

1972

## State of Utah v. Sam B. Conover : Brief of Appellant

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IN THE  
SUPREME COURT  
OF THE  
STATE OF UTAH

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STATE OF UTAH,

*Plaintiff-Appellant*

vs.

SAM B. CONOVER,

*Defendant-Respondent*

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BRIEF OF APPEAL

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An Appeal from the Judgment of the  
District Court, in and for Utah County,  
Honorable Allen B. Sorensen, Judge

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IN THE  
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**STATE OF UTAH**

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STATE OF UTAH,  
*Plaintiff-Appellant,*  
vs.  
SAM B. CONOVER,  
*Defendant-Respondent.*

Case No.  
12911

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**BRIEF OF APPELLANT**

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**STATEMENT OF THE NATURE OF THE CASE**

This is an appeal brought by the plaintiff-appellant, State of Utah, from an order quashing the information and dismissing the case.

**DISPOSITION IN LOWER COURT**

The respondent, Sam B. Conover, was charged in a complaint and information with violating Section 58-33-6(1), Utah Code Ann. (Supp. 1971), selling a depressant, stimulant, or hallucinogenic drug, to wit: methamphetamine. Judge Allen B. Sorensen, Judge of the Fourth Judicial District Court, on motion of the respondent, quashed the information and dismissed the case.

## RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the judgment of the district court and an order reinstating the information against respondent.

## STATEMENT OF FACTS

On February 1, 1972, a complaint was filed against respondent, charging him with having committed a felony by selling methamphetamine on December 19, 1971 (R. 4). He was arraigned on February 14, 1972, and had a preliminary hearing on March 15, 1972. J. Gordon Knudsen, Judge of the City Court of Provo City bound him over to the Fourth Judicial District Court (R. 3) with an information being filed in the district court on March 16, 1972, charging him with a violation of Section 58-33-6(1) Utah Code Ann. (1953), as amended, by having sold methamphetamine on or about December 19, 1971 (R. 7). Methamphetamine was defined as a "depressant, stimulant or hallucinogenic drug" in Section 58-33-1(d) (2).

In 1971 the Utah Legislature passed the Utah Controlled Substances Act, L. 1971, Ch. 145, codified as Title 58, Chapter 37, Utah Code Annotated (Supp. 1971). This act took effect on January 1, 1972, and repealed Title 58, Chapter 33, Utah Code Annotated 1953, Under this new act methamphetamine is a controlled substance pursuant to Schedule II in Section 58-37-4(3) (b) (iii) (B).

On April 4, 1972, a motion to quash the above information was filed in the Fourth Judicial District Court.

This motion alleged that the statute under which defendant was charged had been repealed on January 1, 1972, and was not a proper basis for a complaint filed February 1, 1972 (R. 10). This motion was granted on April 27, 1972, (R. 13, 18) at a hearing before the Honorable Allen B. Sorensen, Judge of the Fourth Judicial District Court, who signed an order quashing the information and dismissing the case on May 4, 1972 (R. 17). The appellant, State of Utah, appeals this order.

## ARGUMENT

### POINT I.

THE LOWER COURT ERRED IN QUASHING THE INFORMATION ON THE BASIS OF THE REPEAL OF THE APPLICABLE STATUTE BECAUSE VIOLATIONS OCCURRING PRIOR TO THE EFFECTIVE DATE OF THE UTAH CONTROLLED SUBSTANCES ACT ARE UNAFFECTED BY THAT ACT.

At common law a general repeal of a criminal statute without a saving clause was a bar to subsequent prosecution arising out of occurrences before the repeal. *Huffman v. District Court of Eighteenth Judicial District In and For Gallatin County*, 154 Mont. 201, 461 P. 2d 847 (1969). But this was a rule of legislative intent and was subject to the exception that where there is a substantial reenactment of the same provisions the legislature did not intend for there to be a general remission of all crimes not yet

reduced to judgment. *Huffman, supra, In re Dapper*, 77 Cal. Rptr. 897, 71 C. 2d 184, 454 P. 2d 905, cert. den., *Dapper v. California*, 397 U. S. 905, 90 S. Ct. 906, 25 L. Ed. 2d 90, reh. den., 398 U. S. 954, 90 S. Ct. 1865, 26 L. Ed. 2d 299 (1969). And of course a valid saving clause obviated any possible question. *Huffman, supra*.

Section 18 of the Utah Controlled Substances Act, § 58-37-18 Utah Code Ann. (Supp. 1971), is a saving clause for prior violations of similar statutes, and provides:

“(1) (a) Prosecution for violation of any law or offense occurring prior to the effective date of this act shall not be affected by this act; provided, that sentences imposed after the effective date of this act may not exceed the maximum terms specified and the judge has discretion to impose any minimum sentence.

(b) Civil seizures, forfeitures, and injunctive proceedings commenced prior to the effective date of this act shall not be affected by this act.

(c) All administrative proceedings pending before any agency or court on the effective date of this act shall be continued and brought to final determination in accordance with laws and regulations in effect prior to the effective date of this act. Drugs placed under control prior to enactment of this act which are not listed within schedules I through V shall be automatically controlled and listed in the appropriate schedule without further proceedings.

(2) This act does not affect rights and duties that mature, penalties that are incurred, and



proceedings that are begun before its effective date.

(3) This act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it where laws are similar to this act."

A similar legislative intent is evidenced in the general statute referring to the revision and repeal of statutes, Section 68-2-8; Utah Code Ann. (1953):

"No offense committed, and no penalty or forfeiture incurred, under any statute hereby repealed before the repeal takes effect shall be affected by the repeal, except that when a punishment, penalty or forfeiture is mitigated by the provisions herein contained such provisions shall be applied to a judgment pronounced after the repeal."

All statutes in Utah, whether in derogation of the common law or not, are to be construed liberally in the interest of justice and their statutory objective. Section 68-3-2 Utah Code Ann. (1953) so provides:

"The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of this state. The statutes establish the laws of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice. Whenever there is any variance between the rules of equity and the rules of common law in reference to the same matter the rules of equity shall prevail."

The above principles of law were construed in the similar Utah case of *People v. Sloan*, 2 Utah 326 (1877). In that case the defendant was charged in an indictment in May, 1876, for having committed a crime in January, 1876. Between these dates, in March, 1876, the section under which he was charged was repealed by the new "Penal Code." The defendant attacked the validity of the indictment. A saving clause in the "Penal Code" provided for an effective date of the act and added that:

"Any act or omission commenced prior to that time may be inquired of, prosecuted and punished in the same manner as if this code had not taken effect." *Id.* at 330.

To the allegation that the prosecution was void because it was commenced after the effective date of the repealing statute the Court replied:

"The counsel for the appellant claims, in effect, that a general jubilee was proclaimed by the passage of the 'Penal Code,' for all criminals in this Territory, unless the prosecution against them was commenced before that act went into effect.

Sec. 4 of the act (C. L. § 1834) declares that: "The rule of the common law that penal statutes are to be strictly construed has no application to this code; all its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice."

Without the aid of this section we could not give the construction to the act which is asked for by the defendant; and, certainly, with that as the guide which the legislature themselves have furnished us to construe it, we are at a loss to see

how it would 'promote justice' to judicially construe it into a general jail delivery and free pardon for all offenses committed before the passage of the act. The plain and evident intent of the legislature was to steer clear of any difficulty arising from the enactment of *ex post facto* laws, and to retain in force the former Crimes and Punishment Act, so far as it related to offenses committed prior to the time the 'Penal Code' went into effect. In my opinion the language employed accomplishes this purpose." 2 Utah at 330.

The same reasoning and result are found in the *Huffman* case, *supra*. There the defendant was charged in an information in April, 1969, with having sold marijuana in January, 1969. Between the dates of the crime and information the Montana Legislature passed a new drug law which repealed the old one under which he was charged. This new act had no saving clause, but Montana had a general statutory saving clause which provided that a repeal of a criminal statute did not constitute a bar to prosecution for offenses committed prior to the repeal unless a contrary intention was clearly expressed. The Court held, based on the statutory saving clause, that the prosecution under the old statute was preserved. They further noted that:

"The same result would follow at common law in the absence of such statute. . . . Where there is an outright repeal and a substantial reenactment, it is presumed that the legislature did not intend a remission of crimes not reduced to judgment at that time." 461 P. 2d at 850.

The foregoing clearly indicates that the present information charging the respondent with a violation of Section 58-33-6(1) is entirely proper and valid, even though between the date of the crime and the date of the information that section was repealed by a new statute. The current statute clearly provides that:

“Prosecutions for violations of any law or offense occurring prior to the effective date of this act shall not be affected by this act. . . .” Utah Code Ann. § 58-37-18(1) (a).

This offense occurred prior to the effective date of the new Controlled Substances Act (January 1, 1972) and therefore, prosecution is unaffected by that act. The general legislative intent to preserve prosecutions under repealed laws is also emphasized in Section 68-2-8. Furthermore, the substantial reenactment of the repealed statute further indicates the legislative intent to preserve prosecutions based on violations of the prior narcotic laws. The selling of methamphetamine was illegal then and it is illegal now. This alone would justify prosecution under the prior statute. It was obviously not the legislature's intention to declare a general amnesty for all who violated Utah's narcotics laws prior to January 1, 1972.

## CONCLUSION

The specific statutory saving clause, the general statutory saving clause, and the common law rule that substantial reenactment preserves prosecution of prior offenses, all indicate that the information charging the respondent with selling methamphetamine prior to January 1, 1972, is valid and proper. The information should be reinstated and the order quashing the information and dismissing the case should be reversed.

Respectfully submitted,

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