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2002 Survey of Rhode Island Law: Cases: Criminal Law

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Criminal Law. *State v. Casas*, 792 A.2d 737 (R.I. 2002). After a mistrial based on prosecutorial misconduct, double jeopardy only attaches if the prosecutor's actions were intended to provoke the defendant to move for a mistrial.

FACTS AND TRAVEL

Defendant Oscar W. Casas was indicted for possession of, and intent to deliver, cocaine.[1] Prior to trial, the defendant made a motion in limine to preclude the state from introducing in its case-in-chief, a statement he allegedly made to a detective of the state police, that "you've been chasing me for years."[2] The trial judge reserved ruling on the motion; however, during opening statements, the prosecutor made reference to the statement at issue by stating that the officer had been investigating the defendant for years.[3] After an immediate objection from the defense counsel, the judge held a hearing outside the presence of the jury, at which point defense counsel moved for mistrial based on the prosecutor's statement.[4] The trial judge declared a mistrial the following morning.[5]

At the start of the second trial, the defendant moved to dismiss the indictment on double jeopardy grounds.[6] In a hearing on the motion to dismiss the indictment, defense counsel admitted there was no evidence the error was deliberate or in bad faith.[7] However, the defense argued the prosecution should have been on notice this information could be inadmissible and should not be used until ruled upon.[8] The trial judge then concluded that the actual statement affected by the motion in limine and the opening statement were different enough from one another to be considered separate issues.[9] The judge concluded, however, that the phrase "drug trafficking" in the prosecutor's opening statement was inflammatory terminology and "fatally prejudicial" to the defendant, warranting a mistrial, and did not have to reach the issue of notice

1. State v. Casas, 792 A.2d 737, 738 (R.I. 2002).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.* at 739.

to the prosecution for the inadmissibility of the statement.[10] In the absence of evidence to the contrary, the trial judge, during the second trial, concluded that there had been no showing that the opening statement reference was made in bad faith or deliberately, or to goad the defendant into moving for a mistrial and, therefore, refused to dismiss the indictment at the second trial.[11] The defendant appealed and the Rhode Island Supreme Court expedited his appeal.[12]

BACKGROUND

In the past, the Rhode Island Supreme Court has normally allowed interlocutory appeals from a motion to dismiss for double jeopardy claims.[13]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court began with the general rule that mistrials on a motion from the defendant do not normally result in double jeopardy attaching.[14] Exceptions are allowed when prosecutorial misconduct was intended to create a situation where the defendant would be compelled to move for a mistrial.[15] The basis for this exception is to preclude prosecutors from engineering a mistrial if a trial is "rapidly declining."[16] In this case, because the error occurred so early in the trial, the court held it was more likely the result of prosecutorial inexperience rather than an attempt to create a mistrial.[17] However, the court disagreed with the second trial judge and stated that the deferred ruling on the motion in limine should have put the state on notice that the information from the objectionable statement was inadmissible until the first trial judge ruled otherwise.[18] However, lacking evidence

10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.* (citing State v. Wiggs, 635 A.2d 272, 275 (R.I. 1993); State v. Chase, 588 A.2d 120, 122 (R.I. 1991)).
14. *Id.*
15. *Id.* (citing State v. McIntyre, 671 A.2d 806, 807 (R.I. 1996) (conforming to the United States Supreme Court ruling in Oregon v. Kennedy, 456 U.S. 667 (1982))).
16. *Id.* at 740.
17. *Id.*
18. *Id.*

of intentional conduct on the part of the prosecution, the supreme court upheld the second trial court's decision and denied the defendant's motion to dismiss the indictment on double jeopardy grounds.[19] In its analysis, the court considered defendant's request to revisit the court's precedent established in *State v. Diaz*[20] and establish stricter constraints on prosecutors based on the state constitution but was satisfied the present protections strike the proper balance between a defendant's rights and societal interests.[21]

CONCLUSION

In affirming the trial court decision, the Rhode Island Supreme Court leaves intact the present rule regarding double jeopardy attaching after a mistrial; defense motions to dismiss an indictment after a defense-requested mistrial should only be granted if the prosecution clearly intended to provoke the mistrial through its own misconduct. In so deciding, the court will look at both the conduct in question and where it occurred in the trial.

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19. *Id.*
20. 521 A.2d 129 (R.I. 1987).
21. *Casas*, 792 A.2d at 740 (quoting *Diaz*, 521 A.2d at 133).

Criminal Law. *State v. Santiago*, 799 A.2d 285 (R.I. 2002). In deciding whether a defendant has violated probation, the trial justice should not assess the defendant's guilt as to the underlying charge. Instead, the trial justice should decide if the defendant acted with the "good behavior" required of a person on probation.

FACTS AND TRAVEL

Anibal Santiago (defendant), a man serving three suspended sentences, was pulled over by the Pawtucket police while driving an unregistered vehicle without a valid license.[1] When the police officer approached the vehicle, the defendant and a passenger began to reach under the front seat.[2] At this time the officer removed Mr. Santiago from the vehicle while the passenger fled.[3] A later search of the vehicle revealed two revolvers in the area where Mr. Santiago and his passenger had been reaching.[4] Mr. Santiago was brought to trial on charges stemming from this incident and the state asked that he be deemed in violation of his probation.[5] The trial justice applied the correct "reasonably satisfied" standard to the narrow question of whether or not Mr. Santiago had possession of the gun and was thus guilty of the underlying crime.[6] Finding that there was no "scintilla of evidence" that Mr. Santiago knew the weapon was in the vehicle, the justice held that the defendant was not guilty of the underlying charge and, therefore, had not violated his probation.[7] The state sought, and was granted, a writ of certiorari.[8]

ANALYSIS AND HOLDING

Without deciding whether Mr. Santiago had actually violated his probation, the Rhode Island Supreme Court held that the trial justice had made an error of law in applying the "reasonably satisfied" standard.[9] The trial justice applied the "reasonably satisfied" standard only to the charge that was brought before him, the pos-

1. State v. Santiago, 799 A.2d 285, 286 (R.I. 2002).
2. *Id.* at 287.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at 286.
9. *Id.* at 288.

session of guns without a permit.[10] Eschewing that view, the supreme court held that when the state seeks to have a defendant's probation revoked, the "reasonably satisfied" standard should be applied to the totality of the circumstances, not just the underlying crime.[11] Instead of being satisfied the defendant committed the underlying crime, the trial justice need only be satisfied the defendant did not "keep the peace" or maintain "good behavior."[12] The supreme court then noted that facts such as driving with a suspended license, in an unregistered vehicle, with two fully loaded firearms could support a finding that Mr. Santiago had violated his probationary status by failing to discharge his duty of good behavior.[13] Accordingly, the judgment of the superior court was quashed and the case was remanded.[14]

CONCLUSION

The Rhode Island Supreme Court held that the "reasonably satisfied" standard to be applied in deciding whether or not probation has been violated should include all of the circumstances surrounding a defendant's actions, not just the underlying criminal charge. Mr. Santiago's case was remanded for the standard to be correctly applied.

Mark Ted Romley

10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*

Criminal Law. *State v. Tilson*, 794 A.2d 465 (R.I. 2002). In the course of pre-trial plea negotiations, a prosecutor's threat to recharge the defendant with greater charges should the defendant not plead to the current lesser charges is not grounds for a finding of vindictive prosecution, even when that threat is made immediately prior to trial.

FACTS AND TRAVEL

The State of Rhode Island (state) alleged that Juan Tilson threatened another with an object that appeared to be a handgun on February 4, 1999.[1] The state failed to recover a handgun in the subsequent investigation.[2] Although the state contemplated charging Tilson with assault with a dangerous weapon,[3] the state initially filed a one-count information charging felony assault with a device substantially similar in appearance to a firearm, pursuant to section 11-5-2.1 of the Rhode Island General Laws.[4]

The public defender represented Tilson in all plea negotiations.[5] After refusing Tilson's offer to plead to lesser charges, the state informed Tilson, on the day of trial, that if he pled guilty to the felony charged, it would then recommend Tilson serve no jail time.[6] The state also advised Tilson, should he not accept the plea offer, it intended to dismiss the case, and then recharge him with a two-count information adding a count of assault with a dangerous weapon.[7]

Upon Tilson's rejection of the offer, the state, as promised, successfully moved for dismissal of the case and filed the two-count information against Tilson.[8] Subsequently, a superior court trial justice granted Tilson's motion to dismiss, arguing that his due process rights were violated by "prosecutorial vindictiveness" because of the close proximity of the threat to the beginning of the trial.[9] In doing so, the justice also noted that the dismissal and subsequent recharge would create an undue financial burden on

1. State v. Tilson, 794 A.2d 465, 466 (R.I. 2002).
2. *Id.*
3. *Id.* at 469.
4. *Id.* at 466.
5. *Id.* at 469.
6. *Id.* at 466.
7. *Id.*
8. *Id.*
9. *Id.* at 469.

Tilson, if he had retained private council.[10] The state appealed to the Rhode Island Supreme Court.[11]

ANALYSIS AND HOLDING

Two standards exist to prove vindictive prosecution: (1) actual vindictiveness and (2) circumstances warranting a presumption of vindictiveness.[12] Three federal precedents support a finding that the facts herein do not rise to the level of either of those two standards.[13]

In *Bordenkircher v. Hayes*,[14] a defendant's due process rights were not violated when a prosecutor followed through on a threat to reindict the defendant on more serious charges if the defendant fails to plead guilty to the lesser charges.[15] Although this prosecutorial conduct aims to convince the defendant to waive his constitutional right to a trial by jury, it does not suffice as vindictiveness because "the 'give and take' of plea bargaining" leaves the ultimate decision, however unenviable, in the hands of the defendant.[16] Unless the prosecutor does not have probable cause to believe the defendant committed the crime described by statute, or the prosecution's selection is based on an unjustifiable standard, such as race, the state can exercise discretion in prosecution.[17]

In *United States v. Goodwin*,[18] the United States Supreme Court reaffirmed the holding of *Bordenkircher*, and additionally cautioned against "adopting an inflexible presumption of prosecutorial vindictiveness in a pretrial setting."[19]

In *United States v. Cartagena-Carrasquillo*,[20] the First Circuit held that the government's decision to seek the enhancement of

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10. *Id.*
11. *Id.*
12. *Id.* at 467 (citing United States v. Marrapese, 826 F.2d 145, 147 (1st Cir. 1987)).
13. *Id.*
14. 434 U.S. 357 (1978).
15. *Tilson*, 794 A.2d. at 467 (citing *Bordenkircher*, 434 U.S. at 358).
16. *Id.* at 468 (quoting *Bordenkircher*, 434 U.S. at 363).
17. *Id.* (quoting *Bordenkircher*, 434 U.S. at 364).
18. 457 U.S. 368 (1982).
19. *Tilson*, 794 A.2d at 468 (quoting *Goodwin*, 457 U.S. at 381).
20. 70 F.3d 706 (1st Cir. 1995). This case did note "such cliff-hanging practices are not wise." *Tilson*, 794 A.2d at 468 (citing *Cartagena-Carrasquillo*, 70 F.3d at 715).

penalties the day before jury selection did not support a finding of vindictive prosecution.[21]

Based upon the fact that the state both contemplated the greater charge initially and made the ramifications of the refusal of the plea offer clear to Tilson, the Rhode Island Supreme Court held that the prosecution's conduct did not support a finding of vindictive prosecution.[22] Furthermore, the court noted that herein, Tilson was defended by the public defender, rather than private counsel as hypothesized by the trial justice.[23]

CONCLUSION

In *State v. Tilson*, the Rhode Island Supreme Court reversed the superior court's finding that a prosecutor's threat to file greater charges should a defendant not plead guilty to the lesser charges did constitute vindictive prosecution. Based upon both *Bordenkircher* and *Goodwin*, such a threat does not support a finding of either actual vindictiveness or circumstances warranting a presumption of vindictiveness. Furthermore, *Cartagena-Carrasquillo* allows for the prosecution to make such threats immediately preceding trial. In contrast, the state's initial contemplation of the greater charge and the clear statement of the ramifications should a defendant fail to accept the plea offer, together indicate a lack of vindictive prosecution.

Kyle Zambarano

21. *Tilson*, 794 A.2d at 468 (citing *Cartagena-Carrasquillo*, 70 F.3d at 715).
22. *Id.* at 469.
23. *Id.*