

1999

State of Utah v. Daniel Cruz Perez : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
 :
 Plaintiff/Appellant, : Case No. 990470-CA
 :
 vs. :
 : Priority No. 2
 DANIEL CRUZ PEREZ :
 :
 Defendant/Appellee. :

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT'S GRANT OF
DEFENDANT'S MOTION TO QUASH AND DISMISSAL OF A
THIRD DEGREE FELONY CHARGE OF DAMAGING A JAIL, IN
VIOLATION OF UTAH CODE ANN. § 76-8-418 (1999), IN THE
FOURTH JUDICIAL DISTRICT OF UTAH COUNTY, THE
HONORABLE STEVEN L. HANSEN, PRESIDING.

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REPLY BRIEF OF APPELLANT

In addition to the facts and arguments contained in the State's opening brief, the State submits the following points in reply to the statements and arguments contained in defendant's responsive brief.

**THE STATUTORY PHRASE "OTHERWISE DAMAGES" IS NOT
AMBIGUOUS, AND INCLUDES DEFENDANT'S ACTIONS AS
ALLEGED**

In his brief, defendant does not dispute that the State produced evidence at the preliminary hearing that he caused damage to a jail by scratching an obscenity into a cell door. Defendant argues only that the damaging jails statute, Utah Code Ann. § 76-8-418 (1999), must be narrowly construed to apply only to damage which meets some unspecified degree of seriousness.

The statute punishes anyone who “breaks down, pulls down, destroys, floods, or otherwise damages” a jail. In order to argue that the statute does not apply to his actions, defendant must show that the phrase “otherwise damages” is so inherently ambiguous that the court must consider the other acts listed in the statute in order to determine its meaning. This argument fails for several reasons.

First, this Court has already rejected it. In *State v. Pharris*, 846 P.2d 454 (Utah App. 1993), the court held that the damaging jails statute is unambiguous and broadly prohibits all physical damage of whatever degree. “The statute sets the standard that any injury to a physical facility used for jail functions can be punished under the statute.” *Id.* at 466. The amendment of the statute from the phrase “otherwise destroys or injures” in the former statute to the current phrase, “otherwise damages” only serves to make the broad scope of the statute more clear.

Second, defendant’s argument is based on a false comparison to sex crimes. In support of his ambiguity argument, defendant compares the language of this statute to the inherently ambiguous terms used to describe sex offenses. Brief of Appellee, p. 5-6. Defendant asserts that the phrase “otherwise damages” in § 76-8-418 is comparable to the term “otherwise takes indecent liberties,” in § 76-5-404 (1999), as discussed by the court in *State ex rel. J.L.S.*, 610 P.2d 1294 (Utah 1980). In fact, these phrases are in no way comparable. As defendant acknowledges in his brief, the phrase “otherwise damages” is a “broad–yet plain” term. Brief of Appellee, p. 5. On the other hand, the

phrase “indecent liberties” is necessarily vague, a difficulty arising out of the special problems inherent in drafting statutes prohibiting sexual abuse:

These questions are, in a basic sense, manifestations of a recurring problem in construing statutes, particularly those prohibiting sex crimes: On the one hand, there is the need to give effect to the legislative intent and penalize sexual abuse, a concept which, in all its possible forms, is extremely difficult to define. On the other hand, there is a need to define the prohibited conduct with precision in order to avoid unconstitutional vagueness and chilling of protected conduct, and to avoid attaching the weight of criminal culpability to innocent or innocuous (but possibly indecorous) behavior.

Utah courts have addressed this problem by interpreting the broad, catch-all phrases of sex crime statutes (phrases such as “taking indecent liberties”) in light of all of the facts and circumstances of the case.

State v. Peters, 796 P.2d 708, 711 (Utah App. 1990). In *State ex rel. J.L.S.*, the court found that the phrase “indecent liberties” is so inherently ambiguous that the statute would be void-for-vagueness unless it is given meaning and limited in scope by the more specific acts listed. *Id.*, 610 P.2d at 1296. See also *State v. Vogt*, 824 P.2d 455, 458 (Utah App. 1991) (“the phrase “act of gross lewdness” is not subject to a plain meaning, but must derive its definition from the context in which it occurs.”) (*quoting State v. Serpente*, 768 P.2d 994 (Utah App. 1989)).

In this case, defendant has not asserted that the scope of the phrase “otherwise damages” must be limited in order to prevent the statute from being unconstitutionally vague, and a void-for-vagueness argument against the damaging jails statute was explicitly rejected without any need for limiting its broad scope. *Pharris*, 846 P.2d at

466 (“Defendant’s disagreement with the broad interpretation of the statute’s language does not translate to a lack of meaningful standards to guide the application of the statute.”). Accordingly, unlike cases interpreting language used to describe sex crimes, there is no need for the court to turn to interpretive doctrines such as *eusdem generis* or *noscitur a sociis* in order to avoid a vagueness problem in this statute. *See Id.* (“the statutory language includes ‘any damage to the facility’ within the plain meaning of ‘injury’”).

Finally, defendant acknowledges that this court has adopted a broad definition of “injury” or “damage” in interpreting this statute. In the face of this, defendant asserts only that the court should must determine on a case-by-case basis whether the statute applies to the alleged conduct. Brief of Appellee, p. 7-8. Of course, the application of any statute to alleged conduct is determined on a case-by-case basis, in that the facts proven at the preliminary hearing are examined by the court to determine whether they fulfill all of the elements of the crime alleged.

In this case, however, defendant is seeking to add an additional element to the crime, i.e., that the damage done to the jail meets some unspecified level of “substantial” injury or caused some unspecified level of harm to the operation of the jail.¹ The broad and unambiguous language of the statute precludes the imposition of

¹ Defendant’s formulation of the additional element is even more limited than this, and would not justify dismissal of the charges against him in this case. Defendant

such a requirement, and the courts in *Pharris* and *State v. Jaimez*, 817 P.2d 822 (Utah App. 1991), did not require proof of some substantial level of damage. *See Pharris*, 846 P.2d at 466 (rejection of defendant's argument that "the statute should be limited to felony prosecution of 'substantial' damage").

CONCLUSION

For the reasons stated, the trial court's quashal of the bindover and dismissal of the charge should be reversed and the case remanded for further proceedings.

RESPECTFULLY SUBMITTED this 4 day of February, 2000.

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Attorney General



SCOTT KEITH WILSON
Assistant Attorney General

asserts that the statute should be construed to require that the State prove that the alleged conduct "damages or injures portions of the jail facility that are essential to its proper functioning and legislative purpose." Brief of Appellee, p. 8. The cell door which defendant damaged is obviously essential to the functioning of a jail.

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Reply Brief of Appellant were mailed by first class mail this 4 day of February, 2000 to:

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A handwritten signature in black ink, appearing to read 'M. Lindsay', is written over a horizontal line.