

1979

State of Utah v. Ralph Leroy Menzies : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-vs- : Case No. 16323
RALPH LEROY MENZIES, :
Defendant-Appellant. :

BRIEF OF RESPONDENT

AN APPEAL FROM THE JUDGMENT AND CONVICTION OF
THE CRIME OF ESCAPE IN THE THIRD JUDICIAL DISTRICT
COURT IN AND FOR SALT LAKE COUNTY, STATE OF
UTAH, THE HONORABLE PETER F. LEARY, JUDGE PRESIDING.

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TABLE OF CONTENTS

| | PAGE |
|--|------|
| STATEMENT OF THE NATURE OF THE CASE ----- | 1 |
| DISPOSITION IN THE LOWER COURT ----- | 1 |
| RELIEF SOUGHT ON APPEAL ----- | 1 |
| STATEMENT OF THE FACTS ----- | 2 |
| ARGUMENT | |
| POINT I: THE EVIDENCE IS SUFFICIENT TO SUPPORT A VERDICT OF GUILT IN THIS CASE ----- | 5 |
| POINT II: APPELLANT WAS NOT DENIED HIS RIGHT TO A SPEEDY TRIAL ----- | 7 |
| POINT III: APPELLANT WAS NOT SUBJECTED TO DOUBLE JEOPARDY ----- | 10 |
| CONCLUSION ----- | 11 |

CASES CITED

| | |
|--|---|
| Barker v. Wingo, 407 U.S. 514, 33 L.Ed.2d 101, 92 S.Ct. 2182 (1972) ----- | 7 |
| Beavers v. Hanbert, 198 U.S. 77, 49 L.Ed. 50, 25 S.Ct. 573 (1905) ----- | 7 |
| State v. Archuleta, 577 P.2d 547 (Utah, 1978) ----- | 9 |
| State v. Erickson, 568 P.2d 750 (Utah, 1977) ----- | 5 |
| State v. Fort, 572 P.2d 1387 (Utah, 1977) ----- | 5 |
| State v. Logan, 563 P.2d 811 (Utah, 1977) ----- | 5 |
| State v. Lozano, 23 Utah 2d 312, 462 P.2d 710 (1969) ----- | 8 |
| State v. Mathis, 7 Utah 2d 100, 319 P.2d 134 (1957)- | 8 |
| State v. Rasmussen, 18 Utah 2d 201, 418 P.2d 134 (1966) ----- | 8 |
| State v. Renzo, 21 Utah 2d 205, 443 P.2d 392 (1968) ----- | 9 |
| State v. Romero, 554 P.2d 216 (Utah, 1976) ----- | 5 |
| State v. Weddle, 29 Utah 2d 145, 506 P.2d 67 (1973)- | 8 |
| State v. Wilson, 565 P.2d 66 (Utah, 1977) ----- | 5 |

TABLE OF CONTENTS
(Continued)

PAGE

STATUTES CITED

| | | |
|--|-------|-----|
| Utah Code Ann., § 76-8-309 (1953, as amended) | ----- | 1,5 |
| Utah Code Ann., § 77-1-8(6) (1953, as amended) | ----- | 8 |
| Utah Code Ann., § 77-65-1 (1953, as amended) | ----- | 2 |

IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-vs- : Case No. 16323
RALPH LEROY MENZIES, :
Defendant-Appellant. :

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged by complaint and information with the crime of escape in violation of Utah Code Ann., § 76-8-309 (1953), as amended.

DISPOSITION IN THE LOWER COURT

Appellant was tried by a jury before the Honorable Peter F. Leary, of the Third Judicial District Court for Salt Lake County on January 15, 1979. The jury found him guilty as charged and he was sentenced by the court to a term of one to fifteen years in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Respondent urges affirmance of the conviction and sentence of the lower court.

STATEMENT OF THE FACTS

A complaint charging appellant with the crime of escape was filed in circuit court on July 11, 1978 (R. 6). Following his arrest on July 25, 1978 (R. 4), an information was filed in District Court on August 31, 1978 (R. 7). Appellant plead not guilty on September 1, 1978 (R. 8), and trial was set for October 18, 1978 (R. 9). The date of trial was continued twice, on motion of defendant (R. 10, 12), so that other charges against appellant could be tried (R. 75-76). Finally, on motion of the court, the matter was continued from December 6, 1978, to January 15, 1979 (R. 19). Apparently there was no judge available for the December 6 date (R. 76). There is no indication in the record on appeal that appellant ever demanded a trial or raised the speedy trial issue before his motion to dismiss at trial. In fact, appellant's counsel indicated to the trial court that he had waived the 90-day disposition "as to this case." (R. 76). (See Utah Code Ann., § 77-65-1).

At appellant's trial, a copy of a judgment and commitment from the Third Judicial District indicating delivery of appellant to the prison by the sheriff was introduced into evidence (R. 122, and Exhibit 1P). George Byron Stark, the criminal calendar clerk for the Third District Court, testified that the copy was a true and authenticated copy of the judgment and conviction (R. 118).

The papers indicated that appellant had been committed to a term of five years to life for aggravated robbery (Exhibit 1P). Gregory L. Bown also testified that he was a deputy county attorney and that he was present when appellant plead guilty to the previous charge (R. 120, 121).

Joy Greenwood, the record's clerk at the prison, testified that appellant's prison record contained no indication that he had ever been paroled, released or otherwise allowed to leave the prison (R. 131, 140).

Carl Loerbs, a prison counselor, testified that on July 6, 1978, at 11:00 p.m., he conducted a bed check of the minimum security ward of the Utah State Prison and discovered that appellant was missing from his assigned bed (R. 106). The entire dormitory was searched and appellant's absence was reported to Mr. Loerbs' superiors (R. at 107). Ron Hinckley, another prison officer, testified that he and another officer searched the common areas, gym and culinary areas and the outside perimeter of minimum security. During their search, they discovered a door to a fan room which had been forced open through which appellant could have gained access to the outside. They then obtained an automobile and searched the roads around the prison, the freeway frontage road, and the Bluffdale road in an unsuccessful search for appellant (R. 114, 116).

Several weeks later, on July 22, 1978, South Salt Lake City Police officer Charles L. Illsley was patrolling near Lemel Circle at about 12:45 p.m., when he saw a 1973 Chevrolet pick-up with a large cardboard box in the bed. He followed the truck after putting his spotlight on it to determine what was in the back. After a few blocks, the truck stopped on its own and the driver got out and approached the police car. The driver appeared to have been drinking and his driver's license indicated that he was under the legal drinking age. Officer Illsley consequently observed the interior of the truck and questioned the two other occupants. Appellant, one of the passengers, stated that his name was Lee Stevens and that he lived at fifty-five White Cherry Way, but that he had no I.D. with him. Officer Illsley noticed a wallet on the floor of the truck in front of appellant. Within the wallet was prison identification for Ralph Menzies (appellant). Officer Illsley radioed dispatch to get a description of appellant for verification. The physical description, including a tattoo on his right forearm, matched and so Officer Illsley asked appellant his name again. Appellant replied, "You know who I am, you've got me." He asked the officer to retrieve his glasses which he had pushed under the truck seat (R. 124-128).

The jury found appellant guilty of escape, as charged. The court subsequently sentenced appellant to a term of one to fifteen years in the Utah State Prison, to commence from the time he normally would have been released as provided by the state statute (R. 58).

ARGUMENT

POINT I.

THE EVIDENCE IS SUFFICIENT TO
SUPPORT THE VERDICT OF GUILT
IN THIS CASE.

In reviewing a claim of insufficient evidence to support a jury verdict, it is well established that:

The weight of evidence and the credibility of witnesses are reserved exclusively for the jury, and this Court will not interfere unless the evidence is found to be so lacking and insubstantial that reasonable men could not possibly have reached a verdict beyond a reasonable doubt. Nor will we weigh conflicting evidence, the credibility of witnesses, or the weight to be given appellant's testimony. Further, unless there is a clear showing of lack of evidence, the jury verdict will be upheld.

State v. Logan, 563 P.2d 811, 813-814 (Utah, 1977). See also State v. Romero, 554 P.2d 216 (Utah, 1976); State v. Fort, 572 P.2d 1387 (Utah, 1977); State v. Wilson, 565 P.2d 66 (Utah, 1977); and State v. Erickson, 568 P.2d 750 (Utah, 1977).

The crime charged in the instant matter is set forth in Utah Code Ann., § 76-8-309 (1953), as amended:

(1) A person is guilty of escape if he escapes from official custody.

(2) The offense is a felony of the second degree if; . . . (b) the actor escapes from confinement in the state prison.

(3) "Official custody," for the purpose of this section, means . . . custody in a penal institution For purposes of this section a person is deemed to be confined in the Utah State Prison if he has been sentenced and committed and the sentence has not been terminated or voided or the prisoner is not on parole.

The evidence in the lower court indicated that there was a judgment and commitment for appellant to the Utah State Prison (Exhibit 1P); and that appellant had not been paroled or had his sentence terminated or voided (R. 131-140). He was shown to have been missing from the prison and was, in fact, found without the prison in South Salt Lake. Finally, his own statement upon being found, "You know who I am, you've got me," would indicate that his absence from the prison was knowingly without authorization. The evidence was clearly sufficient to sustain the verdict which must be affirmed.

POINT II.

APPELLANT WAS NOT DENIED HIS RIGHT
TO A SPEEDY TRIAL.

In Barker v. Wingo, 407 U.S. 514 (1972), the United States Supreme Court established criteria for determining whether the right to speedy trial has been violated. In Wingo, the defendant spent ten months in jail before posting bond. Four years after his release on bond, he was finally tried. The court found that the defendant had not been denied the right to speedy trial. The court rejected rigid guidelines for making the determination reaffirming its decision in Beavers v. Hanbert, 198 U.S. 77 (1905):

The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.

The court adopted a balancing test which approached each case on an individual basis and weighs four factors: length of delay, the reason for the delay, defendant's assertion of his right, and prejudice to the defendant.

This approach parallels the decisions of this Court with respect to the speedy trial issue. This Court has consistently noted that although there are statutory guidelines as to how long the State may wait before trying

one charged by indictment or information (See Utah Code Ann., §§ 77-1-8(6), and 77-65-1 (1953), as amended), these lengths are directory, not mandatory. State v. Rasmussen, 18 Utah 2d 201, 418 P.2d 134, 135 (1966). See also, State v. Mathis, 7 Utah 2d 100, 319 P.2d 134 (1957), and State v. Lozano, 23 Utah 2d 312, 462 P.2d 710 (1969).

In State v. Weddle, 29 Utah 2d 145, 506 P.2d 67 (1973), this Court noted:

[1] The right to a speedy trial assured by our Constitutions refers, of course, not to the speed at which a trial proceeds, but rather to the right of an accused to be brought to trial without undue delay. This is a right of ancient origin which arose because of abuses wherein people were kept in custody for unreasonable periods of time without trial and even without knowing what the charge may be against them. It is important as a safeguard against any abuse of that character. But in the absence thereof, it should not be extended as a mere abstraction of law in circumstances where there is no justification for its application.

[2] The statement itself is general and there is no particular length of time which can be specified as a standard in all instances in order to avoid infringement of the right. The correct application of the principle depends upon the facts of each case. The total picture should be looked at to see whether there has been any such abuse or imposition upon the accused as the provision was designed to protect against, so that he was prejudiced in having a fair trial and just treatment under the law. In making that determination, where there has been what appear to be

undue delay, it is important to consider whether or not there was justification for it including: (1) which party cause it; (2) whether it may have been wilful and/or for some improper purpose; (3) whether the defendant was aware of his rights; (4) whether he made known his desire for a speedy trial; (5) whether by words or conduct there was explicit or implicit waiver; and (6) whether the proceeding was completed as soon as reasonably could be done in the circumstances.

Id. at 68. See also, State v. Archuletta, 577 P.2d 547 (Utah, 1978).

Finally, in State v. Renzo, 21 Utah 2d 205, 443 P.2d 392, 395 (1968), this Court noted that:

Even though there may be a delay between the time when an information or indictment is filed and the trial of the matter, a defendant cannot claim that his constitutional right to a speedy trial has been violated unless he asks the court to grant him a trial.

In the instant matter, appellant never requested a trial. In fact, he requested that his trial be delayed. Half of the delay from information to trial was upon appellant's motion. The remainder of the time, two separate periods of six weeks each, was not oppressive or unreasonable. At the end of the first period, which extended from the date of appellant's plea to his first trial date, appellant moved for continuance. The second six-week period was occasioned because no judge was available on the appointed

trial date (See R. 76). During the entire period from arrest to trial, appellant was incarcerated pursuant to a lawful commitment on a previous charge. Appellant has indicated no instance, nor is there any, where the delay caused harm to appellant or his case.

In summary, there was no undue delay. Any delay was caused partially by appellant himself and partially by court requirements. There was no harm to appellant or his case. In short, there is no justification for the application of the speedy trial doctrine. Consequently, appellant's conviction and sentence should be affirmed.

POINT III.

APPELLANT WAS NOT SUBJECTED TO DOUBLE JEOPARDY.

Respondent notes that appellant's counsel has correctly stated the law with respect to double or former jeopardy and prison discipline.

The unanimous consensus on that issue is that a defendant who is criminally prosecuted for escape from prison is not twice put in jeopardy even though he is subject to discipline by the prison board for his attempted escape.

Appellant's brief, p. 20.

Appellant's brief does not present any case law to the contrary, nor does there appear to be any. Consequently, appellant's claim of double jeopardy is without merit and his conviction and sentence should be affirmed.

CONCLUSION

There was more than enough evidence to reasonably sustain the jury verdict of guilt in this case. There was no undue delay in bringing the matter to trial, and what delay there was was not harmful to appellant or his case. There is no justification in this case for the application of the speedy trial doctrine. Finally, the courts have unanimously held that one who is punished by a prison board for escape and is also subjected to criminal prosecution for the crime of escape is not subjected to double jeopardy.

For the above-stated reasons, respondent urges this Court to affirm the conviction and sentence of appellant.

Respectfully submitted,

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