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State of Utah v. Marie S. McKinnon : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellant,

v.

MARIE S. McKINNON,

Defendant/Appellee.

Case No. 20010790-CA

Priority No. 15

REPLY BRIEF OF APPELLANT

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Clerk of the Court

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BRIEF OF APPELLANT

ARGUMENT

I. THE STATUTORY CRIMINAL DISCOVERY RULE OF SECTION 76-1-303 SHOULD FUNCTION DIFFERENTLY FROM CIVIL DISCOVERY RULES BECAUSE, UNLIKE IN CIVIL CASES, REASONABLE DELAY IN FILING A CRIMINAL INFORMATION IS JUSTIFIABLE

Defendant argues that cases and statutes controlling the application of discovery rules in civil cases should control the interpretation of this criminal statute. Br. of Appellee at 9-20. She cites to several civil cases requiring that a discovery rule should not extend a statute of limitations if a plaintiff discovered their action before the expiration of the original limitations period. *See, e.g., O'Neal v. Division of Family Services*, 821 P.2d 1139, 1144 (Utah 1991); *Williams v. Howard*, 970 P.2d 1282, 1285 (Utah 1998); Br. of Appellee at 17-20. These civil cases should not control the interpretation of this criminal statute, however, because they fail to recognize that delay in

the filing of a criminal information may be justified although delay in filing a civil complaint may not. Thus, the criminal discovery rule should function differently from civil discovery rules.

Both this Court and the Utah Supreme court have held that a civil plaintiff who discovers his cause of action prior to the expiration of the original limitations period may not avoid the statute of limitations. *See O'Neal*, 821 P.2d at 1144; *Hom v. Utah Dept. of Public Safety*, 962 P.2d 95, 101-02 (Utah Ct. App. 1998). Such delay in civil cases only serves to prejudice defendants by allowing plaintiffs to litigate potentially stale claims. *See Myers v. McDonald*, 635 P.2d 84, 86 (Utah 1981); *O'Neal*, 821 P.2d at 1145.

Conversely, the United States Supreme Court has held that reasonable delay in filing criminal charges is not always so one-sided. *See United States v. Lovasco*, 431 U.S. 783, 795 (1977) (comparing a prosecutor's "investigative delay" with delay taken "solely 'to gain tactical advantage over the accused'") (quoting *United States v. Marion*, 404 U.S. 370, 324 (1971)). After a prosecutor discovers a crime, he may delay filing criminal charges until he has had a reasonable time to consider several important factors. *See id.* at 791-96. Such delay is justified, because a prosecutor's careful consideration of these factors before filing charges benefits defendants, courts, and society. *Id.*

For example, after a prosecutor discovers a crime, but before he files charges, he should consider whether he has sufficient evidence to prove a suspect's guilt beyond a reasonable doubt. *Id.* at 791. Failure to do so could negatively affect his case because the filing of premature charges "could make obtaining proof of guilt beyond a reasonable

doubt impossible by causing potentially fruitful sources of information to evaporate before they are fully exploited.” *Id.* at 791-92. More importantly, however, the filing of premature charges also harms defendants “because it would increase the likelihood of unwarranted charges being filed, and would add to the time during which defendants stand accused but untried.” *Id.* at 791. Formal accusations significantly interfere with a defendant’s liberty. *Id.* The filing of premature charges could also harm the courts “because it would cause scarce resources to be consumed on cases that prove to be insubstantial, or that involve only some of the responsible parties or some of the criminal acts.” *Id.* at 792. As the United States Supreme Court concluded, “no one’s interests would be well served by compelling prosecutors to initiate prosecutions as soon as they are legally entitled to do so.” *Id.*

Moreover, the determination of whether the evidence is sufficient to establish guilt is a difficult determination. As the United States Supreme Court observed, “[t]he determination of when the evidence available to the prosecution is sufficient to obtain a conviction is seldom clear-cut, and reasonable persons will often reach conflicting conclusions.” *Id.* at 793. Thus, forcing a prosecutor to file charges hastily or risk running of the statute of limitations would “pressure prosecutors into resolving doubtful cases in favor of early and possibly unwarranted prosecutions.” *Id.*

The sufficiency of the evidence to prove guilt is not the only factor that a prosecutor must consider when deciding whether to file charges. When multiple defendants commit a crime, and a prosecutor has sufficient evidence with respect to only

one defendant, a prosecutor must also consider whether the filing of a charge against the one defendant “would impair the prosecutor’s ability to continue his investigation, thereby preventing society from bringing lawbreakers to justice.” *Id.* at 793. Even if the prosecutor’s investigation of the remaining defendant’s would not be hampered by filing charges against a single defendant, “the necessary result would be multiple trials involving a single set of facts.” *Id.* This would “place needless burdens on defendants, law enforcement officials, and courts.” *Id.*

Finally, a prosecutor must also have a reasonable time after discovery of a crime to consider whether the filing of criminal charges is even appropriate. *Id.* at 794. A decision to file criminal charges produces profound consequences and “requires consideration of a wide range of factors in addition to the strength of the Government’s case, in order to determine whether prosecution would be in the public interest.” *Id.* Thus, contrary to defendant’s assertion, the decision of whether to file criminal charges cannot usually be made in an hour, especially in fraud-based cases. *See* Br. of Appellee at 22-23.

A prosecutor must have sufficient time after discovery of an offense to evaluate the above factors. When a prosecutor carefully does so, he benefits not only his case, but also defendants, the courts, and society. *Id.* at 791-96. As the United States Supreme Court held, a prosecutor abides by the “standards of ‘fair play and decency’” when “he refuses to seek indictments until he is completely satisfied that he should prosecute and will be able promptly to establish guilt beyond a reasonable doubt.” *Id.* (quoting *Smith v.*

United States, 360 U.S. 1, 10 (1959)). Forcing a prosecutor to file charges hastily or risk running of the statute of limitations, however, prevents a prosecutor from fully considering the above factors and serves no one's interests. Thus, while such a delay in a civil case may only prejudice a defendant, extending the criminal statute of limitations, even when the crime was discovered prior to the expiration of the statute, benefits defendants. Accordingly, the statutory criminal discovery rule of section 76-1-303 should not function in the same way as the civil discovery rules.

II. SECTION 76-1-303 JUSTIFIABLY EXTENDS THE CRIMINAL STATUTE OF LIMITATIONS WHILE ALSO PREVENTING THE LITIGATION OF STALE CLAIMS

Section 76-1-303 justifiably extends the criminal statute of limitations for fraud-based crimes, even when the crime is discovered before the expiration of the original limitations period. The statute recognizes that, unlike most crimes, those involving fraud are not always easily discoverable. It also recognizes that when a fraud-based crime is not discovered until shortly before the expiration of the limitations period, a prosecutor may not have sufficient time to consider the important factors discussed above. Thus, section 76-1-303 allows a prosecutor a reasonable time—one year—within which to file a fraud-based charge, regardless of whether the crime was discovered before or after the expiration of the original limitations period. *See UTAH CODE ANN. § 76-1-303(1) (1999)*.

Section 76-1-303 also prevents the prosecution of stale charges. A defendant is never required to defend against a fraud-based charge filed more than three years after the original limitations period would have expired. *See UTAH CODE ANN. § 76-1-303(2)*

(1999). Furthermore, if the original limitations period expires before charges are filed, the State must file charges within one year of the discovery of the fraud-based offense. § 76-1-303(1) (1999). Accordingly, although section 76-1-303 justifiably extends the original statute of limitations, it nevertheless bars the prosecution of stale claims by allowing a maximum of only three additional years in which to prosecute fraud-based claims, regardless of when the crimes are discovered.

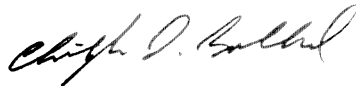
Moreover, defendant cannot seriously complain that she is being forced to defend against a stale charge. The information was filed 16 April 2001, only seventeen days after expiration of the original two-year limitations period. R. 1-2. The last possible day the information could have been filed was 30 June 2001, which was only three months after the expiration of the original limitations period. *See* UTAH CODE ANN. § 76-1-303(1) (1999) (providing that the information must be filed within one year after discovery). Thus, under the statute, the latest the State could have filed the information was only two years and three months after the crime was committed. It is unlikely that a charge becomes stale in seventeen days, or even three months.

CONCLUSION

For the foregoing reasons this Court should dismiss the trial court's order of dismissal and remand the case for further proceedings.

Respectfully submitted this 26th day of March, 2002.

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MAILING CERTIFICATE

I hereby certify that on 26 March 2002, I mailed, postage prepaid, two accurate copies of the foregoing BRIEF OF APPELLANT to:

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