

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMES ROY STEIGER,

Defendant-Appellee.

UNPUBLISHED

January 18, 2000

No. 216717

Mason Circuit Court

LC No. 98-000369-FH

Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court's order dismissing the case with prejudice because double jeopardy guarantees barred retrial. We reverse and remand for further proceedings.

I. Basic Facts and Procedural History

Defendant James Roy Steiger was tried by a jury on charges of uttering and publishing, MCL 750.249; MSA 28.446, and conspiracy to commit uttering and publishing, MCL 750.157a; MSA 28.354(1). During the trial, a police officer witness, testifying for the prosecution, indicated that he had been unable to tape record his conversation with Steiger because Steiger had stated that he was on parole and did not wish to make a taped statement. The trial court granted Steiger's motion for a mistrial. Subsequently, the trial court granted Steiger's motion to dismiss the case with prejudice, finding that, although the prosecution did not goad Steiger into moving for a mistrial, the prejudicial error was attributable to the prosecution.

II. Double Jeopardy

A. The Prosecution's Argument

The prosecution argues that the trial court erred by granting Steiger's motion to dismiss the case with prejudice because double jeopardy guarantees precluded retrial.

B. Overview

Both the United States Constitution and the Michigan Constitution prohibit placing a defendant twice in jeopardy for the same offense. US Const, Am V; Const 1963, art 1, § 15. A mistrial granted on a defendant's own motion, or with his consent, unless provoked by intentional prosecutorial misconduct, waives double jeopardy protection. However, if a mistrial is granted due to innocent error by the prosecutor or the court, or for reasons which were beyond their control, retrial is not precluded. *People v Dawson*, 431 Mich 234, 253; 427 NW2d 886 (1988).

C. Standard of Review

A double jeopardy issue presents a question of law, which we review de novo. *People v Walker*, 234 Mich App 299, 302; 593 NW2d 673 (1999).

D. The Prosecution's Duty

The prosecution has a duty to insure that a police officer witness does not venture into a discussion of forbidden topics while giving testimony. *People v McCartney*, 46 Mich App 691, 694; 208 NW2d 547 (1973). In the instant case, the prosecution told the witness to avoid mentioning Steiger's parole status during his testimony. Nevertheless, the witness made such a statement in the presence of the jury. Informing a jury that a defendant is on parole may be grounds for reversal. *People v Sabin*, 223 Mich App 530, 538; 566 NW2d 677 (1997), remanded in lieu of lv to appeal 459 Mich 920 (1998), aff'd on recon 236 Mich App 1 (1999). Steiger's assertion that the witness did so deliberately is speculative. He does not dispute that the prosecution attempted to ensure that the witness testified properly. In granting the motion to dismiss, the trial court found no intentional misconduct on the part of the prosecution and, although the trial court found that the officer "failed to heed" or "failed to abide," it did not find that the failure was an intentional act intended to cause a mistrial. Under these circumstances, granting the motion to dismiss the case with prejudice because double jeopardy guarantees precluded retrial was error. *Dawson, supra* at 252.

We reverse the trial court's order dismissing the case and remand this matter for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Roman S. Gribbs

/s/ Helene N. White