

1987

Lynn Harold Anderson v. State of Utah : Brief of Appellant

Utah Court of Appeals

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BRIEF

UTAH COURT OF APPEALS

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DOCKET NO.

LYNN HAROLD ANDERSON,
870443-CA
Defendant-Appellant

vs

STATE OF UTAH,
Plaintiff-Respondent

Case No. 870443-CA

BRIEF OR DEFENDANT-APPELLANT, LYNN HAROLD ANDERSON

APPEAL FROM SENTENCE IMPOSED BY THE COURT,
IN THE CIRCUIT COURT, STATE OF UTAH,
WASHINGTON COUNTY, ST. GEORGE DEPARTMENT, THE
HONORABLE ROBERT F. OWENS, CIRCUIT COURT
JUDGE PRESIDING.

ARGUMENT CLASSIFICATION

THIS APPEAL FALLS UNDER ARGUMENT CLASSIFICATION
2 OF UTAH APPELLATE PROCEDURES

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COURT OF APPEALS

UTAH COURT OF APPEALS

LYNN HAROLD ANDERSON,

Defendant-Appellant

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STATE OF UTAH,

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LYNN HAROLD ANDERSON,
Defendant-Appellant
vs
STATE OF UTAH,
Plaintiff-Respondent

Case No. 870443-CA

"Jurisdiction of the Utah Court of Appeals is pursuant to Utah Code 1987-1988 §78-2(a)-3(2)(c).

Appellant was found guilty by a jury in the Circuit Court, State of Utah, Washington County, St. George, Department on August 14, 1987 of Count I, Disorderly Conduct, and not guilty of Count II, Criminal Mischief.

STATEMENT OF ISSUES

1

found not guilty by a jury of the Criminal Mischief charge and guilty only of Disorderly Conduct?

DETERMINATIVE STATUTORY PROVISIONS

- 1) UC 77-17-10 (2)
- 2) UC 76-3-201 (3) (a) (i)
- 3) UC 77-32(a)-1

STATEMENT OF FACTS

Appellant, Lynn Harold Anderson, was charged in an Amended Information, dated August 3, 1987 with two counts which were: Count I, Disorderly Conduct, a Class C Misdemeanor see Addendum "A" attached hereto, and Count II, Criminal Mischief, a Class A Misdemeanor, (TR-17) see Addendum "A" attached hereto.

On August 14, 1987, a jury trial was held and appellant was found guilty of Count I, the Class C Misdemeanor, Disorderly Conduct, (TR-35) but not guilty of the count II, the Class A Misdemeanor, Criminal Mischief. (TR-38)

On September 14, 1987, appellant was sentenced by the Court on the Count I, of which he was convicted by the Jury, to a fine of \$100.00, a ten-day suspended jail sentence and to the payment of restitution in the amount of \$842.00 jointly and severally with other parties who were convicted on other occasions of Criminal Mischief involving damage to certain premises. (TR-50) (See Addendum "B")

During the trial on August 14, 1987, Interrogatories and a form of verdict were submitted to the Jury on Count I, Disorderly Conduct, (TR-33-35) Addendum "C", and Interrogatories and a form of verdict on Count II, Criminal Mischief, (TR-37-38) Addendum "D".

The Jury, in answer to the first question, "Did the defendant (appellant) damage property belonging to another?" answered "NO" and found him not guilty. (TR-37)

Only on the Interrogatory and form of verdict addendum "C" did the Jury answer affirmatively. (TR-33) The jury found one only of several options; to wit: "Engage in violent, tumultuous, threatening behavior." (TR-33)

SUMMARY OF ARGUMENT

Appellant submits that the jury found that defendant-appellant did not cause the damages alleged and therefore the Court may not ignore that finding and punish or sentence the appellant as if he had in fact caused the alleged damage simply because he was convicted of another crime, Disorderly Conduct.

ARGUMENT

UC 77-17-10 states the historical truth that questions of law are to be decided by the court and questions of fact by the jury.

UC 77-32a-1 States in its entirety that: "In a criminal action the court may require a convicted defendant to make restitution and pay costs."

While the words are not found in that section, qualifying that section, i.e. limiting the "restitution" to

damage arising out of the crime for which the defendant was convicted, common sense dictates that that is what was meant by the legislature.

To pose a ridiculous example, certainly such a statute was not meant to mean that if one were convicted of jay-walking, (hence making him a "convicted defendant" in the words of the statute) he could be required to pay \$100,000.00 restitution for damages to a bombed out church across town!

UC 76-3-201 (3) (a) (i) makes that concept abundantly clear when it says:

"When a person is adjudged guilty of criminal activity which has resulted in pecuniary damages...the court shall order that defendant make restitution...(Emphasis added)

The jury, exercising its right and duty to decide the issues of fact, (UC 77-17-10(2)), examined the interrogatories submitted to it by the court and made a determination.

Those interrogatories (addendums C & D hereto) were born out of the Amended Information filed by the State against appellant.

That information charged Disorderly Conduct, i.e.

...Defendant on or about the 19th day of April 1987, in Washington County, State of Utah, intending to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, did engage in fighting or in violent, tumultuous, or threatening behavior, or did engage in abusive or obscene language in a public place, after being requested to stop said conduct.....(TR-17)

There is no mention of any damage allegedly being caused by appellant in the charging language of that count, Count I, of the Amended Information.

On the other hand, Count II states:

...Defendants (sic) on or about the 19th day of April, 1987 in Washington County, State of Utah, did intentionally damage, deface or destroy the property of another, said property being in excess of \$500.00.....(Emphasis added)

In that count, Count II, Criminal Mischief, damage to property was alleged.

The two sets of Interrogatories were not only labelled "Disorderly Conduct" and "Criminal Mischief" but were tailored to match those two counts by the same names.

The jury found appellant guilty of Disorderly Conduct, i.e., doing one or more of the proscribed acts found in question No.1, not one of which finds or even suggests that any damage was caused by appellant. See addendum "C"

On the other hand, the very first question contained in the Interrogatory pertaining to Criminal Mischief is:

Did the Defendant Damage Property Belonging to Another?

The answer to that question, by the jury is "NO."

As a result the jury did not even answer subsequent questions, in the interrogatory, but proceeded to the verdict and found appellant "Not Guilty" of Criminal Mischief, the only count alleging that he caused damage. (TR-38)

Consequently, pursuant to UC 76-3-201 (3)(a)(i), the Court had no right to assess restitution against this appellant, for damage alleged, because he was not...adjudged guilty of criminal activity which has resulted in pecuniary damage....as required by that section of the Utah Code.

On the contrary, appellant was specifically found by the jury to have not committed criminal activity resulting in pecuniary damages.

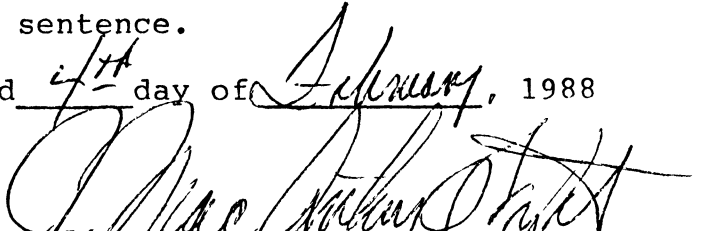
Counsel for the State at the sentencing stated on page 64 of the transcript that "there was so special finding made by the jury verdict as to whether damage was caused or not." (TR-64 line 11-14) That is of course totally wrong! The jury did specifically find that no damage was caused by the appellant. (TR-37)

CONCLUSION

The Court erred in assessing a restitution order against appellant when he had been specifically found not guilty of committing the crime which alleged pecuniary damage, and also found by the jury to have not caused damage to the property of another.

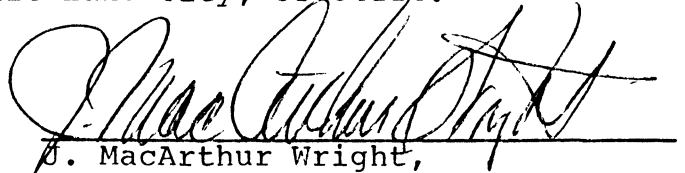
It is respectfully submitted that this court should reverse the order of Restitution against appellant and require the Circuit Court to eliminate the requirement for the payment of restitution in its judgment and sentence.

RESPECTFULLY submitted 4th day of February, 1988


J. MacArthur Wright, Attorney for
Appellant, Lynn Harold Anderson

MAILING CERTIFICATE

I hereby certify that on the 8th day of February, 1988,
I hand delivered (4) true and correct copys of the above and
foregoing document addressed to DAVID L. WILKINSON, Attorney
General, 236 State Capitol, Salt Lake City, UT 84114.


J. MacArthur Wright,
Attorney at Law

Paul F. Graf
Washington County Attorney
O. Brenton Rowe #2815
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Hall of Justice
220 North 200 East
St. George, Utah 84770
(801) 634-5723

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CIRCUIT COURT, STATE OF UTAH

WASHINGTON COUNTY, ST. GEORGE DEPARTMENT

STATE OF UTAH,)	
Plaintiff,)	Bail \$ _____
vs.)	<u>AMENDED INFORMATION</u>
LYNN H. ANDERSON,)	Criminal No. 871000806
Defendant.)	

The undersigned complainant, under oath states on information and belief that the Defendant committed the crime of:

COUNT I: DISORDERLY CONDUCT, a Class C Misdemeanor, in that said Defendant, on or about the 19th day of April, 1987, in Washington County, State of Utah, intending to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, did engage in fighting or in violent, tumultuous, or threatening behavior, or did engage in abusive or obscene language in a public place, after being requested to stop said conduct, in violation of Section 76-9-102(b)(i)(iv), Utah Code Annotated 1953, as Amended.

COUNT II: CRIMINAL MISCHIEF, a Class A Misdemeanor, in that said Defendants on or about the 19th day of April, 1987, in Washington County, State of Utah, did intentionally damage, deface or destroy the property of another, said property being in excess of \$500.00, in violation of Section 76-6-106(1)(c), Utah Code Annotated 1953, as Amended.

This Information is based on evidence from these witnesses:
Kerry Larson Jim Hatzidakis

Filing Authorized:

O. Brenton Rowe

St. George, Utah
Complainant

Subscribed and Sworn to before
me this date: Aug 3, 1987

St. Robert F. Owens
CIRCUIT COURT JUDGE

ADDENDUM "A"

Circuit Court, State of Utah

Washington

County,

St. George

Department

STATE OF UTAH

Plaintiff

vs.

ANDERSON, Lynn Harold

Defendant

JUDGMENT OF CONVICTION

SENTENCE AND COMMITMENT

Crim. No. 871000806

APPEARANCES: ☒ Defendant ☒ Counsel ☒ Prosecutor ☐ In Absentia
CONVICTION: ☒ By Jury ☐ By Court ☐ Plea of Guilty or No Contest

OFFENSE: Count 1. Disorderly Conduct, C Count 2. _____
Defendant is adjudged guilty of the above offense(s) and sentenced:

SENTENCE

☒ FINE. UCA 77-19-1. Defendant is ordered to pay a fine, 1. \$ 100.00
The fine is to be paid as follows: 2. \$ _____
due in full 10-14-87 3. \$ _____
TOTAL: \$ 100.00
The fine must be fully paid by this review date: _____
If not paid, defendant is ordered to appear in court on that date.

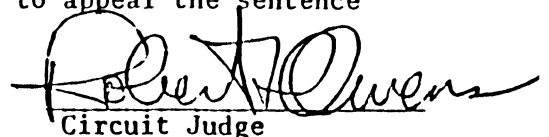
☒ JAIL. UCA 77-19-1. Defendant is sentenced to jail, 1. 10 days
The sentences are to run ☐ concurrently. 2. _____ days
☐ consecutively. 3. _____ days
Sentence begins on _____ TOTAL: 10 days
☒ SUSPENDED: The court suspends ☐ COMMITMENT: The sheriff is
10 days of the jail term on directed to take custody of and
the conditions checked below. detain the defendant until the
jail term is served or until the
sum of \$ _____ is paid.

☒ PROBATION. UCA 77-18-1. Defendant is placed on probation for twelve
months on the following conditions:
☒ 1. The probation is ☐ supervised ☒ unsupervised.
☐ 2. Defendant will sign a probation agreement and comply with it.
☐ 3. Defendant will report to probation officer when required.
☐ 4. Defendant will violate no law during probation.
☐ 5. Defendant will waive fourth amendment rights and will subject
himself to search at reasonable times and places.
☒ 6. Defendant will pay the fine in full before the review date.
☐ 7. Defendant will make restitution of \$ 842, jointly and severly
☐ 8. _____
☐ 9. _____

THIS COURT RETAINS JURISDICTION TO MAKE FURTHER ORDERS.

☐ APPEAL. Defendant was advised of the right to appeal the sentence
within 30 days after entry of judgment.

Date of sentence 09-14-87


Circuit Judge

ADDENDUM "B"

Instruction No. 17

Offense DISORDERLY CONDUCT Code UCA 76-9-102 (b)

HERE IS A STEP-BY-STEP METHOD YOU CAN USE TO MAKE YOUR DECISION

This instruction will help you review the evidence in a logical way to reach your verdict.

STEP A. The elements of the offense charged are set forth in a series of questions. Read all the questions. Words marked with an asterisk* are explained in the next instruction.

STEP B. Start with the first question. Read it again and discuss it. Take as much time as you need to answer it.

STEP C. When you have UNANIMOUSLY agreed on an answer, put a checkmark in the box which corresponds with your answer and follow the directions under that box.

Question No. 1

DID THE DEFENDANT DO ONE (OR MORE) OF THE FOLLOWING THINGS?

- ☐ Engage in fighting, or
- ☐ Engage in Violent, tumultuous, threatening behavior, or
- ☐ Make unreasonable noises in a public place, or
- ☐ Make unreasonable noises in a private place which could be heard in a public place, or
- ☐ Engage in abusive or obscene language in a public place, or
- ☐ ~~Make obscene gestures in a public place, or~~
- ☐ ~~Obstruct vehicular or pedestrian traffic.~~

☐ YES, beyond a reasonable doubt.

If "yes" was checked, then go to the next question.

☐ NO, or a reasonable doubt exists.

If "no" was checked, sign the NOT GUILTY verdict on the next page and report to the bailiff.

ADDENDUM "C"

Question No. 2

DID THIS CONDUCT OCCUR IN THE CITY/COUNTY OF _____

_____ ON OR ABOUT THE DATE OF _____

☐ YES, beyond a reasonable doubt. If "yes" was checked then go to the next question.

☐ NO, or a reasonable doubt exists. If "no" was checked, Sign the NOT GUILTY verdict below and report to the bailiff.

Question No. 3

IN DOING THESE THINGS, DID THE DEFENDANT INTEND TO CAUSE PUBLIC INCONVENIENCE, ANNOYANCE, OR ALARM, OR DID HE RECKLESSLY CREATE A RISK THEREOF?

☐ YES, beyond a reasonable doubt. If "yes" was checked, go to the next question.

☐ NO, or a reasonable doubt exists. If "no" was checked, sign the NOT GUILTY verdict below and report to the bailiff.

JURY VERDICT

Case No. _____

We the jury, duly impaneled, find the defendant,

NOT GUILTY OF DISORDERLY CONDUCT

Date: _____

Foreman

Question No. 4

DID THE DEFENDANT CONTINUE ENGAGING IN SUCH CONDUCT AFTER
A PERSON ASKED THE DEFENDANT TO STOP IT?

☐ YES, beyond a reasonable doubt.

If "yes" was checked,
sign the GUILTY VERDICT
NO. 1 below.
Report to the bailiff.

☐ NO, or a reasonable doubt exists.

If "no" was checked, sign the
GUILTY VERDICT NO. 2 below.
Report to the bailiff.

No. 1 VERDICT
(GUILTY- Misdemeanor)

Case No. _____

We the jury, duly impaneled,
find the defendant,

GUILTY OF Disorderly Conduct,
A Class C Misdemeanor

Date: _____

Foreman

No. 2 VERDICT
(Guilty- Infraction)

Case No. _____

We the jury, Duly Impaneled,
Find the defendant,

GUILTY OF Disorderly Conduct
an Infraction.

Date: _____

Foreman

Instruction No. 18

Offense DISORDERLY CONDUCT Code UCA 76-9-102 (b)

DEFINITIONS

Certain words have special meanings in criminal law. This may be different from their meaning in everyday conversation. For purpose of this case, you should use the legal definitions given for the following words.

A PUBLIC PLACE is any place to which a substantial part of the public has access. It includes (but is not limited to) streets, highways, common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops

Instruction No. 17

Offense CRIMINAL MISCHIEF Code UCA 76-6-106

HERE IS A STEP-BY-STEP METHOD YOU CAN USE TO MAKE YOUR DECISION

This instruction will help you review the evidence in a logical way to reach your verdict.

STEP A. The elements of the offense charged are set forth in a series of questions. Read all the questions. Words marked with an asterisk* are explained in the next instruction.

STEP B. Start with the first question. Read it again and discuss it. Take as much time as you need to answer it.

STEP C. When you have UNANIMOUSLY agreed on an answer, put a checkmark in the box which corresponds with your answer and follow the directions under that box.

Question No. 1

DID THE DEFENDANT DAMAGE PROPERTY BELONGING TO ANOTHER.

[Handwritten signature]

☐ YES, beyond a reasonable doubt.
Go to the next question.

☒ NO, or, a reasonable doubt exists.
Sign the NOT GUILTY verdict.
Report to the bailiff.

Question No. 2

DID THIS OCCUR IN THE STATE OF UTAH, CITY/COUNTY OF

_____ ON OR ABOUT THE DATE OF _____?

☐ YES, beyond a reasonable doubt.
Go to the next question.

☐ NO, or, a reasonable doubt exists.
Sign the NOT GUILTY verdict.
Report to the bailiff.

Question No. 3

WAS THE DEFENDANTS ACT IN DAMAGING PROPERTY AN INTENTIONAL ACT?

☐ YES, beyond a reasonable doubt.
If "yes" was checked, go on to the next question.

☐ NO, or, a reasonable doubt exists.
Sign the NOT GUILTY verdict on the next page and report to the bailiff.

ADDENDUM "D"

Question No. 4

DID THE DAMAGE RESULT IN A LOSS TO THE OWNER, WHICH CAN
BE MEASURED IN MONEY?

☐ YES, beyond a reasonable
doubt.

Go to the next question.

☐ NO, or a reasonable doubt
exists.

If, "no" was checked,
sign the NOT GUILTY
verdict and report to
the bailiff.

Question No. 5

WHAT DO YOU FIND THE AMOUNT OF LOSS TO BE (BEYOND A
REASONABLE DOUBT)?

<input type="checkbox"/> \$ 1.00 - \$ 250.00	-	Class C Misdemeanor
<input type="checkbox"/> \$250.00 - \$ 500.00	-	Class B Misdemeanor
<input type="checkbox"/> \$500.00 - \$1000.00	-	Class A Misdemeanor

Enter the grade of offense which you find has been
proved beyond a reasonable doubt in the GUILTY verdict
for, sign the verdict, and report to the bailiff.

(GUILTY VERDICT)

We, the jury, duly impaneled,
find the defendant,

GUILTY of the charge of

Date _____

Foreman

(NOT GUILTY VERDICT)

We, the jury, duly impaneled,
find the defendant,

NOT GUILTY of the charge of

Date _____

Foreman