

1980

State of Utah v. Richard S. : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, in the)
interest)

of)

CASE NO. 16219

RICHARD S., a person under)
eighteen years of age.)

BRIEF OF APPELLANT

Appeal from a dispositional order of Judge L.
Roland Anderson of the First Judicial District Juvenile
Court for Weber County, State of Utah.

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TABLE OF CONTENTS

PAGE

PRELIMINARY STATEMENT..... 1

DISPOSITION IN LOWER COURT..... 1

RELIEF SOUGHT ON APPEAL..... 2

STATEMENT OF FACTS..... 3

ARGUMENT:

 POINT I: THE TRIAL COURT ERRED IN
 RULING THAT APPELLANT IS
 LIABLE FOR DAMAGES TO FIVE
 MOTOR HOMES WHEN HE WAS
 ONLY CONVICTED OF DAMAGING
 ONE..... 7

 POINT II: THE TRIAL COURT MISCON-
 STRUED THE CONCEPT OF
 SINGLE CRIMINAL EPISODE
 WHEN IT USED IT AS A JUS-
 TIFICATION FOR FINDING
 APPELLANT RESPONSIBLE FOR
 DAMAGES TO ALL FIVE MOTOR
 HOMES..... 10

 POINT III: BECAUSE APPELLANT WAS
 COMMITTED TO THE STATE
 YOUTH DEVELOPMENT CENTER
 PRIOR TO HIS RESTITUTION
 HEARING, THE ENTIRE ISSUE
 OF RESTITUTION WAS BEYOND
 THE JURISDICTION OF THE
 JUVENILE COURT..... 12

CONCLUSION..... 16

TABLE OF CASES AND AUTHORITIES

<u>CASES CITED</u>	<u>PAGE</u>
 <u>Federal:</u>	
<u>Breed v. Jones</u> , 421 U.S. 519 (1975).....	9
<u>Cole v. Arkansas</u> , 333 U.S. 196 (1948).....	8
<u>Ex Parte Lange</u> , 85 U.S. (18 Wall) 163 (1873)..	9
<u>Ex Parte Young</u> , 209 U.S. 143 (1907).....	9
<u>Thompson v. City of Louisville</u> , 362 U.S. 100 (1960).....	8
 <u>State:</u>	
<u>In the Matter of A__ N__</u> , 500 S.W.2d 284 (Mo. App. 1973).....	13,14
<u>Matter of Appeal in Maricopa County, Etc.</u> , 572 P.2d 451 (Ariz. App. 1977).....	14,15
<u>R v. Whitmer</u> , 515 P.2d 617 (Utah 1973).....	12
<u>State v. Eichler</u> , 584 P.2d 861 (Utah 1978)....	11
<u>State v. Hunter</u> , 437 P.2d 208 (Utah 1968)....	11
<u>State of Missouri ex rel B__ C__ C__ v. Conley</u> , 568 S.W.2d 608 (Mo. 1978).....	14

STATUTES CITED

<u>Federal:</u>	
U.S. Const., amend. V.....	9
U.S. Const., amend. XIV.....	9

<u>State:</u>	PAGE
Utah Code Annotated 1973, §76-1-402(1).....	10
Utah Code Annotated 1973, §76-1-402(2).....	4
Utah Code Annotated 1953, §77-35-17.....	7
Utah Code Annotated 1953, §78-3a-1 et. seq....	12
Utah Code Annotated 1953, §78-3a-39(7).....	7,15
Utah Code Annotated 1953, §78-3a-40(2).....	12,13,15

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, in the
interest

of

RICHARD S., a person
under eighteen years
of age.

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CASE NO. 16219

BRIEF OF APPELLANT

PRELIMINARY STATEMENT

This is an appeal from the Findings and Conclusions and the Order entered on December 12, 1978, by Judge L. Roland Anderson of the First Judicial District Juvenile Court for Weber County, State of Utah. Specifically, appellant appeals the trial court's finding that he can be required to pay for damages sustained by five motor vehicles when appellant was only convicted of damaging one of the vehicles.

DISPOSITION IN LOWER COURT

On September 8, 1978, a petition was filed in the juvenile court charging appellant with unlawfully entering one motor home with the intent to commit a felony or a theft (Legal File 2). On September 20, 1978, appellant was arraigned on this charge and entered a plea of true. As a result, the juvenile court re-

committed appellant to the State Youth Development Center, nunc pro tunc September 4, 1978 (Legal File 4).

On October 16, 1978, a second petition was filed in the juvenile court charging appellant with four counts of intentionally damaging four motor homes (Legal File 6). Appellant denied these charges and trial was set for November 21, 1978. On that date the court granted a preliminary motion made by appellant's counsel and dismissed all four charges contained in the October 16th petition (Legal File 12). However, on November 21, 1978 and December 12, 1978, the court held a restitution hearing and ruled that appellant could be ordered to pay for damages suffered by all five motor homes - not only the one which appellant admitted damaging in his September 20th arraignment, but also the four which appellant was never convicted of having damaged (Legal File 13). Based on this finding of liability, the court recommended to the State Youth Development Center that payment of full restitution be made a condition of appellant's parole (Legal File 17).

RELIEF SOUGHT ON APPEAL

Appellant asks this Court to reverse the trial court's finding that he can be required to pay restitution for damages suffered by five vehicles when he admitted damaging one of them and all charges relating to damage to the other four vehicles were dis-

missed. Stemming from such a reversal, appellant also asks this Court to nullify the trial court's recommendation to the State Youth Development Center that payment of restitution for all five vehicles be made a condition of his parole from the institution.

STATEMENT OF FACTS

On August 16, 1978, five motor homes on the premises of Freeway Mazda in Riverdale, Utah were allegedly broken into and damaged. Following police investigation of the incident, the county attorney filed a petition in juvenile court on September 8, 1978, charging that "on or about the 16th day of August, 1978, (appellant) did unlawfully enter a vehicle with intent to commit a felony or theft therein, to-wit: a motor home" (Legal File 2). On September 20, 1978, appellant was arraigned on this charge and entered a plea of true. As a result of this plea, he was re-committed to the State Youth Development Center (hereinafter State School) effective September 4, 1978.

The instant controversy began at the September 20th arraignment when the probation officer, Kathleen Weaver, attempted to make a recommendation to the court as to the amount of restitution which appellant should be required to pay. She noted that five trailers had been broken into on August 16th and that she was not certain which one appellant had been charged with and had admitted damaging (Transcript 2). Because there was

a wide range in the amount of financial damages sustained by the different trailers, she asked that the matter of restitution be continued until she could make a further investigation into which one of them appellant had been charged with breaking into.

Ms. Weaver's subsequent attempts to determine which vehicle appellant had been charged with damaging apparently caused the county attorney to re-examine the police report (Transcript. 10) and realize that five vehicles were damaged on August 16th. Thus, on October 16th, a second petition, containing four individual charges, was filed. For each of the four charges, the petition alleged that "on or about the 16th day of August, 1978, (appellant) did intentionally damage, deface or destroy the property of Freeway Mazda, to-wit: (a description of the individual vehicle), causing pecuniary loss less than \$250.00." Appellant was arraigned on these charges on October 25th and denied any involvement with these four motor homes. Trial was set for November 21st, and disposition on the first petition was continued to that date.

At the time set for trial, appellant's counsel moved, pursuant to Section 76-1-402(2), Utah Code Annotated (1973), to dismiss all four charges in the October 16th petition. This motion was based on the

fact that whenever conduct establishes separate offenses under a single criminal episode, and the offenses are within the jurisdiction of a single court, and the offenses are known to the prosecuting attorney at the time the defendant is arraigned on the first charge, the defendant shall not be subject to separate trials for multiple offenses (Transcript 14 and 15). The county attorney admitted that the instant situation was the type contemplated by the statute (see statements of Mr. Gladwell, Transcript. 15, and particularly his admission "[i]nitially we ... did have access to all of the reports...") but argued that the juvenile court should not follow the statute in this instance. The court did not agree with his argument, and ruled that there was no question that the charges should be dismissed (Transcript 17). Hence all charges relating to damages to the motor homes listed in the October 16th petition were dismissed.

The reason this case is now before this Court is that, after dismissing these charges, the trial court went on to say that appellant could be held liable for damages to all five motor homes. (See statements of the court on pages 17, 21, 28, 32 and 33 of Transcript, and on pages 13 and 17 of Legal File). The court ruled this despite the fact that there was no evidentiary hearing on whether appellant had caused

any damage to the four vehicles, and despite the fact that the court was barred from considering any such evidence, if it did exist, by the fact that the court itself had just dismissed those charges.

Over repeated objections of appellant's counsel that the court did not have the power to hold him liable for damages to all five trailers (Transcript. 21, 26, 27, 31, 32) the court proceeded to conduct a restitution hearing to determine the financial loss suffered by each trailer. Part of this hearing was conducted on November 21st (Transcript 19-29). The remainder of the hearing was held on December 12, 1978, in order to give Mr. Cutrubus, the owner of Freeway Mazda, an opportunity to check with his insurance company and determine the exact amount of loss (Transcript 31 and 32).

Again reaffirming its ruling that appellant was legally responsible for damages to all five vehicles, the court set a total restitution figure of \$607.00 (Transcript 32). The court then entered an order recommending that payment of the full \$607.00 be made a condition of appellant's parole when he is released from the State School (Legal File 17). His release from the State School should occur sometime in the late spring of 1979.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN RULING THAT APPELLANT IS LIABLE FOR DAMAGES TO FIVE MOTOR HOMES WHEN HE WAS ONLY CONVICTED OF DAMAGING ONE.

The juvenile court's power to make restitution orders flows from the language of Section 78-3a-39(7), Utah Code Annotated (1953), which states that "[t]he court may order that the child be required to repair or replace or to otherwise make restitution for damage or loss caused by his wrongful act..." (Emphasis added.) Thus the court does have the authority to require a child who is under the court's jurisdiction to pay for losses which are caused by acts which the child has either admitted doing or has been convicted of doing.

Further understanding of the meaning of restitution can be obtained by examining the adult criminal code. In setting forth the permissible conditions of probation which a court can impose, Section 77-35-17, Utah Code Annotated (1953), states that the defendant "...may be required to make restitution or reparation to the aggrieved party or parties for the actual damages or losses caused by the offense to which the defendant has pleaded guilty or for which conviction was had..." (Emphasis added.)

Nowhere do either of these statutes permit a court to require an individual to pay for damages which are not shown to have been caused by specific acts

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of that individual. The court's action in the instant case, in dismissing the charges that appellant damaged the four motor homes and then going ahead and finding that he is liable for the damages sustained by these four vehicles, is clearly unwarranted and arbitrary, and amounts to a violation of appellant's rights to due process of law. The United States Supreme Court, pointing out that the due process clause is rule of fairness that protects a citizen from arbitrary denial of his rights, has consistently applied the due process clause as a bar to arbitrary state action.

In Thompson v. City of Louisville, 362 U.S. 100 (1960), the Court held that due process was denied when a state convicted an individual without introducing any evidence. In its decision, the Court cited Cole v. Arkansas, 333 U.S. 196 (1948), in which it was declared to be as much a violation of due process to send an accused to prison following conviction on a charge on which he was never tried as it would be to convict him upon a charge that was never made. Cole involved convictions in a state court under §2 of a statute where on appeal to the state Supreme Court that court affirmed a conviction based on §1 of the statute. The United States Supreme Court held that such an affirmance had the effect of convicting defendants without a trial and was therefore a denial of procedural

due process under the Fourteenth Amendment. There would seem to be little difference between convicting an accused of a charge for which he was not tried and the instant situation of finding that appellant can be made to pay for damages to property he was not convicted of harming.

The net effect of the trial court's action is that it has imposed multiple fines upon appellant for his admission to the charge of having damaged one trailer. Such action violates his rights to be free from double jeopardy. (See amend. V, U.S. Const; and Breed v. Jones, 421 U.S. 519 (1975), extending the double jeopardy right to juveniles.) The Supreme Court, in Ex Parte Lange, 85 U.S. (18 Wall) 163 (1873), clearly pointed out that the doctrine of double jeopardy prohibits multiple punishments for a single offense. Additionally, the Court has noted that excessive penalties for a single offense are also a denial of constitutional rights. Ex Parte Young, 209 U.S. 143 (1907). The trial court has patently offended these principles by finding that an individual guilty of damaging one trailer should pay for damages to five trailers. The court's arbitrary action in punishing appellant for four charges for which he was never convicted offends the most fundamental notions of due process and fair play.

Hence its ruling that appellant is legally responsible for the full \$607.00 in restitution should be reversed.

POINT II

THE TRIAL COURT MISCONSTRUED THE CONCEPT OF SINGLE CRIMINAL EPISODE WHEN IT USED IT AS A JUSTIFICATION FOR FINDING APPELLANT RESPONSIBLE FOR DAMAGES TO ALL FIVE MOTOR HOMES.

The trial court attempted to justify its finding that appellant is responsible for the damage to all five vehicles by saying that because they were apparently damaged in the same criminal episode, appellant should pay restitution on all of them. (Transcript 32; Legal File 17). The court applied this reasoning despite the fact that five separate charges were filed against appellant, one of which he admitted and four of which were dismissed. It is unclear exactly why the court thought that the single criminal episode statute supported this type of finding.

An examination of the single criminal episode statute produces nothing which vindicates the manner in which the trial court applied it. Section 76-1-402(1), Utah Code Annotated (1973) states:

(1) A defendant may be prosecuted in a single criminal episode for all separate offenses arising out of a single criminal episode; however, when the same act of a defendant under a single criminal episode shall establish offenses which may be punished in different ways under different

provisions of the code, the act shall be punishable under only one such provision; an acquittal or conviction and sentence under any such provision bars a prosecution under any other such provision.

One of the primary purposes of this statute is to protect a defendant from being punished in several ways for the commission of one wrongful act. For example, a defendant who pleads guilty to assault with a deadly weapon cannot also be prosecuted for the lesser included offense of simple assault. State v. Hunter, 437 P.2d 208 (Utah 1968). The statute does allow a defendant to be prosecuted in one criminal action for each separate offense he committed in the same criminal episode. State v. Eichler, 584 P.2d 861 (Utah 1978).

The single criminal episode statute does not support the ruling of the trial court in the case at bar. It does not say that a defendant can be prosecuted for one of the offenses which occurred in the criminal episode and then found guilty of the rest of the offenses without being charged with them. Nor does it state that an accused who admits one of the separate offenses, following which the court dismisses charges for the other offenses, can be held responsible for damages caused by each of the separate offenses. The court's use of the single criminal episode theory assumes that a charged offense and its concomitant penalty can be separated.

The notion that a punishment can be imposed without the supportive structure of an actual charge offends essential requirements of due process. Again, the court's finding that appellant is responsible for any losses over those sustained by the one motor home which he admitted damaging is erroneous and should be reversed.

POINT III

BECAUSE APPELLANT WAS COMMITTED TO THE STATE YOUTH DEVELOPMENT CENTER PRIOR TO HIS RESTITUTION HEARING, THE ENTIRE ISSUE OF RESTITUTION WAS BEYOND THE JURISDICTION OF THE JUVENILE COURT.

In addition to the reasons discussed in points one and two which mandate reversal of the trial court's ruling, there is a fundamental question as to whether the court had the power to enter any form of ruling on the issue of restitution. This Court has held that the juvenile court is a statutory court which has only those powers specifically granted to it by the Juvenile Court Act, Section 78-3a-1 et. seq., Utah Code Annotated. R v. Whitmer, 515 P.2d 617 (Utah 1973). Section 40(2) of that Act states that the jurisdiction of the juvenile court terminates "upon commitment to the state industrial school for an indeterminate period in excess of 90 days." That type of commitment order was entered in this case at appellant's arraignment on the first petition on September 20, 1978, to be effective

nunc pro tunc September 4, 1978 (Legal File 4). Thus, after that date the juvenile court lost jurisdiction over appellant. It did not have the authority to hold subsequent restitution hearings, nor to make the recommendation to the State School that payment of restitution be made a condition of appellant's parole.

The trial court, commenting on the issue of jurisdiction, stated that the juvenile court retains jurisdiction to determine restitution even after a youth is committed to the State School (Transcript 17). However, the language of Section 78-3a-40(2) is absolute when it discusses termination of the court's jurisdiction: it does not provide for this type of partial retention of jurisdiction.

Case law on the extent of the juvenile court's jurisdiction in this situation is relatively limited. It is helpful to review the following three cases for the analogies they offer on the meaning of a juvenile court's limited jurisdiction. In In the Matter of A. N., 500 S.W.2d 284 (Mo. App. 1973), the court held that an order suspending the commitment of a juvenile, and placing him instead with his mother, was void and beyond the statutory powers of the juvenile court. The statute gave the juvenile court the power to commit a child to an institution, or to place a child on home probation, but not to do both at once. Because the

court's action was not specifically authorized by the statute, it was invalid. The court emphasized that "...the juvenile courts are courts of limited jurisdiction and may exercise only such powers as are conferred by statute." 500 S.W.2d at 287.

A more recent Missouri case again affirms this insistence that a juvenile court may only do those things which it has been specifically authorized to do by statute. In State of Missouri ex rel B C C v. Conley, 568 S.W.2d 608 (1978), the youth had been committed to the state training school. Because the Missouri statute stated that such commitment terminated the juvenile court's jurisdiction, the appellate court ruled that the juvenile court could not make an order affecting the youth unless jurisdiction was returned to it in an appropriate proceeding.

One final case which is helpful to examine is Matter of Appeal in Maricopa County, Etc., 572 P.2d 451 (Ariz. App. 1977). There the issue was whether the juvenile court had exceeded its statutory authority by simultaneously ordering the juvenile committed to the Department of Correction, suspending the commitment, and continuing the juvenile on probation. Because none of the sections of the statute provided the court with the power to enter such an order, the appellate court

ruled the order void, noting that "...the power of the juvenile court to make a particular disposition of a delinquent child is limited in that it must be expressly granted by legislative act." 572 P.2d at 452.

Applying these principles to the instant case, it appears that the trial court indeed lacked the statutory authority to conduct the restitution hearing. While Section 78-3a-39(7) allows a juvenile court to make restitution orders, this section only applies to those youths who are within the jurisdiction of the juvenile court. By virtue of Section 78-3a-40(2), the juvenile court's jurisdiction over appellant terminated when he was committed to the State School on September 20, 1978. Thus the trial court had no power to rule that appellant could be held legally responsible for damages to each of the five motor homes.

Additionally, it was not within the trial court's power to recommend to the State School that payment of \$607.00 in restitution be made a condition of appellant's parole. Aside from the above discussed problem with the court even considering the restitution issue, it is not within the province of the juvenile court to determine conditions of parole. For practical purposes, a "recommendation" from the juvenile court will be interpreted by the officials at the State School as a directive with which they must comply. Having to structure

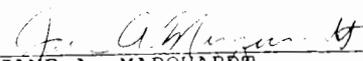
a juvenile's parole around a prior order of the court will interfere with the ability to fashion a parole contract around the particular needs of the juvenile at the time he is released from the institution. Such interference is discordant with the rehabilitative goals of the entire juvenile justice system.

CONCLUSION

Appellant is not legally responsible for the damages sustained by five individual motor homes when he only admitted damaging one of them. All charges relating to the other four vehicles were dismissed by the trial court. The trial court is clearly incorrect in stating that appellant is liable for all losses solely because the five vehicles were damaged in one criminal episode. Damage to each of the trailers was a separate criminal offense - appellant is only responsible for one of those offenses. For these reasons, and for the more fundamental reason that the trial court lost jurisdiction over appellant and did not have the statutory authority to conduct a restitution hearing, appellant respectfully asks this Court to reverse the lower court's ruling that he is liable for damages to the five motor homes.

DATED this 8th day of March, 1979.

Respectfully submitted,
UTAH LEGAL SERVICES, INC.


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