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American Fork City v. William Shawn Asiata : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

AMERICAN FORK CITY,
Plaintiff / Appellant,

vs.

WILLIAM SHAWN ASIATA,
Defendant / Appellee.

**REPLY BRIEF OF THE
APPELLANT**

Case No. 20080651-CA

**APPEAL FROM AN ORDER OF DISMISSAL ON JULY 2, 2008,
IN THE FOURTH JUDICIAL DISTRICT COURT, STATE OF UTAH,
UTAH COUNTY, AMERICAN FORK DEPARTMENT,
JUDGE HOWARD H. MAETANI**

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ARGUMENT

I. THE PROSECUTION IS NOT REQUIRED TO PRESENT FORMAL EVIDENCE THAT IT DID NOT HAVE THE ORIGINAL RECORDINGS AND REQUESTED INFORMATION IN ITS POSSESSION.

The Prosecution is not required to present formal evidence that it did not have the original recordings and requested information in its possession. Asiata argues in his brief that the Prosecution is required to present evidence beyond the statements of the Prosecution's counsel that it did not have the requested recordings and information in its possession. This argument by Asiata fails for a number of reasons – 1) there is no legal authority for such argument, and 2) if there were a legal basis for such argument, it would support the Prosecution's position that the trial court erred in dismissing the case.

First, there is no legal authority for Asiata's position that the statements of Plaintiff's counsel cannot be considered by this Court because such statements are not formal evidence. Rule 25 of the Utah Rules of Appellate Procedure dictates that courts consider the record when reviewing matters on appeal. The appellate record is defined as the "original papers and papers filed in the trial court, including the presentence report in criminal matters, the **transcript of proceedings**, if any, the index prepared by the clerk of the trial court, and the docket sheet . . ." Utah R. App. P. 11(a) (emphasis added). Thus, information contained in a transcript of the proceeding is part of the record and can be considered by the appellate court even if such information does not constitute formal evidence.

In the present matter, the transcript of the suppression hearing contained in the record includes the statements from the Prosecution's counsel indicating that the

Prosecution did not have the recordings or requested information in its possession. Specifically, at the suppression hearing held on May 27, 2008, the Prosecution's counsel informed the trial court that it did not have the originals recordings and why it did not have such recordings. (R. 134, p. 3, line 21 – p. 4, line 3.) This information presented by the Prosecution's counsel at the suppression hearing is part of the record and therefore can be considered by the Court.

Secondly, if the Court were to accept Asiata's argument that only formal evidence may be considered by the Court when determining the appropriateness of the trial court's decision to dismiss the case, then it would support the Prosecution's position that the trial court's dismissal of the case was inappropriate. Rule 25(a) of the Utah Rules of Criminal Procedural allows for trial courts to exercise their discretion and dismiss criminal cases only for substantial cause and in the furtherance of justice. Using Asiata's logic, a trial court could not dismiss a case unless there had been formal evidence presented showing there was substantial cause for dismissing the case and that the dismissal would further the interest of justice.

In the present matter, there was no formal evidence presented that would show the interests of justice would be furthered by the dismissal. The trial court's articulated reasons for dismissing the case were that the Prosecution did not produce material that was allegedly in its possession and that there was good cause for requiring the production of such material. (R. 0125, ¶ 19, ¶ 21). Yet, there was never any formal evidence presented showing that the Prosecution had the requested material in its possession. Nor was there any formal evidence presented showing that there was good cause for requiring

the production of such material. The only information indicating that the Prosecution had the requested material in its possession was the “unsupported statements of counsel,” and the only information presented that indicated that there was good cause for the production of the requested information was Asiata’s counsel’s statement that such material was necessary for his case. Asiata’s counsel did not call police personnel, Prosecution’s counsel, or any other person to the witness stand to show that the Prosecution had the requested material in its possession. Nor did he introduce into evidence the duplicated recordings, even though he had such recordings, to show why he needed the original recordings for his case. Thus, under Asiata’s reasoning, because there was no formal evidence presented showing how justice would be furthered by dismissing the case, the Court erred in dismissing the case.

The above information shows that 1) there is no legal authority for Asiata’s argument that information in the record cannot be considered unless it is information that was formally introduced as evidence, and 2) if there were a legal basis for Asiata’s argument that formal evidence is required, then the Court would have to find that the trial court’s dismissal was inappropriate as Asiata failed to present any formal evidence showing why there was good cause for requiring the production of the requested material. Accordingly, the Court should reject Asiata’s argument that the Prosecution was required to introduce formal evidence showing that it did not have in its possession the requested material.

II. THE TRIAL COURT ERRED IN DISMISSING THE CASE AS THE PROSECUTION MADE EVERY EFFORT TO COMPLY WITH THE TRIAL COURT'S ORDER.

The trial court erred in dismissing the case as the Prosecution made every effort to comply with the trial court's order. Asiata claims in his brief that the Prosecution argues that it did not need to comply with the trial court's order because the requested recordings did not contain exculpatory evidence. *Appellee's Brief*, p. 14. This claim misconstrues the Prosecution's argument. The Prosecution is not arguing that it was justified in not complying with the trial court's order because the order was incorrect. To the contrary, the Prosecution is arguing that it did everything in its power to follow the trial court's order, but it was unable to do so.

The Prosecution made every effort to comply with the trial court's order that it produce the recordings and contact information within 30 days of the suppression hearing held on May 27, 2008. The Prosecution's effort to comply with the trial court's order is evident by the letter it sent to Asiata's counsel on June 25, 2008. (R. 0098—0096) This letter shows that the Prosecution took substantial steps to find the original recordings and the requested contact information but was unable to do so. Asiata's implication that the Prosecution intentionally disobeyed the trial court's order is false and contrary to the evidence in the record. The facts show that the Prosecution tried to comply with the trial court's order.

III. THE TRIAL COURT ABUSED ITS DISCRETION IN REQUIRING THE PROSECUTION TO PRODUCE THE ORIGINAL RECORDINGS.

a. The Trial Court Erred in Requiring the Prosecution to Produce Material That Does Not Contain Exculpatory Evidence.

The trial court erred in requiring the prosecution to produce material that does not contain exculpatory evidence. In response to the Prosecution's argument that it is not required to produce material that does not contain exculpatory evidence, Asiata appears to be arguing that a prosecutor has to produce any material the court orders that he produce or that defense counsel requests. Regarding a prosecutor's obligation to comply with a court order, the Prosecution agrees that a prosecutor is obligated to comply with a court order if it is able to do so.¹ Regarding Asiata's argument that a prosecutor is required to produce any material requested by defense counsel, the Prosecution asserts that this argument is contrary to well-established Utah law.

As is set forth in the Prosecution's Appellate Brief, prosecutors do not have an obligation to deliver to defendants material that does not contain exculpatory evidence. The Utah Supreme Court has stated that a prosecutor is only required to deliver to the defendant evidence that is favorable to the defendant and that would deprive him of a fair trial if it were suppressed. *State v. Bisner*, 2001 UT 99, ¶ 33, 37 P.3d 1073 (Utah 2001). Asiata has failed to produce any authority for his argument that a prosecutor has to deliver to defense counsel all material requested by defense counsel regardless of whether such information contains exculpatory evidence. Accordingly, in the present matter, the

¹ The information previously set forth in this Reply shows why the Prosecution was unable to comply with the trial court's order.

trial court erred in requiring the Prosecution to deliver the recordings when they did not contain any exculpatory evidence and it was never alleged that they did contain exculpatory evidence.

b. Asiata Could Have Obtained a Number of the Requested Recordings Through His Own Efforts.

Asiata could have obtained a number of the requested recordings through his own efforts. Asiata argues in his brief that he could not obtain the recordings on his own. This statement by Asiata is false for a number of the recordings. In his June 25, 2008, letter to Asiata's counsel, Prosecution's counsel identified that three of the recordings had come from American Fork High School. (R. p. 98—p.96). Furthermore, even prior to the June 25, 2008, letter from Prosecution's counsel, Asiata knew through common knowledge that the participating teams recorded the game. Yet, despite this knowledge, he chose to not contact the high schools even though he easily could have done so. The Prosecution is not responsible for providing Asiata with material he could easily obtain on his own. Accordingly, the trial court erred in requiring the Prosecution to deliver the recordings to Asiata.

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN DISMISSING THE CASE WHEN THERE WAS NO SHOWING THAT THERE WAS SUBSTANTIAL CAUSE FOR THE DISMISSAL AND THAT THE DISMISSAL WOULD FURTHER THE INTERESTS OF JUSTICE.

The trial court abused its discretion in dismissing the case when there was no showing of substantial cause for the dismissal and that the dismissal would further the interests of justice. Asiata argues that trial courts have broad discretion in determining whether to dismiss a case for discovery sanctions. *Appellee Brief*, p. 21. This argument

by Asiata is misplaced. A trial court's discretion to impose discovery sanctions does not eliminate the Rule 25 requirements that a court must have substantial cause for the dismissal and the dismissal must serve the interests of justice. Meaning, a trial court has discretion to enter discovery sanctions but if the sanction is dismissal, then the trial court also must make a showing that there is substantial cause for the dismissal and it will serve the interests of justice.

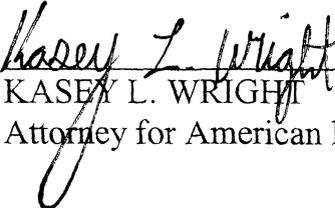
In the present matter, even assuming *arguendo* that the trial court was within its discretion to enter sanctions for discovery purposes against the Prosecution, there has been no showing that there was substantial cause for the dismissal or that the dismissal furthered the interests of justice. Absent from the trial court's Findings of Fact and Order of Dismissal is any finding that because the Prosecution failed to produce the requested information that Asiata's case was prejudiced or that he would not be able to have a fair trial without such material being produced. The trial court's only substantial finding on this issue was that "[n]o valid reason was provided by the prosecution for its failure to comply with this Court's order on May 27, 2008." (R. p. 125 ¶ 21). Such a finding by the trial court simply does not satisfy the requirements of Rule 25 that substantial cause and furtherance of the interest of justice must be found before a trial court can dismiss a case. The trial court could have imposed a number of sanctions against the Prosecution short of dismissing the case and it would not have had to satisfy the heightened requirements of Rule 25. But, for the trial court to dismiss the case entirely, it had to show that such dismissal satisfied the Rule 25 requirements. The trial court made no such showing. Accordingly, the trial court abused its discretion in dismissing the case.

CONCLUSION

Based on the authority cited above, the Prosecution requests that the Court find that the trial court abused its discretion in requiring the Prosecution to produce the requested material and that it abused its discretion in dismissing the case without showing that the Rule 25 requirements for dismissal had been satisfied. With such findings, the Prosecution requests that the Court reverse the trial court's dismissal of the action against Asiata and remand the case for further proceedings.

DATED this 5th day of March, 2009.

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CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing **APPELLANT'S REPLY BRIEF**, postage prepaid by first class mail, on this 5th day of March, 2009, to the following:

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