

SUPREME COURT OF SOUTH DAKOTA

State v. Thomason

Thomason, 2015 S.D. 90 (S.D. 2015) · No. #27301 · Decided November 18, 2015

SUMMARY

The South Dakota Supreme Court affirmed Kenneth Dale Thomason’s convictions for forgery and offering false or forged instruments for filing, registering, or recording in a public office. The court held that the successive prosecution did not violate double jeopardy or res judicata because the offenses were distinct from the previously reversed aggravated-theft-by-deception conviction. The court also concluded that sufficient evidence supported venue in Lawrence County.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Wilbur, Justice; Gilbertson, Chief Justice; Zinter, Justice; Severson, Justice; Kern, Justice
JURISDICTION	South Dakota
DECIDED	November 18, 2015
DOCKET	#27301
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from convictions for two counts of forgery and two counts of offering false or forged instruments for filing, registering, or recording in a public office, after the circuit court denied his motion to dismiss on double-jeopardy, res judicata, collateral-estoppel, and venue grounds.
STANDARD OF REVIEW	Whether a person is twice placed in jeopardy is reviewed de novo. Venue is a question for the trier of fact; on appeal, the court accepts the evidence and most favorable inferences that the jury could fairly have drawn to support the verdict.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Kenneth Dale Thomason a/k/a Kenneth D. Thomason Jr. v. State of South Dakota

TOPICS

double jeopardy

criminal procedure

appellate procedure

constitutional law

PRACTICE AREAS

criminal law

constitutional law

appellate practice

QUESTIONS PRESENTED

1. Whether double jeopardy or res judicata barred the State's successive prosecution for forgery and offering false or forged instruments after Thomason's aggravated-theft-by-deception conviction had been vacated.
2. Whether the State established proper venue in Lawrence County for the forgery and false-instrument offenses.

HOLDINGS

1. Double jeopardy did not bar the successive prosecution because aggravated theft by deception, forgery, and offering a false or forged instrument for filing, registering, or recording are separate offenses requiring different proof and the second prosecution was not for the same act and crime, in law and in fact, as the first prosecution.
2. The principles of res judicata embodied in the Double Jeopardy Clause did not bar the second prosecution because the offenses were separate and distinct and Thomason was not twice placed in jeopardy for the same act.
3. Venue was proper in Lawrence County because the State presented sufficient evidence and reasonable inferences for the jury to find by a preponderance of the evidence that the charged conduct occurred in, or was completed through acts occurring in, Lawrence County.

KEY QUOTATIONS

“The Fifth Amendment of the United States Constitution and Article Six of the South Dakota Constitution forbids placing a person in jeopardy twice for the same offense.” (§ 22)

“A defendant has a right to be prosecuted in the county where the crime was committed.” (§ 28)

FACTUAL BACKGROUND

Thomason and his wife acquired the Gold Town Hotel and received financial loans from Barbara Langlois, who later recorded a quitclaim deed and entered an agreement with them concerning repayment and the Hotel. During a subsequent lease-to-buy-back transaction with the Vinsons, documents included a Special Power of Attorney and a joint warranty deed purporting to convey an interest held by Thomason's son, Dale. Dale testified that he did not sign the power of attorney, authorize Thomason to act for him, or sign the related check, and the evidence showed that the documents were sent to and recorded in Lawrence County.

PROCEDURAL HISTORY

Thomason had previously been convicted of aggravated theft by deception, but the South Dakota Supreme Court vacated that conviction because the State failed to prove all elements of the offense. The State then brought separate forgery and false-instrument charges arising from related conduct. The circuit court denied Thomason's motions to dismiss and motion for judgment of acquittal, a jury convicted him on all charges, and the court imposed concurrent terms of years. The Supreme Court of South Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Thomason, 2014 S.D. 18, 845 N.W.2d 640
- Bank of Hoven v. Rausch, 449 N.W.2d 263, 266 (S.D. 1989)
- Springer v. Black, 520 N.W.2d 77, 79 (S.D. 1994)
- Blockburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 182, 76 L. Ed. 2d 306 (1932)
- State v. Weaver, 2002 S.D. 76, ¶ 10, 648 N.W.2d 355, 359
- State v. Danielson, 2010 S.D. 58, ¶ 7, 786 N.W.2d 354, 356
- State v. Dillon, 2001 S.D. 97, ¶ 13, 632 N.W.2d 37, 43
- United States v. Dixon, 509 U.S. 688, 703-05, 113 S. Ct. 2849, 2859-60, 125 L. Ed. 2d 556 (1993)
- State v. Pickering, 88 S.D. 548, 552-54, 225 N.W.2d 98, 100-01 (1975)
- Ashe v. Swenson, 397 U.S. 436, 453-54, 90 S. Ct. 1189, 1199, 25 L. Ed. 2d 469 (1970) (Brennan, J., concurring)
- State v. Lafferty, 2006 S.D. 50, ¶ 4, 716 N.W.2d 782, 784
- State v. Haase, 446 N.W.2d 62, 65-66 (S.D. 1989)
- State v. Boyles, 260 N.W.2d 642 (S.D. 1977)
- State v. Iwan, 2010 S.D. 92, ¶¶ 9, 14, 791 N.W.2d 788, 789-91
- State v. Greene, 86 S.D. 177, 182-83, 192 N.W.2d 712, 715 (1971)
- State v. Dale, 66 S.D. 418, 284 N.W.2d 770 (S.D. 1939)