

1990

State of Utah v. Patrick Dean Coando : Reply Brief

Utah Supreme Court

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UTAH SUPREME COURT

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BRIEF

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DOCKET NO.

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IN THE UTAH SUPREME COURT

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent,	:	
vs.	:	Case No. 900019
	:	
PATRICK DEAN COANDO,	:	
	:	
Defendant/Petitioner.	:	Category 14

REPLY OF PETITIONER

Writ of Certiorari to review opinion of the Court of Appeals affirming the the Order of the Eighth District Court.

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Clerk, Supreme Court, Utah

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Plaintiff/Respondent, :
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REPLY

Point 1. The facts in State v. Lane, 771 P. 2d 1150 (Wash.,1989) are distinguishable from the facts in the instant case. In State v. Lane, supra., the conduct which occurred in Washington and formed the basis for that state's jurisdiction was mental conduct known as premeditation. Premeditation is an element of the crime of first degree murder and it is an element which refers to the conduct of the accused, not to the conduct of someone else. This case shows only that some criminal conduct of the accused which conduct is an essential element of the crime charged must occur within the state in order for the state to claim jurisdiction and nothing more. The facts do not include the discretionary non-proscribed act of a third party as do the facts in the instant case. The case is inapposite here.

Point 2. Whether the bank exercises its discretion to pay a draft or whether it does not exercise its discretion to pay a draft does not necessarily depend on any prior arrangement with the maker as respondents brief implies.

Point 3. Due process requires that notice or process by which parties are brought within the jurisdiction of the court which will render judgement. The Utah criminal jurisdiction statute gives notice that one who commits conduct within this state which is proscribed or the result of which is proscribed may be subject to the criminal jurisdiction of the court. It does not give notice that the non-proscribed conduct of a third party (not the accused) may subject one to the criminal jurisdiction of the court such as where a bank refuses to pay a draft

written by the accused. Where a court wrongfully extends jurisdiction beyond the scope of its authority its judgement violates due process and is void.¹ Furthermore to base criminal jurisdiction on the act of a third party not controlled by the accused would be an arbitray and capricious act of the government in violation of the guarantee of equal protection.²

The Constitutions of the state and of the United States both protect individuals from deprivation of their liberty without due process of law. Petitioners sentence below deprived him of his liberty. Therefore the court should consider the constitutional issues raised even if raised for the first time on appeal.³

Point 4. The state's last arguement is in error. Section 1 of the bad check statute is a separate crime from that in section 2,¹ requires knowledge by the accused that a check won't be paid. The knowledge element is absent from the section 2 crime which allows one who writes a check whic is legally refused by the bank to cure the default in 14 days to avoid criminal liability. The state can charge the section 1 crime regardless of the 14 day cure provision in section 2 if it can show culpable knowledge on the part of the accused that the check would not be paid.

¹ Jones v. Giles, 741 F.2d 24 (C. A. Wash., 1984): West v. Capital Federal Savings and loan Ass'n, 558 F. 2d 977 (C. A.Kans., 1977).

² Young v. Hunt, 507 F. Supp. 785 (D. C. Ind., 1981)

³ State in re N. H. B., 777 p. 2d 487 (Ut. App., 1989)

There fore the Utah statute has the same infirmity the Colorado court found in its statute. " The actors conduct was complete prior to the time taht the disinterested third party bank had the complete freedom to decide whether to honor or dishonor the insufficient check," People v. Smith, 638 P. 2d 1, 6 (Colo. 1981). Like the Colorado statute the Utah statute prevents any cure under section 1. Once the bank dishonors the check the crime is complete.

Furthermore and in contradistinction to the bad check scenario in the case of rape the victims consent or the lack of consent will occur or be effective concurrently with the act of the accused and not at a different time or in a different place. Also the victim is the result of the proscribed conduct and is not an independent third party. The rape statute is not analagous to the bad check statute. The crime does not depend on the arbitrary discretionary act of a third party for its completion.

Dated this ___ day of August, 1990.



Dixon D. Hindley
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that four true and correct copies of the foregoing Reply brief of Petitioner were hand delivered to Sandra L. Sjogren, Assistant Attorney General, Attorney for Respondent, at 236 State Capitol, Salt Lake City, Utah 84114 this ____ day of August, 1990.