

1997

West Valley City v. Richard Norris : Petition for Writ of Certiorari

Utah Court of Appeals

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Jan Graham; Attorney General; Attorney for Respondent.

Richard Norris.

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IN THE UTAH SUPREME COURT

West Valley City,

Appellant/Respondent

Vs.

Richard Norris,

Appellee/Petitioner

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UTAH SUPREME COURT

BRIEF

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Case No. 960151CA

PETITION FOR WRIT OF CERTIORARI FROM UTAH COURT OF APPEALS

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UTAH**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	(I)
QUESTION PRESENTED.....	1
OPINIONS OF THE COURT.....	2
JURISDICTION.....	2
STATEMENT OF CASE.....	2
STATEMENT OF FACTS.....	3
ARGUMENT.....	10
AFFIDAVIT	17
CERTIFICATE OF MAILING	18
ADDENDUM.....	19

TABLE OF AUTHORITIES

State vs. Pursifell 746 P2d 270.....	10
U.S. vs. Wadsworth 830 F2d 1500.....	11
U.S. vs. Derr 726 F2d 617.....	15

STATUTE AND CONSTITUTIONAL SECTIONS

Utah Code Annotated 76-10-1801.....	2, 13, 15
Rule 4 Utah Rules of Criminal Procedure.....	15
Rule 25 (a) Utah Rules of Criminal Procedure.....	16
Rule 37 Utah Rules of Appellate Procedure.....	14
Rule 48 (a) Federal Rules of Criminal Procedure.....	15
Utah Article 1 Declaration of Rights §12.....	10
Sixth Amendment U.S. Constitution.....	11

IN THE UTAH SUPREME COURT

West Valley City,

Appellant/Respondent,

Vs.

Richard Norris,

Appellee/Petitioner.

Case No. 960151CA

PETITION FOR WRIT OF CERTIORARI FROM UTAH COURT OF APPEALS

The decision sought to be reviewed is the Order of Dismissal entered March 26, 1997, the denial for the Petition for Rehearing entered May 13, 1997, by the Utah Court of Appeals, and the ruling of the Trial Court entered February 5, 1996.

QUESTIONS PRESENTED FOR REVIEW

1. Did the Utah Court of Appeals and the Trial Court error, when they failed to inquire in the complaints that Petitioner raised about his court re-appointed counsel?
2. Did the Utah Court of Appeals error, when they allowed the Trial Court to re-appoint the same counsel, rather than substitute counsel as previously ordered?
3. Should an indigent Petitioner be forced to proceed with counsel when a complete breakdown in communication and irreconcilable differences had occurred a second time?
4. Is the Utah Communication Fraud Statute ambiguous therefore Unconstitutional?
5. Did the Utah Court of Appeals error when they allowed the Appellant to dismiss its appeal in order to bring charges that are more serious to gain an unfair trial advantage over the Appellee?

OPINIONS OF THE COURT

The opinion of the Utah Court of Appeals in West Valley City vs. Richard Norris and docket sheet of the Circuit Court is contained in the Addendum.

JURISDICTION

The Utah Supreme Court has jurisdiction over the instant appeal by virtue of the Utah Code Annotated §§ 78-2-2 (3) (a), 78-2-2(5), and 78-2a-4.

STATEMENT OF THE CASE

The Petitioner, Richard Norris, was charged by information with four counts (Class A Misdemeanors) of Communications Fraud, violating the Utah Code 76-10-1801 UCA on December 20, 1994. This information was later found defective by the Trial Court. The prosecution then attempted to amend the original information after the Statute of Limitations had expired. The prosecution also failed to provide the Petitioner with a Bill of Particulars and failed to give the Petitioner notice of the charges he may have to defend. The Trial Court without addressing these issues, entered an order to dismiss this case based upon lack of jurisdiction.

The prosecution then filed an appeal with the Utah Court of Appeals. The Trial Court found Petitioner indigent and appointed counsel. The Petitioner's counsel failed to file a brief before oral argument, failed to file a cross appeal, and refused to represent the Petitioner. The Petitioner notified the Utah Court of Appeals that there was a problem with his appointed counsel. The court agreed and remanded this case back to the Trial Court. The Trial Court then re-appointed the same counsel to represent the Petitioner. The Petitioner sincerely tried to reconcile his differences with his counsel without success; the same problems Petitioner had before re-occurred and compounded. The Petitioner attempted to notify both the Trial Court and the Utah Court of Appeals, both courts refused to hear the Petitioner complaints and failed to make any kind of inquiry.

The Petitioner was then charged with ten counts of Communication Fraud while this case was pending appeal, (which was also later dismissed). The Appellant then filed a notice to dismiss its appeal, so that the County Prosecutors could proceed with felony charges. The Utah Court of Appeals entered an order March 26, 1997 to allow the Prosecution to dismiss its appeal over the Appellee's objection. The Appellee filed a Petition for Rehearing on April 7, 1997, which was denied. The Appellee then Petitioned for an Extraordinary Writ which was granted in part by the Utah Supreme Court on June 23, 1997. An Ex Parte Motion for Extension of Time was filed on June 9, 1997 and granted the Petitioner until July 12, 1997, to file a Writ of Certiorari.

STATEMENT OF FACTS

1. Detective Steven Humphreys, of the West Valley City Police Department, was named as a Defendant in a civil lawsuit, Case No. 940903999CV, that was filed in the Third Judicial District Court, Salt Lake County, State of Utah, as a result of defamatory statements Detective Steven Humphreys made to various news media organizations against the Petitioner and his business. Detective Steven Humphreys was served a civil summons and complaint on or about December 14, 1994. In retaliation, Detective Steven Humphreys, Detective Brook Plotnick of the West Valley Police Department and Mr. Keith Stoney, the lead prosecutor for West Valley City, willfully conspired to maliciously charge the Petitioner with four counts of Communications Fraud in violation of Title 76, Chapter 10, Section 1801(1), UCA 1953, as amended, on December 20, 1994. This case was titled: "West Valley City vs. Richard Norris, Case No. 941004929", (hereinafter, referred to as the original information), in the court then known as the Third Circuit Court, State of Utah, Salt Lake County, West Valley Department.

2. The original information did not state the alleged victims' names, the dollar amounts allegedly to have been taken, the scheme to defraud, omissions, the misrepresentations, or false pretenses, etc. Because of the vagueness of the original information, the Petitioner could not prepare his defense; therefore, a Bill of Particulars was demanded, which the prosecution failed to provide the Petitioner.

3. On or about October 2, 1995, the prosecution attempted to amend the original information

and state the victims' names and changed the date of the alleged crime from 1994 to 1993, which was attempted to be amended after the two-year statute of limitations had ran. This amended information then stated:

"That Richard Norris in March, April, or May 1993, devised a scheme to defraud or obtain money, property, or anything of value totaling more than \$300.00 by false pretenses, misrepresentations, promises or omissions and communicated directly and indirectly to the (victims) by any means for the purpose of executing or concealing the scheme."(emphasis added)

This amended information also did not state with particularity or identify what the alleged scheme to defraud was, the alleged false pretenses, misrepresentations, or omissions or how the Petitioner allegedly executed or concealed the scheme.

4. The Petitioner then brought a Motion to Quash the Amended Information and Strike Information on File, which was heard, by the Honorable Judge Watson on or about October 26, 1995. During his hearing, the Prosecution openly admitted on the record, *"They could not proceed with the original information"*, which Judge Watson confirmed and subsequently found that the original information was defective. The Honorable Judge Watson also realized the real nature of this case was a civil dispute and the prosecution was acting in bad faith in filing the original information (without formally addressing the issue of whether the Prosecution could amend the information that was so vague that the information was actually a new filing after the statute of limitations had run). Judge Watson then ordered the original information **dismissed**. Based in part his court lacked jurisdiction and based also in part, because the amended information charged four victims at \$300.00 each. Judge Watson's interpretation of the Utah Communications Fraud Statute was the offense or offenses must be totaled together to determine the level of the offense. This \$1,200.00 amount charged by the Prosecution exceeded the Circuit Courts jurisdictional limit of \$1,000.00; therefore, Judge Watson entered an order to dismiss this original information on February 6, 1996.

5. On or about March 5, 1996, the Respondent then filed an appeal based upon the theory, the prosecution had the discretion to charge a lesser level of offense than what was allegedly committed and that the Circuit Court did have jurisdiction. The Trial Court subsequently appointed Mr. C. Danny Fraizer as counsel to represent the Appellee/Petitioner in the Utah Court of Appeals.

6. The Petitioner then tried to schedule an appointment to meet with Mr. Fraizer. The Appellee/Petitioner left several messages each week for over eight weeks with Mr. Fraizer, and it was not until the Petitioner phoned and complained to Judge Watson's clerk, and the clerk at the Utah Court of Appeals did Mr. Fraizer schedule an appointment. Finally, after meeting with Mr. Frazier the Appellee/Petitioner directed Mr. Fraizer to file a cross appeal based upon several important issues.

First Issue:

It seems clear to the Petitioner that the Communication Fraud Statute contradicts itself and is unconstitutional. The Petitioner does not know if the charges should be four separate charges, at \$300.00 each (Class A Misdemeanors), or if the total amount of the scheme is to be aggregated (\$1200.00) and charged as one Felony (Third Degree), or if a person ran an ad in a newspaper and the ad was false and the newspaper had a circulation of 200,000 readers, do we have 200,000 individual misdemeanor violations, or one high degree felony. Or if the same ad ran seven days, do we have seven counts or one.

Second Issue:

Whether the Prosecution would be barred from bringing these charges based upon the theory of crossover collateral estoppel. The Petitioner had filed a small claims action against each of the alleged victims named in the amended information. Each victim claimed Fraud and Misrepresentation in the Small Claims Trial. A judgement was granted in favor of the Petitioner except for one witness – Mike Mabry. The Petitioner lost this case. It was later found out in the discovery of the Civil Defamation Case that the Small Claims Judge, Mr. Michael Crippen, and Small Claims Defense attorney Mr. Russell Cline (who was representing Mr. Mabry), were actually law Partners with the same law firm at the time of the Small Claims Trial, which Mr. Crippen and Mr. Cline failed to disclose, and neither one of them recused themselves before the trial. If the Petitioner were able to win his cases in Small Claims Court, how would the Prosecution, in a Criminal Case with a much higher standard of proof be able to now prevail and be allowed to re-litigate the same issues as heard in Small Claims Court?

Third Issue:

Because of the vagueness of the original information, the Petitioner was not put on notice of the charges and any amendment would have to be considered an additional and different charge, which is not

llowed after the Statute of Limitations has expired.

Fourth Issue:

Should Judge Watson be allowed to examine material, that may never be admitted into evidence at the trial to determine whether or not the circuit court had jurisdiction or would the original information have to stand or fall based upon the language contained in the original information.

7. Before the Respondent filed these charges on December 20, 1994, the West Valley Police Department screened this case with the Utah Attorney General's Office and the Salt Lake County District Attorney's Office. Both branches of Government determined this case was civil in nature, not criminal, and herefore, refused to prosecute the Petitioner.

8. After the Respondent finally realized they had made several fatal mistakes in drafting their original information, denying the Petitioner a Bill of Particulars, then attempting to amend a void original information after the statue of limitations had run, Detective Polnick of the West Valley Police Department hen pressured, and was somehow able to convince, Mr. Ernie Jones of the Salt Lake County District Attorney's Office to refile these same charges as felonies, which the statue of limitations had not run.

9. The Petitioner was then charged with ten felony counts of Communications Fraud in violation of Title 76, Chapter 10, Section 1801(1), UCA 1953, October 1, 1996, under Case No. 961020866 of The Third District Court, Salt Lake Department Division II in and for Salt Lake County, State of Utah. This ew information still did not state the victims' names, the nature of the scheme, the alleged misrepresentation or omission, etc. The Honorable Judge Palmer subsequently dismissed all ten counts on or about December 10, 1996 based in part, upon the original information, West Valley City vs. Richard Norris; Case No. 960151CA was pending a final decision in the Utah Court of Appeals. Judge Palmer further warned the prosecution they could not proceed with the prosecution of the Defendant/Petitioner until the appeal (Case No. 960151 CA) came to a conclusion.

10. On or about December 10, 1996, the Appellant/Respondent then filed a motion to dismiss its appeal, Case No. 960151CA, for the sole purpose of proceeding with felony charges.

11. On or about November 22, 1996, the Utah Court of Appeals acknowledged that there was a complete breakdown in communications and irreconcilable differences between the Appellee, Richard Norris,

and his court appointed attorney, Mr. Frazier, based in part because, his counsel failed to file a brief, and then filed a notice to withdraw a few days before oral argument was scheduled without prior court permission. In a partially tape-recorded telephone conversation Mr. Fraizer stated: "He had only been paid \$150 and even if the court sanctioned him, he would not represent the Appellee any further." Mr. Fraizer then directed the Appellee to pick up his file and defend himself, Pro se.

The Utah Court of Appeals then ordered:

"This matter is remanded to the trial court for the sole purpose of appointing substitute counsel for the Appellee, Richard Norris, at which time the withdrawal of Mr. C. Danny Frazier is granted."

12. On or about January 10, 1997, The trial court held a special hearing to appoint substitute counsel. Mr. Frazier failed to attend this special hearing and subsequently the trial court continued the hearing to January 30, 1997.

13. On or about January 30, 1997 the trial court held a second special hearing to appoint substitute counsel. Mr. Frazier again failed to appear and again Petitioner was not represented by counsel at this hearing. Before the hearing began on January 30, 1997, Mr. Bruce Larsen, who is another public defender for West Valley City, approached and misled the Petitioner. He told the Petitioner he "had tried to find another attorney to represent the Petitioner but he was unsuccessful", and he further stated I would "just have to accept Mr. Frazier as your attorney. **You have no other choice.**" Petitioner also does recall Judge Watson asking the Petitioner if he "would accept the reappointment of Mr. Frazier." Petitioner replied: "I would if Mr. Frazier would roll up his sleeves and go to work on my case."

14. After the re-appointment of Mr. Fraizer, the Petitioner sincerely tried to reconcile, however on or about **February 10, 1997**, Petitioner encountered another unfortunate complete breakdown of communication and irreconcilable differences between Petitioner and his re-appointed council Mr. Frazier based in part because Mr. Frazier still refused to file a cross appeal, which the Petitioner had directed at the beginning of the appeal.

15. On or about February 18, 1997, the Utah Court of Appeals entered an order that Appellee's response to Appellant's Motion to Dismiss be filed no later than March 3, 1997.

16. On or about February 19, 1997, the Petitioner filed a Motion Pro se to Appoint Substitute

counsel with the Trial Court. No hearing was held and subsequently Petitioner's motion was denied.

17. On or about February 26, 1997, the Petitioner filed a Motion Pro se to Stay the Utah Court of Appeals order that was entered February 18, 1997, **and to appoint new counsel** because of a second breakdown in communication and irreconcilable differences that had occurred on February 10, 1997, between Petitioner and his attorney, Mr. Frazier. No hearing was held, and subsequently, the Utah Court of Appeals also denied this motion on March 26, 1997.

18. Appellee's response to Appellant's Motion to Dismiss was due on March 3, 1997. Appellee later learned that the response to the Appellant's Motion to Dismiss was not filed by Mr. Frazier with the Utah Court of Appeals until March 5, 1997.

19. On or about March 26, 1997, the Utah Court of Appeals entered an order that stated, in part:

"The defendant's Motion to Stay is denied and this appeal is dismissed."

20. On or about April 1, 1997, the Petitioner then started to conduct legal research and began drafting a Motion for appointment of counsel, to assist the Petitioner to petition the Utah Court of Appeals for rehearing under Rule 35 of the Utah Rules of Appellate Procedure. The Petitioner was also in the process of drafting a Petition for Rehearing, pro se, **just in case** the Utah Court of Appeals should deny Appellee's motion for appointment of counsel and extension of time.

21. On April 2, 1997, the Petitioner was arrested (Case No. 971005698FS, Third District Court, State of Utah, Salt Lake Department, Division II) which is **now the third arrest on these same charges**, and booked into the Salt Lake County Jail. Bail was set at \$75,000.00. In addition a search warrant was wrongfully served upon Petitioner, and all computers, word processing software, files, important legal notes, etc., that were relevant to this case, and Appellee's rough draft for a Petition for rehearing, was illegally seized and taken.

22. On or about April 7, 1997, while Petitioner was incarcerated, Petitioner was able to have a family member (Danny Solt) file a faxed copy of a partially complete Petition for Rehearing, in addition Mr. Dave Maddox, Esquire, spoke with an attorney from the Utah Attorney General's Office. They assured Mr. Maddox their office would also file a Petition for Rehearing with the Utah Court of Appeals that was taken on April 2, 1997, before the required filing period on behalf of the Petitioner. Which the Utah Attorney General's

Office later confirmed on April 9, 1997, they had delivered on April 7, 1997.

23. On or about April 11, 1997, the Petitioner appeared before the Honorable L.S. Dever, (Case No.971005698FS, Third District Court, State of Utah, Salt Lake Department, Division II) on a motion to dismiss the charges that were filed April 2, 1997, and subsequently these charges were dismissed and Petitioner was released from Jail.

24. The Petitioner filed a Ex Parte Motion for Extension of Time to file a Petition for Writ of Certiorari on June 9, 1997 with the Utah Supreme Court and this Court entered an order allowing Petitioner until July 12, 1997 to file a Petition for Certiorari.

ARGUMENT ON ISSUES PRESENTED FOR REVIEW

ARGUMENT I

THE UTAH COURT OF APPEALS ERRED, WHEN THE COURT FAILED TO MAKE AN INQUIRY INTO APPELLEE'S COMPLAINTS ABOUT HIS COUNSEL.

The Petitioner/Appellee filed a Motion to Re-appoint Substitute Counsel on February 19, 1997, with the Trial Court and also attempted to notify the Utah Court of Appeals on February 26, 1997, that the Petitioner/Appellee had encountered another breakdown in communication of irreconcilable differences with Mr. Fraizer on February 10, 1997. These Motions were brought in good faith and not for delay.

The Utah Court of Appeals said in *State v. Pursifell* 746 P2d 270:

"When dissatisfaction is expressed, the court must make some reasonable, non-suggestive efforts to determine the nature of the defendant's complaints and to apprise itself of the facts necessary to determine whether the defendant's relationship with his or her appointed attorney has deteriorated to the point that sound discretion requires substitution or even to such an extent that his or her Sixth Amendment right to counsel would be violated for substitution. Even when the trial judge suspects that the defendant's requests are disingenuous and designed solely to manipulate the judicial process and to delay the trial, perfunctory questioning is not sufficient." United States vs. Welty, 674 F2d 185, 187 (3d Cir.1982)

The Utah Court of Appeals failed to make any kind of inquiry, effort or even perfunctory questioning into Appellee/Petitioner's dissatisfaction with his counsel and seems to have completely contradicted its previous decision in *State v. Pursifell*.

Judge Watson ruled that the trial court did not have jurisdiction to grant Appellee's motion to re-appoint substitute counsel (which is probably correct, but how is a lay Defendant/Appellee to know). However, Judge Watson was timely notified that there was a breakdown in communication and irreconcilable difference between the Petitioner and his counsel. Even if Judge Watson did not have jurisdiction to hear Appellee/Petitioners motion to re-appoint substitute counsel, he could have and should have notified, or referred this matter to, a court that did have jurisdiction to hear this motion to re-appoint substitute counsel.

The court said in *United States vs. Wadsworth* 830 F.2d 1500 (9th Cir. 1987):

"An indigent defendant's right to counsel under the sixth amendment is not contingent upon his request for appointed counsel. See Carnally, 369 U.S. at 513, 82 S.Ct. at 889; United States v. Karr, 742 F.2d 493, 495 (9th Cir. 1984)."

ARGUMENT II

THE UTAH COURT OF APPEALS ERRED, WHEN THEY ALLOWED THE TRIAL COURT TO RE-APPOINT THE SAME COUNSEL, RATHER THAN SUBSTITUTE COUNSEL, AS PREVIOUSLY ORDERED.

The Utah Court of Appeals entered an order on November 22, 1996 that stated in part:

"This matter is remanded to the trial court for the sole purpose of appointing substitute counsel for Appellee, Richard Norris, at which time this withdrawal of counsel Mr. C. Danny Frazier is granted." (Emphasis added.)

The trial court held a special hearing on January 10, 1997 to re-appoint substitute counsel for the Appellee/Petitioner. Mr. Frazier failed to appear. The trial court continued the hearing to January 30, 1997. Mr. Frazier again failed to appear and again Appellee/Petitioner was not represented by counsel. The trial court on January 30, 1997, then re-appointed the **same counsel**, (Mr. Frazier). It was Petitioner's understanding as per the Utah Court of Appeals order of November 22, 1996, that the trial court was to appoint substitute counsel, **not re-appoint the same counsel**.

The Court stated in *U.S. vs. Wadsworth* 830F 2nd 1500 (9th Cir. 1987) at 1510, in reference to a motion to appoint new counsel:

"We are also convinced that the proceeding conducted by the court on the defendant's motions resulted in the denial to the Defendant of his right to due process and the right to counsel at that hearing. An accused is entitled to counsel at every critical stage of the proceedings against him. Coleman v. Alabama, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed2d 387 (1970); United States v. Perez, 769 F.2d 1336, 1338 (9th Cir.1985). There can be no question that these proceedings were critical. See United States v. Wade, 388 U.S. 218, 226, 87 S.Ct. 1926, 1932, 18 L.Ed2d 1149 (1967) (right to counsel exists where counsel's absence might derogate from the accused's right to a fair trial)."

The Appellee should have been represented by Mr. Fraizer or another lawyer at this hearing,

and the Trial Court should not have failed to follow the previous order entered by the Utah Court of Appeals.

ARGUMENT III

SHOULD AN INDIGENT DEFENDANT BE FORCED TO GO FORWARD WITH COUNSEL WHEN A COMPLETE BREAKDOWN IN COMMUNICATION AND IRRECONCILABLE DIFFERENCES HAVE OCCURRED A SECOND TIME?

The Appellee/Petitioner made every effort possible to reconcile with Mr. Fraizer after his re-appointment. However, the same problems that Appellee/Petitioner encountered before, began to resurface and start all over again. Mr. Fraizer still refused to read any of the court decisions Appellee/Petitioner offered to support his position, refused to return phone calls, refused to meet with Appellee/Petitioner, and refused to file a cross-appeal.

Under the Strickland Test, the Appellee/Petitioner believes he was denied “effective assistance of counsel.” When Mr. Fraizer refused to file a cross-appeal, it is clear Mr. Fraizer’s inaction fell below an objective standard or reasonable professional judgement. Any other attorney would have filed a cross-appeal based upon some, if not all, of the issues the Appellee/Petitioner outlined in the Statement of Facts (see number six). However, Appellee/Petitioner can be somewhat sympathetic with Mr. Fraizer, to a certain point, Mr. Fraizer stated: “I’ve only been paid \$150.00.” This amount may not cover the printing expense necessary for Mr. Fraizer to file a cross-appeal. On the other hand, an indigent Appellee/Petitioner should not be denied effective assistance of counsel because West Valley City was not willing to fairly compensate Mr. Fraizer.

When Mr. Fraizer told the Appellee/Petitioner that he was refusing to file a cross-appeal on February 10, 1997, the Appellee/Petitioner then immediately tried to Motion the Trial Court and the Utah Court of Appeals for appointment of substitute counsel, which was subsequently denied by both courts. And because Mr. Fraizer failed to file a cross-appeal, this has prejudiced the Appellee/Petitioner’s defense. If Mr. Fraizer would have filed a cross-appeal, surely this would prevent the Respondent/Appellant from dismissing the Respondent/Appellant’s appeal for the sole purpose of re-filing felony charges and subjecting the Appellee/Petitioner to additional arrests, time in jail, expense and embarrassment.

ARGUMENT IV

THE UTAH COMMUNICATION FRAUD STATUTE 76-10-1801 IS AMBIGUOUS AND UNCONSTITUTIONAL AND SHOULD BAR ANY FURTHER PROSECUTION.

Under both Utah and U.S. Constitutions, the accused shall have a right to demand the nature of the cause of accusation against him in order to prepare a defense.

The Communications Fraud Statute 76-10-1801 states in part:

“(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)”

“(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.”

These two paragraphs seem to completely contradict themselves and make it impossible for a lay Defendant and even members of the judiciary to determine with certainty the level of the offense.

Perhaps, if the Utah Communications Fraud Statute were clear, in regards to the level of the offense, the Prosecution may have never filed these charges or would have been able to draft an information that was certain.

In this case, the Prosecutor, in the original information, failed to state the value of any property, money, or things obtained or sought to be obtained. In addition, because there was no amount stated, it makes it impossible to determine the level of the offense.

Then, after the Statute of Limitations had expired, the Prosecution attempted to amend the original information and alleged four different victims at \$300 or more each. If the original information is allowed to be amended, do we have four Class A Misdemeanors, or do we have one Third Degree Felony?

Now to add to the confusion, it is stated:

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

Because reliance is not a necessary element of the offense, does that mean it is required first to determine the amount the scheme or artifice obtained or sought to be obtained to determine the level of the offense?

which then could be interpreted to mean that the level of the offense could be determined by something that not a present or past material fact, or something that has not yet occurred. If this is not ambiguous and confusing, there could be no statute that could ever qualify.

The Appellee/Petitioner would respectfully request that the Utah Communication Fraud Statute be given special and fair consideration because the Petitioner could be arrested on these very same charges a fourth time. The Appellee/Petitioner should not have to endure the hardship to try to determine these issues repeatedly. Each time the Appellee/Petitioner is arrested, this causes lost time from his business, Bail Bond fees, thousands of dollars in legal fees, and hundreds of hours of legal research.

These issues are also important to other Utah citizens because if a person was convicted under the Utah Communications Fraud Statute, the stigma that society, or a jury, or the Parole Board would attach to one count vs. multiple counts would be a significant factor in the punishment that a convicted defendant would have to face.

ARGUMENT V

THE UTAH COURT OF APPEALS ERRED WHEN THEY ALLOWED THE APPELLANT TO DISMISS ITS APPEAL WITHOUT THE TERMS OF THE DISMISSAL AGREED TO BY THE PARTIES OR FIXED BY THE COURT

Rule 37(b) Utah Rules of Appellate Procedure states:

“Voluntary Dismissal. If the parties to an appeal or other proceeding shall sign and file with the clerk and agreement that the proceeding be dismissed, specifying the terms as to payment of costs and shall pay whatever fees are due, that clerk shall enter an order of dismissal, unless otherwise directed by the court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the court.” (Emphasis added)

An Appellant normally should be allowed to dismiss its own appeal, if the parties agree to the terms or the terms are fixed by the court. However, in this case, the Appellee/Petitioner did not agree to any terms or was even asked about any terms either by the Prosecutor or the Utah Court of Appeals. Nor did the Utah Court of Appeals fix any terms; they just simply dismissed the case without making any specific findings as for their ruling or terms. Furthermore, the Appellant should not be allowed to dismiss its appeal for the sole purpose to allow the Prosecution to now refile additional and different charges that will prejudice the Appellant/Petitioner's

Defense. Without triggering, the protection guaranteed by Double Jeopardy or the Statute of Limitations.

When the Prosecution filed the original information, the Prosecutor had the discretion of what charge to file, and how to draft the charging information and the Prosecution also assumed the obligation to put the Petitioner on notice of the charges he is called to defend.

The original information and the Probable Cause statement did not state the victim's names or the amounts and did nothing more than partially recite the Utah Communications Fraud Statute 76-18-1801. The Petitioner could not prepare a defense based upon this original information, therefore, the petitioner demanded a Bill of Particulars which the Prosecution failed to provide. The statute as alleged in this case allows for several interpretations of fact as to whether or not the Petitioner attempted to defraud another or whether he attempted to obtain from another money or anything of value by means of false or fraudulent pretense, by misrepresentations, by false promises or material omissions. Obviously, there are multiple sets of facts and alleged wrong doings or circumstances, which could satisfy each and every one of these elements of the offense charged.

The problem is, the Petitioner does not know, even today, and the Prosecution has failed to be able to define how the Petitioner allegedly violated this statute. And because the original information is so vague, any amendments would now have to be held as additional or different charges which is prohibited under Rule 4 (d) of the Utah Rules of Criminal Procedure and the two year statute of limitations.

It seems clear to the Appellee/Petitioner that what the Prosecution is really attempting, is to circumvent the court rules and get a second "bite at the apple" at the same time causing the Appellee/Petitioner as much grievance and expense as possible. The Federal Court system has addressed the issue of charging a Defendant, dismissing and re-charging without triggering the Protection of Double Jeopardy as stated in U.S. vs. Derr (726 F2d 617). Other states also have various rules and the Federal Court System has Rule 48 to prevent the abuse of a Prosecutors' power. When jeopardy has not attached, and the Prosecution has *nolle prosequi*, re-filing is prohibited if it is capriciously or vexatiously repetitious or causes substantial prejudice to the Defendant. Allowing the Prosecution to now re-file felony charges to continue this abuse, is unconscionable. The Appellee/Petitioner has personally spent over \$10,000.00 in legal fees (and

still counting), has been arrested three different times and jailed for over 30 days, has been subject to bad publicity in the news media, which has substantially affected his business profits and standing in the community. Because of the amount of time that has passed the Appellee/Petitioner has lost several important witnesses that would be vital to the Appellee/Petitioner's defense (Emilio Cortez, Randy Hunter, Dr. Rivera, Mr. Santos, and Laurie Orr), business records and documents have been lost, misplaced, or wrongfully seized and memories have faded all of which has substantially prejudiced the Appellee/Petitioner's case.

Appellee/Petitioner has not been able to find a Utah case on the point of charging, dismissing and re-charging without triggering the Protection of Double Jeopardy or Statute of Limitations. Utah, however, does have Rule 25 Utah Rules of Criminal Procedure to allow the courts to dismiss a case.

Rule 25 Utah Rules of Criminal Procedure states in part:

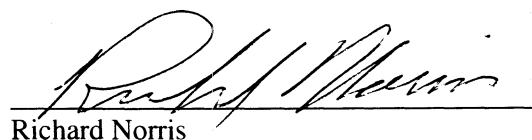
"(a) It is in the discretion, for substantial cause and in furtherance of justice, the court may, either on its own initiative or upon application of either party, order an information or indictment dismissed."

Petitioner believes this case is a prime example of why Rule 25 was enacted.

CONCLUSION

The Petitioner would respectfully request this case be dismissed with prejudice in the furtherance of justice barring any further prosecution of Richard Norris and that this court enter an injunctive order to prevent the Respondent or the Salt Lake County District Attorneys Office or the Utah State Attorney Generals Office from any further prosecution or harassment. In the alternative that this case be remanded for the appointment of counsel, and allow the Petitioner an opportunity to file and appeal, so that all of the issues raised herein may be properly briefed and decided between the Respondent and the Petitioner on the merits.

Submitted this 11 day of July, 1997.


Richard Norris

CERTIFICATE OF MAILING

I hereby certify that I have mailed a true and correct copy of the foregoing Petition for Writ of Certiorari from the Utah Court of Appeals, postage pre-paid, this 14 day of July 1997.

Mr. Ernie Jones
Salt Lake Deputy District Attorney
231 East 400 South
Salt Lake City, Utah 84111

Mr. C. Danny Frazier
Attorney for the Appellee-Defendant
39 West 300 North
Provo, Utah 84601

Mr. Keith Stoney
West Valley City Attorney's Office
3600 South Constitution Boulevard
West Valley City, Utah 84119


Ms. Marilyn Branch
Clerk, Utah Court of Appeals
230 South 500 East, Suite 400
Salt Lake City, Utah 84102

Utah Supreme Court
Room 332 State Capitol Building
Salt Lake City, Utah 84114

Hand Delivered

Ms. Jan Graham
Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114

Hand Delivered



Richard Norris

IN THE UTAH SUPREME COURT

Vest Valley City

Respondent,

Vs.

Richard Norris

Petitioner,

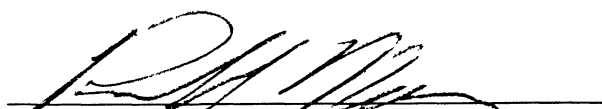
**AFFIDAVIT IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI FROM THE
UTAH COURT OF APPEALS.**

CASE NO. 960151CA

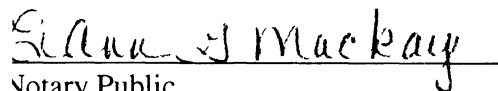
Richard Norris, who is, being by me first duly sworn, deposes and says, based upon his personal knowledge:

1. I am the Petitioner in the above-entitled matter and I am familiar with the above-referenced matter.

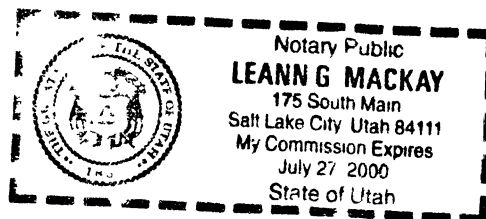
2. I personally prepared the Petition for Writ of Certiorari from the Utah Court of Appeals, and to the best of my knowledge and ability, the facts and information presented are true.


Richard Norris

The foregoing instrument was acknowledged before me this 11 day of July 1997, by Richard Norris, who is personally known to me and who did take an oath.


Notary Public
State of Utah

My Commission expires on 7-27-2000.



ADDENDUM

Keith L. Stoney (3868)
City Prosecutor, West Valley City
3600 Constitution Boulevard
West Valley City, UT 84119
(801) 963-3331

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WVC)

Plaintiff,

v.

NORRIS, RICHARD F.
678 WILLIAMSBURG
SANDY, UTAH
5/15/55

Defendant.

WARRANT OF ARREST

Bail \$ 2000.00

Case No. 941004929 mc

STATE OF UTAH }
COUNTY OF SALT LAKE } ss.

TO ANY SHERIFF, CONSTABLE, MARSHALL OR POLICE OFFICER IN THE STATE:

Information, upon oath, having been made, by KEITH L. STONEY, that the offense(s) of COMM FRAUD, COMM FRAUD, COMM FRAUD, COMM FRAUD has been committed, and accusing NORRIS, RICHARD F. thereof.

You are therefore commanded to arrest the above-named NORRIS, RICHARD F. and bring Defendant before said Court forthwith.

WITNESS, The Honorable Judge of the above entitled Court.

PROBABLE CAUSE STATEMENT:

WITNESSES STATED TO OFFICERS, THE DEFENDANT ON FOUR DIFFERENT OCCASIONS, UNLAWFULLY DEFRAUDED ANOTHER OR OBTAINED FROM ANOTHER, MONEY, PROPERTY, OR ANYTHING OF VALUE BY MEANS OF FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS, PROMISES, OR MATERIAL OMISSIONS, AND COMMUNICATED DIRECTLY OR INDIRECTLY WITH ANY PERSON BY ANY MEANS FOR THE PURPOSE OF EXECUTING OR CONCEALING THE SCHEME; THE DEFENDANT HAS NO BUSINESS LICENSE TO OPERATE IN WEST VALLEY AND NO CURRENT RESIDENCE. THE DEFENDANT'S WHEREABOUTS ARE UNKNOWN, THEREFORE, THE CITY REQUESTS A WARRANT OF ARREST

DATED this 20th day of December, 1994.

COMPLAINANT

SUBSCRIBED and SWORN to before me this 20th day of December, 1994.

JUDGE

By:

Deputy Clerk.

Keith L. Stoney (3868)
City Prosecutor
West Valley City
3600 Constitution Boulevard
West Valley City, UT 84119
(801) 963-3331

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WVC)

Plaintiff,

v.

NORRIS, RICHARD F.
678 WILLIAMSBURG
SANDY, UTAH
5/15/55

Defendant.

I N F O R M A T I O N

Case No. 9410049 29mc

The undersigned, **KEITH L. STONEY**, under oath, states on information and belief that the defendant, on or about 12 **MAY** 1994, at the vicinity of 3392 **WEST** 3500 **SOUTH**, West Valley City, Utah, did unlawfully commit the crime(s) of:

COUNT 1: COMMUNICATIONS FRAUD 76-10-1801, CLASS "A"

COUNT 2: COMMUNICATIONS FRAUD 76-10-1801, CLASS "A"

COUNT 3: COMMUNICATIONS FRAUD 76-10-1801, CLASS "A"

COUNT 4: COMMUNICATIONS FRAUD 76-10-1801, CLASS "A"

This information is based on evidence obtained from the following witnesses:

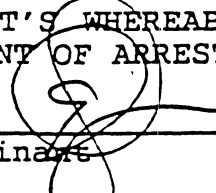
MICHAEL MABRY
BONNIE GESSEL
JOAN MATTSON
KAYLYNN CROSBY
LISA STAUFFER
SHERRY FRANCIS
DOUG FAY

DETECTIVE PLOTNICK**PLEASE LET US KNOW IF THERE ARE ADDITIONAL WITNESSES**

PROBABLE CAUSE STATEMENT:

Your affiant bases this information on the following:

WITNESSES STATED TO OFFICERS, THE DEFENDANT ON FOUR DIFFERENT OCCASIONS, UNLAWFULLY DEFRAUDED ANOTHER OR OBTAINED FROM ANOTHER, MONEY, PROPERTY, OR ANYTHING OF VALUE BY MEANS OF FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS, PROMISES, OR MATERIAL OMISSIONS, AND COMMUNICATED DIRECTLY OR INDIRECTLY WITH ANY PERSON BY ANY MEANS FOR THE PURPOSE OF EXECUTING OR CONCEALING THE SCHEME; THE DEFENDANT HAS NO BUSINESS LICENSE TO OPERATE IN WEST VALLEY AND NO CURRENT RESIDENCE. THE DEFENDANT'S WHEREABOUTS ARE UNKNOWN, THEREFORE, THE CITY REQUESTS A WARRANT OF ARREST.



Complainant

94-25376, DR, NORRIS.R2
PTC: ,
December 19, 1994

Keith L. Stoney (3868)
Valerie J. O'Brien (6624)
David L. Clark (6199)
City Prosecutor
West Valley City
3600 Constitution Boulevard
West Valley City, UT 84119
(801) 963-3344

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WVC)

Plaintiff,

v.

NORRIS, RICHARD F.
678 WILLIAMSBURG
SANDY, UTAH
5/15/55

Defendant.

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A M E N D E D
I N F O R M A T I O N

Case No. 941004929

The undersigned, KEITH L. STONEY, under oath, states on information and belief that the defendant, on or about MARCH, APRIL AND/OR MAY OF 1993, at the vicinity of 3392 WEST 3500 SOUTH, West Valley City, Utah, did unlawfully commit the crime(s) of:

COUNT 1: COMMUNICATIONS FRAUD, SECTION 76-10-1801 U.C.A. 1953 AS AMENDED, CLASS "A" MISDEMEANOR, RICHARD NORRIS IN MARCH, APRIL OR MAY OF 1993 DEvised A SCHEME TO DEFRAUD OR OBTAIN MONEY, PROPERTY OR ANYTHING OF VALUE, TOTALING MORE THAN \$300.00, BY FALSE PRETENSES, REPRESENTATIONS, PROMISES, OR OMISSIONS AND COMMUNICATED DIRECTLY AND INDIRECTLY TO **MICHAEL MABRY** BY ANY MEANS FOR THE PURPOSE OF EXECUTING OR CONCEALING THE SCHEME.

COUNT 2: COMMUNICATIONS FRAUD, SECTION 76-10-1801 U.C.A. 1953 AS AMENDED, CLASS "A" MISDEMEANOR, RICHARD NORRIS IN MARCH, APRIL OR MAY OF 1993 DEvised A SCHEME TO DEFRAUD OR OBTAIN MONEY, PROPERTY OR ANYTHING OF VALUE, TOTALING MORE THAN \$300.00, BY FALSE PRETENSES, REPRESENTATIONS, PROMISES, OR OMISSIONS AND COMMUNICATED DIRECTLY AND

INDIRECTLY TO JOAN MATTSON BY ANY MEANS FOR THE PURPOSE OF EXECUTING OR CONCEALING THE SCHEME.

COUNT 3: COMMUNICATIONS FRAUD, SECTION 76-10-1801 U.C.A. 1953 AS AMENDED, CLASS "A" MISDEMEANOR, RICHARD NORRIS IN MARCH, APRIL OR MAY OF 1993 DEvised A SCHEME TO DEFRAUD OR OBTAIN MONEY, PROPERTY OR ANYTHING OF VALUE, TOTALING MORE THAN \$300.00, BY FALSE PRETENSES, REPRESENTATIONS, PROMISES, OR OMISSIONS AND COMMUNICATED DIRECTLY AND INDIRECTLY TO LISA STAUFFER BY ANY MEANS FOR THE PURPOSE OF EXECUTING OR CONCEALING THE SCHEME.

COUNT 4: COMMUNICATIONS FRAUD, SECTION 76-10-1801 U.C.A. 1953 AS AMENDED, CLASS "A" MISDEMEANOR, RICHARD NORRIS IN MARCH, APRIL OR MAY OF 1993 DEvised A SCHEME TO DEFRAUD OR OBTAIN MONEY, PROPERTY OR ANYTHING OF VALUE, TOTALING MORE THAN \$300.00, BY FALSE PRETENSES, REPRESENTATIONS, PROMISES, OR OMISSIONS AND COMMUNICATED DIRECTLY AND INDIRECTLY TO SUSAN HUNTER BY ANY MEANS FOR THE PURPOSE OF EXECUTING OR CONCEALING THE SCHEME.

This information is based on evidence obtained from the following witnesses:

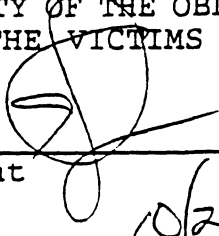
MICHAEL MABRY
BONNIE GESSEL
JOAN MATTSON
KAYLYNN CROSBY
LISA STAUFFER
SHERRY FRANCIS
DOUG FAY
DETECTIVE PLOTNICK**PLEASE LET US KNOW IF THERE ARE ADDITIONAL WITNESSES**
SUSAN HUNTER

PROBABLE CAUSE STATEMENT:

Your affiant bases this information on the following:
RICHARD NORRIS PLACED A NEWSPAPER ADVERTISEMENT FOR A \$1400.00 A

MONTH SALARIED, WITH BENEFITS, POSITION FOR A DIET COUNSELOR, WHEN, IN FACT, THE POSITION HE WAS OFFERING TO THE VICTIM WAS NOT A POSITION OF THAT NATURE OR THE NATURE ADVERTISED OR SOLICITED OR PROMISED SUCH THAT:

- A. THE POSITION WAS NOT A SALARIED JOB WITH BENEFITS, OR
- B. THE POSITION WAS NOT AS A DIET COUNSELOR, OR
- C. THE POSITION WAS FOR COMMISSIONED SALES OF A DIET PRODUCT, OR
- D. THE CONTRACT MR. NORRIS REQUIRED WAS NOT, WHAT HE SAID IT WAS FOR AND AMOUNTED TO A DEBT OF OVER \$300 TO EACH VICTIM THAT SIGNED IT, OR
- E. THE DIET PRODUCT WAS NOT A DIET PRODUCT, OR
- F. THE DIET PRODUCT WAS NOT APPROVED AS A DIET PRODUCT, OR
- G. THE AMOUNT OF PRODUCT SOLD TO THE VICTIM WAS MORE THAN THE AMOUNT AGREED UPON BY AND PROMISED BY MR. NORRIS, HENCE THE DEBT WAS GREATER THAN INTENDED
- H. MR. NORRIS, AFTER THE SALE, WOULD NOT ACCEPT RETURNS OF THE PRODUCT AS PREVIOUSLY INSINUATED, PROMISED OR AGREED, OR
- I. MR. NORRIS KNEW THAT THE PRODUCT WAS NOT WHAT HE STATED IT WAS, OR
- J. MR. NORRIS USED THIS SCHEME KNOWING PEOPLE COULD NOT LIVE UP TO THE REQUIREMENTS OF THE CONTRACT, OR
- K. MR. NORRIS, KNOWING THE IMPOSSIBILITY OF THE OBLIGATION OF THE VICTIMS, USED THIS SCHEME TO SUE THE VICTIMS TO MAKE MONEY FOR HIS COMPANY, OR
- L. MR. NORRIS, KNOWING THE IMPOSSIBILITY OF THE OBLIGATION OF THE VICTIM, USED THIS SCHEME TO SUE THE VICTIMS FOR THE FALSE VALUES OF THE PRODUCT..


Complainant

10/2/95.

94-25376, DR/CP, NORRIS.R2
PTC: ,
October 2, 1995

ndant

Citation:

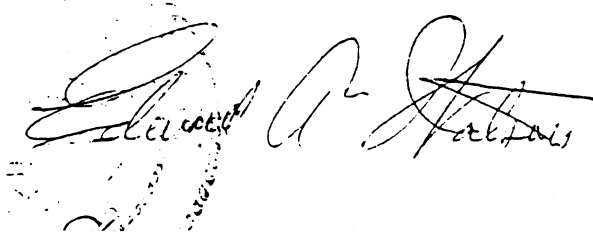
WVC Case: 941004929 MC

NORRIS, RICHARD F

Agency No.: WVC

City Misdemeanor

5/96 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, RECEIVED CASH BAIL REFUND IHR



FILED
Utah Court of Appeals

MAR 26 1997

Charilyn M. Branch
Clerk of the Court

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

West Valley City,)	ORDER OF DISMISSAL
)	
Plaintiff and Appellant,)	
)	
v.)	Case No. 960151-CA
)	
Richard Norris,)	
)	
Defendant and Appellee.)	

Before Judges Bench, Greenwood, and Orme.

This matter is before the court pursuant to West Valley City's motion to dismiss its appeal, to which defendant objects, and pursuant to defendant's motion to stay this court's February 18, 1997 order, to which West Valley City objects.

West Valley City seeks to dismiss its own appeal of the circuit court's order dismissing misdemeanor charges against defendant on the ground that the facts supported a felony charge, over which the circuit court did not have jurisdiction. Subsequently, the Salt Lake District Attorney's Office indicated its intent to file a felony charge in district court on the same facts. Since the circuit and district courts were consolidated in July, 1996, the district court now has jurisdiction whether the charges are filed as felonies or as misdemeanors.

Defendant, through counsel, asserts that this appeal should not be dismissed because West Valley City will now file felony charges against him out of vindictiveness for his filing of a motion to dismiss in circuit court. However, even assuming the truth of these assumptions, that issue is not before this court and may be raised in a different appeal, if and when defendant is convicted of felony charges. There is simply no reasoned argument that West Valley City should not be allowed to dismiss its own appeal from the circuit court's decision.

Defendant's pro se argument that this court should stay its own order directing him to file a response to the motion to dismiss by March 3, 1997 is without merit. The trial court does not have jurisdiction to consider defendant's latest motion for substitute counsel, and defendant's claim that counsel will not adequately represent him does not appear to be supported by the filings in this court.

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of March, 1997, a true and correct copy of the foregoing ORDER OF DISMISSAL was deposited in the United States mail to the parties listed below:

Keith L. Stoney
Elliot R. Lawrence
West Valley City Attorney's Office
3600 South Constitution Blvd.
West Valley, City, UT 84119

C. Danny Frazier
Attorney for Appellee
39 West 300 North
Provo, UT 84601

courtesy copy to
Richard Norris
3392 West 3500 South
West Valley City, UT 84119

and a true and correct copy of the foregoing ORDER OF DISMISSAL was deposited in the United States mail to the trial court listed below:

Third Circuit Judge Edward A. Watson
West Valley City Circuit Court
3600 Constitution Boulevard
West Valley City, UT 84119

Dated this March 26, 1997.

By 

Deputy Clerk

Case No. 960151
Third Circuit Court, West Valley Dept., Case #941004929 MC

FILED

MAY 13 1997

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

West Valley City,

Plaintiff and Appellant,

v.

Richard Norris,

Defendant and Appellee.

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ORDER

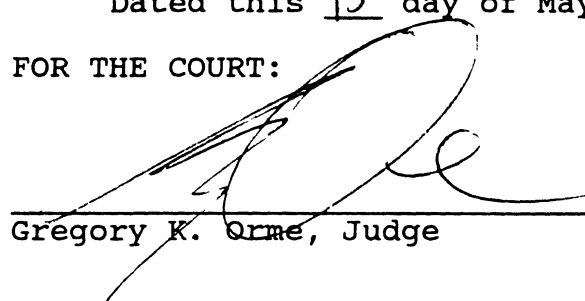
Case No. 960151-CA

This matter is before the court pursuant to defendant's petition for rehearing and motion to stay remittitur.

IT IS HEREBY ORDERED that the petition for rehearing and the motion to stay remittitur are denied.

Dated this 13th day of May, 1997.

FOR THE COURT:



Gregory K. Orme, Judge