

SUPREME COURT OF UTAH

State v. Stewart

2018 UT 24 · No. 20160484 · Decided June 12, 2018

SUMMARY

The Utah Supreme Court considers whether time-barred criminal acts may be used as evidence to establish a pattern of unlawful activity under Utah’s Pattern of Unlawful Activity Act. The court holds that the statute permits reliance on such acts, reasoning that otherwise the Act’s five-year lookback provision would be rendered meaningless. The court reverses the district court’s evidentiary ruling and remands the case.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Pearce; Chief Justice Durrant; Associate Chief Justice Lee; Justice Himonas; Justice Petersen
JURISDICTION	Utah
DECIDED	June 12, 2018
DOCKET	20160484
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal by the State from a district court order excluding evidence of alleged time-barred predicate acts offered to prove a pattern of unlawful activity.
STANDARD OF REVIEW	Questions of statutory interpretation are reviewed for correctness, without deference to the district court's legal conclusions.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	State of Utah v. Scott Richard Stewart

TOPICS

- statutory interpretation
- plain meaning rule
- interlocutory appeal
- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- statutory interpretation
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether Utah's Pattern of Unlawful Activity Act permits the State to use evidence of individual criminal acts that are barred by the applicable statute of limitations to establish a pattern of unlawful activity.

HOLDINGS

1. The Pattern of Unlawful Activity Act permits the State to base a pattern of unlawful activity on crimes for which the statute of limitations has expired.
2. The court disavowed the sentence in *State v. Kay* that could be read to prohibit using untimely predicate acts to establish a pattern of unlawful activity.

KEY QUOTATIONS

“We conclude that the best reading of the Pattern of Unlawful Activity Act permits the State to base a pattern of unlawful activity on crimes on which the statute of limitations has expired.” (¶ 25)

“The flaw in Stewart’s argument is that although a statute of limitations may serve as a bar to prosecution, it does not negate the illegality of conduct.” (¶ 20)

FACTUAL BACKGROUND

The State alleged that Stewart committed multiple securities-fraud or communications-fraud offenses involving investments made by thirteen victims and that some of those acts formed a pattern of unlawful activity. Following appellate decisions holding that securities fraud and communications fraud are not continuing offenses, the State dismissed several charges barred by the statute of limitations but continued to rely on evidence concerning those acts to prove the pattern charge. Stewart moved to exclude the evidence, and the district court granted the motion.

PROCEDURAL HISTORY

The State charged Stewart with securities fraud, communications fraud, and participating in a pattern of unlawful activity. After *State v. Taylor* and *State v. Kay* undermined the State's continuing-offense theory, the State amended the information and sought to use testimony concerning dismissed, time-barred securities-fraud allegations to prove the pattern charge. The district court excluded the evidence, concluding that predicate acts must themselves be chargeable within the applicable statute of limitations. The Utah Supreme Court granted interlocutory review, reversed, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court's order excluding the evidence was reversed, and the case was remanded for further proceedings consistent with the opinion.

CASES CITED

- State v. Taylor, 2015 UT 42, 349 P.3d 696
- State v. Kay, 2015 UT 43, 349 P.3d 690
- Marion Energy, Inc. v. KFJ Ranch P'ship, 2011 UT 50, 267 P.3d 863
- Turner v. Staker & Parsons Cos., 2012 UT 30, 284 P.3d 600
- Anderson v. Bell, 2010 UT 47, 234 P.3d 1147
- State v. Crank, 142 P.2d 178 (Utah 1943)
- State v. Jackson, 2011 UT App 318, 263 P.3d 540, cert. denied, 272 P.3d 168 (Utah 2012)
- Oliver v. Utah Labor Commission, 2017 UT 39
- In re J.M.S., 2011 UT 75, 280 P.3d 410

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