

2008

## State of Utah v. Jerry Cooper : Unknown

Utah Court of Appeals

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### Recommended Citation

Legal Brief, *State of Utah v. Cooper*, No. 20080413 (Utah Court of Appeals, 2008).

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FILED  
UTAH APPELLATE COURTS

JAN 28 2010

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UTAH APPELLATE COURTS

FEB 25 2010

IN THE UTAH COURT OF APPEALS

|                      |   |                                |
|----------------------|---|--------------------------------|
| STATE OF UTAH        | ) |                                |
| Plaintiff/Appellee,  | ) | VERIFIED OBJECTION AND         |
| vs.                  | ) | SUPPLEMENT TO BRIEF OF         |
|                      | ) | APPELLANT FILED BY COUNSEL FOR |
| JERRY COOPER,        | ) | APPELLANT                      |
| Defendant/Appellant, | ) |                                |
|                      | ) | Case No. 20080413-CA           |
|                      | ) |                                |

COMES NOW I, Jerry Cooper, Defendant/Appellant, with a Verified Objection and Supplement to "my" Brief of Appellant as submitted on or about 22 January 2010, under Case No. 20080413-CA, to which I hereby respectfully request this instrument, by reference and incorporation, be made a part thereof in full.

Objection

Aaron P. Dodd, Counsel for Appellant, did well prepare said Brief of Appellant and filed it prior to my reading the same. I hereby file my Verified Objection with Supplement to Brief of Appellant to make clear my position, that it ought to be known and understood by this honorable court, as my position has not changed from the first day of this matter. This Verified Objection and Supplement to Brief of Appellant is not to alter what Mr. Dodd has presented in his well stated Brief, but constitutes a supplement thereto.

Supplement in Summary

I assert that two material elements of the crime charged were withheld from jury consideration: first, whether the "Administrative Judgment" document, as recorded, created a true lien, and, second, if a true lien, whether it was wrongful, i.e., injurious to some determinate

person or property. I assert that the evidence presented was not sufficient to substantiate the first or threshold element, being the operation or effect of the recorded “Administrative Judgment” document as a true lien with capacity to encumber the title to any real property other than the parcel legally described therein in which I held an undisputed ownership interest. Further, I assert that I did not competently and knowingly waive my constitutional right to have the jury examine every essential element of the crime charged.

The complete case record, including trial and hearing transcripts, is had by Mr. Dodd, Counsel for Appellant, who can provide upon request more specific citations for the statements of fact contained herein.

Were Not Two Material Elements of the Crime Charged Withheld from Jury Consideration:  
First, Whether the “Administrative Judgment” Document, as Recorded, Created a True Lien and,  
Second, If a True Lien, Whether It Was Wrongful?

The charging statute says words to the effect, “recording a wrongful lien with the county recorder is a crime.” For analogy purposes, a similar Utah statute may say, “firing a wrongful gunshot in the city is a crime.” The question in both cases is: can a criminal prosecution proceed without proving first that there was a lien or a gunshot? The gunshot may have been a car “backfire” which everyone heard. The talk of a lien may have been a notice of a right to lien, but lacking the factual quality of a lien. Can the court presume as material evidence the first issue that there was a gunshot, or a lien, and then grant a directed verdict for the State on the second issue, being the factual elements of “recording a wrongful lien,” or “firing a wrongful gunshot?”

Ought not the quality of both the “sound heard” to prove a gunshot, and the “instrument as recorded” to prove a lien, be considered only upon jury deliberation that the sound heard was or was not a true gunshot, or that the instrument recorded was or was not a true lien? Isn’t it true, that only if it can be proven first, before the jury, that there was a gunshot fired, in fact, or a

lien recorded, in fact, can the jury next determine if the gunshot or lien was “wrongful?” Might the gun have fallen to the ground and gone off by accident and the gunshot not be wrongful, or might the lien have been on the lienee’s own property and the lien not be wrongful? Ought the factual differentiation as to the wrongfulness of either a gunshot or a lien be considered by the jury and not the court?

In an American criminal trial by jury, does an investigative detective or a state prosecutor have the capacity to declare evidence legally sufficient to establish guilt, and then motion for a directed verdict of guilt for the State based on the material fact that there was a true gunshot fired or that there was a true lien recorded?

In an American criminal trial by jury, does a trial judge have the capacity to declare evidence legally sufficient to establish guilt, and then grant a directed verdict of guilt for the State based on the material fact that there was a true gunshot fired or a true lien recorded?

Was Evidence Presented Sufficient to Substantiate the First or Threshold Element, Being the Operation or Effect of the Recorded “Administrative Judgment” Document as a True Lien With Capacity to Encumber the Title of Any Real Property?

As to the first material element of the crime, was there a true lien ever proven? The first material element of the crime has never been proven or presented to a trial by jury for

determination, although I raised the question many years ago, on the first day, and ever since

Was material fact evidence presented in confirmation of the statement of Mr and Mrs Pace that “ It [the recorded “Administrative Judgment” document], also, threatened that if unpaid, a lien of said amount would be placed on our properties.. ”<sup>1</sup>, that such a lien was ultimately, in fact, “placed on our [Mr and Mrs Pace’s] properties”?

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<sup>1</sup> See affidavit of Mr and Mrs Pace presented at preliminary hearing

Was material fact evidence presented in contradiction to Mr. Rivers' testimony that the "Administrative Judgment" document, as recorded, did not hinder his ability to obtain a second mortgage on his property<sup>2</sup>?

Was material fact evidence presented of the encumbrance of Judge Davis' ownership interest in the parcel of property located at 125 North 100 West in Provo, Utah, presently the Fourth District Courthouse, or in contradiction of Judge Davis' statement regarding certain real property owned by him that "...I then had a title search performed on our property. It was free and clear of all liens."<sup>3</sup>?

Was material fact evidence presented contrary to the testimony of Mr. Covington that in his many years of experience as the Utah County Recorder he had not seen a lien on certain real property based on a mailing address or something other than a legal property description<sup>4</sup>?

Further, was material fact evidence presented contrary to the testimony of Mr. Covington that he was able to identify only a single legal property description in the recorded "Administrative Judgment" document, which, in fact, was of that parcel in which I held an undisputed ownership interest<sup>4</sup>?

Was the Constitutional Right to Have the Jury Examine Every Essential Element of the Crime Charged Competently and Intelligently Waived?

I did not enjoy the assistance of counsel at trial or in the months prior to and at no time in that impaired capacity did I competently and intelligently waive my constitutional right to have a jury examine every essential element of the crime charged. On the contrary, did I not expressly maintain my rights at all times, both orally in hearings before the court and in numerous filings

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<sup>2</sup> See trial testimony of Mr. Rivers.

<sup>3</sup> See statement of Judge Davis dated 24 Mar 2009.

<sup>4</sup> See trial testimony of Mr. Covington.

with the court<sup>5</sup>? In anticipation of not having assistance of counsel at trial, did I not specifically ask the court, in the person of Judge Skanchy pursuant to his oath of office, to protect and preserve my rights as secured and guaranteed to me by the national and state constitutions<sup>6</sup>?

My Conclusion and Prayer for Relief

From time immemorial in American Criminal Law, the exclusive province of the jury is to determine from the evidence whether the State has proven all material elements beyond a reasonable doubt. As to the first material element of the crime, was there a true lien ever proven? Did the "Administrative Judgment" instrument, as recorded, create a true lien by its certain plain language or by its operation and effect? As to the second material element of the crime, if a true lien, was it wrongful? Were these material elements of the crime charged ever presented to a jury on which to make a determination? If not, were these material elements of the crime charged properly barred from the jury's consideration?

If these questions are answered in the negative, it is my prayer that this case be found in want of requisite jurisdictional facts of material elements of the crime charged and that it be vacated and made void or voidable, and that an order be fashioned to be equitable and do me justice, restoring back to me my reputation as a law abiding citizen.

Respectfully submitted

Verification: I, Jerry Cooper, Defendant/Appellant, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct [28 USC 1746(1)]. Executed on this 25<sup>th</sup> day of January, 2010.

  
\_\_\_\_\_  
Jerry Cooper

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<sup>5</sup> See 27 Aug 2007, 5 Nov 2007, and 7 Jan 2008 hearing transcripts. See also pleadings dated 9 Jul 2007, 7 Aug 2007, 24 Oct 2007, 9 Nov 2007, 26 Nov 2007, 5 Dec 2007, 31 Dec 2007, 10 Jan 2008, and 14 Jan 2008

<sup>6</sup> See 7 Jan 2008 hearing transcript

PROOF OF SERVICE

I certify that I caused to be served the foregoing VERIFIED OBJECTION AND SUPPLEMENT TO BRIEF OF APPELLANT FILED BY COUNSEL FOR APPELLANT, by first-class mail, postage prepaid, to:

Original and four true and complete copies to the Clerk of the Court of Appeals, 450 South State, P. O. Box 140230, Salt Lake City, UT 84114, and

One true and complete copy to the Appeals Division, Utah Attorney General, P.O. Box 140854, Salt Lake City, Utah 84114.

on this the 25<sup>th</sup> day of January, 2010.

  
Jerry Cooper

United States Postal Service  
Third Party Server and Witness