

1957

## State of Utah v. Chester Mathis : Brief of Respondent

Utah Supreme Court

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In the  
Supreme Court of the State of Utah

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THE STATE OF UTAH,

vs.

CHESTER MATHIS,

*Respondent,*

*Appellant.*

Case No.

8375 -

8735

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BRIEF OF RESPONDENT

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## BRIEF OF RESPONDENT

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### STATEMENT OF FACTS

On June 18, 1957 in the District Court of Salt Lake County, the appellant was convicted of a crime and sentenced to a term in the Utah State Prison. For the purpose of this brief, respondent adopts the facts as described on pages 4 and 5 of appellant's brief.

### STATEMENT OF POINTS

#### POINT I

IT WAS WITHIN THE DISCRETIONARY POWERS OF THE TRIAL JUDGE TO GRANT A CONTINUANCE OF TRIAL.

## POINT II

THE CONTINUANCE OF TRIAL GRANTED TO THE STATE DID NOT DEPRIVE APPELLANT OF HIS CONSTITUTIONAL RIGHT TO A "SPEEDY TRIAL".

## POINT III

IF THE COURT COMMITTED ERROR IN GRANTING THE CONTINUANCE TO THE STATE, IT WAS HARMLESS AND NOT PREJUDICIAL TO THE SUBSTANTIVE RIGHTS OF THE APPELLANT.

## ARGUMENT

## POINT I

IT WAS WITHIN THE DISCRETIONARY POWERS OF THE TRIAL JUDGE TO GRANT A CONTINUANCE OF TRIAL.

There is strong and numerous authority in this state for the proposition that the granting of a continuance is a question within the discretion of the trial court.

"Whether a postponement of the trial should or should not be granted on showing made is a matter within the discretion of the trial court, and a denial of postponement will not be regarded as reversible error unless clearly prejudicial." *State v. Fairclough* (1935 Utah) 44 P. 2d 692.

See also *State v. Williams* (1917 Utah) 163 P. 1104, *State v. Cano* (1924 Utah) 228 P. 563, and *State v. Anselmo* (1915 Utah) 148 P. 1071.

In *State v. Hartman* (1941 Utah) 119 P. 2d 112, a case cited by appellant, the trial court had denied defendant's motion for a continuance and he appealed. This court said, at page 114:

“The granting of a continuance in a criminal case is discretionary with the court and its refusal to grant a continuance is not reversible error unless clearly prejudicial.”

In the cited case, the defendant had been denied a continuance at trial and appealed on that basis. We have found no Utah cases where appeal has been sustained on the ground that it was error to grant the state a continuance.

## POINT II

### THE CONTINUANCE OF TRIAL GRANTED TO THE STATE DID NOT DEPRIVE APPELLANT OF HIS CONSTITUTIONAL RIGHT TO A “SPEEDY TRIAL”.

As appellant declares at the outset of his second point (Appellant's brief, p. 4) the substantive question here is whether granting the continuance amounted to a violation of appellant's constitutional rights. More precisely, it is whether appellant was denied his right to a “speedy trial”. Trial was set for June 5, and on that date on the state's motion, it was continued to June 18, a delay of 13 days.

The constitutional guarantee of a "speedy trial", as other guarantees, is based on experience and good reason; to prevent arbitrary delays in the prosecution of criminal actions often resulting in lost evidence and faulty convictions, and to prevent long imprisonment of accused persons before trial. Constitution of the United States, John Randolph Tucker, (1899). Its ancestry may be traced far back into the history of English criminal law where early attempts were made to prevent extended imprisonment before trial. An old and oft cited decision describes the right in general.

"Nor does a speedy trial mean a trial immediately upon the presentation of the indictment or the arrest upon it, but simply means that the trial shall take place as soon as possible after the indictment is found, without depriving the prosecution a reasonable time for preparation. The law is the embodiment of reason and good sense; \* \* \*." *Ex parte Stanley*, 1868 Nev. 4 Nev. 113.

Speaking generally of the right to a "speedy trial" Justice McKenna said in *Beavers v. Haubert*:

"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." 1905 198 U. S. 77, 25 S. Ct. 573.

See also *Nixon v. State*, 2 S & M (Miss.) 507, and *Stewart v. State* (1853 Ark.) 13 Ark. 720.

Appellant's argument begins by asserting as a foundation the "speedy trial" guarantee of the Utah constitution (Appellant's Brief, p. 5). The argument then seeks in addition to rely on two sections of the Utah Code of Criminal



Procedure which are quoted, 77-24-18 and 77-29-1. The first prohibits undue postponement in trial and the second provides the means by which a postponement or continuance may be obtained. Appellant asserts that the continuance granted the state was improper because the procedure described in Section 77-29-1 is not strictly complied with, i. e. that there was not sufficient cause shown by affidavit. Here the argument assumes a double front; on the one hand that the delay amounted to a deprivation of the right to a "speedy trial", and on the other that the failure to comply strictly with Section 77-29-1 violated due process. The due process argument is not properly before the court. The failure to comply with required criminal procedure does not in every instance constitute a violation of due process. The procedure followed may have been error, but it was not prejudicial to substantive rights. If the situation had been reversed and appellant had been denied a continuance, then the question of due process could likely be raised.

The core of the problem and the real substantive issue, as stated above, is whether the delay as a result of the continuance, deprived appellant of his right to a "speedy trial". The necessity of a workable definition of the term "speedy trial" is apparent. Appellant did not cite in his brief a section of the Utah code which we feel is likely determinative of this problem. Section 77-51-1 reads:

"Dismissal for failure to prosecute.—The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:

"(1) When a person has been held to answer for a public offense, if an information is not filed

nor an indictment found against him at the next term of the court at which he is held to answer.

“(2) If the defendant, whose trial has not been postponed upon his application, is not brought to trial at the next term of the court in which the information or indictment is triable after it is filed or found.”

This section is mandatory and requires the dismissal of the prosecution unless the conditions enumerated are complied with. Those conditions are time limitations within which the information must be filed and the defendant tried. Several states have similar code provisions providing that if the time limits are not complied with the cause shall be dismissed or the prisoner discharged. In the cases we have found, the courts have interpreted these mandatory time guarantees as being supplemental to and definitive of the right to a “speedy trial” as guaranteed in state constitutions.

In *Ex parte Trull* (1931 Kans.) 298 P. 775, the information was filed about two and one-half years after arrest, and the Kansas Supreme Court was dealing with a section of the code similar to ours which provided a maximum period beyond which an accused person could not be held and providing that at the expiration of said period the person so held shall be discharged. In considering this code section together with the “speedy trial” provision of the constitution the court said:

“It is generally held that the statutes supplement the constitution and are to be regarded as rendering the constitutional guarantee effective and constitute a legislative definition of what is, under

the circumstances named, a reasonable and proper delay in bringing the accused to trial.”

This principle followed an earlier Kansas decision, see *In re McMicken* (Kans.) 18 P. 473.

California also follows this interpretation. In *In re Begerow*, (1901 Cal.) 65 P. 828, a case quoted by appellant, the petitioner was discharged because he had been held for more than 60 days in violation of the code. The California Penal Code, Section 1382, provides that the court, unless for good cause shown, must dismiss the prosecution when an accused, if trial has not been postponed on his application, has not been to trial within 60 days after indictment. The court in speaking of this statutory provision in the light of the “speedy trial” guarantee, said:

“The statute is a construction of the constitutional provision, so far as to indicate what is a reasonable time within which a case should be brought to trial, in order that the constitutional guarantee may be kept. And it may be fairly interpreted to be that this guarantee is violated whenever 60 days is allowed to elapse without a trial; \* \* \*.”

Oklahoma courts have held similarly that the constitutional provision guaranteeing a “speedy trial” is a term of indeterminate meaning and permits legislative definition to some extent. See *Application of Hayes* (1956 Okla.) 301 P. 2d 701. See also *State v. Keefe* (1908) 98 P. 122, a Wyoming case, which also adopts this principle in defining the constitutional guarantee.

There are two significant Utah decisions discussing the requirements of Section 77-51-1 above quoted, as it applies

to the right to a "speedy trial." In *State v. Endsley*, (1899 Utah) 57 P. 430, the defendant appealed on the ground that the trial was not held at the next term after filing the information as required by Section 5065 Revised Statutes 1898 (Section 5065 is identical to above quoted section 77-51-1). This court said:

"Doubtless by this statute the legislature intended to secure to every defendant in a criminal prosecution a speedy trial, in the absence of good cause being shown for delay; \* \* \*."

In *State v. Rutledge* (1922 Utah) 227 P. 479, an appeal was taken to the Supreme Court on the ground that after the defendant had been committed, the district attorney failed to file an information within the period required by Section 9345 Com. Laws of Utah 1917, identical to present Section 77-51-1. The appellant asserted that the delay violated the defendant's right to a "speedy trial". This court said:

"The right of an accused person to have a speedy public trial (Const. of Utah, Art. I, Sec. 12) so far as the filing of the information is concerned, is secured by Comp. Laws of Utah 1917, Section 9345, \* \* \*."

Obviously the trial in this case was within the time period described in Section 77-51-1, and appellant's right to a "speedy trial" was not violated. The information was filed on May 16 (R. 6) and trial was held on June 18, both within the April term of the court.

## POINT III

IF THE COURT COMMITTED ERROR IN GRANTING THE CONTINUANCE TO THE STATE, IT WAS HARMLESS AND NOT PREJUDICIAL TO THE SUBSTANTIVE RIGHTS OF THE APPELLANT.

On the basis of the state's motion for a continuance, trial was postponed from June 5th to June 18th, a period of less than two weeks. If it can be said that granting the continuance was error, how can it reasonably be asserted that such a brief delay prejudiced the appellant. It would be another thing if, as pointed out in Point II above, it had been the defendant's request for continuance that had been denied. The delay which resulted in this case is certainly not the long delay or extended imprisonment which the framers of the constitution intended to prevent by inserting a provision guaranteeing the right to a "speedy trial".

Section 77-42-1, Utah Code Annotated 1953, is a codification of that principle of appellate review holding that a cause will not be reversed for error or defect unless the substantive rights of the accused are effected.

This court in 1953 in *State v. Neal*, 262 P. 2d 756, declared:

"We will not reverse criminal causes for mere error or irregularities. It is only when there has been error which is both substantial and prejudicial to the rights of the accused that a reversal is warranted."

For a similar ruling, see *State v. Justenson*, 35 Utah 105, 99 P. 456. Section 77-29-1 is relied on by appellant

and quoted in his brief. It prescribes a procedural requirement. But failure to comply with the section is not error unless the appellant is prejudiced and his substantive right effected. We have found no cases, nor has appellant cited any, wherein a conviction was reversed on the ground of failure to comply with Section 77-29-1.

### CONCLUSION

In the case before the court, the information was filed on May 16th. Appellant was arraigned on May 17th and trial was had on June 18th, all within the same term of court. We have been unable to find any cases reversing a conviction on the grounds alleged here and under circumstances similar to this case. In Utah, Section 77-51-1 amounts to a supplement and a legislative definition of the right to a "speedy trial". In cases cited by appellant and in those we have found, reversals were based on a failure to grant a continuance to the defendant or on the ground that the delays in trial violated code provisions similar to Section 77-51-1. This statute was not violated in the case before the court. It is respectfully submitted that the judgment of the trial court should be affirmed.

Respectfully submitted,

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