

Fugitive Claims Double Jeopardy In Test of Shaky Maryland Law

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A 36-year-old bill collector with a habit of taking the law into his own hands has become a fugitive from a Maryland work camp in order to challenge the State's power to try him twice for the same offense.

Alphonso K. Kyles, twice tried and once convicted for making abusive telephone calls in plying his unpopular trade, is asking the courts of Washington to rule that his constitutional rights were violated when Maryland sent

him to jail after his second prosecution.

The issue, if Kyles can find a court to hear it, is the constitutionality of a rarely used Maryland law that allows the State to appeal a verdict of acquittal in Peoples Court to Circuit Court and conduct a new trial.

The State has exercised its power sparingly, partly because it smacks of double jeopardy. Prosecutors in Montgomery County have reserved such appeals for "aggravated cases," and to them Kyles—by his own admission

one of the County's most controversial bill collectors—is an aggravated case.

Recent indications from the Supreme Court are that time may be running out on the prosecution tactic, but Montgomery prosecutors, never in a rush to anticipate High Court rulings, refuse to disclaim it.

Kyles' own tactics are at the heart of his troubles with the law. An aggressive telephone talker, he has been charged nine times in the last 18 months with using abusive language over the phone to collect bills for creditors. He paid a \$150 fine after one conviction in December, 1964.

Last July he was charged with the same violation on the See **JEOPARDY, A14, Col. 1**

law's double jeopardy protections inherited from English judges. He said it was not his function to overrule the law, despite the trend of recent Supreme Court decisions, and he noted that the Maryland Court of Appeals had rejected an argument similar to Kyles' a year before.

The Court of Appeals also refused to entertain the appeal on Feb. 3, "for the reasons assigned in Judge Mathias' opinion."

Leaves Work Camp

By this time Kyles had served half his sentence. His attempts to gain temporary freedom through the courts had proved fruitless and his legal arguments would become moot if his sentence ran out.

Kyles' simple expedient was to walk away from a minimum security work force at Camp Church, Md., on Feb. 24. He returned to his Washington home at 1363 Kalmia rd. nw. and notified both Maryland and Sixth Precinct police of his whereabouts. Police soon arrested him on the strength of a Maryland fugitive warrant and set in motion extradition machinery.

He was released early this month by General Sessions Judge Charles W. Halleck on \$5000 bond to await an extradition hearing in District Court before Chief Judge Matthew F. McGuire, who acts in the role of a state governor in such matters.

Meanwhile, Kyles has filed a habeas corpus petition that asks Washington's District Court to set aside his conviction. A hearing has been set on this petition for Monday before Judge Oliver Gasch.

Kyles and his attorney, Andrew Carroll, concede that they have some tall legal barriers in their way. Judge Gasch ruled recently that a man on bond has no right to be heard on habeas corpus because he is not restrained of his liberty, a point stressed in opposing papers filed by the United States Attorney's office.

Beyond that is the fact that while Washington courts traditionally construe the Constitution more liberally than Maryland courts, they are reluctant to pass upon the laws

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complaint of George H. Williams of Takoma Park, who operates a housemoving business in Laurel, Md. Williams said his office and home were bombarded with abusive phone calls over a disputed balance of a bill for the installation of storm windows.

The key issues at Kyles' trial before Judge Samuel Gordon in Peoples Court were the identification of the abusive voice on the telephone as Kyles' and the lack of documentary evidence about the origin of the calls. On either ground, or both, Judge Gordon threw out the case and entered a verdict of acquittal.

On to Circuit Court

Assistant States Attorney Charles W. Foster, with the approval of States Attorney Leonard T. Kardy, then carried the case to the County's Circuit Court over Kyles' protest of double jeopardy. Foster explained later that the State appealed "because we didn't prove all we could have

proved" in the first trial because telephone company records were not subpoenaed.

This was only the second such appeal by the government in his four years as a County prosecutor, Foster said. He acknowledged that "If the Supreme Court ever gets the issue, it will probably strike it down," but he insisted "that his duty was to apply the law as it stands.

The prosecution persuaded Circuit Judge Ralph G. Shure. Rejecting the constitutional arguments, he sentenced Kyles in November to eight months in the Maryland House of Corrections.

Then another twist in Maryland law came into play. Neither party has an absolute right of appeal from the Circuit Court's judgment in a case that originates in Peoples Court. Kyles' application to appeal to the State Court of Appeals was rejected by Circuit Judge Joseph M. Mathias.

Judge Mathias cited a 1947 Maryland decision upholding the State law as a proper departure from the common

of states.

A Strong Hint

Kyles contends that there must be a court somewhere that will hear what he considers a plain violation of his rights. At a much earlier stage he filed a petition in Baltimore's Federal Court but withdrew it as premature.

Only last month the Supreme Court strongly hinted that states, already bound by the Fifth Amendment's self-incrimination

clause, will soon be held to Federal double jeopardy standards.

In one case the Supreme Court let stand a Second Circuit ruling in a habeas corpus case that first arose in New York's State courts. By refusing to review the ruling in the defendant's favor, the Court allowed the Federal standard to apply in New York, Connecticut and Vermont State courts.

Calls for Response

At the same time the Court called for a response from Indiana in a similar case that went against the defendant. Indiana filed its brief last week, and the Court could decide to review the case, calling the entire two-trial practice into question nationally.

Kyles attributes his present predicament to years of police and government persecution. He is a light-skinned Negro, and says that authorities resent the fact that he received mild punishment a decade ago for assaulting his white mother-in-law in a child custody dispute during the breakup of his marriage. He says he has a history of "taking the law into my own hands."

He also concedes that his business practices have been on the ethical fringe in the past, but he insists his bill collecting methods are on a high plane now.

In 1958 Kyles testified that he used trickery to try to locate a debtor for Marvin's Credit, Inc., of Washington.

He told General Sessions Chief Judge John Lewis Smith Jr. that he called the debtor's home and said his wife had been seriously injured, touching off a frantic search of area hospitals. Judge Smith denounced the tactic as "cruel, reprehensible and completely unjustified," but held that Marvin's had not been proved responsible.

In 1959 Kyles pleaded guilty to four charges of using the mails in a scheme to defraud

New York clothing stores and was placed on probation by Chief Judge Roszel C. Thompsen in Baltimore Federal Court. Kyles says the charges grew out of a complicated scheme to locate his former wife.

Reached at his home, Kyles refused to allow his picture to be taken on grounds that it would ruin his troubled collection business. He explained that he uses several assumed names in his work.