fraudulent insurance claim, a second degree felony, in violation of Utah Code Ann. Section 76-6-521 (1978).

Defendant entered a plea of not guilty to the charge and was found guilty by a jury on February 22, 1988. Defendant filed an appeal raising four issues to the Utah Court of Appeals. Upon review, the Court found defendant's appeal meritorious reversing the trial court's decision. The case was remanded for a new trial with instructions to the trial court as to how to approach the statute of limitations issue. The State now seeks clarification of the instructions set forth in the appellate opinion.

STATEMENT OF FACTS

The facts are fully set forth in appellant's brief and are restated in the Court's opinion.

SUMMARY OF ARGUMENT

There is some question as to what the trial court's responsibility is when the case is heard on remand. The issue which should be addressed and clarified is the manner in which the trial court should approach the statute of limitation issue. This Court should clarify the approach because the method of the California courts, the authorities relied upon in the Court's opinion. The California courts treat legal issues such as defective informations as matters of law for the trial court to rule upon and factual issues as matters for the jury to determine. The defective information or pleading statute of limitation issue is treated differently in California than in Utah and the cases cited by this Court tend to involve the defective pleading problem and could be confusing to the trial court and attorneys involved.

INTRODUCTION

A classic pleading problem is raised in In re Demillo, 14 Cal 3d 598, 535 P.2d 1181, 121 Cal. Rptr. 727 (1975). In that case the defendant plead guilty to an information. The information was silent as to when the offense was committed. It was also silent as to the fact that the defendant had been outside the state for the critical statute of limitations period. The defendant filed a writ of habeas corpus attacking the jurisdiction of the trial court. The California appellate court held that the accusatory pleading must allege facts showing that the prosecution is not barred by the statute of limitations. In the absence of such an allegation in the information, the court

lacked jurisdiction to hear the matter and defendant was discharged. The case, People v. Padfield, 136 Cal. App. 3d 218, 185 Cal. Rptr. 903 (1982) is similar. In Padfield the defendant entered a no contest plea after initially resisting the charge by proceeding to trial. During trial the defendant's counsel belatedly discovered that the defendant's out of state absence tolled the statute of limitations. The defendant then hastily changed his plea pursuant to a plea bargain. The trial court addressed the statute of limitations issue with the defendant at the time of his plea. The defendant persisted in his plea and later attempted to raise the statute of limitation issue on appeal. The appellate court rejected the defendant's attack noting that the defendant's plea acknowledged each and every element of the offense. Notwithstanding the defendant's attempt to make his case similar to Demillo, the appellate court was not persuaded. The case did not present the same issues, but did give the court an opportunity to discourse on the approach the California courts take with respect to the statute of limitations issue. This Court has taken a different approach to the defective information problem as evidenced by the first portion of its opinion in this matter.

ARGUMENT

POINT I

THE STATUTE OF LIMITATION REQUIREMENT IS A JURISDICTIONAL REQUIREMENT.

Statutes of limitation are legislative creations which limit the power of the State to initiate prosecutions. The statute of

limitation is not an element of the offense. State v. Tibor, 373 N.W.2d 877 (N.D. 1985). Utah's statute of limitation on criminal offenses is no exception. It is a legislative proscription on the right to prosecute. It serves the purpose of encouraging the State to bring charges in a timely manner and protects the individual from stale prosecutions. As this court has ruled, the State bears the burden of proving the facts to support its claim that the statute of limitation has been complied with in any given case.

POINT II

THE TRIAL COURT SHOULD REVIEW DEFENDANT'S REQUEST
TO DETERMINE IF IT PRESENTS A QUESTION OF FACT.

A statute of limitations issue may present an issue of law or may present a factual issue. Where an issue of law is presented, a trial court may rule upon the issue. Where a question of fact is presented, then the prevailing rule suggests that a jury must rule as to whether the prosecution was initiated during the appropriate period. State v. Wyman, 198 Kan. 666, 426 p.2d 26 (Kan. 1967); Criminal Law, Section 1132, 23A C.J.S. (1968). A typical legal issue is the defective pleading issue raised in Demillo.

When a defendant raises a statute of limitation question, the trial court should first determine if the question raised by the accused presents a question of law or a question of fact. If the matter is one of law, the trial court may rule upon the issue. However, if the defendant has raised an issue which involves a factual dispute, such as the one presented in this

case, then the trial court should submit the matter to the jury for its determination. The previous approach taken by the trial court in this case should be avoided. The trial court should not take evidence to attempt to resolve factual disputes as to whether the a particular crime was discovered when the trier of fact i.e. the jury may reach different conclusions on the evidence. Typical of questions that ought to be submitted to a jury are issues involving discovery of the offense and tolling of statute of limitation.

The State argues that a "standard" needs to be adopted for determining when a question of needs be submitted to a jury. No standard need be adopted. The State's example is an attempt to allow the trial court to adjudicate facts which it should submit to a jury by placing a conclusionary labeling test on the facts. (See addendum note.) If any test should be applied, it should be a test similar to that of summary judgment. If there is genuine issue with respect to a factual question, then the matter ought to be submitted to the jury.

The trial court should apply a preponderance of evidence standard upon those issues requiring its decision. The jury should apply its traditional standard of beyond a reasonable doubt on matters that are submitted to it for findings. As noted in the respondent's brief, the "some evidence" standard is inappropriate.

CONCLUSION

The trial court should first determine whether an issue of law or fact is presented when the defendant raises a statute of

limitations issue. If the issue is one of law, then the trial court should proceed to deal with the issue and apply the preponderance of the evidence standard. If the issue involves facts, such as the discovery question in this case, then the trial court should require the matter to be presented to the jury. The jury would apply its traditional standard with respect to the evidence.

RESPECTFULLY submitted this 25 day of August, 1989.



JAMES P. RUPPER
Attorney for Appellant

MAILING CERTIFICATE

I hereby certify that four true and accurate copies of the foregoing Response to the Petition for Rehearing were mailed, postage prepaid, to Ms. Barbara Bearnson, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah 84114 this 25 day of August, 1989.



ADDENDUM

Without a presentation of the underlying facts, one cannot arrive at the conclusion that "discovery" is equal to "mere suspicion." See Turner v. Liner, 87 P.2d 740, 742 (Cal. App. 1939). This case clearly indicates the need for a court to hear the underlying facts as evidences^d by this quotation:

"Discovery" and "knowledge" are not convertible terms, and whether there has been a "discovery" of the facts "constituting the fraud" within the statute of limitations, is a question of law to be determined by the court from the facts pleaded. As in the case of any other legal conclusion, it is not sufficient to make averment thereof, but the facts from which the conclusion follows must themselves be pleaded. It is not enough that plaintiff merely avers that he was ignorant of the facts at the time of the occurrence, has not been informed of them until within the three years. He must show that the acts of fraud were committed under such circumstances that he would not be presumed to have any knowledge of them--as that they were done in secret or were kept concealed; and he must show that the times and circumstances under which the facts constituting the fraud were brought to his knowledge, so that the court may determine whether discovery of these facts was within the time alleged, and the means of knowledge are equivalent to knowledge, if it appears that the plaintiff had notice or information of the circumstances which would put him on an inquiry which if followed, would lead to knowledge, or that the facts were presumptively within the knowledge he will be deemed to have had actual knowledge of these facts. These principles are so fully recognized that mere reference to some of the cases in which they have been reinforced will be sufficient. (Citations omitted). Turner v. Liner, 87 P.2d at 742.