2008

American Fork City v. Karl G. Peterson : Brief of Appellee

Utah Court of Appeals

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Karl Peterson; pro se.

IN THE UTAH COURT OF APPEALS

AMERICAN FORK CITY, Plaintiff/Appellee, vs. **KARL G. PETERSON** Defendant/Appellant	**BRIEF OF THE APPELLEE** Case No. 20081052-CA

APPEAL FROM THE DECEMBER 12, 2008 ORDER OF THE FOURTH DISTRICT COURT, UTAH COUNTY, STATE OF UTAH, AMERICAN FORK DEPARTMENT
JUDGE HOWARD H. MAETANI

Karl G. Peterson
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American Frok, Utah 84003
Pro Se, Appellant

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Annotated § 78A-4-103. This section gives the Court of Appeals jurisdiction over appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony. The issue at hand comes within this category. District Court Judge Maetani found Defendant guilty on December 12, 2008.

DETERMINATIVE PROVISIONS

American Fork Code 8.08.030 Nuisance Abatement and Beautification

Utah Code Ann. § 78A-4-103

Utah Code Ann. §10-9a-515

Rule 16, Utah Rules of Criminal Procedure

Rule 30. Utah Rules of Criminal Procedure

Rule 24, Utah rules of Appellate Procedure

Amateur Radio Preemption, 101 FCC 2d 952 (1985) PRB-1

State v. Martin, 1999 UT 72, ¶ 8, 984 P.2d 975 (Utah 1999)

State v. Jarrell, 608 P.2d 218, 224 (Utah 1980), citing U.S. v. Agurs, 427 U.S. 97, 107.

State v. Martin, 2002 UT 34, ¶ 28, 44 P.3d 805 (Utah 2002)

Utah v. Hassan, 2004 UT 99, ¶ 10, 108 P.3d 695 (Utah 2004)

State v. Green, 2005 UT 9, ¶ 12, 108 P.3d 710 (Utah 2005)

Koulis v. Standard Oil Co., 746 P.2d 1182, 1185 (Utah Ct. App. 1987)

STATEMENT OF MATERIAL FACTS

1. Defendant/Appellant (hereafter referred to as "Peterson") was charged with allowing unlawful waste upon the premises, an infraction, in American Fork City on or between January 17, 2008 and March 26, 2008. (R. 0001).
2. On June 16, 2008 Peterson filed a Motion for Dismissal. The basis for his Motion was that the American Fork City ordinance he was charged under should be unenforceable due to it not providing for reasonable accommodations for amateur radio towers. (R. 0016).
3. Judge Maetani denied Peterson's Motion, ruling that Peterson was charged with a beautification violation and it had nothing to do with an antenna. (R. 0060, p. 7).
4. Judge Maetani concluded by stating that "[t]he antenna issue is not before the court." He proceeded to dismiss Peterson Motion to Dismiss. (R. 0060, p. 8).

SUMMARY OF ARGUMENTS

No harmful error was made by the trial court in its careful and deliberate handling of the proceedings against Peterson for violation of American Fork City's beautification ordinance. The trial court obtained jurisdiction over Peterson when he committed the crime within the court's jurisdiction. Peterson's constitutional rights were maintained during the entire process, from arraignment to discovery to sentencing, under the

prescribed processes of law. Appellant's Brief contains burdensome, emotional, immaterial, inaccurate and inadequate arguments and should therefore, be disregarded. Peterson has failed to show how any perceived error made by the trial court would have altered the outcome of his conviction.

ARGUMENT

I. THE TRIAL COURT PROPERLY RULED WHEN IT FOUND APPELLANT GUILTY OF AN AMERICAN FORK CITY BEAUTIFICATION ORDINANCE.

The trial court properly ruled when it found Appellant guilty of an American Fork City beautification ordinance (8.08.030). In American Fork City it is a violation, which may be prosecuted criminally, to participate in conduct that amounts to a nuisance. It is a nuisance to "allow the accumulation or growth of noxious weeds, garbage, refuse, or any unsightly or deleterious objects, conditions, or structures" on ones property which would "create a fire hazard, a source of contamination or pollution of water, air or property, a danger to health, a breeding ground or habitation for insects or rodents or other forms of life deleterious to human habitation, or when such objects, conditions, or structures are unsightly or deleterious to their surroundings." *American Fork Code 8.08.030 Nuisance Abatement and Beautification,*

Furthermore, it is unlawful for a property owner in American Fork City, Utah, "to park, store or leave...any licensed or unlicensed motor vehicle...which is in a wrecked

junked, partially dismantled, inoperative or abandoned condition...upon such property" for more than seventy-two hours. *Id.* Additionally it is unlawful for a property owner in American Fork City, Utah, "to cause or permit junk, scrap metal, scrap lumber...discarded building materials...or other waste materials to be in or upon any such property." *Id.* In the present matter, the American Fork City enforcement officer discovered in or upon Appellant's real property a number of items prohibited by the ordinance.

Appellant argues that U.C.A. §10-9a-515 trumps or preempts the American Fork City Ordinance. *See Appellant Brief* ¶ *6.* However, U.C.A. §10-9a-515 deals only with the regulation of amateur radio antennas, which is not an issue in this case. (R. 0060, p. 8). Defendant essentially is saying that if he is a licensed radio operator, he may disregard the law with impunity. Such a position is without basis in the law and is against public policy. This court will review the trial court's conclusions of law for correctness. The trial court ruled that antennas did not apply to the ordinance in question and that Appellant violated said ordinance.

II. APPELLANT'S DUE PROCESS RIGHTS WERE NOT DENIED HIM BECAUSE HE FAILED TO REQUEST ANY DISCLOSURES AND THE ISSUE WAS NOT PRESERVED FOR APPEAL.

Appellant argues that his due process rights were violated by the prosecution because discoverable information was not disclosed to Appellant pursuant to Utah Rule

of Criminal Procedure 16. The Utah Supreme Court opined that "[r]ule 16(a) only requires the prosecutor to 'disclose [evidence] to the defense upon **request**.' Utah R. Crim. P. 16(a). Due process, on the other hand, requires that certain evidence be disclosed even without a request." *State v. Martin, 1999 UT 72, ¶ 8, 984 P.2d 975 (Utah 1999)* (Emphasis Added).

Both the United States Supreme Court and the Utah Supreme Court have held that a prosecutor does not have a duty to disclose all information in its possession, only that evidence that is clearly exculpatory. More specifically, the Utah Supreme Court stated that "a prosecutor has a constitutional duty to volunteer obviously exculpatory evidence and evidence that is 'so clearly supportive of a claim of innocence that it gives the prosecution notice of a duty to produce.'" *State v. Jarrell, 608 P.2d 218, 224 (Utah 1980), citing U.S. v. Agurs, 427 U.S. 97, 107.*

In the present matter, Appellant failed to request any discoverable information from the prosecution, which relieved the prosecution from disclosing any evidence that was not exculpatory. The prosecution did not have in its possession any evidence that supported a claim of innocence and thereby had no duty to disclose without a specific request from Defendant.

Furthermore, Appellant did not preserve this issue for appeal. A defendant wanting to raise an issue on appeal must first raise it in the trial court. In *Martin*, the

court stated that because defendant "never raised this argument below...he thus waived his right to urge its consideration on appeal." (On appeal Defendant sought to raise an issue that had not been raised in the trial court) *State v. Martin, 2002 UT 34, ¶ 28, 44 P.3d 805 (Utah 2002).* Throughout the entire process, Appellant's due process was respected. In no way were his substantial rights prejudiced in any way.

III. APPELLANT'S BRIEF SHOULD BE DISREGARDED PURSUANT TO RULE 24(K) OF THE RULES OF APPELLATE PROCEDURE.

Appellant's Brief contains burdensome, emotional, immaterial, inaccurate and inadequate arguments. The Court of Appeals may disregard a Brief that is filled with burdensome, emotional, immaterial and inaccurate arguments. *See Koulis v. Standard Oil Co.*, 746 P.2d 1182, 1185 (Utah Ct. App. 1987); *see also* Rule 24(k) of the Rules of Appellate Procedure. It is difficult to know what Appellant is arguing in his "Argument 1." *See* Appellant Brief p. 10-15. To the best of Appellee's reading of the Appellant brief, Appellant references several laws (*Appellant's Brief*, p. 10-11) that are not applicable in this case and endeavors to correlate them and apply them to a state statute (*Appellant's Brief*, p. 12) which regulates amateur radio antennas.

Appellant goes on to state that any ordinance of the city which does not comply with PRB-1[1] is unenforceable (*Appellant's Brief*, p. 13-14). Appellant then goes so far as to ask this Court to create a clear public policy in applying U.C.A. §10-9a-515 (deals

[1] PRB-1, cited as "Amateur Radio Preemption, 101 FCC2d 952 (1985)," is a limited preemption of local zoning ordinances. It delineates rules for local municipalities to follow in regulating antenna structures.

only with the regulation of amateur radio antennas) to the American Fork City Beautification ordinance (*Appellant's Brief*, p. 15). Appellant then randomly states that if all of the ordinances of American Fork City become unenforceable due to U.C.A. §10-9a-515 then the city will have to vacate and refund all traffic citations from 2005 to date. As stated in *Green* a brief that contains "a disjointed array of facts" is inadequate. *State v. Green*, 2005 UT 9, ¶ 12, 108 P.3d 710 (Utah 2005). For these reasons this Court should disregard Appellant's brief.

IV. APPELLANT'S BRIEF FAILS TO SHOW ANY HARMFUL ERROR.

Appellant's Brief fails to state how the trial court committed reversible error. The Utah Supreme Court has stated, "[W]e will overturn the trial court's rulings only if we find that (i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for [defendant]." *Utah v. Hassan, 2004 UT 99, ¶ 10, 108 P.3d 695 (Utah 2004)* (internal citations omitted). Appellant's claims fail to meet the standard of "harmful" error. Rule 30 of the Utah Rules of Criminal Procedure states, "Any error, defect, irregularity or variance which does not affect the substantial rights of a party shall be disregarded." Utah R. Crim. P. 30. Nothing in Appellant's Brief puts in question the trial court's conviction of Appellant for violation of the beautification ordinance. The trial court duly received evidence at trial, carefully considered the evidence and

testimony, and rendered a ruling. (R. 0046). Appellant has failed to show prejudice or how his substantial rights were impaired.

CONCLUSION

Appellant's arguments fail to show any reversible error on the part of the trial court or City. Therefore, the City respectfully requests that Appellant's conviction be affirmed.

DATED this 14th day of December, 2009

HANSEN WRIGHT EDDY & HAWS, P.C.

TIMOTHY G. MERRILL
Deputy American Fork Prosecutor

MAILING CERTIFICATE

I hereby certify that I mailed two true and correct copies of the foregoing **BRIEF OF THE APPELLEE**, postage prepaid by first-class mail, on this 14th day of December, 2009, to the following:

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IN THE UTAH COURT OF APPEALS

AMERICAN FORK CITY, Plaintiff / Appelle, vs. **KARL G. PETERSON,** Defendant / Appellant.	**CERTIFICATE OF SERVICE** Case No. 20081052-CA

Plaintiff, by and through its counsel, HANSEN WRIGHT EDDY & HAWS, P.C. hereby certifies that pursuant to the Utah Supreme Court Standing Order No. 8, a Compact Disc containing Appellant's Reply Brief was mailed to Defendant/Appellant, together with a true and correct copy of this Certificate of Service, by mail, first-class postage prepaid on the 14th day of December, 2009, to the following:

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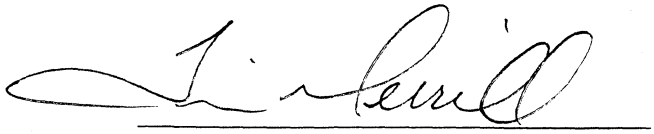

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