

1996

West Valley City v. Richard Norris : Brief of Appellant

Utah Court of Appeals

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Elliot R. Lawrence; Attorney for Appellant; West Valley City Attorney's Office.

C. Danny Frazier; Attorney for Appellee.

Recommended Citation

Brief of Appellant, *West Valley City v. Richard Norris*, No. 960151 (Utah Court of Appeals, 1996).

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IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,
Appellant,

vs.

RICHARD NORRIS,
Appellee.

Appellate Court No.: 960151 CA

Priority no.: 15

BRIEF OF APPELLANT

Appeal from the final judgment of the Third Circuit Court, State
of Utah, in and for Salt Lake County, West Valley Department.
The Honorable Edward A. Watson.

**UTAH COURT OF APPEALS
BRIEF**

UTAH
DOCUMENT
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DOCKET NO. 960151 CA

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FILED
JUN 21 1996
COURT OF APPEALS

AUG - 5 1996

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1 August 1996

Court Clerk
Utah State Court of Appeals
230 South 500 East #400
Salt Lake City, Utah 84102

RE: West Valley City v Richard Norris. Appeal by West Valley City. Case No. 960151-CA.

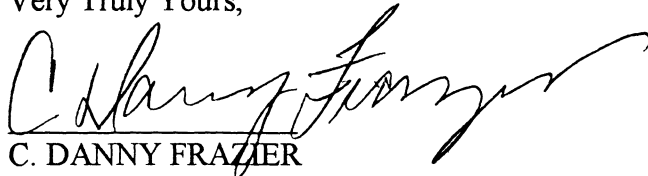
Dear Sir or Madam,

I am writing in regards to the above matter. Appellee's brief was due in the above matter on 24 July 1996. However, Appellee Richard Norris hereby advises that he will not file a response brief to that filed by West Valley City.

I, as Mr. Norris' counsel, have spoken with him at length about the appeal and we have reached the conclusion that Mr. Norris' response to the specific issue addressed in the brief places him in a peculiar situation. The trial judge Judge Watson dismissed the misdemeanor charges for lack of jurisdiction due to the amounts he deemed to be at issue. He did so without addressing any of the other issues raised by Mr. Norris' counsel for dismissal of the case.

However, even though a dismissal is normally in the best interests of a defendant, a dismissal in this case for lack of jurisdiction opens up the prospect of felony criminal charges being filed against Mr. Norris. Mr. Norris is, essentially, left with two equally untenable alternatives: argue that the Court's dismissal be upheld at the risk of having felony charges filed against him or that he should still face misdemeanor charges as argued by the West Valley City prosecutor's office. Neither alternative suits Mr. Norris and, therefore, he has chosen to not respond rather than be embroiled in this "catch 22".

Very Truly Yours,

A handwritten signature in black ink, appearing to read "C. Danny Frazier", written over a horizontal line.

C. DANNY FRAZIER
Attorney for Appellee
Richard Norris

P.S.:

A copy of this letter has also been sent to the West Valley City Prosecutor's office.

C. Danny Frazier

IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,
Appellant,

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RICHARD NORRIS,
Appellee.

Appellate Court No.: 960151 CA

Priority no.: 15

BRIEF OF APPELLANT

Appeal from the final judgment of the Third Circuit Court, State
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TABLE OF CONTENTS

STATEMENT OF JURISDICTION	1
STATEMENT OF THE ISSUE AND STANDARD OF REVIEW	1
DETERMINATIVE CONSTITUTIONAL PROVISIONS AND STATUTES	2
STATEMENT OF THE CASE	2
RELEVANT FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	7
I. THE TRIAL JUDGE IMPROPERLY DISMISSED THE CHARGES BECAUSE HIS INTERPRETATION OF § 76-10-1801 DENIES THE PROSECUTOR DISCRETION TO DETERMINE WHICH CHARGES TO FILE, IN VIOLATION OF THE UTAH CONSTITUTION.	7
II. THE LANGUAGE OF § 76-10-1801(2) DOES NOT LIMIT THE PROSECUTOR'S DISCRETION, BECAUSE IT ALLOWS THE PROSECUTION OF AN ENTIRE FRAUD SCHEME.	9
CONCLUSION	12
ADDENDA:	
ADDENDUM 1: ORDER DISMISSING CASE, <i>WEST VALLEY CITY v.</i> <i>NORRIS</i> , FEB. 5, 1996.	
ADDENDUM 2: DOCKET, <i>WEST VALLEY CITY v. NORRIS</i> , JUNE 6, 1996.	
ADDENDUM 3: UTAH CODE ANN. § 76-10-1801 (Supp. 1995).	
ADDENDUM 4: UTAH CONSTITUTION ARTICLE V, § 1.	

TABLE OF AUTHORITIES

Cases

<u>Bordenkircher v. Hayes</u> , 434 U.S. 357 (1978)	3,8
<u>State v. Bell</u> , 785 P.2d 390 (Utah 1989)	3,4,7,8
<u>State v. Carter</u> , 578 P.2d 1275 (Utah 1978)	4,8
<u>State v. Garcia</u> , 29 Utah 2d 52, 504 P.2d 1015 (1972)	3,7
<u>State v. Larsen</u> , 865 P.2d 1355 (Utah 1993)	1
<u>State v. Shipler</u> , 869 P.2d 968 (Utah App. 1994)	1

Statutes

Utah Code Ann. § 76-10-1801 (Supp. 1995)	5, 9-10
Utah Code Ann. § 78-2a-3(2)(a) (Supp. 1995)	1

Constitutional Provisions

Utah Constitution article V, § 1	8
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IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,
Appellant,

vs.

RICHARD NORRIS,
Appellee.

Appellate Court No.: 960151 CA

Priority no.: 15

BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

Because this appeal is from the final judgment of the Third Circuit Court, the Utah Court of Appeals has jurisdiction. UTAH CODE ANN. § 78-2a-3(2)(d) (Supp. 1995).

STATEMENT OF THE ISSUE AND STANDARD OF REVIEW

ISSUE: Did the trial judge correctly dismiss the charge against Appellee for lack of jurisdiction by interpreting that Section 76-10-1801 of the Utah Code required that the charges against Appellee be felonies rather than misdemeanors?

STANDARD OF REVIEW: A trial court's interpretation of statutes is a question of law that is reviewed according to a correctness standard. State v. Larsen, 865 P.2d 1355, 1357 (Utah 1993). The Utah Court of Appeals "review[s] questions of law under a correction of error standard, without deference to the trial court." State v. Shipler, 869 P.2d 968, 969 (Utah App. 1994) (citation omitted).

DETERMINATIVE CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTIONAL PROVISIONS

Utah Constitution art. V, § 1.

STATUTES

Utah Code Ann. § 76-10-1801 (Supp. 1995).

RULES

There are no procedural rules at issue in this appeal.

STATEMENT OF THE CASE

This appeal concerns the trial judge's dismissal of the charges against Appellant by ruling that § 76-10-1801(2) of the Utah Code required that the charges be felonies rather than misdemeanors. The charges were dismissed because the Circuit Court's jurisdiction is limited to misdemeanors. The trial judge's interpretation of § 76-10-1801(2) violates the Utah Constitution because it denies the prosecutor discretion to determine what charges to file. A copy of the trial judge's ruling is included as an Addendum to this Brief.

RELEVANT FACTS

On December 20, 1994, Appellant Richard Norris, ("Norris") was charged with violating Utah Code Ann. § 76-10-1801, Communications Fraud. Four misdemeanor charges were filed. Because of incessant delays, the trial process took an extraordinarily long time. (See Docket, *West Valley City v. Norris* at 1-3 (hereafter "Docket")).

In October of 1995, Norris filed a motion to strike the

information. The trial judge struck the original information as defective. (Docket, *supra* at 3). Norris also filed a motion to strike the amended information. The trial judge allowed the parties to prepare memoranda on that motion, and then requested information on the jurisdiction of the case. The judge requested the information because of a question regarding the language of subsection 76-10-1801(2). *Id.* The trial judge ruled that because of the amount in question, the subsection required the charges to be felonies rather than misdemeanors. Since the Circuit Court had no jurisdiction to hear felonies, the trial judge dismissed the charges. (Docket, *supra* at 4).

SUMMARY OF THE ARGUMENT

I. THE TRIAL JUDGE IMPROPERLY DISMISSED THE CHARGES BECAUSE HIS INTERPRETATION OF § 76-10-1801 DENIES THE PROSECUTOR DISCRETION TO DETERMINE WHICH CHARGES TO FILE, IN VIOLATION OF THE UTAH CONSTITUTION.

The trial judge improperly dismissed the charges against Norris because the application of § 76-10-1801 denies the prosecutor discretion to determine which charges to file. This violates Article V of the Utah Constitution, which guarantees separation of powers. See State v. Bell, 785 P.2d 390, 404 (Utah 1989). Prosecutorial discretion is recognized as an integral part of the criminal justice system, and judges cannot override the legitimate decisions of a prosecutor. See Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978); State v. Garcia, 29 Utah 2d 52, 53, 504 P.2d 1015-16 (1972). Prosecutorial discretion is so vital to the

criminal justice system it enjoys constitutional protection. The trial judge's interpretation of § 76-10-1801 ignores that protection.

The trial judge's interpretation violates Article V of the Utah Constitution, which guarantees separation of powers amongst the co-equal departments of government. Judges are not permitted to override the legitimate decisions of prosecutors, nor can the legislature remove discretion altogether. See *Bell*, 785 P.2d at 404; *State v. Carter*, 578 P.2d 1275, 1277 (Utah 1978). Prosecutorial discretion operates within limits set by laws defining crimes and acceptable punishments, by case law interpreting those laws, and by procedural and constitutional requirements. However, a total elimination of discretion is impermissible under Article V. The trial judge held that § 76-10-1801 denied the prosecutor any choice over which charges to file. That interpretation is an unconstitutional intrusion into the realm of prosecutorial discretion.

The trial judge had no authority to override the prosecutor's decision to file misdemeanor charges against Norris, and thus the dismissal was improper. The decision denied the prosecutor discretion violated the separation of powers guarantee in the Utah Constitution. Since the trial judge exceeded the bounds of his authority, and violated the state constitution, his decision should be reversed.

II. THE LANGUAGE OF § 76-10-1801(2) DOES NOT LIMIT THE PROSECUTOR'S DISCRETION, BECAUSE IT ALLOWS THE PROSECUTION TO CHARGE A DEFENDANT FOR AN ENTIRE FRAUD SCHEME.

The prosecutor's discretion remains unfettered by the language of § 76-10-1801(2). That subsection does not restrict the prosecutor; it actually provides greater prosecutorial discretion by authorizing prosecution based on an entire fraud scheme. Subsection 76-10-1801(2) states that the degree of the offense "shall be measured by the total value . . . obtained or sought to be obtained by the scheme" UTAH CODE ANN. § 76-10-1801(2) (Supp. 1995). The trial judge interpreted this statement to mean that all discretion to choose what charge to file was eliminated, and dismissed the charge because of that interpretation. As has been discussed, that interpretation exceeded the judge's constitutional authority.

Subsection 76-10-1801(2) closes avenues for the defendant, not the prosecutor. First, the subsection prohibits the defendant from arguing that each separate transaction be treated as a separate offense. Second, the prosecution is based on the amount of money or property involved in the entire scheme, which prohibits the defendant from arguing that the charge be based on the amount actually involved. Third, the subsection focuses the prosecution on the fraudulent scheme, not the amount of money that was actually involved. Section 76-10-1801 prohibits the devising and communicating of a fraudulent scheme, not the taking of money or property. Subsection two reinforces that mandate by permitting

prosecution based on the potential scope of the fraud scheme, not the amounts actually obtained by it.

The trial judge's decision to dismiss the charge was thus based on an unwarranted interpretation of § 76-10-1801(2). That subsection was not intended to shackle prosecutors, but to enhance their ability to effectively prosecute those who violate the law. The trial judge failed to see the purpose of subsection two, and chose instead an unconstitutional denial of prosecutorial discretion.

ARGUMENT

- I. THE TRIAL JUDGE IMPROPERLY DISMISSED THE CHARGES BECAUSE HIS INTERPRETATION OF § 76-10-1801 DENIES THE PROSECUTOR DISCRETION TO DETERMINE WHICH CHARGES TO FILE, IN VIOLATION OF THE UTAH CONSTITUTION.

The trial judge improperly dismissed the charges because his interpretation of § 76-10-1801 denies the prosecutor discretion to determine which charge to file. This violates Article V of the Utah Constitution, which guarantees separation of powers. "[Utah] has long recognized the vital role of the prosecution and the importance of affording that body the discretion, within permissible limits, to exercise its function. Certainly, we are compelled . . . to recognize this discretion as it preserves the constitutional concept of separation of powers." State v. Bell, 785 P.2d 390, 404 (Utah 1989). Prosecutorial discretion is recognized as an integral part of the criminal justice system, and judges cannot override the legitimate decisions of a prosecutor. "It is not a function of the courts to review the exercise of executive discretion" State v. Garcia, 29 Utah 2d 52, 53, 504 P.2d 1015-16 (1972).

In addition, the U.S. Supreme Court has recognized the importance of allowing prosecutors substantial discretion to determine what charges to file. "[T]he decision whether or not to prosecute, and what charges to file . . . , generally rests within [the prosecutor's] discretion. . . . [T]he conscious exercise of some selectivity in enforcement is not in itself a federal

constitutional violation." Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978). Prosecutorial discretion is so vital to the criminal justice system it enjoys constitutional protection. The trial judge's interpretation of § 76-10-1801 ignores that protection.

The trial judge's interpretation of § 76-10-1801 is unconstitutional. Article V of the Utah Constitution guarantees separation of state power amongst three distinct, co-equal departments. "[N]o person charged with the exercise of powers properly belonging to one of the[] departments, shall exercise any functions appertaining to either of the others" UTAH CONST. art. V. As has been stated, the separation of powers guarantee preserves prosecutorial discretion. See *Bell*, 785 P.2d at 404.

The trial judge could not override the prosecutor's legitimate decisions, nor could the legislature remove discretion from the prosecutor altogether. "[D]iscretion rests in the prosecutor in every case Some selectivity is always permitted" State v. Carter, 578 P.2d 1275, 1277 (Utah 1978); see also *Bell*, 785 P.2d at 404. The legislature may impose limits to the prosecutor's discretion by defining the crime and the acceptable penalties; and the judiciary may limit discretion through statutory interpretation, procedural rules and constitutional requirements, but a total elimination of discretion is impermissible under Article V. The trial judge held that § 76-10-1801 denied the prosecutor any choice over which charges to file. That interpretation is an unconstitutional intrusion into the realm of the prosecutor's legitimate discretion.

Legitimate prosecutorial decisions are protected and authorized by Article V of the Utah Constitution. These decisions include authority to choose which charges to file. The prosecutor may choose to file a charge lesser than that justified by the fact situation. The prosecutor could determine that a particular charge would not be appropriate, although warranted by the facts. Finally, the prosecutor could choose to reduce or drop the charges as part of a plea bargain agreement. In this case, the trial judge's interpretation of § 76-10-1801 prohibited the prosecutor from making those choices. Thus, that interpretation is unconstitutional, and the judge's decision to dismiss the charges against Norris should be reversed.

The trial judge impermissibly overrode the prosecutor's decision to file misdemeanor charges against Norris, and thus the dismissal was improper. That decision denied the prosecutor discretion and violated the separation of powers guarantee in the Utah Constitution. Since the trial judge based his decision to dismiss the charge on his incorrect and unconstitutional interpretation of § 76-10-1801, the dismissal must be reversed.

II. THE LANGUAGE OF § 76-10-1801(2) DOES NOT LIMIT
THE PROSECUTOR'S DISCRETION, BECAUSE IT ALLOWS
THE PROSECUTION OF AN ENTIRE FRAUD SCHEME.

The prosecutor's discretion remains unfettered by the language of § 76-10-1801(2). That subsection does not restrict the prosecutor, because it allows prosecution based on an entire fraud scheme rather than individual transactions. Section 76-10-1801(2)

states that the degree of the offense "shall be measured by the total value . . . obtained or sought to be obtained by the scheme" UTAH CODE ANN. § 76-10-1801(2) (Supp. 1995). The trial judge wrongly and unconstitutionally interpreted this statement as eliminating any discretion to determine what charge to file against Norris.

That subsection closes avenues for the defendant, not the prosecution. First, subsection 1801(2) prohibits the defendant from arguing that each separate transaction be treated as a separate offense. For example, suppose a defendant sought to defraud a victim out of \$2,000, by obtaining 20 payments of \$100 apiece. Without subsection two, the defendant could argue that the degree of the offense should be based on one transaction, and is only a class B misdemeanor. With subsection two, the entire scheme becomes the basis of the charge, which is a third degree felony.

Secondly, subsection two allows prosecution for an entire fraud scheme, even though the scheme has not been completed. This prevents a defendant from arguing that only a small amount of money or property was actually obtained. The criminal act that the statute prohibits is devising and communicating "any scheme or artifice to defraud another or to obtain . . . money, property, or anything of value by means of fraud" *Id.* § 76-10-1801(1). Actually obtaining the money is not necessary, only devising and communicating a scheme to obtain the money. Subsection two prevents a defendant from arguing that only a small amount of money or property had actually been involved. In this way, the

fraudulent scheme may be appropriately punished and adequately deterred.

Subsection two also directs the focus of the prosecution on the fraudulent scheme, not on the money that is involved. Those who perpetrate fraud schemes hide their gains from official documentation. Because records are nonexistent or unreliable in fraudulent transactions, it may be difficult to adequately prove how much money or property was actually involved. Under subsection two, the prosecution chooses the appropriate charge based on the existence of a fraud scheme and the total amount sought. Subsection two thus focuses the attention on preventing and punishing the crime of devising and communicating a fraudulent scheme, even if no money changed hands.

To conclude, the trial judge's interpretation of subsection 76-10-1801(2) was incorrect. That subsection does not eliminate the prosecutor's discretion, but it does eliminate the defendant's arguments blunting the impact of the law. Subsection two prevents a defendant from undermining the effect of the law by removing the possibility that the charge be based on individual transactions or on the money or property actually involved or proven to be involved. Subsection 76-10-1801(2) enables the law to adequately deter people from devising and communicating a fraud scheme, and appropriately punish those who do.

CONCLUSION

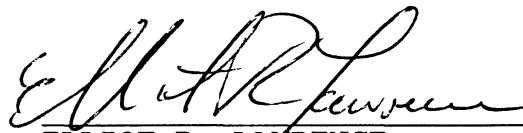
The trial judge improperly dismissed the charges against Norris. The dismissal was based on an unconstitutional and improper interpretation of § 76-10-1801. Article V of the Utah Constitution requires prosecutorial discretion as part of the separation of powers guarantee. A prosecutor has discretion over which charges to file, and judges are not permitted to override the legitimate decisions of a prosecutor. The trial judge's interpretation of § 76-10-1801 unconstitutionally denied the prosecutor discretion to determine what charges to file. Since the dismissal was based on this unconstitutional interpretation, the decision to dismiss must be reversed, and the prosecution allowed to continue.

Section 76-10-1801(2) does not limit a prosecutor's discretion. Rather, it removes a defendant's arguments for escaping or blunting the impact of the law. The crime that the law prohibits is devising and communicating a fraudulent scheme. Subsection two enhances the prosecution of violations by preventing defendants from arguing that the charges be based on separate transactions, or on the actual amounts of money or property involved. Subsection two enables the law to adequately deter people from violating the law, and appropriately punish those who do.

The trial judge failed to recognize these purposes for subsection two, and determined instead that it eliminated all discretion to determine which charges to file. That interpretation

is unconstitutional, because it violates Article V of the Utah Constitution. For this reason, the judge's decision to dismiss the charges against Richard Norris must be reversed, and the prosecution against him allowed to continue.

RESPECTFULLY SUBMITTED this 21st day of June, 1996



ELLIOT R. LAWRENCE
Attorney for Appellant

CERTIFICATE OF MAILING

This certifies that a copy of the foregoing Brief of Appellant was mailed to the following address:

C. Danny Frazier
Attorney for Richard Norris
8 N. Center
Box 727
American Fork, Utah 84003

The trial court appointed Mr. Frazier as counsel for Richard Norris on April 19, 1996.

DATED this 21st day of June, 1996.

A handwritten signature in cursive script, appearing to read "C. Danny Frazier", is written over a horizontal line.

Addenda

1. Order Dismissing Case, *West Valley City v. Norris*, Feb. 5, 1996.
2. Docket, *West Valley City v. Norris*, June 6, 1996.
3. UTAH CODE ANN. § 76-10-1801 (Supp. 1995).
4. Utah Constitution article V, § 1

ADDENDUM 1:

Order Dismissing Case, *West Valley City v. Norris*, Feb 5, 1996

ndant

Citation:

WVC Case: 941004929 MC

Agency No.: WVC

City Misdemeanor

NORRIS, RICHARD F

02/05/96

TAPE: 13874 COUNT: 142

Deft not present

ATD: MADDOX, DAVID

PRO: STONEY, KEITH

WEST VALLEY CITY VS RICHARD NORRIS IS BEFORE THE COURT ON A MOTION TO STRIKE THE INITIAL INFORMATION AS VOID ON THE BASIS IT IS LACKING SUFFICIENT INFORMATION TO ADVISE THE DEFENDANT OF PERSONS ALLEGED DEFRAUDED AND THE SCHEME OR ARTIFICE UTILIZED, PRECLUDING ABILITY TO PREPARE A DEFENSE. THE MOTION TO STRIKE WAS FILED SUBSEQUENT TO A DEFENSE REQUEST FOR A BILL OF PARTICULARS. THE CITY PROSECUTOR FILED AN AMENDED INFORMATION. THEREAFTER, THE DEFENSE FILED A MOTION TO QUASH THE AMENDED INFORMATION ALLEGING AN INVALID OR VOID INITIAL INFORMATION CANNOT BE AMENDED CHARGING CRIMES NOW BARRED BY THE RUNNING OF THE STATUTE OF LIMITATIONS. THE COURT RECEIVED MEMORANDUMS FROM BOTH PARTIES. IN PROCESS OF REVIEWING THE VOLUMINOUS PAPERWORK SUBMITTED BY THE CITY, THE COURT BECAME CONCERNED WHETHER IT WAS EXAMINING MATERIAL THAT MAY NEVER BE ADMITTED INTO EVIDENCE AT THE TRIAL OF THE CASE AND MAY REQUIRE THE COURT TO RECUSE ITSELF FOR EXAMINING SUCH INVESTIGATIVE MATERIAL. AS IT ALWAYS DOES, IN REVIEWING A CASE, THE COURT REVIEWED TO CONFIRM JURISDICTION OF THE COURT. THE STATUTE 76-10-1801, U.C.A., 1953, AS AMENDED, UNDER WHICH THE OFFENSES ARE CHARGED, INDICATES IN SUBPARAGRAPH TWO (2) THEREOF, "THE DETERMINATION OF THE DEGREE OF ANY OFFENSE UNDER SUBSECTION (1) SHALL BE MEASURED BY THE TOTAL VALUE OF ALL PROPERTY, MONEY, OR THINGS OBTAINED OR SOUGHT TO BE OBTAINED BY THE SCHEME OR ARTIFICE DESCRIBED IN SUBSECTION (1)" THE INITIAL INFORMATION IS SILENT AS TO THE NUMBER OF VICTIMS AND MEASURE OF VALUE. THE AMENDED INFORMATION NAMES FOUR VICTIMS IN FOUR COUNTS AND MEASURES VALUE OF MORE THAN \$300 IN EACH COUNT. ON JANUARY 4, 1996, THE COURT SENT A LETTER TO BOTH PARTIES, MR DAVID MADDOX FOR THE DEFENSE AND MR KEITH STONEY FOR THE PROSECUTION, REQUESTING INPUT IF THEY DESIRED, ON THE ISSUE OF JURISDICTION. RESPONSE WAS RECEIVED FROM THE DEFENSE. NONE WAS RECEIVED FROM THE CITY FOR THE COURT'S REVIEW PRIOR TO MAKING ITS DECISION THIS 5TH DAY OF FEBRUARY 1996. IN AN ATTEMPT TO RESOLVE THE ISSUE OF JURISDICTION, THE COURT REVIEWED SOME OF THE INVESTIGATIVE MATERIAL SUBMITTED BY THE CITY AND DETERMINED THE \$1000 JURISDICTIONAL AMOUNT FOR CIRCUIT COURT JURISDICTION HAD BEEN EXCEEDED. FOR EXAMPLE, A LETTER OF DEMAND FROM DEFENDANT NORRIS TO A SINGLE VICTIM OF FOUR ALLEGED IN THE INFORMATION DEMANDS \$1,600. THEREFORE, THE COURT FINDS THE CIRCUIT COURT LACKS JURISDICTION OF THE FELONIOUS ACTIONS ALLEGED IN THE AMENDED INFORMATION. AS A RESULT, THE COURT DOES NOT REACH THE ISSUE OF STRIKING THE INITIAL INFORMATION FOR VOIDNESS OR THE ISSUE TO QUASH THE AMENDED INFORMATION FOR RUNNING OF THE STATUTE OF LIMITATIONS AS RAISED BY THE DEFENSE. C/O THE CASE DISMISSED.

02/06/96

960250227

Refund of bail

CHK #:011474

2000.00

GAYLENE FOWLER, PAYOR OF CASH BAIL, RECIEVED CASH BAIL REFUND

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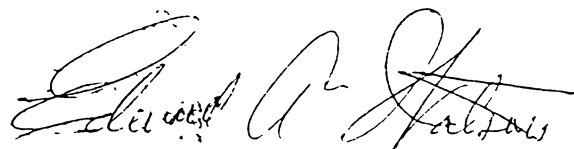
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ADDENDUM 2:

Docket, *West Valley City v. Norris*, June 6, 1996

D O C K E T

THIRD CIRCUIT COURT - WVC

Page 1
THURSDAY JUNE 6, 1996
1:54 PMDefendant

Citation:

WVC Case: 941004929 MC
Agency No.: WVC

NORRIS, RICHARD F

City Misdemeanor
Judge: EDWARD A. WATSON3392 WEST 3500 SOUTH
WEST VALLEY CITY UT 84119NO OTN # FOR THIS CASEChargesBail

Violation Date: 05/12/94

1. COMMUNICATIONS FRAUD	76-10-1801	.00
Sev: MA		
2. COMMUNICATIONS FRAUD	76-10-1801	.00
Sev: MA		
3. COMMUNICATIONS FRAUD	76-10-1801	.00
Sev: MA		
4. COMMUNICATIONS FRAUD	76-10-1801	.00
Sev: MA		

Proceedings

2/20/94 Case filed on 12/20/94. JLB
Warrant ordered JLB
WARRANT OF ARREST issued - JUDGE WBB JLB
Other: city warrant of arrest JLB
Bail amount ordered: 2000.00 JLB
2/28/94 Warrant recalled on 12/28/94 because Booked LJB
2/29/94 942540092 Bail posted =====> Check 2000.00 IHR
Posted by: GAYLENE FOWLER IHR
5093 WEST LONGMORE DR IHR
SLC UT IHR
2/30/94 ARR scheduled for 12/30/94 at 9:16 A in room 1 with EAW SWU
Mis Arraignment JUDGE: EDWARD A. WATSON SMT
TAPE: 12546 COUNT: 3486 SMT
ATD: None Present PRO: None Present SMT
Deft is not present SMT
PTC scheduled for 01/26/95 at 0900 A in room 1 with EAW SMT
Chrg: 76-10-1801 Plea: Not Guilty SMT
Chrg: 76-10-1801 Plea: Not Guilty SMT
Chrg: 76-10-1801 Plea: Not Guilty SMT
Chrg: 76-10-1801 Plea: Not Guilty SMT
DON BYBEE WAS PRESENT FOR DEF AN ENTERED NG PLEA. SMT
CASH BAIL WILL REMAIN AT \$2000 CASH. SMT
FILED RECEIPT OF CASH BAIL PAID \$2000 RECEIPT 04727 LJB
THE DEF CAME TO THE COURT WITH HIS ATTY, DON BYBEE, TO REQUEST SMT
A RETURN OF THE CASH BAIL. THE COURT ORDERED THE BAIL CHANGED SMT
TO BOND. UPON POSTING OF \$2000 BOND, THE CASH BAIL MAY BE SMT
RETURNED TO THE DEF. SMT
1/26/95 Hearing (PRE-TRIAL CONFERENCE): JUDGE: EDWARD A. WATSON SMT
TAPE: 12631 COUNT: 682 SMT

THIRD CIRCUIT COURT - WVC

THURSDAY JUNE 6, 1996

1:54 PM

Defendant

Citation:

WVC Case: 941004929 MC

Agency No.: WVC

NORRIS, RICHARD F

City Misdemeanor

1/26/95	Deft Present		SMT
	ATD: None Present	PRO: CLARK, DAVID	SMT
	PTC scheduled for 02/16/95 at 0900 A in room 1 with EAW		SMT
	DON BYBEE WAS GRANTED PERMISSION TO WITHDRAW. GILBERT ATHAY		SMT
	WILL REPRESENT ATTY. PTC WAS CONTINUED.		SMT
2/01/95	FILED: APPEARANCE OF COUNSEL AND DEMAND FOR JURY TRIAL - D		MEL
	GILBERT ATHAY		MEL
	FILED: REQUEST FOR DISCOVERY - D GILBERT ATHAY		MEL
2/02/95	FILED - 1-25-95 - NOTICE AND ORDER OF WITHDRAWAL BY ATTY		SDS
	DON L. BYBEE.		SDS
2/16/95	Hearing (PRE-TRIAL CONFERENCE): JUDGE: EDWARD A. WATSON		SMT
	TAPE: 12689 COUNT: 58		SMT
	Deft Present		SMT
	ATD: ATHAY, D. GILBERT	PRO: CLARK, DAVID	SMT
	PTC scheduled for 03/29/95 at 0900 A in room 1 with EAW		SMT
	PTC WAS CONTINUED.		SMT
3/14/95	*****NOTE: CASH BAIL OF \$2000.00 BEING HELD ON THIS CASE*****		IHR
3/29/95	Hearing (PRE-TRIAL CONFERENCE): JUDGE: EDWARD A. WATSON		SMT
	TAPE: 12831 COUNT: 1430		SMT
	Deft Present		SMT
	ATD: ATHAY, D. GILBERT	PRO: CLARK, DAVID	SMT
	TRJ scheduled for 04/20/95 at 0900 A in room 1 with EAW		SMT
	PTC WAS HELD. THERE WAS NO RESOLUITON. TRJ WAS SET. REQUESTED		SMT
	VOIR DIRE AND INSTRUCTIONS WILL BE DUE 4-13-95.		SMT
4/10/95	FILED: MOTION BY CITY FOR CONTINUANCE.		SMT
4/13/95	TRJ on 4/20/95 was cancelled		SDS
4/14/95	NOTE: TRJ RESET TO 5-8-95 AT 9 AM - MAILED NOTICE TO		SDS
	ATD-D. GILBERT ATHAY AND TO CITY ATTYS OFFICE.		SDS
	TRJ scheduled for 5/ 8/95 at 9:00 A in room 1 with EAW		SDS
4/18/95	Accepted distribution CF \$ 4.00 from Misc. Payments screen		DSW
5/02/95	FILED: MOTION TO CONTINUE TRIAL DATE - D GILBERT ATHAY		MEL
5/08/95	NOTE: JUDGE RESET TRJ TO 6-8-95 AT 9 AM, MAILED NEW NOTICE TO		SDS
	ATTY ATHAYS OFFICE AND TO CITY ATTYS OFFICE.		SDS
	TRJ rescheduled to 6/ 8/95 at 9:00 A in room 1 with EAW		SDS
5/01/95	FILED: MOTION TO WITHDRAW - D GILBERT ATHAY		MEL
5/02/95	NOTE: JUDGE WATSON HAS ALLOWED ATTY ATHAY TO WITHDRAW AS		SDS
	COUNSEL TO DEFENDANT.		SDS
5/05/95	NOTE; CALLED ATTY ATHAY'S OFFICE AND INFORMED SECRETARTY JO		SDS
	THAT THE JUDGE WILL NOT CONTINUE TRJ FROM 6-8-95 AND WILL NOT		SDS
	SIGN THE MOTION TO WITHDRAW FROM ATTY ATHAY UNTIL ANOTHER		SDS
	ATTY IS PREPARED TO GO FORTH WITH THE JURY ON 6-8-95.		SDS
5/07/95	NOTE: ON 6-7-95 - JUDGE WATSON SIGNED THE MOTION TO WITHDRAW		SDS
	ON ATTY ATHAY - AND CONTINUED THE TRJ TO 7-12-95 - TALKED WITH		SDS
	ATTY MADDOX AND HE STATED THAT 7-12-95 WOULD BE FINE WITH HIM.		SDS
	ATTY MADDOX HAS A PREVIOUS COMMITMENT ON 7-10-95.		SDS
	TRJ rescheduled to 7/12/95 at 9:00 A in room 1 with EAW		SDS
5/12/95	*****NOTE, DEF HAS CASH BAIL OF \$2000 BEING HELD ON THIS *****		IHR
5/15/95	FILED: APPEARANCE OF COUNSEL - DAVID MADDOX		MEL
5/26/95	FILED: REQUEST FOR FILL OF PARTICULARS - DAVID MADDOX		MEL
7/07/95	FILED: REQUEST FOR BILL OF PARTICULARS - DAVID MADDOX		MEL
7/10/95	TRJ on 7/12/95 was cancelled		SMT

Page 3

THIRD CIRCUIT COURT - WVC

THURSDAY JUNE 6, 1996
1:54 PM

Defendant

Citation:

WVC Case: 941004929 MC

Agency No.: WVC

City Misdemeanor

NORRIS, RICHARD F

7/10/95	TRIAL WAS CONTINUED AT THE REQUEST OF THE DEF ATTY. FILED: FAX FROM ATTY MADDOX REQUESTING A CONTINUANCE.	SMT
7/11/95	FILED: MOTION TO DISMISS OR CONTINUE - DAVID MADDOX	SMT
7/13/95	FILED: LETTER FROM DEF'S ATTY, DAVID MADDOX	MEL
7/14/95	TRJ scheduled for 9/14/95 at 9:00 A in room 1 with EAW	IHR
8/24/95	*****NOTE: CASH BAIL OF \$2000 BEING HELD ON THIS CASE*****	SMT
9/07/95	NOTE: TRJ CONT TO 10-26-95 AT 9 AM, MAILED NEW NOTICE TO ATTY MADDOX AND TO CITY ATTYS OFFICE.	IHR
	TRJ rescheduled to 10/26/95 at 9:00 A in room 1 with EAW	SDS
10/04/95	FILED: AMENDED INFORMATION	SDS
10/23/95	FILED REQUEST OR ORAL ARGUMENTS & EXPEDITED HEARING FILED MOTION TO QUASH AMENDED INFORMATION AND STRIKE THE INFORMATION ON FILE FILED MEMORANDUM IN SUPPORT OF MOTION TO STRIKE AMENDED INFORMATION FILED AFFIDAVIT IN SUPPORT OF MOTION TO STRIKE AMENDED INFORMATION	DOA
10/24/95	NOTE; JUDGE SPOKE WITH ATTY MADDOX AS WELL AS ATTY STONEY JURY TRIAL WILL BE SET ASIDE, AND WE WILL HAVE THE ORAL ARGUMENTS AND MOTION HRGS IN ITS PLACE. LET ATTY STONEY KNOW AS WELL AS ATTY MADDOX. TRJ on 10/26/95 was cancelled HRG scheduled for 10/26/95 at 9:00 A in room 1 with EAW	LJB
10/26/95	Hearing: JUDGE: EDWARD A. WATSON TAPE: 13529 COUNT: 1540 Def't Present ATD: MADDOX, DAVID PRO: STONEY, KEITH 1781 - ATTY MADDOX ARGUED HIS MOTION TO QUASH AMENDED INFORMA- TION AND STRIKE THE INFORMATION ON FILE. C2300 - ATTY STONEY RESPONDED C3371 - COURT FOUND THE ORIGINAL INFORMATION IS DEFECTIVE. THE COURT WILL ALLOW THE ATTORNEYS TIME TO PRESENT MEMORANDA AS TO WHETHER THE AMENDED INFORMATION IS ACTUALLY A NEW INFORMATION AND IS THEREFORE BARRED BY THE STATUTE OF LIMITATIONS. DEF WILL HAVE 10 DAYS TO PREPARE MEMO. PROSECUTOR WILL HAVE 10 DAYS TO RESPOND. DEF WILL THEN HAVE AN ADDITIONAL 5 DAYS TO RESPOND.	LJB
11/09/95	FILED MEMORANDUM	SDS
11/16/95	*****CASH BAIL OF \$2000 BEING HELD ON THIS CASE*****	SDS
11/27/95	NOTE: REPLY MEMORANDUM FILED BY WEST VALLEY CITY.	CCE
12/27/95	FILED; NOTICE TO SUBMIT FOR DECISION - DAVID MADDOX	LJB
12/28/95	FILED MOTION TO SUBMIT FOR DECISION	SMT
1/05/96	LETTER MAILED TO BOTH ATTYS MADDOX AND STONEY REQUESTING INFORMATION REGARDING JURISDICTION OF THIS CASE.	SMT
1/23/96	FILED: LETTER FROM DEF'S ATTY, DAVID MADDOX	IHR
1/25/96	NOTE: *****CASH BAIL OF \$2000 BEING HELD ON THIS CASE*****	IHR
2/01/96	HRG scheduled for 2/ 5/96 at 10:30 A in room 1 with EAW	SMT
2/05/96	FILED: REPLY TO JUDGES REQUEST FOR RESPONSE REGARDING DEGREE OF OFFENSE NOTE: WAS BROUGHT OVER FROM CITY ON 2/2/96 Hearing: JUDGE: EDWARD A. WATSON	DOA
		DOA
		SMT

THIRD CIRCUIT COURT - WVC

THURSDAY JUNE 6, 1996

1:54 PM

Defendant

Citation:

WVC Case: 941004929 MC

NORRIS, RICHARD F

Agency No.: WVC

City Misdemeanor

2/05/96 TAPE: 13874 COUNT: 142 SMT
Deft not present SMT
ATD: MADDOX, DAVID PRO: STONEY, KEITH SMT
WEST VALLEY CITY VS RICHARD NORRIS IS BEFORE THE COURT ON A SMT
MOTION TO STRIKE THE INITIAL INFORMATION AS VOID ON THE BASIS SMT
IT IS LACKING SUFFICIENT INFORMATION TO ADVISE THE DEFENDANT SMT
OF PERSONS ALLEGED DEFRAUDED AND THE SCHEME OR ARTIFICE SMT
UTILIZED, PRECLUDING ABILITY TO PREPARE A DEFENSE. THE MOTION SMT
TO STRIKE WAS FILED SUBSEQUENT TO A DEFENSE REQUEST FOR A BILL SMT
OF PARTICULARS. THE CITY PROSECUTOR FILED AN AMENDED INFOR- SMT
MATION. THEREAFTER, THE DEFENSE FILED A MOTION TO QUASH THE SMT
AMENDED INFORMATION ALLEGING AN INVALID OR VOID INITIAL SMT
INFORMATION CANNOT BE AMENDED CHARGING CRIMES NOW BARRED BY THE SMT
RUNNING OF THE STATUTE OF LIMITATIONS. THE COURT RECEIVED SMT
MEMORANDUMS FROM BOTH PARTIES. IN PROCESS OF REVIEWING THE SMT
VOLUMINOUS PAPERWORK SUBMITTED BY THE CITY, THE COURT BECAME SMT
CONCERNED WHETHER IT WAS EXAMINING MATERIAL THAT MAY NEVER SMT
BE ADMITTED INTO EVIDENCE AT THE TRIAL OF THE CASE AND MAY SMT
REQUIRE THE COURT TO RECUSE ITSELF FOR EXAMINING SUCH INVESTI- SMT
GATIVE MATERIAL. AS IT ALWAYS DOES, IN REVIEWING A CASE, THE SMT
COURT REVIEWED TO CONFIRM JURISDICTION OF THE COURT. THE SMT
STATUTE 76-10-1801, U.C.A, 1953, AS AMENDED, UNDER WHICH THE SMT
OFFENSES ARE CHARGED, INDICATES IN SUBPARAGRAPH TWO (2) SMT
THEREOF, "THE DETERMINATION OF THE DEGREE OF ANY OFFENSE SMT
UNDER SUBSECTION (1) SHALL BE MEASURED BY THE TOTAL VALUE SMT
OF ALL PROPERTY, MONEY, OR THINGS OBTAINED OR SOUGHT TO BE SMT
OBTAINED BY THE SCHEME OR ARTIFICE DESCRIBED IN SUBSECTION SMT
(1) . . ." THE INITIAL INFORMATION IS SILENT AS TO THE NUMBER SMT
OF VICTIMS AND MEASURE OF VALUE. THE AMENDED INFORMATION NAMES SMT
FOUR VICTIMS IN FOUR COUNTS AND MEASURES VALUE OF MORE THAN SMT
\$300 IN EACH COUNT. ON JANUARY 4, 1996, THE COURT SENT A SMT
LETTER TO BOTH PARTIES, MR DAVID MADDOX FOR THE DEFENSE AND SMT
MR KEITH STONEY FOR THE PROSECUTION, REQUESTING INPUT IF THEY SMT
DESIRED, ON THE ISSUE OF JURISDICTION. RESPONSE WAS RECEIVED SMT
FROM THE DEFENSE. NONE WAS RECEIVED FROM THE CITY FOR THE SMT
COURT'S REVIEW PRIOR TO MAKING ITS DECISION THIS 5TH DAY OF SMT
FEBRUARY 1996. IN AN ATTEMPT TO RESOLVE THE ISSUE OF SMT
JURISDICTION, THE COURT REVIEWED SOME OF THE INVESTIGATIVE SMT
MATERIAL SUBMITTED BY THE CITY AND DETERMINED THE \$1000 SMT
JURISDICTIONAL AMOUNT FOR CIRCUIT COURT JURISDICTION HAD BEEN SMT
EXCEEDED. FOR EXAMPLE, A LETTER OF DEMAND FROM DEFENDANT SMT
NORRIS TO A SINGLE VICTIM OF FOUR ALLEGED IN THE INFORMATION SMT
DEMANDS \$1,600. THEREFORE, THE COURT FINDS THE CIRCUIT SMT
COURT LACKS JURISDICTION OF THE FELONIOUS ACTIONS ALLEGED SMT
IN THE AMENDED INFORMATION. AS A RESULT, THE COURT DOES NOT SMT
REACH THE ISSUE OF STRIKING THE INITIAL INFORMATION FOR SMT
VOIDNESS OR THE ISSUE TO QUASH THE AMENDED INFORMATION FOR SMT
RUNNING OF THE STATUTE OF LIMITATIONS AS RAISED BY THE DEFENSE. SMT
/06/96 C/O THE CASE DISMISSED. SMT
960250227 Refund of bail CHK #:011474 2000.00 IHR
GAYLENE FOWLER, PAYOR OF CASH BAIL, RECIEVED CASH BAIL REFUND IHR

D O C K E T

THIRD CIRCUIT COURT - WVC

Page 5
THURSDAY JUNE 6, 1996
1:54 PM

Defendant

Citation:

WVC Case: 941004929 MC

Agency No.: WVC

City Misdemeanor

NORRIS, RICHARD F

2/06/96	OF \$2000 OVER THE COUNTER THIS DATE	IHR
	Chrg: 76-10-1801 Find: Dismissed	IHR
	Chrg: 76-10-1801 Find: Dismissed	IHR
	Chrg: 76-10-1801 Find: Dismissed	IHR
	Chrg: 76-10-1801 Find: Dismissed	IHR
	Entered case disposition of: Dismissed	IHR
2/07/96	FILED: WITHDRAWAL OF COUNSEL	IHR
3/05/96	FILED NOTICE OF APPEAL	LJB
	CERTIFIED COPY OF NOTICE OF APPEAL SENT TO COURT OF APPEALS	LJB
3/14/96	FILED: CERTIFICATE OF MAILING FROM WV CITY	DOA
3/15/96	FILED: REQUEST FOR TRANSCRIPT. ARRANGEMENTS MADE WITH ALAN SMITH TO PREPARE. TAPES COPIED AND MR SMITH NOTIFIED.	CLN
		CLN
3/19/96	FILED: LETTER FROM COURT OF APPEALS CASE NO IS 960151CA	LJB
	FILED: CERTIFICATE OF MAILING ADDRESS CORRECTED ADDRESS	LJB
	IS NOT 3392 WEST 3500 SOUTH WEST VALLEY CITY, UTAH 84119	LJB
3/22/96	FILED: TRANSCRIPT	LJB
4/08/96	FILED IMPECUNIOUS AFFIDAVIT REQUEST FOR APPOINTMENT OF COUNSEL	LJB
	COPY SENT TO COURT OF APPEALS	LJB
4/11/96	PAULETTE, COURT OF APPEALS, SAID JUDGE WATSON SHOULD RULE ON THE APPOINTMENT OF COUNSEL. HAD THE REQUEST BEEN SENT TO THE COURT OF APPEALS, THE FILE WOULD HAVE BEEN TEMPORARILY REMANDED TO THIS COURT FOR RULING.	SMT
		SMT
		SMT
	FILED UNSIGNED ORDER APPOINTING PUBLIC DEFENDER	LJB
4/18/96	HRG scheduled for 4/19/96 at 9:30 A in room 1 with EAW	SMT
4/19/96	Hearing: JUDGE: EDWARD A. WATSON	SMT
	TAPE: 14106 COUNT: 1343	SMT
	Deft Present	SMT
	ATD: None Present PRO: None Present	SMT
	THE COURT FOUND DEF IS INDIGENT AND APPOINTED BRUCE LARSEN, CITY'S PUBLIC DEFENDER. DEF SAID THERE IS A CONFLICT WITH MR LARSEN'S OFFICE. COURT APPOINTED THE CONFLICT ATTY, DANNY FRAZIER.	SMT
		SMT
4/30/96	SENT FILE TO COURT OF APPEALS	LJB

Accounting Summary

Citation Amount:

Trust Account	Posted	Applied	Refunded	Payable	
	2000.00		2000.00		Cash

Additional Case Data

Sentence Summary

1. COMM FRAUD	Plea: Not Guilty	Find: Dismissed
2. COMM FRAUD	Plea: Not Guilty	Find: Dismissed
3. COMM FRAUD	Plea: Not Guilty	Find: Dismissed
4. COMM FRAUD	Plea: Not Guilty	Find: Dismissed

D O C K E T

IIRD CIRCUIT COURT - WVC

Page 6
THURSDAY JUNE 6, 1996
1:54 PMDefendant

Citation:

WVC Case: 941004929 MC

Agency No.: WVC

City Misdemeanor

NORRIS, RICHARD F

Case Disposition

Disposition.....: Dismissed

DATE: 02/06/96

Parties

Payor

GAYLENE FOWLER
5093 WEST LONGMORE DR
SLC UT

Work Phone: () -

Atty for Defendant

ATHAY, D. GILBERT
72 EAST 4TH SOUTH,
SUITE 325
SALT LAKE CITY UT 841110000

Home Phone: () -

Work Phone: () -

Atty for Defendant

MADDOX, DAVID R.
488 EAST 6400 SOUTH
SUITE 120
MURRAY UT 841070000

Home Phone: () -

Work Phone: () -

Personal Description

Sex: M DOB: 05/15/55

Dr. Lic. No.: 0

State: UT Expires:

Scheduled Hearing Summary

ARRAIGNMENT	on 12/30/94	0916 A in room 1 with EAW
PRE-TRIAL CONFERENCE	on 01/26/95	0900 A in room 1 with EAW
PRE-TRIAL CONFERENCE	on 02/16/95	0900 A in room 1 with EAW
PRE-TRIAL CONFERENCE	on 03/29/95	0900 A in room 1 with EAW
HEARINGS ON MOTIONS	on 10/26/95	0900 A in room 1 with EAW
DECISION	on 02/05/96	1030 A in room 1 with EAW
APPOINTMENT OF COUNS	on 04/19/96	0930 A in room 1 with EAW

End of the docket report for this case.

ADDENDUM 3:

UTAH CODE ANN. § 76-10-1801 (Supp. 1995).

76-10-1801. Communications fraud - Elements - Penalties.

(1) Any person who has devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and who communicates directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice is guilty of:

(a) a class B misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is less than \$300;

(b) a class A misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$300 but is less than \$1,000;

(c) a third degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$1,000 but is less than \$5,000;

(d) a second degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$5,000; and

(e) a second degree felony when the object of the scheme or artifice to defraud is other than the obtaining of something of monetary value.

(2) The determination of the degree of any offense under Subsection (1) shall be measured by the total value of all property, money, or things obtained or sought to be obtained by the scheme or artifice described in Subsection (1) except as provided in Subsection (1)(e).

(3) Reliance on the part of any person is not a necessary element of the offense described in Subsection (1).

(4) An intent on the part of the perpetrator of any offense described in Subsection (1) to permanently deprive any person of property, money, or thing of value is not a necessary element of the offense.

(5) Each separate communication made for the purpose of executing or concealing a scheme or artifice described in Subsection (1) is a separate act and offense of communication fraud.

(6) (a) To communicate as described in Subsection (1) means to bestow, convey, make known, recount, impart; to give by way of information; to talk over; or to transmit information.

(b) Means of communication include but are not limited to use of the mail, telephone, telegraph, radio, television, newspaper, computer, and spoken and written communication.

(7) A person may not be convicted under this section unless the pretenses, representations, promises, or material omissions made or omitted were made or omitted intentionally, knowingly, or with a reckless disregard for the truth.

ADDENDUM 4:

Utah Constitution article V, § 1.

ARTICLE V

DISTRIBUTION OF POWERS

Section 1. [Three departments of government.]

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.