

1987

# Utah v. Ronald Dean Lancaster : Brief of Respondent

Utah Supreme Court

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Ronald Dean Lancaster.

David L. Wilkinson; Attorney General; Sandra L. Sjogren; Assistant Attorney General; Attorneys for Respondent.

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870154

IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,	:	
	:	
Plaintff-Respondent.	:	Case No. 870154
	:	
vs.	:	
	:	
RONALD DEAN LANCASTER,	:	Priority 2
	:	
Defendant-Appellant.	:	

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BRIEF OF RESPONDENT

APPEAL FROM A CONVICTION FOR VIOLATION OF  
UTAH CODE ANNOTATED § 76-5-103.5(2)(A),  
AGGRAVATED ASSAULT BY A PRISONER, IN THE  
THIRD JUDICIAL DISTRICT COURT, IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH, THE  
HONORABLE TIMOTHY R. HANSON, PRESIDING

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BRIEF OF RESPONDENT

JURISDICTION

This appeal is from a conviction for violation of Utah Code Ann. § 76-5-103.5(2)(a) aggravated assault by a prisoner in the Third District Court. This court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(e) (1987).

ISSUES PRESENTED ON APPEAL

1. Whether the judge properly amended the information to refer to the correct subsection of Utah Code Ann. § 76-5-103.5.
2. Whether introducing evidence of defendant's prior conviction for murder and commitment to prison violated the defendant's right against double jeopardy.
3. Whether the trial judge acted within his discretion in believing the State's witnesses rather than the defendant.

STATEMENT OF THE CASE

Defendant was convicted of aggravated assault by a prisoner, in violation of Utah Code Ann. § 76-5-203.5(2)(a)

(1978) in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Timothy R. Hanson, presiding.

The court sentenced defendant to a term of five years to life to run consecutively with his prior sentence for murder.

#### STATEMENT OF FACTS

On April 17, 1986, defendant, Ronald Dean Lancaster, serving a sentence of five years to life in the Utah State Prison for a 1978 conviction of second-degree murder, attacked a guard at the prison with a homemade knife, inflicting a wound in the guard's leg and a wound in his arm which required eight stitches (R. 282).

The Salt Lake County Attorney filed an information (R. 8) charging the defendant with aggravated assault by a prisoner. The information originally charged the defendant with violating Utah Code Ann. § 76-5-103.5(B), a capital felony, for prisoners inflicting serious bodily injury. The text of the information, though, did not allege the infliction of serious bodily injury, but an attempt to inflict serious bodily injury by such force or means likely to produce death or serious bodily injury.

At a hearing before the Third District Court, Judge Timothy R. Hanson amended the information by interlineation to make the statutory reference parallel the text, changing it to read Utah Code Ann. § 76-5-103.5(2)(a) (R. 241). The defendant moved to dismiss the information, alleging that because it had referred to the wrong citation, he had not received proper notice (R. 235). The judge denied the motion and made the amendment (R. 241).

During the course of trial, the State offered into evidence, as Exhibit 11, an Information, Judgment and Commitment in the case of State of Utah v. Ronald Dean Lancaster, CR 78-256 (R. 336). This exhibit showed that Lancaster was lawfully committed to the Utah State Prison, serving a five to life term for second-degree murder at the time of the assault.

In a Motion to Dismiss toward the end of the trial (R. 415), defendant alleged that the statute (Utah Code Ann. § 76-5-103.5) deprived him of his right against double jeopardy by requiring introduction of evidence concerning his 1978 conviction. The judge denied the motion (R. 426).

#### SUMMARY OF ARGUMENT

1. Because the defendant had adequate notice of the charge against him through the textual part of the information, the judge's amendment of the statutory citation to accurately reflect the charge described in the text did not deny defendant notice of other due process guarantees.

2. Defendant was neither twice tried nor punished for the acts leading to his 1978 conviction for murder. The State introduced the judgment and commitment for that conviction to satisfy the element in Utah Code Ann. § 76-5-103.5 that the defendant be a prisoner.

3. Because the judge was the trier of fact in this case, he had the discretion to believe the prison guard was more credible than the defendant. The defendant cannot complain to the court on review that the judge should have disbelieved the State's witness unless he can show the judge's reliance on the evidence was clearly erroneous.



## ARGUMENT

### POINT I

THE TRIAL JUDGE DID NOT OFFEND DEFENDANT'S DUE PROCESS RIGHTS BY AMENDING THE INFORMATION TO REFER TO THE CORRECT STATUTE WHEN THE TEXT OF THE INFORMATION GAVE DEFENDANT NOTICE OF THE ACTUAL CHARGE AGAINST HIM.

In his brief to this Court, defendant alleges that Judge Hanson's amendment of the information denied him due process because he did not receive proper notice of the actual charge against him. The amendment aligned the citation with the text of the charge and, in fact, lowered the level of punishment from a capital felony to a first-degree felony. Utah Code Ann. § 77-35-4(d) (1982), allows amendment if "no additional or different offense is charged and the substantial rights of the defendant are not prejudiced." Before the change, defendant was charged with aggravated assault by a prisoner, after the change, he was still charged with aggravated assault on a prisoner based upon precisely the same factual allegations.

In State v. Colston, 16 Utah 2d 89, 396 P.2d 405 (1964), this Court specifically upheld a judge's amendment of a criminal complaint when the change affected only the statutory reference and the language of the complaint apprised the defendant of the correct charge against him. Id. at 406. The State urges the Court to apply the rule in Colston to this case because the charge apprised the defendant of the actual accusation against him and the change of the statutory reference did not prejudice him.

## POINT II

INTRODUCING EVIDENCE OF DEFENDANT'S 1978  
CONVICTION FOR MURDER AND COMMITMENT TO  
PRISON DID NOT PLACE DEFENDANT TWICE IN  
JEOPARDY FOR THE SAME OFFENSE

The trial on appeal in this case, *State of Utah v. Ronald Dean Lancaster*, CR 86-829, neither tried nor punished defendant for the acts which led to his murder conviction in 1978. The State introduced evidence of defendant's judgment and commitment for that conviction to satisfy an element in the offense for which he was on trial, aggravated assault by a prisoner; namely, that he was a prisoner.

The statute which defendant condemns as violating his right against double jeopardy--Utah Code Ann. § 76-5-103.5--is analogous to an habitual offender statute, in that it builds upon prior convictions to identify individuals deserving additional punishment because of their dangerousness. In *State v. Carter*, 578 P.2d 1275 (Utah 1978), this Court rejected a charge that the habitual criminal statute, Utah Code Ann. § 76-8-1001 (1978) unconstitutionally allowed the prosecutor discretion in charging holding that the statute "merely enhances the punishment for the conviction of a crime committed when the defendant has committed at least two other felonies and been committed to prison therefor." *Id.* at 1277.

Similarly, introduction of the prior judgment and commitment in this case did not violate double jeopardy because the judge did not retry the prior offense. Rather, its introduction served primarily an evidentiary function to establish that the defendant was, in fact, a prisoner and also

enhanced the punishment for the assault. The double jeopardy clause simply precludes a person from being twice prosecuted, convicted or punished for the same offense. State v. Dyer, 671 P.2d 142 (Utah 1983). Defendant was neither reprosecuted, convicted or punished for second degree murder. Thus, his claim of double jeopardy fails.

### POINT III

THE TRIAL JUDGE ACTED WITHIN HIS DISCRETION  
AS THE TRIER OF FACT IN BELIEVING THE  
TESTIMONY OF OFFICER DENNIS MOODY INSTEAD OF  
THE TESTIMONY OF DEFENDANT

In his brief, defendant objects to the trial court's acceptance of the "perjured" testimony of the prosecutor's primary witness, the victim, Officer Dennis Moody. He also attempts to deny the existence of an "American Fork Medical Report" which detailed the treatment Officer Moody received at the hospital.

Because the defendant presented no extrinsic evidence that Officer Moody perjured himself, the judge's acceptance of the testimony cannot be deemed clearly erroneous. Utah R. Civ. P. 52(a); State v. Walker, 743 P.2d 191 (Utah 1987). There was adequate evidentiary support through Officer Moody's testimony for a finding that the assault actually occurred in this case. Moody's testimony was corroborated by Officers Williams and Lee and by photographs of his knife wounds. (See trial court findings at T. 429-435.)

Concerning the American Fork Medical Report, its existence or non-existence is irrelevant to this appeal. While defendant questioned Moody about the report, the State did not

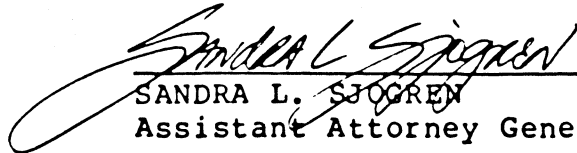
offer the report into evidence (T. 337), nor did defendant offer the report. Thus, the report was not a basis for the trial court's finding of guilt (T. 429-435).

CONCLUSION

For the reasons stated, the State requests the Court to affirm the conviction and sentence imposed in this case.

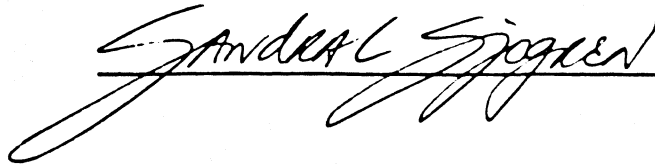
DATED this 21st day of January, 1988.

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Attorney General

  
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SANDRA L. SJOGREN  
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that on the 21st day of January, 1988, I caused to be mailed, postage prepaid, four (4) true and exact copies of the above and foregoing Brief of Respondent to Ronald Dean Lancaster, P.O. Box 250, Draper, Utah 84020.

  
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