

1999

# Utah v. Daniel Cruz Perez : Brief of Appellee

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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STATE OF UTAH,

Plaintiff/Appellant,

vs.

DANIEL CRUZ PEREZ,

Defendant/Appellee.

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Case No. 990470-CA

Priority No. 2

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**BRIEF OF APPELLEE**

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APPEAL FROM THE FOURTH JUDICIAL COURT, UTAH COUNTY,  
STATE OF UTAH, FROM THE GRANT OF DEFENDANT'S MOTION TO  
QUASH AND DISMISSAL OF THIRD DEGREE FELONY CHARGE OF  
DAMAGING A JAIL BY THE HONORABLE STEVEN L. HANSEN

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**FILED**

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**COURT OF APPEALS**

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## IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Plaintiff/Appellant,

vs.

DANIEL CRUZ PEREZ,

Defendant/Appellee.

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Case No. 990470-CA

Priority No. 2

### **JURISDICTION OF THE UTAH COURT OF APPEALS**

This Court has appellate jurisdiction in this matter pursuant to Utah Code Annotated § 78-2a-3(2)(e) and § 77-18a-1(2)(a).

### **ISSUES PRESENTED AND STANDARDS OF REVIEW**

1. Whether the trial court abused its discretion in quashing the bindover and dismissing the information against Perez because his alleged conduct did not rise to the level of “damage” or “injury” to a jail required for conviction under Utah Code Annotated § 78-8-418. This Court should review this issue under “an abuse of discretion” standard which affords the trial court’s legal conclusions little deference but overturns his factual findings only if “clearly erroneous.” *See* Rule 25(a), Utah Rules of Criminal Procedure (granting trial court discretion to order dismissal of criminal

information). *See also, State v. Harmon*, 956 P.2d 262, 265 (Utah 1998) (trial court has discretion in its ruling regarding motion for new trial).

### **CONTROLLING STATUTORY PROVISIONS**

#### **Utah Code Annotated § 76-8-418**

A person who willfully and intentionally breaks down, pulls down, destroys, floods, or otherwise damages any public jail or other place of confinement is guilty of a felony of the third degree.

### **STATEMENT OF THE CASE**

#### **A. Nature of the Case**

The State appeals from the grant of Perez's motion to quash the bind-over and the order of dismissal entered into this case by the Honorable Steven L. Hansen.

#### **B. Trial Court Proceedings and Disposition**

Daniel Cruz Perez was charged by information filed on or about February 19, 1998, in Fourth District Court with Damaging a Jail, a third degree felony, in violation of Utah Code Annotated § 76-8-418 (R. 4). At a preliminary hearing, Perez moved to dismiss the charge (Prelim. Tr. at 17). The magistrate denied his motion and he was bound over for arraignment (R. 72).

Perez filed a motion to quash the bind over and dismiss the charge (R. 85). Judge Hansen granted his motion and dismissed the charge on April 13, 1999 (R. 103).

Specifically, Judge Hansen found that courts must apply “a case-by-case approach to determine whether any injury to a jail constitutes ‘damage’” under Utah Code Annotated § 76-5-418 and that the “otherwise damages” language in the statute “must be restricted to conduct of a similar nature and comparative gravity to the behavior defined in the statute” (R. 101). Accordingly, Judge Hansen found that scratching a word in a cell door is incomparable to “breaking, pulling down, destroying, or flooding” and that such a scratch does not “interfere with the functions of the jail or constitutes any type of substantial injury to the facility” (R. 101).

On May 13, 1999, the State filed a Notice of Appeal and this action commenced (R. 106).

### **STATEMENT OF RELEVANT FACTS**

On January 25, 1998, Daniel Cruz Perez was arrested and booked into the Utah County Jail (Prelim. Tr. at 6). Because Perez refused to cooperate with the booking process, he was placed into a holding cell where he continued to yell and bang on the cell door with his hands (Prelim. Tr. at 6-7). When Perez calmed down, he was removed from the cell and came out holding two keys and a penny (Prelim. Tr. at 13). After he was removed from the cell, the booking officer found that the word “fuck” had been scratched into the back door of the cell in 4-6 inch letters (Prelim. Tr. at 8). The cell door required two coats of paint to remove the scratch (Prelim. Tr. at 12). Perez denied scratching the word into the door (Prelim Tr. at 9).

## **SUMMARY OF ARGUMENT**

Perez asserts that the trial court did not abuse its discretion in quashing the bindover and ordering dismissal of the information against him. Although the phrase “otherwise damages” does have a definable meaning, that meaning is ambiguous when viewed in the context of the statute as a whole. The Utah Supreme Court has set a precedent in limiting the meaning of broad--yet plain--terms used in criminal statutes where that language is non-specific and potentially ambiguous in its context. Accordingly, Perez asserts that the trial court was correct in restricting the term “otherwise damages” to conduct of a similar nature and comparable gravity of that specifically defined in the statute. Moreover, Perez argues that decisions from this Court support that position.

## **ARGUMENT**

### **POINT I**

#### **THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING THE CHARGE AGAINST PEREZ BECAUSE HIS CONDUCT DID NOT RISE TO THE REQUISITE LEVEL OF DAMAGE OR INJURY TO A JAIL REQUIRED FOR CONVICTION**

Perez was charged by criminal information with Damaging a Jail, a third degree felony, in violation of Utah Code Annotated § 76-8-418 (R. 4). After a preliminary hearing where Perez was bound-over on the charge, Perez filed a motion to quash the bindover and dismiss the information (R. 85). Judge Hansen granted his motion and the



State appealed (R. 101-03). The conduct for which Perez was accused consisted of scratching the word “fuck” in the holding cell door at the Utah County Jail.

Rule 25(a) of the Utah Rules of Criminal Procedure grants trial courts the discretion to dismiss a criminal information “for substantial cause and in furtherance of justice.” Moreover, Rule 25(b)(2) of the Utah Rules of Criminal Procedure requires a trial court to dismiss a criminal information when “the allegations of the information... do not constitute the offense intended to be charged in the pleading so filed.” Perez asserts that the trial court did not abuse its discretion in dismissing the criminal information against him because “the scratching of a door inside a jail in no way interferes with the functions of the jail or constitutes any type of substantial injury to the facility” (R. 101).

Utah Code Annotated § 76-8-418 reads: “ A person who willfully and intentionally breaks down, pulls down, destroys, floods, or otherwise damages any public jail or other place of confinement is guilty of a felony of the third degree.” While the words “otherwise damages” do have a definable meaning, that meaning is ambiguous when viewed in the context of the statute as a whole. Accordingly, the Utah Supreme Court has set a precedent in limiting the meaning of broad--yet plain--terminology used in criminal statutes where that language is non-specific and potentially ambiguous in its context.

For example, Utah Code Annotated § 76-5-404.1 defines the crime of sexual abuse of a child. The statute specifically sets forth conduct which would constitute the crime but also includes a general liability for any conduct where an individual “otherwise takes

indecent liberties” with a child. In *State ex rel J.L.S.*, 610 P.2d 1294 (Utah 1980), the Utah Supreme Court examined the meaning of “otherwise takes indecent liberties” and concluded that the term could only pass constitutional muster if read as “referring to conduct of the same magnitude of gravity as that specifically described in the statute.” 610 P.2d at 1296.

In reaching its decision, the Utah Supreme Court clearly applied the principle of *ejusdem generis* in deciding that “otherwise takes indecent liberties” was not a catch-all phrase that encompassed all possible lewd conduct but rather was a phrase that must be interpreted in light of the specific conduct set forth in the remainder of the statute. In relation to this, the Court stated:

In interpretation of Section 76-5-404(1), the format of the statute is significant. In the first part, the legislature describes in detail the specific conduct proscribed, viz., the actor’s touching the anus or genitals of another. In the second part, which is separated from the first by the disjunction “or” the conduct is set forth in generalized terms, viz., “otherwise takes indecent liberties with another.” The use of the disjunctive in combination with the term “otherwise” is indicative of an intent to proscribe the type of conduct of equal gravity to that interdicted in the first part, although the acts are committed in a different way or manner than that set forth in the first part.”

*J.L.S.*, 610 P.2d at 1295. The court, therefore, found that the definition of “indecent liberties” and the scope of the statute was limited--rather than expanded--by the phrase “or otherwise”. The court in *J.L.S.* made this determination despite the fact that both “indecent” and “liberties” like “damages” have a plain meaning.

Perez asserts that the trial court was correct in his determination that the graffiti Perez is alleged to have written on the holding cell door cannot be considered “damage” within the meaning of the law. Utah Code Annotated § 76-8-418 reads: “ A person who willfully and intentionally breaks down, pulls down, destroys, floods, or otherwise damages any public jail or other place of confinement is guilty of a felony of the third degree.”

The proscribed conduct which is expressly enumerated in this section includes breaking down, pulling down, destroying, or flooding. All of these are clearly acts that either cause or create a risk of significant destruction and which impede or interfere with the proper functions of a jail. Perez asserts that the trial court was correct in limiting the application of the more general prohibition found in the statutes “or otherwise damages” language to conduct of a similar nature and comparable gravity.

The State has argued that the plain language of § 76-8-418 and this Court’s decision in *State v. Pharris*, 846 P.2d 454 (Utah App.), *cert. denied*, 857 P.2d 948 (Utah 1993), mandate that the phrase “otherwise damages” apply to any damage whatsoever (Br. of Appellant at 4-6). Although this Court in dicta did adopt in *Pharris* a broad definition of the term “injury” or “damage”, this Court utilized what amounts to a case-

by-case approach in making its determination whether the conduct of the defendant was sufficient to establish culpability under the statute.

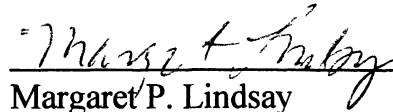
The defendant in *Pharris*, repeatedly flushed a clogged toilet which resulted in at least 85 gallons of water pouring onto the floor of the cell and adjoining day room and water seeping into the basement soaking the backup generator. 846 P.2d at 457. In addition, the defendant broke the welds on his bunk which--like the rest of his cell, the day room and basement generator--rendered it unusable. *Id.* Only under these facts did this Court rule that the statute was not void for vagueness as applied to the defendant because his conduct was in line with the statute's "objective of fully protecting the facilities essential to the functioning of a jail" in that his actions "caused injury to portions of the jail facility that are essential to its functioning." *Pharris*, 846 P.2d at 466, 467.

Accordingly although this Court called for a broad interpretation of the term "injury" or "damages" under the statute, it found liability only where the conduct is of the same type and gravity as that specifically enumerated in the statute--namely conduct that damages or injures portions of the jail facility that are essential to its proper functioning and legislative purpose. Therefore, Perez asserts that the trial court did not abuse its discretion in ruling that "scratching a word in a cell door is incomparable to breaking, pulling down, destroying, or flooding" and that defendant's conduct "in no way interfere[d] with the functions of the jail or constitute[d] any type of substantial injury to the facility" (R. 101-02).

**CONCLUSION AND PRECISE RELIEF SOUGHT**

Perez asks this Court affirm the trial court's quashing of the bindover and dismissing the charge against him.

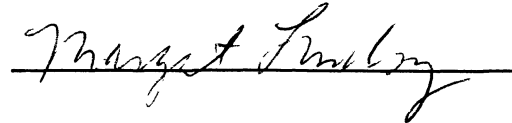
RESPECTFULLY SUBMITTED this 14 day of December, 1999.



Margaret P. Lindsay  
Counsel for Daniel Cruz Perez

**CERTIFICATE OF MAILING**

I hereby certify that I delivered two (2) true and correct copies of the foregoing Brief to Scott Wilson, Appeals Division, Utah Attorney General, 160 E. 300 South, 6<sup>th</sup> Floor, P.O. Box 140854, Salt Lake City, Utah 84114 this 14 day of December, 1999.



## ADDENDA

**IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

DANIEL CRUZ PEREZ,

Defendant.

CASE NO. 981403595

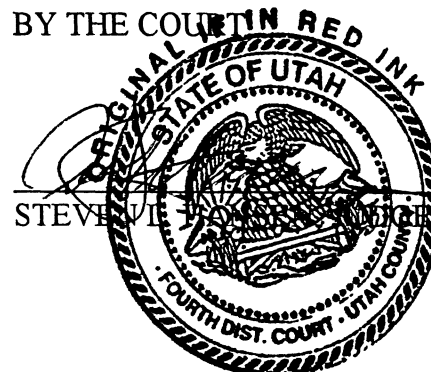
DATE: April 13, 1999

**ORDER**

JUDGE STEVEN L. HANSEN

Being fully advised of the facts in this matter, the bindover order in this matter is quashed  
and the information ordered dismissed.

DATED this 13 day of April, 1999,



cc: Christine Johnson  
Phillip Hadfield

**IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH**

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|---|---|
| STATE OF UTAH,<br><br>Plaintiff,<br><br>vs.<br><br>DANIEL CRUZ PEREZ,<br><br>Defendant. | CASE NO. 981403595<br><br>DATE: April 13, 1999<br><br><b>RULING</b><br><br>JUDGE STEVEN L. HANSEN |
|---|---|

Before the Court is Defendant's Motion to Quash Bindover and Dismiss. Having reviewed all relevant memoranda on this issue, as well as the October 21, 1998 ruling which bound this case over for trial, this Court hereby grants the Defendant's motion.

On January 25, 1998, the Defendant was booked into the Utah County Jail. As part of the booking process, Deputy Matt Pederson placed the Defendant in Pre-booking cell #2. While in the pre-booking cell, the Defendant cursed loudly and kicked the cell door several times, stopping this behavior only after warnings from the deputy. As Deputy Pederson removed the Defendant was from the pre-booking cell he saw that the Defendant had in his possession two keys and one penny. Upon inspection of the cell, Deputy Pederson saw the word "Fuck" with a line under it scratched into the back of the cell door in letters measuring approximately four to six inches in height.

Based on these events, the Defendant was bound over to stand trial for the offense of Damaging a Jail, a Third Degree Felony, Utah Code Ann. § 76-8-418 (Supp. 1998). Under this section:



A person who willfully and intentionally breaks down, pulls down, destroys, floods, or otherwise damages any public jail or other place of confinement is guilty of a felony of the third degree.

Utah Code Ann. § 76-8-418 (Supp. 1998). This Court finds that the “otherwise damages” language in the statute must be restricted to conduct of a similar nature and comparable gravity to the behavior defined in the statute. Courts must apply a case-by-case approach to determine whether any injury to a jail constitutes “damage” under the statute. See State v. Pharris, 846 P.2d 454, 466 (Utah Ct. App. 1993). Clearly, scratching a word in a cell door is incomparable to breaking, pulling down, destroying, or flooding. In addition, scratching a door inside of a jail in no way interferes with the functions of the jail or constitutes any type of substantial injury to the facility. Id. As such, I find that the behavior in this case does not consist of “damage” under the statute.

DATED this 13 day of April, 1999,

BY THE COURT,



cc: Christine Johnson  
Phillip Hadfield