3-18-1977

Burleson v. Miller

NO. 27488

IN THE

SUPREME COURT

OF THE

STATE OF COLORADO

OSCAR RAY BURLESON, Plaintiff-Appellee, v. ARNOLD MILLER, Sheriff of Arapahoe County, Defendant-Appellant.	Appeal from the District Court of Arapahoe County Honorable WILLIAM B. NAUGLE, Judge

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ANSWER BRIEF

J. D. MacFARLANE
Attorney General

JEAN E. DUBOFSKY
Deputy Attorney General

EDWARD G. DONOVAN
Solicitor General

J. STEPHEN PHILLIPS
Chief, Criminal Appeals

Attorneys for Appellant

1525 Sherman Street, Rm. 306
Denver, Colorado 80203
Telephone: 892-3611

May 1977

I N D E X

	Page
STATEMENT OF THE CASE	1
SUPPLEMENTAL STATEMENT OF THE FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT:	
THE TRIAL JUDGE WAS CORRECT IN DENYING THE PETITION FOR A WRIT OF HABEAS CORPUS IN THE INSTANT CASE SINCE IT WAS BASED ON THE INSUFFICIENCY.	2-4
CONCLUSION	4

CASES

Boyd v. Cleave, 180 Colo. 403, 505 P.2d 1305 (1973)	2
Bryan v. Conn, 187 Colo. 275, 530 P.2d 1274 (1975)	3
Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963)	3
Capra v. Ballandy, 158 Colo. 91, 405 P.2d 205 (1965)	2,3
Dressel v. Bianco, 168 Colo. 517, 452 P.2d 756 (1959)	2
Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973)	2
Samples v. Cronin, ___ Colo. ___, 536 P.2d 306 (1975)	3

OTHER AUTHORITY

V.T.C.A. Penal Code, § 29.02	3

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ANSWER BRIEF

STATEMENT OF THE CASE

The People accept the appellant's statement of the case in the opening brief.

SUPPLEMENTAL STATEMENT OF THE FACTS

The appellant's statement of the facts is essentially correct; however, for proper presentation of the case, the People reserve the right to differ in pertinent detail or make additional references thereto during argument.

SUMMARY OF THE ARGUMENT

The trial judge was correct in denying the petition for a writ of habeas corpus which was based on the insufficiency of the indictment.

ARGUMENT

THE TRIAL JUDGE WAS CORRECT IN DENYING THE PETITION FOR A WRIT OF HABEAS CORPUS WHICH WAS BASED ON THE INSUFFICIENCY OF THE INDICTMENT.

Petitioner contends that the indictment forwarded in support of the extradition demand is deficient since it does not properly charge the offense of aggravated robbery under the statutes of the state of Texas. The People's position is that even assuming arguendo that the indictment in support of extradition, does not, in fact, charge the offense of aggravated robbery under the Texas statutes, the legal sufficiency of the indictment relative to the crime charged does not affect the propriety of the extradition.

The applicable law on point is that the asylum state has no authority to pass on the technical sufficiency of an indictment. If the subject of extradition desires to attack the technical sufficiency of an indictment, he must do so in the demanding state. Capra v. Ballandy, 158 Colo. 91, 405 P.2d 205 (1965); Boyd v. Cleave, 180 Colo. 403, 505 P.2d 1305 (1973). Courts of the asylum state are without authority to pass on the technical sufficiency of the indictment, which is left to the courts of the remanding state. Dressel v. Bianco, 168 Colo. 517, 452 P.2d 756 (1959); matters of technical pleading will not be considered in an extradition hearing. Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

The duty of the asylum state is to determine (1) if the person demanded is substantially charged with a crime under the

laws of the demanding state by indictment or affidavit before a magistrate and (2) if the person charged is a fugitive from the justice of the demanding state. Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963); Capra v. Ballarby, 158 Colo. 91, 405 P.2d 205 (1965). The second requirement is not contested here. Whether the accused is substantially charged means that the charge standing against him must legally constitute a crime. Buhler v. People, supra.

The indictment in question on its face charges as follows:

> . . . petitioner, while in the course of committing theft and with intent to obtain property of Edward Jasek, the owner of the following described property, to wit: $258.75 in lawful money of the United States, without the effective consent of said owner and intent to deprive the said owner of said property, did then and there intentionally and knowingly place Edward Jasek in fear of death.

Section 29-02 of the Texas Penal Code provides the following definition of robbery:

> (a) a person commits an offense if, in the course of committing theft as defined . . . he:
>
> (1) intentionally, knowingly, or recklessly causes bodily injury to another, or
>
> (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

The indictment clearly charges a crime under Texas law.

In support of his argument petitioner urges the case of Bryan v. Conn, 187 Colo. 275, 530 P.2d 1274 (1975). This case is clearly inapplicable on the facts since it does not involve, as here, the critical element of an indictment. Petitioner further offers the case of Samples v. Cronin, ___ Colo. ___, 536 P.2d 306 (1975). That case also is inapposite on the facts since it simply reiterates our position when it states:

> It is fundamental that a technical sufficiency of an indictment is for the court of the demanding state and not for the court of the asylum state.

Id. at 307.

The People respectfully submit therefore that the indictment substantially charges petitioner with a crime, the issue of whether he is a fugitive is not contested, the trial court was imminently correct in not inquiring into the technical sufficiency of the indictment and was therefore correct in dismissing petitioner's action for habeas corpus.

CONCLUSION

For the foregoing reasons, the People respectfully request that the decision of the trial court be affirmed.

FOR THE ATTORNEY GENERAL:

JAMES E. THOMPSON, No. 8028
Assistant Attorney General

Attorney for Appellant

1525 Sherman Street, Rm. 306
Denver, Colorado 80203
Telephone: 892-3611

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was deposited with the United States Postal Service on the 19th day of May, 1977, addressed as follows:

Mary G. Allen
Deputy State Public Defender
1575 Sherman Street
Denver, Colorado 80203