1980

James H. Hupp v. Hon. S. Mark Johnson, Judge of The Circuit Court, State of Utah, Davis County, Bountiful Department : Petition For Rehearing

Utah Supreme Court

IN THE SUPREME COURT OF THE

STATE OF UTAH

JAMES H. HUPP,)

Petitioner-Appellant,)

vs.)

HONORABLE S. MARK JOHNSON,) Case No. 16603
Judge of the Circuit Court,
State of Utah, Davis County,)
Bountiful Department,
)

Defendant-Respondent.

PETITION FOR REHEARING

APPEAL FROM THE JUDGMENT OF THE SECOND JUDICIAL DISTRICT COURT, IN AND FOR DAVIS COUNTY, STATE OF UTAH, THE HONORABLE J. DUFFY PALMER, JUDGE, PRESIDING

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PETITION FOR REHEARING

STATEMENT OF THE NATURE OF THE CASE

Petitioner contends that the Court erred in its original determination of this case.

ARGUMENT

POINT I: THE UTAH SUPREME COURT ERRED IN FINDING ON APPEAL THAT THE OFFENSES INVOLVED HEREIN DID NOT CONSTITUTE A "SINGLE CRIMINAL EPISODE" UNDER § 76-1-401 ET SEQ. (1953), AS AMENDED

§ 76-1-401 defines a "single criminal episode as follows:

> . . . all conduct which is closely related in time and is incident to an attempt to an accomplishment of a single criminal objective. (Emphasis added.)

A. Petitioner's Conduct Constituted Offenses Which Were Clearly Closely Related in Time

Petitioner respectfully submits that the opinion of this Court on appeal is contradictory in that in the first paragraph it states that all four citations were issued at the same time, while the fifth paragraph states that the citations charge separage, independent offenses which were committed at different times. Certainly all are separate offenses, as is necessary in order for them to be joined under the "single criminal episode" statute. The four offenses charged were all committed at 1:50 in the morning of January 5, 1979; and thus, as is conceded in the Respondent's Appeal Brief on pages 2 and 4, the four separate violations of the Motor Vehicle Code involved driving or operating the vehicle and "the conduct of appellant giving rise to the charges was 'closely related in time.'"

The Colorado Court of Appeals addressed a similar question concerning its compulsory joinder statute in Ruth v. The County Court In and For the County of El Paso, Colo. App., 563 P.2d 956 (1976). In that case, plaintiff had pleaded guilty to operating a vehicle without a valid operating license, and when separately prosecuted for two other traffic offenses arising out of the same incident, asked for a writ of prohibition to prevent the county court from proceeding further against him. The date, time, and location of the offense were the same in each charge, and

the Appeals Court found that where the statute requires that there must be one prosecution for all offenses "based on the same act or series of acts arising from the same criminal episode," that the county court was barred from separate prosecution of those charges. The court found that "the charges alleged in this case were all based on the violation of state statutes, arise from a single episode, and were to be prosecuted in the county court. . . . The compulsory joinder statute requires that plaintiff be granted the requested relief." (Emphasis added.)(For the convenience of the Court, a copy of the Colorado case has been appended to this Petition for Rehearing.)

That petitioner's offenses were "closely related in time" is also confirmed by the California Supreme Court's finding in In re Hayes, 75 Cal. Rptr. 790, 451 P.2d 430 (1969), that where a motorist was charged with driving while his license was suspended and driving under the influence of intoxicating liquor in the same incident, the offenses occurred simultaneously. Thus petitioner asks the Court to correct its opinion and find that the offenses were closely related in time, both in fact and in law.

B. Petitioner's Offenses Were Committed Incident To a Single Criminal Objective

The offenses with which petitioner was charged require, as an essential element, and indeed have as their only common element, the driving of the vehicle. Further, none of the offenses herein charged is illegal until such time

as it is combined with the driving of the vehicle.

Thus, at the time of his arrest, petitioner was operating his vehicle with the only criminal objective he could have had under these statutes, the single criminal objective of operating his vehicle illegally.

"Criminal objective" is to be defined in terms of the act by which the law is broken, and not by the elements of the offense which must be proved. This position is relied on in In re Hayes, supra. There the Court was addressing itself to that part of § 654 of the California Code which proscribes multiple punishments for separate offenses arising under a single criminal episode. However, in differentiating the section which precludes multiple prosecutions in that statute, the California Supreme Court noted that it had, in People v. Morris in 1965, in a similar factual situation, declared that § 654 proscribed multiple prosecutions for drunk driving and an invalid license. The Court in Morris, supra, stated that the test for deciding whether the separate offenses charged amounted to a single criminal episode was whether the neutral common act was "essential" to all offenses, rather than requiring that the common conduct be a "criminal act." Thus, while the majority of the Court in In re Hayes found that a "criminal act" test was proper under the section proscribing double punishment, the purposes of the two sections of the Code were different, and thus that "double prosecution may be precluded even when double punishment is permissible."

The Colorado Court of Appeals, in Ruth v. The County Court In and For the County of El Paso, supra, implicitly agrees with this view when it states that

> . . . all such offenses must be prosecuted as a single prosecution when 'based on the same act or series of acts arising from the same criminal episode.' Offenses not so joined cannot be the subject of a later prosecution. . . . As to defendants' assertion that the offenses with which plaintiff was charged did not possess the requisite commonality so as to fall within the scope of [the compulsory joinder statute] we conclude that . . . the test of identity of issues has been satisfied.

The drafts of the Model Penal Code, and the American Bar Association, Minimum Standards for Criminal Justice, Joinder and Severance, both include as alternative standards for decision on whether joinder is required, those offenses based on the same "conduct" or those offenses with a "single criminal objective." In this instance, petitioner's conduct fits the language of these drafts.

For an expanded discussion of the optimum scope of criminal prosecution and the statutory joinder of offenses for purposes of prosecution, see: Caraway, "Pervasive Multiple Offense Problems--A Policy Analysis, "Utah L. Rev. 1971:105 Spr. '71. See also, "Note: Multiple Prosecution and Punishment of Unitary Criminal Conduct--Minn. Statute § 609.035," Minn. L. Rev. 56:646 May '71; and Collier, "Multiple Prosecutions When Conduct Constitutes More Than One Offense," Ohio N. L. Rev. 2:23-32 '74.

In illustrating its discussion, the Minnesota Law Review article points out that

> Where several traffic charges result from a single instance of the operation of an automobile, the defendant's conduct should be within the scope of a single prosecution . . . it is sufficient that the defendant sought to drive from one place to another, even though he committed several offenses in doing so.

"Note: Multiple Prosecution and Punishment of Unitary Criminal Conduct," supra, at 661. (Emphasis added.)

Petitioner submits that the definition of "single criminal episode" has been met. Because all charges occurred simultaneously and grew out of a single criminal objective, they comprise a "single criminal episode" under & 65-1-401.

POINT II: PETITIONER IS ENTITLED TO THE PROTECTION OF THE STATUTORY BARS RAISED BY § 76-1-402 AND § 76-1-403 (1953), AS AMENDED

§ 76-1-402(1) and (2)(a)(b) provides:

> 76-1-402. Separate offenses arising out of a single criminal episode.--(1) A defendant may be prosecuted in a single criminal action for all separate offenses arising out of a single criminal episode; however, where 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 this 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.
>
> (2) Whenever conduct may establish separate offenses under a single criminal episode, unless the court otherwise orders to promote justice, a defendant shall not be subject to separate trials for multiple offenses when:
>
> (a) The offenses are within the jurisdiction of a single court, and
>
> (b) The offenses are known to the prosecuting attorney at the time the defendant is arraigned on the first information or indictment. (Emphasis added.)

Under the foregoing provisions of § 76-1-402(1), where the same act of the defendant is punishable under different provisions, a defendant shall be punished under only one such provision. The normally innocent act of driving becomes the only illegal and criminal act of the petitioner when combined with the other equally innocent acts of omission and/or commission involved in these charges, and this one act of driving is the only one which subjects the petitioner to punishment. Since he has already been punished (convicted and sentenced) under three other statutory provisions for this one act, both his prosecution and/or punishment under § 41-6-44 (1953), as amended, on a charge of driving a motor vehicle while under the influence of intoxicating liquor, is barred.

Chief Justice Traynor of the California Supreme Court, in his dissent in In re Hayes, supra, presents a very well reasoned discussion of the issues underlying problems involved in the application of statutes barring punishment for more than one offense arising out of a single criminal episode. He asserts that the legislative purpose behind the California statute was the determination that "essentially unitary criminal activity shall not be punished more than once regardless of how many distinct crimes it may comprise." (Emphasis added.) He goes on to find that the "act" which is made punishable under different provisions of the Code refers to "conduct significantly common to both," and not to the "entire criminal conduct proscribed by each

provision." Further, he continues "petitioner's single act of driving was an essential element, indeed the only active element, of the two crimes charged" and that petitioner was convicted of "a single act of driving while intoxicated and while his driving privilege was suspended. It is the singleness of that act which is determinative."

A close reading of Chief Justice Traynor's dissent and a case-by-case comparison of the dissent with the majority opinion in In re Hayes can only lead to the conclusion that Traynor's characterization of "act" for the purposes of a statute barring multiple punishment of essentially unitary criminal activity is the correct one. He closes his dissent with the following observation

> It is a strange inversion that a defendant who commits an act that is the essential and crucial element of two crimes can be punished twice if that act by itself is innocent or the defendant's intent and objective are innocent, but can be punished only once if the common act or the intent and objective are criminal.

Petitioner contends that his single act of driving, which established four offenses which may be punished in four different ways under the Utah Code, bars punishment under more than one such provision. Thus the previous convictions and sentences bar punishment for the present charge of driving under the influence of intoxicants.

Should this Court, however, find that for the purposes of § 76-1-402, petitioner's conduct did not amount to a single act and thus bar punishment under more than one provision, his conduct does fall under the single criminal

episode statute and subsequent prosecution is barred by § 76-1-403, which provides in relevant part

> 76-1-403. Former prosecution barring subsequent prosecution for offense out of same episode.-- (1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if:
> (a) The subsequent prosecution is for an offense that was or should have been tried under section 76-1-402(2) in the former prosecution; and
>
> * * *
> (ii) Resulted in conviction . . .(Emphasis added.)

76-1-403(3) defines the term "conviction" as follows:

> (3) There is a conviction if the prosecution resulted in a judgment of guilt that has not been reversed, set aside, or vacated . . . or a plea of guilty accepted by the court. (Emphasis added.)

While the statute only requires a plea of guilty accepted by the court in its definition of "conviction," in this case the pleas of guilty were not only accepted by the court, but the petitioner was also sentenced on those charges.

Petitioner has thus met the requirements of § 76-1-403.

CONCLUSION

The Court's summary disposition of petitioner's appeal resulted in its incorrectly finding that petitioner's conduct consisted of offenses which were committed at different times. It is clear in this case that all of the offenses occurred simultaneously. Defendant's act of driving was the common element to all the offenses, and the illegal criminal driving of the vehicle is the sole criminal

objective. Thus petitioner's conduct meets the requirements defined in the statute for single criminal episode. All charges were Class B misdemeanors, all under the jurisdiction of the Circuit Court, and could and should have been tried simultaneously. The petitioner, having entered a plea of, and been found guilty and sentenced on three of the offenses, is clearly entitled to the bar contained in § 76-1-401 et seq.

The purpose of the legislature in enacting the "single criminal episode" statute was to mandate joinder of separate offenses arising out of a single criminal episode which met the standards defined by the legislature, and to bar multiple prosecution for those offenses. By its refusal to find that petitioner's offenses are included in § 76-1-401 et seq., the Court appears to have thwarted the clear purpose of the legislature in enacting this legislation and thus judicially emasculated the single criminal episode statute.

If it is finally determined that the facts of this case do not come under the prohibitions of § 76-1-401 et seq., then after considering this opinion and the previous decisions of the Court on this subject it is difficult, if not impossible to imagine a situation where said statute would apply!

RESPECTFULLY SUBMITTED this 15 day of February, 1980.

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CERTIFICATE OF MAILING

I certify that on the 15 day of February, 1980, I deposited in the U.S. Mail, first class, postage prepaid, two true and accurate copies of the foregoing PETITION FOR REHEARING, addressed to: ROBERT B. HANSON, Esq., Attorney General, 236 State Capitol, Salt Lake City, Utah 84114.

the location and installation of basement doors other than that of providing a child proof barrier and a properly working latch is only incidental to the fulfillment of these purposes. We are constrained to observe that, as a "barrier" a door is designed to be opened, else a wall would suffice. Thus, we reject the trial court's finding and conclusion as not supported by the evidence, see *Anderson v. Cold Spring Tungsten, Inc.*, 170 Colo. 7, 458 P.2d 756; *Holland Furnace Co. v. Robson*, 157 Colo. 347, 402 P.2d 628. We do not, therefore, find it necessary to consider whether the parties intended the applicable policy section as a separate insurable risk or as an exclusion from the policy. *Cf. Jorgensen v. St. Paul Insurance Co., supra.*

[3] In considering the meaning of a written contract, the entire instrument should be considered, and meaning should be given to each provision of the agreement. *Grimes v. Barndollar*, 58 Colo. 421, 148 P. 256; *New Brantner Extension Ditch Co. v. Kramer*, 57 Colo. 218, 141 P. 498. The "completed operations hazard" provision should therefore be interpreted in such a way as to give significance to each of its clauses.

[4] In the context of this case, the import of the last sentence of the provision at issue is that the defective latch did not prevent the basement door from being put to its intended use. Thus, the door comes within the area of completed operations and therefore injuries suffered as a result of the improper installation of the door latch are not covered by the policy.

Judgment reversed.

SILVERSTEIN, C. J., and PIERCE, J., concur.

Joseph R. RUTH, Plaintiff-Appellant,

v.

The COUNTY COURT IN AND FOR the COUNTY OF EL PASO, and Judge James Quine, Defendants-Appellees.

No. 76-172.

Colorado Court of Appeals,
Div. I.

Dec. 16, 1976.

Rehearing Denied Jan. 6, 1977.

Certiorari Granted May 9, 1977.

Plaintiff who had entered plea of guilty to operating vehicle without valid operator's license sought relief in nature of writ of prohibition to preclude county court from proceeding further against him on traffic charges involving the same date, time and location. The District Court, El Paso County, William Rhodes, J., entered order dismissing the complaint and plaintiff appealed. The Court of Appeals, Coyte, J., held that: (1) if the offenses sought to be tried are within the circumscription of joinder statute, then trial court jurisdiction is lacking and a writ of prohibition may properly issue; (2) plaintiff who had pleaded guilty to the licensing offense had been subjected to prosecution within purview of joinder statute and any further proceedings would constitute a "subsequent" prosecution impermissible under the statute; (3) the licensing offense and charges that plaintiff had improperly backed his vehicle and struck another vehicle and that he left the scene of the accident without attempting to notify the owner of the second vehicle or making a report of the incident were not separate and distinct by reason of the applicability of both municipal and state law.

Reversed and remanded.

1. Prohibition ⇐5(4)

Prohibition may properly issue in a criminal proceeding.

2. **Prohibition** ⇐10(3)

If offenses sought to be tried are within the circumscription of statute requiring that all offenses must be prosecuted as a single prosecution when based on the same act or series of acts arising from the same criminal episode, then trial court jurisdiction is lacking and writ of prohibition may properly issue. C.R.S. '73, 18–1–408(2).

3. **Criminal Law** ⇐273.2(1)

A guilty plea entered in good faith has the same effect as the verdict rendered by a jury.

4. **Criminal Law** ⇐200(1)

Plaintiff who had pleaded guilty to operating vehicle without valid operator's license had been subjected to prosecution within purview of statute requiring that all offenses must be prosecuted as a single prosecution when based on the same act or series of acts arising from the same criminal episode, and any further proceedings against plaintiff on traffic offense charges involving the same date, time and location as the licensing offense, would constitute a "subsequent" prosecution impermissible under the statute. Rules of Civil Procedure, rule 106(a)(4); C.R.S. '73, 18–1–408(2), 42–2–101, 42–4–112, 42–4–1404.

5. **Indictment and Information** ⇐129(1)

Purpose of statute providing that all offenses must be prosecuted as a single prosecution when based on the same act or series of acts arising from the same criminal episode is to provide safeguards against harassment of defendants and unfair prosecutorial advantage. C.R.S. '73, 18–1–408(2).

6. **Indictment and Information** ⇐129(1)

Concerns of public policy, such as avoidance of costly and repetitive trials as well as notions of constitutional due process, require that statute providing that all offenses must be prosecuted as a single prosecution when based on the same act or series of acts arising from the same criminal episode be construed so as to effectuate the discernible objectives. C.R.S. '73, 18–1–408(2).

7. **Criminal Law** ⇐200(1)

When prosecutor reasonably should be aware of separate charges against a defendant arising from the same criminal episode, the failure to prosecute all charges in a single action forecloses any further proceedings. C.R.S. '73, 18–1–408(2).

8. **Criminal Law** ⇐129(1)

Charges that defendant improperly backed his vehicle and struck another vehicle, that he left scene of accident without attempting to notify owner of the second vehicle or making a report of the incident, and operating vehicle without valid operator's license, which charges arose from a single episode, were not separate and distinct by reason of applicability of both municipal and state law and statute requiring joinder of all charges was applicable. Rules of Civil Procedure, rule 106(a)(4); C.R.S. '73, 18–1–408(2), 42–4–101, 42–4–112, 42–4–1404.

MacLaughlin, Ciccolella & Barton, John B. Ciccolella, Colorado Springs, for plaintiff-appellant.

Robert L. Russel, Dist. Atty., James M. Franklin, Deputy Dist. Atty., Colorado Springs, for defendants-appellees.

COYTE, Judge.

Plaintiff appeals a district court order dismissing his complaint wherein he requested relief in the nature of a writ of prohibition. We reverse.

Plaintiff was charged in El Paso County Court on two different occasions with offenses arising under the Motor Vehicle Law. The first action, consisting of two counts, was filed on January 20, 1975. The charges alleged that plaintiff had improperly backed his vehicle and struck another vehicle, and that he left the scene of the accident without attempting to notify the owner of the second vehicle or making a report of the incident. *See* §§ 42–4–112 and 42–4–1404, C.R.S.1973. Plaintiff entered a plea of not guilty to these charges and the matter was set for trial.

On February 7, 1975, plaintiff was charged in the same county court in a separate proceeding with the offense of having operated a vehicle without a valid operator's license in violation of § 42–2–101, C.R.S.1973. The date, time, and location specified in the charge were the same as those described in the first complaint. Plaintiff pled guilty to this latter offense and sentence was imposed.

Plaintiff thereafter moved in the county court for dismissal of the charges scheduled for trial, which motion was denied. He subsequently commenced the present litigation seeking to prohibit the county court from proceeding further against him.

I.

The initial question presented by this appeal is whether relief in the nature of prohibition, *see* C.R.C.P. 106(a)(4), is an appropriate remedy under the circumstances. We conclude that it is.

The basis upon which plaintiff asserts his claim for relief is the compulsory joinder statute, § 18–1–408(2), C.R.S.1973, which provides that if several offenses are known to a district attorney at the commencement of prosecution, all such offenses must be prosecuted as a single prosecution when "based on the same act or series of acts arising from the same criminal episode." Offenses not so joined cannot be the subject of a later prosecution.

[1] Defendants concede that prohibition may properly issue in a criminal proceeding, *Bustamante v. District Court*, 138 Colo. 97, 329 P.2d 1013 (1958), but maintain that the trial court here possessed the requisite subject matter jurisdiction, and that accordingly, plaintiff's remedy is limited to an appeal of the judgment entered in that criminal case. *See People v. District Court*, Colo., 541 P.2d 683 (1975). We conclude that the defect in this proceeding is one which deprives the county court of jurisdiction.

In *Bustamante v. District Court, supra*, our Supreme Court held that statutes of limitations in criminal cases operate as a bar to prosecution and are jurisdictional in nature. Therefore, the Supreme Court pointed out, a trial of a charge barred by a statute of limitation would be a "useless act" and an unnecessary expense to the public.

[2] Similar considerations underlie the construction of a joinder statute. In providing that offenses not properly joined cannot be a basis for subsequent prosecution, the legislature has explicitly surrendered the right to prosecute, as occurs with respect to statutes of limitation. *Bustamante v. District Court, supra; see generally* 21 *Am.Jur.2d* Criminal Law § 154. The circumstances here are thus distinguishable from those cases in which the remedy of prohibition is denied when the adjudicative tribunal acts within its jurisdiction. *See, e. g., Leonhart v. District Court*, 138 Colo. 1, 329 P.2d 781 (1958); *Colorado State Board of Medical Examiners v. District Court*, 138 Colo. 227, 331 P.2d 502 (1958). Consequently, if the offenses sought to be tried are within the circumscription of § 18–1–408(2), C.R.S.1973, then trial court jurisdiction is lacking and a writ of prohibition may properly issue.

II.

Asserting that plaintiff entered a guilty plea to the licensing offense in order to avoid subsequent prosecution, that the district attorney had no knowledge of the guilty plea, that the prosecution pending here is not "subsequent," and that different evidence will be required to prove the allegations in the two complaints, defendants contend that § 18–1–408(2), C.R.S.1973, does not bar prosecution of plaintiff for the offenses charged under §§ 42–4–112 and 42–4–1404, C.R.S.1973. These arguments are unpersuasive.

[3, 4] Defendants admit that plaintiff did not act in a fraudulent manner in entering the plea of guilty, but argue however, that the conviction was the result of collusion or connivance, which conduct should estop plaintiff from asserting the matter of joinder. However, the authority relied upon by defendants in support of this proposition, *i. e., Hampton v. Municipal Court*, 242 Cal.App.2d 689, 51 Cal.Rptr. 760 (Dist.

Ct.App.1966), relates to the defense of double jeopardy raised by one who procured a prior conviction by fraud for the purpose of avoiding a greater punishment. *See* Annot., 75 A.L.R.2d 683. In contrast, a guilty plea entered in good faith has the same effect as a verdict rendered by a jury. *Markiewicz v. Black*, 138 Colo. 128, 330 P.2d 539 (1958). Thus, under the circumstances present here, plaintiff has been subjected to prosecution within the purview of § 18–1–408(2), C.R.S.1973, and any further proceedings would constitute a "subsequent" prosecution impermissible under the statute.

[5–7] The purpose of joinder statutes is to provide safeguards against harassment of defendants and unfair prosecutorial advantage. *People v. Cooks*, 186 Colo. 44, 525 P.2d 426 (1974); *and see Kellett v. Superior Court*, 63 Cal.2d 822, 48 Cal.Rptr. 366, 409 P.2d 206 (1966). Additional concerns of public policy, such as the avoidance of costly and repetitive trials as well as notions of constitutional due process, *see Ciucci v. Illinois*, 356 U.S. 571, 78 S.Ct. 839, 2 L.Ed.2d 983 (1958), require that these enactments be construed to as to effectuate their discernible objectives. Here, the district attorney maintained a file consisting of information forwarded by the court, and when a prosecutor reasonably should be aware of separate charges against a defendant arising from the same criminal episode, the failure to prosecute all charges in a single action forecloses any further proceedings. *See Weaver v. Schaaf*, 520 S.W.2d 58 (Mo.1957).

As to defendants' assertion that the offenses with which plaintiff was charged did not possess the requisite commonality so as to fall within the scope of § 18–1–408(2), C.R.S.1973, we conclude that, under the pertinent authority in this jurisdiction, the test of identity of issues has been satisfied.

[8] The charges alleged in this case were all based on the violation of state statutes, arise from a single episode, and were to be prosecuted in the county court. The offenses, therefore, are not separate and distinct by reason of the applicability of both municipal and state law. *See People v. Pinyan*, Colo., 546 P.2d 488 (1976). Thus the compulsory joinder statute requires that plaintiff be granted the requested relief.

The order denying prohibition is reversed and the cause remanded with directions to enter an order granting the writ in the nature of prohibition.

ENOCH and STERNBERG, JJ., concur.

Sophronia J. JONES, Plaintiff-Appellant,

v.

Kurt W. KRISTENSEN and Regional Transportation District, Defendants-Appellees.

No. 76–234.

Colorado Court of Appeals, Div. I.

Jan. 13, 1977.

Rehearing Denied Feb. 24, 1977.

Certiorari Granted May 9, 1977.

Motorist, whose car was struck from the rear by another car after it had been rear-ended by regional transportation district's bus, brought action to recover against district and its employee-bus driver. The District Court, City and County of Denver, Mitchel B. Johns, J., dismissed complaint for failure to file 90-day notice provided for in Governmental Immunity Act, and motorist appealed. The Court of Appeals, Enoch, J., held that (1) fact that district and its insurer were aware of accident and that they had made their own investigation of it did not constitute substantial compliance by plaintiff in regard to notice requirements of Act; (2) defendants were not equitably estopped from contending that motorist failed to file the notice required under Act; (3) fact that district carried liability insurance did not render notice requirements of Act inapplicable; (4) failure of motorist to comply with notice requirements did not preclude motorist