

2001

State of Utah v. Daniel Peterson : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellant,

vs.

DANIAL PETERSON,

Defendant/Appellee.

Case No. 20010211-CA

Priority No. 2

REPLY BRIEF OF APPELLANT

AN APPEAL FROM AN ORDER DISMISSING THE INFORMATION
FILED AGAINST DEFENDANT IN THE FOURTH JUDICIAL DISTRICT
COURT OF UTAH, UTAH COUNTY, JUDGE GUY R. BURNINGHAM
PRESIDING

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TABLE OF CONTENTS

TABLE OF CONTENTS -i-

TABLE OF AUTHORITIES -ii-

ARGUMENT 1

CONCLUSION 4

NO ADDENDA NECESSARY

TABLE OF AUTHORITIES

CASE AUTHORITY

State v. Coleman, 2001 UT App 281, 431 Utah Adv. Rep. 3 1-4
State v. Heaton, 958 P.2d 911 (Utah 1998) 2-4
State v. Velasquez, 641 P.2d 115 (Utah 1982) 2

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah R. App. P. 24 1
Utah R. Crim. P. 7 4

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* * *

Pursuant to rule 24(c), Utah Rules of Appellate Procedure, the State hereby submits this brief in reply to appellee's brief.

ARGUMENT

In his brief, "Peterson concedes that the trial court correctly tolled the period between September 8, 2001, when Peterson filed a motion to reconsider, and October 27, 2000, when the trial court denied that motion—a total of 49 days" Aple. Brf. at 10-11. He also "concedes that the trial court abused its discretion under [*State v. Coleman*], 2001 UT App 281, 431 Utah Adv. Rep. 3,] in failing to toll the disposition period between August 10, and August 21, 2000—a total of 11 days." Aple. Brf. at 10. Therefore, the issue before the Court

is whether the trial court erred in refusing to toll the 31-day period between July 10, 2000 and August 10, 2000—the time required to accommodate Peterson’s motion to suppress.¹

In *Coleman*, this Court acknowledged that a defendant’s “[m]otion to [s]uppress toll[s] the 120-day time period because the motion [i]s a delay caused by [d]efendant.” 2001 UT App 281, at ¶ 8. Peterson contends that although he represented to the trial court his intention to file a motion to suppress on July 7, 2000, the resulting delay should not be attributed to him until August 10, 2000—the day he filed the motion. Aple. Brf. at 11-13. However, as the State argued in its brief, Aplt. Brf. at 10, “the disposition period [is] extended by the amount of time during which defendant himself has created delay.” *State v. Velasquez*, 641 P.2d 115, 116 (Utah 1982); accord *State v. Heaton*, 958 P.2d 911, 916 (Utah 1998).² Delay attributable to a defendant thus does not necessarily turn on when he files a motion, but rather on when his actions create delay.

Following the preliminary hearing, Peterson advised the court that he intended to file motions dispositive of the case. R. 153: 33-34. To accommodate Peterson, the trial court did

¹Peterson also contends that pursuant to *Coleman*, this Court should reject the State’s alternative claim that at best, only the methamphetamine charge should have been dismissed. Aple. Brf. at 20. However, *Coleman*’s “resolution of the first issue obviate[d] [its] need to reach [that] issue,” and its comments in footnote 5 of the opinion are therefore dicta. See *Coleman*, 2001 UT App 281, at ¶ 5 n.5.

²Thus, Peterson’s contention, Aple. Brf. at 11, that the State’s brief was inadequate because it did not cite to any authority supporting the proposition that the disposition period should be tolled before the filing of a motion lacks merit. Citing *Velasquez* and *Heaton*, the State argued that the proceedings were delayed to accommodate Peterson’s motion. See Aplt. Brf. at 10-12. Citation to a case addressing the exact issue before the appellate court is not required, and in many cases, not possible.

not set a trial date, but imposed a motion schedule, giving Peterson three weeks to file his motion, the State two weeks to respond, and Peterson another week to file a reply. R. 153: 35-36. Oral argument was set three days later. R. 153: 36. This delay was wholly attributable to Peterson. But for Peterson's decision to file the motion, trial would have been set and "nothing in the record indicates that the State could not have brought [d]efendant's matter to trial within the required time." *See Coleman*, 2001 UT App 281, at ¶ 11. As such, "there is no 'reasonable basis in the record to support' the trial court's determination that 'good cause' did not excuse the prosecution for its failure to bring the matter to trial" before the February trial date. *See id* (citations omitted).³

In support of his contention that the entire motion period should not be tolled, Peterson points to the fact that the Supreme Court in *Heaton* "did not toll the period between Heaton's request for a preliminary hearing on August 30 and the actual date of the preliminary hearing on September 9." Aple. Brf. at 12-13. *Heaton* does not support Peterson's contention. Four of the ten days were not attributed to Heaton because he did not file a disposition demand until September 3. *Heaton*, 958 P.2d at 916. The remaining six days were not attributed to Heaton because the September 9 preliminary hearing date was originally scheduled as the trial date. *See id*. In other words, those six days were already

³Peterson also contends that because the State did not remind the district court, in responding to the motion to dismiss, that Peterson had previously represented in a pretrial conference that "he's not filing a 120-day disposition [demand]," the State's good cause argument in that regard, Aplt. Brf. at 13-15, is waived. *See* Aple. Brf. at 14-15. However, the State did argue that good cause justified the delay in the proceedings. *See* R. 99-104. Accordingly, the State preserved its claim that good cause justified the delay and may rely on those facts in the record which support that claim.

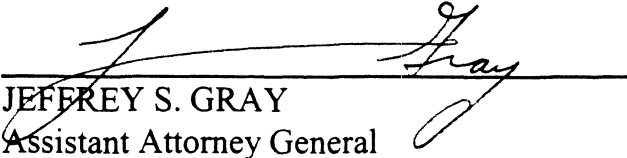
attributable to the State. Heaton was charged with the resulting 18-day delay in the proceedings caused by his tardy request for a preliminary hearing. *Id.* Likewise, here, Peterson should be charged with the resulting delay in the proceedings that was required to accommodate his motion to suppress.⁴

CONCLUSION

For the foregoing reasons, and those identified in the State's opening brief, the State respectfully requests the Court to reverse the trial court's order dismissing the charges.

Respectfully submitted this 12th day of December, 2001.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL

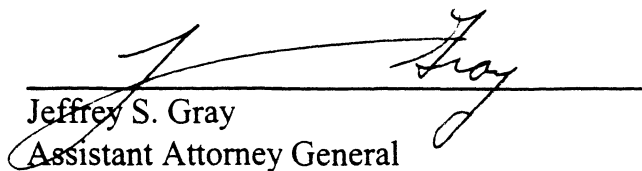

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⁴Moreover, a preliminary hearing is not of the same nature as a motion to suppress. Absent an express waiver, the court must hold a preliminary hearing. Utah R. Crim. P. 7(g). Accordingly, unlike a motion to suppress, the period of delay created by a preliminary hearing does not toll the 120-day disposition period. *See Coleman*, 2001 UT App 281, at ¶¶ 8, 14 (attributing to defendant delay resulting from motion to suppress, but not delay resulting from preliminary hearing).

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December, 2001, I served two copies of the attached Reply Brief upon the defendant/appellee, Danial Peterson, by causing them to be mailed, via first class mail, postage prepaid, to his counsel of record, as follows:

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