

1988

Layton City v. Alex Lopez : Brief of Respondent

Utah Court of Appeals

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Recommended Citation

Brief of Respondent, *Layton City v. Alex Lopez: Brief of Respondent*, No. 880653 (Utah Court of Appeals, 1988).
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BRIEF

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DOCKET NO. 88-0653

IN THE UTAH COURT OF APPEALS

LAYTON CITY,	:	
	:	BRIEF OF RESPONDENT
Plaintiff/Respondent	:	
vs.	:	
	:	Case No. 880653-CA
	:	
ALEX LOPEZ	:	
	:	
Defendant/Appellant.	:	

BRIEF OF RESPONDENT

APPEAL FROM CONVICTION AND TRIAL COURT'S DENIAL OF
DEFENDANT'S MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL,
IN THE SECOND CIRCUIT COURT, STATE OF UTAH, DAVIS COUNTY,
LAYTON DEPARTMENT, THE HONORABLE K. ROGER BEAN, JUDGE,
PRESIDING.

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Argument Priority Classification: 2

DEPOSITED BY THE
STATE OF UTAH

AUG 17 1990

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	:	Case No. 880653-CA
ALEX LOPEZ,	:	
Defendant/Appellant.	:	
	:	

STATEMENT OF JURISDICTION

This appeal arises from the Defendant's convictions of Driving Under the Influence of Alcohol and Delaying and Obstructing an Officer. Those convictions were entered after a jury trial in which the Defendant was found guilty of these two charges and acquitted of a third. The trial was held in the Layton Department of the Second Circuit Court, Davis County, State of Utah.

Pursuant to statute, Section 78-2a-3 (2)(d), Utah Code Annotated, this Court of Appeals has appellate jurisdiction over appeals from the circuit courts.

NATURE OF THE PROCEEDINGS

This is an appeal from convictions of Driving Under the Influence of Alcohol and Delaying and Obstructing and Officer in the Layton Department of the Second Circuit Court.

STATEMENT OF ISSUES

Whether the trial court properly ruled in denying Defendant's Motion to Dismiss which complained that Defendant's right to a speedy trial had been breached.

APPLICABLE CONSTITUTIONAL PROVISIONS, STATUTES

United States Constitution, Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Utah Constitution, Article I, Section 12:

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance

of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases.

....

UTAH CODE ANNOTATED Section 76-1-302 (1)(b)

(1) Except as otherwise provided in this part, prosecutions for other offenses are subject to the following periods of limitation:

...

(b) a prosecution for a misdemeanor other than negligent homicide shall be commenced within two years after it is committed;

....

STATEMENT OF THE CASE

This is a criminal case involving the traffic offenses of Driving Under the Influence of Alcohol and Failure to Remain at the Scene of an Accident, and the offense of Delaying and Obstructing an Officer, all class B misdemeanors against Alex Lopez (hereinafter "Defendant").

The charges herein are the result of an incident that occurred on August 16, 1986 within Layton City. While police officers were investigating a citizen's complaint of a vehicle running over a mail box, they came across the Defendant and an

acquaintance. As they were speaking to the Defendant and the acquaintance, they were approached by the Defendant's wife, Barbara Lopez (hereinafter "Barbara"), who was subsequently arrested for Driving Under the Influence of Alcohol (hereinafter "DUI") after she informed the investigating officers, in the presence of the Defendant, that she was the driver of the vehicle involved in the incident. A jury trial was held December 5, 1986 wherein Barbara, the defendant therein, and the Defendant herein testified that the Defendant, and not Barbara, was the driver. Barbara was acquitted.

Thereafter, charges of DUI, Leaving the Scene of an Accident, and Delaying and Obstructing an Officer were filed against the Defendant on January 26, 1987. At the pre-trial on March 31, 1987 the trial court granted the parties seven (7) days to attempt a resolution. No resolution was made or presented to the trial court.

After having discovered that no trial setting was made, the trial court set a second pre-trial dated for January 13, 1988. The Defendant filed a Motion to Dismiss on January 28, 1988. A hearing on the Defendant's motion was held on March 11, 1988 and the Defendant's motion was denied and a jury trial was set for April 11, 1988.

A jury trial was held April 11, 1988 and at the conclusion thereof the jury returned a verdict of guilty on the DUI and Delaying and Obstructing charges and acquitted the Defendant of Leaving the Scene of an Accident. The trial court entered convictions on the charges of which the jury found the Defendant

guilty.

Defendant makes this appeal.

STATEMENT OF FACTS

At approximately 4:00 a.m. on August 16, 1986 the Layton Police were notified that a vehicle had just run up over a curb and destroyed a mail box. (Barbara Lopez Trial Transcript (hereinafter "B.L. Tr.") pp. 22, 23).

The Defendant approached a neighbor asking for "a jump" to get the vehicle restarted, and stated that his "wife was driving." (B.L. Tr. pg. 16). The owner of the mailbox confronted the Defendant, and the Defendant, without providing any identification or other information, assured the owner that Defendant would "pay for that." (B.L. Tr. pg. 23), as the Defendant headed towards the vehicle. Since the vehicle could not be restarted, the Defendant, along with the other occupants of the vehicle, began pushing it down the road. (B.L. Tr. pg. 23).

As the police arrived, the Defendant and his companions scattered on foot, leaving the vehicle at the side of the roadway. (B.L. Tr. pg. 27). Officer Steven Brown stopped the Defendant and "Marty" Martinez, an apparent occupant of the vehicle, as they were leaving the area of the vehicle. (B.L. Tr. pp. 32, 36). Officer Brown immediately noticed that the Defendant and Martinez had been drinking and he then initiated an investigation for a possible Driving Under the Influence violation in addition to the Leaving the Scene of an Accident complaint. (B.L. Tr. pp. 35, 36). No

sooner did Officer Brown begin asking questions about the incident when Barbara Lopez, the Defendant's wife, emerged from the surrounding foliage and stated "Leave them alone, I was the driver." (B.L. Tr. pp. 37-39, 57).

The Defendant and Martinez acquiesced in this assertion and Barbara Lopez continued her assertion that she was the driver, that she ran down the mailbox, etc. (B.L. Tr. pp. 38, 39). Officer Brown noticed that she too had been consuming alcohol and requested that Barbara Lopez perform field sobriety tests. (B.L. Tr. pg. 39). At the conclusion of those tests she was placed under arrest for Driving Under the Influence of Alcohol. (B.L. Tr. pg. 49). All of this was done in the presence of the Defendant and Martinez with no objections being made. The Defendant watched as his wife was arrested, handcuffed, placed into a patrol vehicle and driven off to jail. (B.L.Tr. pp. 70-71).

Barbara Lopez appeared through counsel and the Circuit Court set a Pre-trial for September 15, 1986. That was continued to September 23, 1986 and was then held. At that hearing the Circuit Court set a jury trial date for December 5, 1986. At that trial, Barbara Lopez and the Defendant testified that the Defendant was the actual driver. (B.L. Tr. pp. 53, 84). The jury acquitted Barbara Lopez.

After evaluating the evidence, the City, on or about January 23, 1987, filed charges against the Defendant for DUI, Leaving the Scene of an Accident, and Delaying and Obstructing an Officer. (Tr. Ct. Rec. pp. 4-7). On January 27, 1987 the Circuit Court set

February 9, 1987 as Defendant's arraignment. On that day the Defendant called the Circuit Court stating that the Defendant's counsel was to "call in an appearance." (Tr. Ct. Rec. pg. 1). Pursuant thereto the Circuit Court allowed a continuance to February 17, 1987. (Tr. Ct. Rec. pg. 1). On February 27, 1987 the Circuit Court set a pre-trial in this case for March 31, 1987. At the pre-trial the Circuit Court allowed the parties seven (7) days within which to reach a resolution or otherwise the matter would be set for trial. (Tr. Ct. Rec. pg. 1). No notice of any resolution was given to the Circuit Court. (Tr. Ct. Rec. pg. 1).

After it was discovered that no action had been taken, the Circuit Court, on December 30, 1987, set a pre-trial for January 13, 1988. At that pre-trial, defendant informed the Court of his intent to request a dismissal because of the delay. Defendant was to file a Motion to Dismiss based on the speedy trial issue within ten (10) days, being January 23, 1988. (Tr. Ct. Rec. pg. 1). The Motion was subsequently filed January 28, 1988 and was the first time the speedy trial issue was asserted. (Tr. Ct. Rec. pg. 1).

On February 25, 1988 the Circuit Court set a hearing on the Defendant's Motion to dismiss for March 11, 1988 and that hearing was held. (Tr. Ct. Rec. Pg. 1). Although not reflected in the docket, after hearing argument the Circuit Court denied Defendant's Motion. After so ruling, and in an effort to have this matter heard quickly, the trial court set a jury trial for April 11, 1988 which required the resetting of another jury trial already set for that day. (Tr. Ct. Rec. pg. 1). The Circuit Court then sent

written confirmation of the trial date on March 18, 1988 to Defendant, and, due to an apparent mailing error, to the City on March 29, 1988. (Tr. Ct. Rec. pg. 1).

On April 11, 1988 a jury trial was held and the Defendant was convicted of DUI and Delaying and Obstructing an Officer, and was acquitted of Leaving the Scene of an Accident. (Tr. Ct. Rec. pg. 2).

Thereafter Defendant has taken this appeal.

SUMMARY OF THE ARGUMENT

The Defendant claims a deprivation of his right to a speedy trial. However, the Defendant cannot satisfy the criteria established by this Court in reviewing such challenges, those being length of delay, reason for delay, assertion of the right, and whether prejudice resulted.

The Defendant is the cause of a very substantial portion of the delays in this proceeding, effectuating a waiver of the right of which he claims deprivation. The Defendant never asserted the right to a speedy trial but merely filed a motion to dismiss based on the lack of a speedy trial.

Further, the Defendant makes a naked allegation of prejudice based on fading memories. The unsubstantiated allegations are not sufficient to support Defendant's claims. There is no evidence of the delays being intentional or oppressive, nor is there any indication of an advantage gained by the prosecution for these delays.

Finally, all of the filings, hearings and trials were within the statute of limitation time period, the primary protection for a defendant from having to defend against a stale criminal allegation.

Defendant has failed to establish any basis upon which a speedy trial deprivation claim may be founded.

ARGUMENT

THE TRIAL COURT PROPERLY RULED THAT THE DEFENDANT WAS NOT DENIED HIS RIGHT TO A SPEEDY TRIAL.

A. Defendant cannot satisfy the requirements of establishing a deprivation of his right to a speedy trial under the Utah State of the federal constitution

Defendant contends that the time period that lapsed between the August 16, 1986 incident and the April 11, 1988 trial denied his right to a speedy trial. In analyzing an allegation of a deprivation of one's right to a speedy trial, the United States Supreme Court established four (4) primary criteria. Barker v. Wingo, 407 U.S. 514; 33 L.Ed.2d 101; 92 S.Ct. 2182 (1972). That four part test has subsequently been utilized and then adopted by the Utah Supreme Court in the cases of State v. Knill, 656 P.2d 1026 (Utah 1982), State v. Velasquez, 641 P.2d 115 (Utah 1982), State v. Hafen, 593 P.2d 538 (Utah 1979), and State v. Giles, 576 P.2d 876 (Utah 1978). The Utah Court of Appeals now utilizes this

same test. State v. Miller, 747 P.2d 440 (Utah App. 1987). These four factors are: "(1) length of delay; (2) reason for delay; (3) Defendant's assertion of the right to a speedy trial; and (4) prejudice to Defendant from the delay." Miller, supra, at 442 (citing Barker v. Wingo, 407 U.S. at 530, 92 S.Ct. at 2192).

1. Length of Delay

The incident resulting in the charges being filed occurred August 16, 1986 and the trial concerning those charges in which the Defendant was found guilty was held April 11, 1988, (Tr. Ct. Rec. pg. 2), not May 4, 1988 or May 19, 1988 as inconsistently alleged by Defendant in his brief. (App. brief, title page and pp. 3,5,6,8). Although this time period is five (5) days short of twenty (20) months, a significant portion is attributable to the Defendant. At the conclusion of the following analysis regarding the Reason for the Delay, this Court will realize that the only period defendant can complain of, while yet maintaining some responsibility therefor, is a nine (9) month period. Such a delay of nine (9) months, however, should not in and of itself "trigger" a review of the remaining criteria. Only if a time period is substantially inordinate is a review of the remaining criteria required. State v Banks, 720 P.2d 1380 (Utah 1986).

2. Reason for the Delay

Defendant first complains about the five (5) month period between the August 16, 1986 incident and the filing of the charges

on January 26, 1987. Defendant presents this as an unnecessary and unreasonable length of time. That is a misrepresentation. The facts are uncontroverted. The officers investigating the accident came upon the Defendant and a male acquaintance of the defendant.

While assessing the occurrence of a Driving Under the Influence of Alcohol ("DUI") violation, the Defendant's wife, Barbara Lopez, confronted the officers and claimed to be the driver. (B.L. Tr. pp. 37-39, 57). She was given field sobriety tests and then arrested for DUI all in the presence of this Defendant. (B.L. Tr. pp. 38-39, 70). Not until the day of Barbara Lopez's trial, December 5, 1986, did the Defendant ever assert that he, this Defendant, was the driver. (B.L. Tr. pp. 53, 84). Had the Defendant not participated and acquiesced in the fraudulent representation that his wife was the driver, causing his wife to be tested, arrested, jailed and then tried, it would have been Defendant's case that would have been disposed of on December 5, 1986.

Clearly then, the first four (4) months of delay rest solely upon the Defendant. Further, Defendant's conduct that is contrary to his stated desire for a speedy trial constitutes a waiver of his right to a speedy trial. State v. Stillings, 709 P.2d 348, at 349 (Utah 1985)(citing State v. Trujillo, 656 P.2d 403 (1982)).

With regard to the month between Defendant's wife's trial and the filing of charges against Defendant, it has been a consistent position by the courts that the delay between the date of the crime and the date the charges are filed need not be considered in a

speedy trial violation claim. "The constitutional protection afforded one relative to a speedy trial has no application until after a prosecution is instituted. See Foley v. United States, 8 Cir., 290 F.2d 562, Cert. Den. 368 U.S. 888, 82 S.Ct. 139, 7 L.Ed.2d 88 (1961), holding that prosecution is not instituted until an indictment is returned or an information is filed." State v. Renzo, 443 P.2d 392 (Utah 1968).

The reasoning the courts have utilized in stating the inapplicability of speedy trial rights to pre-arrest delays is that without having the charges filed there are none of the restraints on one's liberty nor the oppressive conditions hanging over one's head as compared with one who has been charged and is awaiting trial. State v. Smith, 699 P.2d 711 (Utah 1985).

Based on the rulings in the Renzo and Smith cases, the entire five (5) month period before the filing of the charges against the defendant is inapplicable to the defendant's contention of a speedy trial right violation.

After the charges were filed, the next hearing was the pre-trial scheduled for March 31, 1987. At the pre-trial the trial court allowed the parties time within which to attempt a resolution and the trial court set the date of April 7, 1987, by which these negotiations needed to be completed. (Tr. Ct. Rec. pg. 1). Thereafter, the docket is absent of any contact by either party with the trial court. There is no action reflected in the Docket until December 30, 1987.

This delay is not unlike the delay the Utah Supreme Court

addressed in State v. Banks, 720 P.2d 1380 (Utah 1986). In Banks, the Defendant was arraigned in October 1981 and trial was set for February 1982. Defendant filed a suppression motion in February that was denied and the trial date was rescheduled to May 11, 1982. On the trial date the parties submitted the case to the judge on stipulated facts. Unfortunately the judge died before rendering a decision. The presiding judge of that district ordered the parties to prepare and file stipulations in order for the case to be assigned to another judge for disposition. Thereafter, the parties failed to file the required stipulations and the case laid dormant for an additional eighteen (18) months. Banks, supra. at 1382. The Court therein ruled that this eighteen (18) month delay was substantial to the extent that it "triggered" the necessity of addressing the remaining criteria. Banks, supra. at 1385.

In the case at bar the trial court gave the parties seven (7) days within which to propose a resolution or obtain a trial date. Neither party contacted the trial court and the case was idle for nine (9) months, from March 31, 1987 to December 30, 1987, less than half of the time elapsed in Banks. The City submits to this Court that this nine (9) month delay should not in and of itself trigger the review of the remaining criteria.

The Court in Banks, further stated that since the fault for the delay "can be laid at the door of both the prosecutor and Banks," Banks could not take advantage of the error. The Court continued:

The prosecutor claimed to have sent the stipulation to defense counsel. Although the prosecutor may have failed to mail the document, Banks is not entitled to take advantage of that clerical error. His counsel was jointly responsible for preparing the stipulation. When the stipulation did not arrive, Banks's counsel should have taken steps to locate it, inasmuch as his counsel had as much obligation to provide that document to the court as did the prosecutor. Given his counsel's awareness of the need for a stipulation on the record, his failure to pursue the matter is difficult to understand.

Banks, supra. at 1386.

The City would urge upon this Court that a nine (9) month delay does not require the additional review, particularly when such a delay did not forestall the disposition of a case within the statute of limitations and/or wherein defendant must share responsibility for the delay. Banks, supra. at 1386. Just as Banks was disallowed from taking advantage of the procedural error therein, the Defendant herein must not be granted a dismissal when he was equally responsible for contacting the trial court, the failure of which resulted in the delay.

In the alternative, if Defendant asserts culpability upon either the prosecution or the trial court, at most the delay may constitute mere negligence. Even if the allegation is made, this State's Supreme Court addressed such an issue and stated: "Assuming, arguendo, that Salt Lake County officials were negligent in Defendant's prosecution, neglect is 'a more neutral reason' for a delay which, in this case, does not justify relief." State v. Stilling, 770 P.2d 137, citing Barker, supra. at 531.

The remaining time period, from December 30, 1987 until the trial date, is a time period that, other than the two (2) weeks required to set and then hear the January 13, 1988 pre-trial, is solely attributable to the Defendant. State V. Banner, 717 P.2d 1325 (Utah 1986). At that pre-trial Defendant informed the trial court of his intention to move to dismiss this case based on lack of a speedy trial. Defendant was ordered to file said motion within ten (10) days but did not do so for fifteen (15) days. (Tr. Ct. Rec. pg. 1). After receiving Defendant's motion the trial court set a hearing and Defendant's motion was heard March 11, 1988 and denied. At that hearing the trial court set Defendant's trial for April 11, 1988. In an effort to accommodate the Defendant, the trial court set this matter as soon as was possible, which required the resetting of a jury trial already set for April 11, 1988. The time required to receive, set, hear, and rule upon Defendant's motion is solely attributable to the Defendant. State v. Miller, 747 P.2d 440, at 442 (Utah App. 1987); Banner, supra at 1330.

3. Defendant's Assertion of the Right to Speedy Trial

The third criteria to be considered in a claim of denial of a speedy trial is whether the Defendant asserted said right. Barker, supra. There is no dispute that the Defendant neither asserted that right nor requested a speedy trial. Defendant's failure to assert said right "makes it difficult for Defendant to prove that he was denied a speedy trial." Banks, supra at 1386.

After discovering that this case was not set for trial, the trial court then set the January 13, 1988 pre-trial. It was not

until that pre-trial that the "speedy trial" issue was raised and even at that it was not a request or demand for a speedy trial but was presented as a motion to dismiss based thereon. There is a distinction between asserting the speedy trial right and moving to dismiss for lack of a speedy trial as indicated in State v. Ossana, 739 P.2d 628 (Utah 1987). "At no time did Defendant assert his right to a speedy trial. Defendant did move to have the information dismissed for lack of a speedy trial...." Ossana, supra. at 631.

It is clear that the Defendant has failed to assert this right. Even if his motion to dismiss was interpreted as being such an assertion, the remaining delays from that time until the April 11, 1988 trial date, are solely upon the shoulders of the Defendant. And, if the motion to dismiss is taken as such an assertion the trial court responded and the trial was timely held. Banner, supra.

4. Whether Defendant Was Prejudiced by the Delay

The final criteria utilized in analyzing the issue at hand is whether the Defendant suffered any prejudice by the delay. The United States Supreme Court in Barker, supra., identified three interests to be protected and weighed in evaluating a claim of prejudice and that same scheme was adopted by this State's Supreme Court. Ossana, supra. Those "interests to be protected are: (1) preventing oppressive pre-trial incarceration; (2) minimizing anxiety and concern of the accused; and (3) limiting the

possibility that the defense would be impaired." Ossana, supra. at 631 (footnote omitted).

Concerning the first interest, the Defendant has never been incarcerated for this offense. Secondly, "If anxiety and concern were really prejudicial, Defendant was free to demand an expeditious trial." Ossana, supra. at 632. Nor has Defendant alleged any anxiety or concern.

The third interest, that of the impairment of the defense, is the only one Defendant asserts as a basis for prejudice, and that was done with a self serving affidavit filed nearly one month after the jury trial. (Trial record pp. 37-40). The only claim of prejudice in Defendant's affidavit is that of loss of memory by him and his possible three witnesses. This fading of memories would be the same burden the City would have as the City also used a lay witness in addition to two (2) police officers. Further, in the first trial, wherein Defendant's wife Barbara, was the defendant, Barbara, the Defendant herein and only one passenger testified. The Defendant had received copies of the officers' reports and had access to the recording and/or transcript of the prior trial.

Finally, the claim of prejudice by fading memories is not substantiated or supported but merely alleged, which is not enough to warrant consideration by this Court. State v. Lairby, 699 P.2d 1187 (Utah 1984). Nowhere in Defendant's brief are any examples set forth supporting Defendant's naked allegation of fading memories, thus "no persuasive allegation of prejudice from the

delay on the ground that his defense was impaired," has been made. Banner, supra at 1330.

B. Defendant cannot satisfy the alternative criteria utilized by the Utah Supreme Court in analyzing complaints of speedy trial right deprivations.

The Supreme Court of this State has on occasion used other factors when addressing speedy trial right deprivation claims. The Court has stated that the purpose of the speedy trial provision,

is to guard against any intentional delay which may be oppressive or persecutorial in nature. In order to avoid any such baneful effect the requirements of the law should be respected and complied with insofar as can be achieved within the practical operations of the courts. However, the court does not lose jurisdiction because of such a delay and, unless there is some intentional delay of an oppressive character, which results in prejudice to the defendant, the processes of justice should not be wholly defeated thereby. It is for this reason that this court has consistently held that the statutory time within which a trial shall be had is directory and not mandatory.

State v. Archeletta, 577 P.2d 547, at 548 (Utah 1978). Clearly there is no such intentional occurrence in the matter before this Court.

Another consideration is whether the prosecution obtained some "tactical advantage over the defendant because of the delay or prejudiced defendant by allowing the evidence to become prejudicially stale." Smith, supra. at 714. In addressing this same consideration the Court also stated "that the defendant made

no showing that the delay in bringing the charge against him was intentional or designed to produce an advantage for the prosecution." State v. Bailey, 712 P.2d 281 (Utah 1985).

In Bailey the Court further acknowledged the fact that the case was brought within the "statutory period of limitation, U.C.A., 1953, Section 76-1-302, and stated that that is the primary safeguard against prejudice resulting from having to defend against stale criminal charges." Bailey, supra. at 284, citing U.S. v. Marion, 404 U.S. at 332, 92 S. Ct. at 464. It is undisputed that the case at bar was initiated and concluded within the statutory period of limitations, being two (2) years. Section 76-1-302 (1)(b) Utah Code Annotated, as amended.

CONCLUSION

The only period of delay not solely attributable to the defendant is the nine (9) months from the March 31, 1987 pretrial to the December 30, 1987 setting of the subsequent pretrial. The City would submit that this is not a length of time that triggers the speedy trial review. Alternatively, if the delay is to be reviewed, it is clear that defendant must share the blame for even that period of time and then is solely responsible for the remaining delays that were caused by his confusing antics and subsequent motions. Further, the fact that defendant failed to assert his right to a speedy trial must weigh heavily against the defendant in considering his belated claim of a deprivation of that right. Finally, defendant's naked allegations of prejudice are not

conditions suffered by the prosecution.

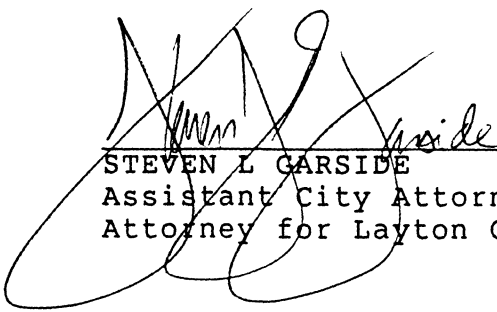
In conclusion the City requests this Court to adopt the conclusion of State v. Hafen, 593 P.2d 538 (Utah 1979):

The facts of this case do not show an intentional delay of an oppressive character resulting in prejudice to the defendant. The defendant's right to a speedy trial was not abused, and the trial court was correct in refusing to dismiss the action. The right to a speedy trial is meant to be a shield against oppression, and not a sword to be used to decapitate the processes of justice.

Hafen, supra. at 541 (emphasis added).

The City respectfully requests that the defendant's conviction be affirmed, the stay of execution be lifted, and the City be awarded costs.

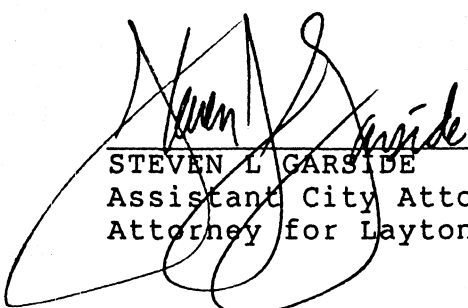
RESPECTFULLY SUBMITTED this 10 day of April, 1990.



STEVEN L GARSIDE
Assistant City Attorney
Attorney for Layton City

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Respondent was mailed to Defendant's Attorney, Steven C. Vanderlinden, 1133 North Main, Layton, Utah 84041 on this 10 day of April, 1990.



STEVEN L. CARSIDE
Assistant City Attorney
Attorney for Layton City