

COURT OF APPEALS OF MARYLAND

Brown v. Sheriff of Prince George's County, 200 Md. 663

91 A.2d 392 (1952) · No. H.C. No. 18, October Term 1952 · Decided October 18, 2001

SUMMARY

The Maryland Court of Appeals considered an application for leave to appeal from an order remanding a petitioner after a habeas corpus hearing. The court held that any double-jeopardy defense to pending rape or assault-with-intent-to-rape charges had to be raised at trial and could not be litigated pretrial through habeas corpus, and it denied the application.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Markell, C.J.; Delaplaine; Collins; Henderson
JURISDICTION	Maryland
DECIDED	October 18, 2001
DOCKET	H.C. No. 18, October Term 1952
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Application for leave to appeal from an order remanding the petitioner after a hearing on a writ of habeas corpus.
STANDARD OF REVIEW	The court did not reach the merits of the double-jeopardy issue because habeas corpus was not the proper vehicle for raising the defense before trial.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Brown v. Sheriff of Prince George's County

TOPICS

- habeas corpus
- double jeopardy
- criminal procedure
- appellate procedure
- preservation of error

PRACTICE AREAS

- Criminal procedure
- Habeas corpus
- Appellate procedure
- Double jeopardy

QUESTIONS PRESENTED

1. Whether habeas corpus could be used before trial to raise the asserted double-jeopardy bar to pending rape or assault-with-intent-to-rape charges.
2. Whether the court should decide whether Brown's prior assault-and-battery conviction legally barred the pending prosecution.

HOLDINGS

1. Habeas corpus cannot be used to anticipate and litigate a double-jeopardy defense before trial; the defense must be raised at the trial of the pending criminal case and, if necessary, after an adverse verdict by appeal or motion for a new trial.

KEY QUOTATIONS

“Habeas corpus cannot be made to serve the purpose of an appeal or a motion for a new trial.” (200 Md. 664)

“This defense may and must be made at the trial of the rape case and, after an adverse verdict on appeal or motion for a new trial.” (200 Md. 664)

FACTUAL BACKGROUND

Brown had been tried and convicted before a trial magistrate on an assault-and-battery charge and had served the resulting thirty-day sentence. He was subsequently held in the county jail under commitments charging rape and assault with intent to rape, allegedly involving a nine-year-old girl, and was awaiting grand-jury action. He sought habeas corpus on the theory that the prior conviction barred the pending prosecution under double jeopardy.

PROCEDURAL HISTORY

Brown was convicted by a trial magistrate of assault and battery and sentenced to thirty days in jail, which he had served. He was then detained on commitments charging rape and assault with intent to rape while awaiting grand-jury action. After the lower court denied habeas relief, Brown sought leave to appeal, arguing that his prior assault-and-battery conviction barred the pending charges under double jeopardy.

DISPOSITION

writ_denied

CASES CITED

- Loughran v. Warden, 192 Md. 719
- Bennington v. Warden, 190 Md. 752, 754
- Strait v. Beall, 198 Md. 677, 84 A.2d 697

OPINION

MARKELL, J.

200 Md. 663 (1952) 91 A.2d 392 BROWN v. SHERIFF OF PRINCE GEORGE'S COUNTY [H.C. No. 18, October Term. 1952.] Court of Appeals of Maryland. Decided October 8, 1952. Before MARKELL, C.J., DELAPLAINE, COLLINS and HENDERSON. MARKELL, C.J., delivered the opinion of the Court. This is an application for leave to appeal from an order remanding petitioner after hearing on a writ of habeas corpus.

The petition for habeas corpus alleges that petitioner is unlawfully detained in the county jail, that on July 23, 1952 he was tried before a trial magistrate on the charge of assault and battery and was found guilty and sentenced to 30 days in jail and has served his sentence. Respondent's answer alleges that petitioner is detained in custody, awaiting the action of the grand jury, by reason of commitments issued by a trial magistrate wherein petitioner is charged with "rape and assault with intent to rape".

It appears that the alleged offense was committed against a girl 9 years old. The Attorney General treats the charge of "rape" as including or meaning "statutory rape". (Code, Art. 27, sec. 545). The commitments are not before us.

The *664 record, and the judge's statement (1947 Supp., Art. 42, sec. 3B), contain no testimony or summary of testimony at the trial before the trial magistrate or at the hearing on habeas corpus. Petitioner contends that assault and battery is a necessary element of rape, that conviction of assault and battery merges the lesser offense, assault and battery, in the greater, rape, and bars prosecution for rape under the doctrine of double jeopardy.

The lower court held that conviction of rape might bar subsequent prosecution for assault and battery, but conviction of assault and battery did not bar the prosecution for rape or assault with intent to rape. If the question of double jeopardy were properly before us, we are by no means prepared to accept, without direct evidence, the assumptions or inferences of fact implicit in petitioner's contentions.

In indictments for rape, a count charging common assault is frequently included, not in order to convict of both the whole and an inseparable part of one offense, but to meet the contingency that the evidence may show misconduct which does not constitute rape but does constitute assault and battery.

The question of double jeopardy, however, is not properly before us. If double jeopardy is a defense to the charge of rape or assault with intent to rape, this defense may and must be made at the trial of the rape case and, after an adverse verdict on appeal or motion for a new trial. Habeas corpus cannot be made to serve the purpose of an appeal or a motion for a new trial.

Loughran v. Warden, 192 Md. 719; Bennington v. Warden, 190 Md. 752, 754. Most of the many cases in which we have so held were cases of resort to habeas corpus after failure to appeal. But,

upon due consideration, we have held the same principle applicable to an attempt to anticipate a defense by resort to habeas corpus before trial. *Strait v. Beall*, 198 Md. 677, 84 A.2d 697.

Application denied, with costs.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/maryland-court-of-appeals-of-maryland/2001/brown-v-sheriff-of-prince-georges-county-200-md-663-jsyg1wfo>