

1998

Salt Lake City v. Dimitrios A. Deslis : Brief of Appellee

Utah Court of Appeals

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Augustus G. Chin; Associate City Prosecutor .

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BRIEF

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

SALT LAKE CITY,)
) Case No. 980269-CA
)
 Plaintiff / Appellee,)
)
 vs.)
)
 DIMITROS A. DESLIS,)
)
 Defendant / Appellant.)
) Priority No. 2
)

BRIEF OF APPELLEE

Appeal from Judgment and Conviction of Obstruction of Justice, in violation of Salt Lake City Ordinance, Section 11.04.060, in the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable A. Lee Dever, presiding.

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FILED
Utah Court of Appeals
OCT 21 1998
Julia D'Alesandro
Clerk of the Court

LIST OF THE PARTIES IN THE COURT BELOW

The following is a complete list of the parties in the proceedings before the Third
Judicial District Court:

JUDGE

The Honorable A. Lee Dever, Judge Presiding

PARTIES

Salt Lake City, Plaintiff, represented by Kelly R. Sheffield, Esq., and Melanie
Serasios, Assistant City Prosecutors;

Dimitrios Deslis, Defendant, represented by Edward D. Flint, Esq., Attorney-at-
law, at trial.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

SALT LAKE CITY,)	
)	Case No. 980269-CA
Plaintiff / Appellee,)	
vs.)	
)	
DIMITROS A. DESLIS,)	
)	
Defendant / Appellant.)	
)	Priority No. 2
)	

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2a-3 (1996).

STATEMENT OF THE ISSUES

- I. WAS SUFFICIENT EVIDENCE PRESENTED TO CONVICT DESLIS?
- II. WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO REQUEST SPECIFICITY FROM THE TRIAL COURT?
- III. DID THE TRIAL COURT COMMIT PLAIN ERROR FOR FAILING TO BE SPECIFIC IN ITS FINDINGS?

DETERMINATIVE PROVISION OR STATUTE

The determinative ordinance that applies to this case is Salt Lake City Ordinance Section 11.04.060 which states:

A person shall be guilty of a misdemeanor if, with intent to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another for the commission of a crime, he/she:

- A. Conceals an offense from a magistrate, knowing it has been committed;
 - B. Harbors or conceals the offender;
 - C. Provides the offender a weapon, transportation, disguise or other means for avoiding discovery or apprehension;
 - D. Warns such offender of impending discovery or apprehension; or
 - E. Conceals, destroys or alters any physical evidence that might aid in the discovery, apprehension or conviction of such person; or
 - F. Obstructs, by force, intimidation, distraction or deception, anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person.
- (Prior code § 32-1-5.1)

STATEMENT OF THE CASE

Defendant-Appellant, Dimitrios A. Deslis (hereinafter referred to as Mr. Deslis) was arrested for obstructing a police investigation. Mr. Deslis entered a not guilty plea. The case was tried before the Honorable A. Lee Dever, on April 23, 1998, and Mr. Deslis was found guilty. The trial court granted a stay of execution of Mr. Deslis' sentence pending his appeal before this Court.

STATEMENT OF RELEVANT FACTS

On February 8, 1998, at approximately 2:50 a.m., two Salt Lake City Police Officers, Detectives Bryan Bailey and Mike Hatch were on duty outside Papyions Club located at 145 West Pierpont Avenue effecting two unrelated arrests. (Tr. 5, 20). They saw Mr. Deslis, whom they recognized enter the passenger side of a black Porsche automobile that was parked in front of Papyions. (Tr. 5, 20). A short while later they heard a crash and saw that the black Porsche had hit a Dodge Caravan automobile. (Tr. 5, 20).

Detective Hatch approached the black Porsche. However, before he reached the black Porsche, it left the scene going eastbound on Pierpont Avenue. (Tr. 21). After completing their unrelated arrests, Detectives Bailey and Hatch went to American Towers to speak with Mr. Deslis about the accident. (Tr. 7, 22). They went to Mr. Deslis' residence after finding the black Porsche in the American Towers parking terrace. (Tr. 15, 23). When questioned about the accident Mr. Deslis declined to identify the driver because the driver was a friend. (Tr. 8, 24). As a result, Mr. Deslis was arrested and charged with obstruction of justice. (Tr. 8, 24). On April 23, 1998, Mr. Deslis was tried before the Honorable Lee A. Dever and found guilty of the crime charged. (Tr. 40).

SUMMARY OF THE ARGUMENT

The trial court heard testimony from the two Salt Lake City police officers, Mr. Deslis, and Tony Ouzounian, the driver of the black Porsche. At trial, Mr. Deslis claimed that he requested to have his attorney present before speaking with Detectives Bailey and Hatch. However, Detectives Bailey and Hatch refuted this claim, testifying that no such request was made. The trial court accepted the officers' testimony and gave little weight to Mr. Deslis' claim. Based on the evidence heard, the trial court found Mr. Deslis guilty of the offense as charged. The trial court's ruling should be affirmed.

ARGUMENT

I. THE EVIDENCE SUFFICIENTLY ESTABLISHES THE APPELLANT'S GUILT.

In reviewing a bench trial for sufficiency of the evidence, this Court has reasoned that the trial court's judgment is sustained unless it is "against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made." **State v. Layman**, 953 P.2d 782 (Utah Ct. App. 1998) (citing **State v. Reed**, 839 P.2d 878, 879

(Utah Ct. App. 1992) (citations omitted).

In the instant case, the trial court's decision was based on the testimonial evidence of Detectives Bailey and Hatch, Mr. Deslis, and Tony Ozounian. Detectives Bailey and Hatch personally observed Mr. Deslis enter the car involved in a hit and run accident. Unaware as to the identity of the driver and recognizing Mr. Deslis, they went to his residence as part of their investigative protocol. Mr. Deslis refused to identify the driver of the black Porsche and was arrested and charged with obstruction of justice.

Mr. Deslis testified that his refusal was based on his request to have his attorney present. However, Detectives Bailey and Hatch testified that no such requested was made during the course of their discussion with him. The trial court found the officers' testimony to be credible and declared Mr. Deslis guilty of the crime as charged.

The trial court's verdict based on the evidence presented should be upheld. The evidence indicates that Mr. Deslis intended to prevent the discovery, apprehension and prosecution of the driver of the black Porsche. As such, the trial court appropriately found Mr. Deslis guilty of obstruction of justice. Salt Lake City ordinance, § 11.04.060 identifies six separate acts which constitute obstruction of justice.

Harboring or concealment are among the six enumerated acts. Harboring or concealment do not require an affirmative act of hiding, giving shelter or refuge to a suspected offender. For example, concealment by definition includes "...withholding from the knowledge of others..., or preventing the discovery of..." **Black's Law Dictionary** 288 (6th ed. 1990). Mr. Deslis' actions when questioned about the accident satisfies this definition and supports the trial court's ruling.

Because Mr. Deslis was a witness and not a suspect, the trial court appropriately declined to address Mr. Deslis' Fifth Amendment claim. The Fifth Amendment to the United States Constitution

states in pertinent part that no person "shall be compelled in any criminal case to be a witness against himself." Utah's counterpart, found in article I, section 12 of the Utah Constitution, provides that "the accused shall not be compelled to give evidence against himself." In questioning the appellant, the officers were not compelling him to be a witness against himself. Moreover, there was no evidence that Mr. Deslis was reasonably apprehensive about disclosures which "could be used in a criminal prosecution or which lead to other evidence that might be so used." **In re Gault**, 387 U.S. 1, 47-48, 87 S. Ct. 1428, 1454, 18 L. Ed. 2d 527 (1967) (citation omitted).

Absent a finding of clear error, this Court should defer to the trial court's consideration of the evidence and particularly the trial court's ability to judge the credibility of the witnesses consistent with the standard set forth in Rule 52a of the Utah Rules of Civil Procedure.

II. APPELLANT'S TRIAL COUNSEL WAS NOT INEFFECTIVE

Mr. Deslis' trial counsel, Edward D. Flint, Esq., was not ineffective for failing to have the trial court specify which provision of the ordinance was violated. According to the Strickland test, appellant's ineffective assistance of counsel claim requires a showing that (1) trial counsel rendered a deficient performance in some demonstrable manner which fell below an objective standard of reasonable professional judgment and, (2) that trial counsel's performance prejudiced the defendant. **Strickland v. Washington**, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). (See also **State v. Arguelles**, 921 P.2d 439, 441 (Utah 1996); **Taylor v. Warden**, 905 P.2d 277, 282 (Utah 1995); **Parsons v. Barnes**, 871 P.2d 516, 521 (Utah), cert. denied, 513 U.S. 966, 130 L. Ed. 2d 344, 115 S. Ct. 431 (1994)).

Mr. Deslis' belief that his trial counsel's failure to request specificity was prejudicial is speculative. The trial court's ruling based on the weight of the evidence presented is not inadequate

for lack of specificity about the particular provision of the ordinance the appellant violated. Assuming arguendo, that specificity is required, this Court should remand for the entry of detailed findings.

In considering Mr. Deslis' ineffectiveness of counsel claim; this court should consider two important principles essential to the two prong Strickland test. First, the strong presumption that trial counsel's conduct falls within the wide range of reasonable professional assistance. Second, given Mr. Deslis' burden to meet both parts of the Strickland test, it is unnecessary for this Court to apply both parts should its inquiry reveal that one part is not satisfied. **State v. Marvin**, 1998 Lexis 35 (Utah) (citations omitted).

III. THE TRIAL COURT'S FAILURE TO BE SPECIFIC IS NOT PLAIN ERROR.

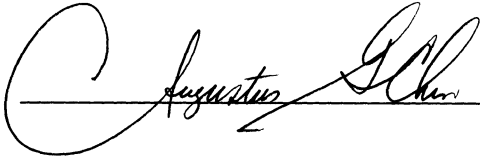
The trial court's ruling does not constitute "plain error" because of lack of specificity. In order to establish plain error, Mr. Deslis, as appellant must show that " (i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful." **State v. Dunn**, 850 P.2d 1201, 1208 (Utah 1993). In considering Mr. Deslis' plain error claim, this Court should first determine if there was any harm or prejudice. Absent a finding of either harm or prejudice, this court need not consider the other elements of plain error analysis identified. **Marvin**, 1998 Lexis 35 (Utah).

If the trial court erred by not being specific, the error was harmless, not prejudicial. Additionally, if this Court determines that the trial court erred by not being specific with its finding, the remedy is not reversal but remand to the trial court for entry of a more detailed finding.

CONCLUSION

The record supports the trial court's verdict, finding Mr. Deslis guilty of the offense of obstruction of justice. Mr. Deslis' trial counsel's representation should not be deemed ineffective because he failed to demand specificity regarding the trial court's finding. Finally, even if the trial court erred in failing to be specific, the error was not plain error but harmless error. Consequently, this court should affirm the trial court's verdict.

Respectfully submitted this 21st day of October, 1998.



MAILING CERTIFICATE

I hereby certify that I mailed / delivered two true and correct copies of the foregoing Brief
of the Appellee to:

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A handwritten signature in cursive script, reading "Augustus G. Chin", is written over a horizontal line.

ADDENDUM

Chapter 11.04. OFFENSES BY OR AGAINST PUBLIC OFFICERS AND GOVERNMENT

11.04.060. Obstruction of justice.

A person shall be guilty of a misdemeanor if, with intent to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another for the commission of a crime, he/she:

- A. Conceals an offense from a magistrate, knowing it has been committed;
 - B. Harbors or conceals the offender;
 - C. Provides the offender a weapon, transportation, disguise or other means for avoiding discovery or apprehension;
 - D. Warns such offender of impending discovery or apprehension; or
 - E. Conceals, destroys or alters any physical evidence that might aid in the discovery, apprehension or conviction of such person; or
 - F. Obstructs, by force, intimidation, distraction or deception, anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person.
- (Prior code § 32-1-5.1)