

1999

Utah v. Daniel Cruz Perez : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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

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 (1996), IN THE
FOURTH JUDICIAL DISTRICT OF UTAH COUNTY, THE
HONORABLE STEVEN L. HANSEN, PRESIDING.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
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vs.	:	
		Priority No. 2
DANIEL CRUZ PEREZ,	:	
Defendant/Appellee.	:	

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

This is an 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 (1996). This Court has jurisdiction to hear this appeal pursuant to Utah Code Ann. § 77-18a-1(2)(a) (Supp. 1998) and § 78-2a-3(2)(e) (1996).

**STATEMENT OF THE ISSUES ON APPEAL AND
STANDARDS OF APPELLATE REVIEW**

Whether defendant's conduct alleged in this case, scratching an obscenity into the paint of a door in a jail cell, constitutes damage to a jail as prohibited by Utah Code Ann. § 76-8-418. This question of the interpretation of the terms of a statute is an issue of law, reviewed for correctness. *State v. Harley*, slip op at 3 (June 17, 1999); *State v. Harmon*, 910 P.2d 1196, 1199 (Utah 1995).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 76-8-418 (1996):

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

On February 19, 1998, defendant was charged with one count of damaging a jail, in violation of Utah Code Ann. § 76-8-418 (R.4). At the preliminary hearing, defendant made a motion to dismiss the charge (Preliminary Hearing Transcript, p.17) (hereinafter, "Prelim"), which the magistrate denied, and defendant was bound over (R.72). Defendant then filed a motion in District Court to quash the bindover and dismiss the charge (R.85). On April 13, 1999, the district judge granted defendant's motion (R.103), and the State now appeals.

STATEMENT OF FACTS

On January 25, 1998, defendant was arrested and brought into the Utah County Jail (Prelim, p. 6). Defendant was put in a holding cell because of his failure to cooperate with the booking process (Prelim, p. 6). Defendant continued to be verbally abusive after being placed in the cell, yelling and banging on the door of the cell with his hands (Prelim, p. 7). After defendant calmed down, he was removed from the cell. Defendant came out holding up two keys and a penny (Prelim, p. 13), and kept saying "I'm sorry, I'm sorry" (Prelim, p. 7). After defendant was removed from the cell, the

booking officer found that the word “fuck” had been scratched into the back door of the cell in letters approximately 4-6 inches in height (Prelim, p. 8).

In order to repair the damage done to the cell, two painters came in and painted over the door with a special epoxy base paint, waited a number of hours, and then applied another coat of the paint (Prelim, p. 12).

SUMMARY OF THE ARGUMENT

The ‘damaging jails’ statute punishes anyone who “breaks down, pulls down, destroys, floods, or otherwise damages any public jail” The language of this statute by its terms broadly applies to any damage done to a jail facility, and the statute nowhere implies that a high degree of damage is a minimum threshold before the statute applies. The two Utah cases considering the scope of the statute found that the plain language of the statute must be given effect to broadly cover “any” damage done to a jail. Since the plain language of the statute is not ambiguous, in that it does not render the statute either inoperable or confusing, no further interpretive doctrines need be applied to ascertain the proper scope of the statute. Further, the legislative history of this statute shows that it was intended to cover any damage done to a jail facility, without regard to the cost of repairs or to the level of inconvenience or danger caused by the need to make repairs within a jail setting.

ARGUMENT

POINT I

THE LANGUAGE OF THE STATUTE IS UNAMBIGUOUS AND INCLUDES ANY DAMAGE TO A JAIL; NO FURTHER INTERPRETIVE RULE NEED BE APPLIED TO CONSTRUE THE LANGUAGE IN THE STATUTE, AND THE LEGISLATIVE HISTORY CONFIRMS THE APPROPRIATENESS OF A BROAD READING OF ITS TERMS.

A. The statute is unambiguous and its plain meaning provides for broad application to “any damage” done to a jail facility.

The damaging jails statute at issue in this case provides as follows:

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 (1996) (emphasis added). The trial court held that the phrase “otherwise damages” must be limited to include only damage which is “of a similar nature and comparable gravity” to the other harms listed in the statute, and found that the damage alleged in this case were not within the scope of the statute (R.101). However, the language of this statute has been twice considered by this Court, and in both cases, its broad application to any act of damaging a jail facility has been acknowledged.

In *State v. Jaimez*, 817 P.2d 822 (Utah App. 1991), the court considered a defendant’s argument that a lesser included instruction on the crime of criminal mischief should have been given. The court assumed (and the state conceded) that the

crime of criminal mischief was, in fact, a lesser included offense to the crime of damaging jails because the criminal mischief statute and the damaging jails statutes both encompass “any” injury to property to the property of another. The request for a lesser included instruction on criminal mischief was rejected, however, because there was no rational basis for acquitting defendant of the damaging a jail charge and still convicting defendant of criminal mischief. “[A]ny damage to the facility amounted to an injury. And, as we have already discussed, the area damaged was the jail. Therefore, there is no interpretation of the evidence that would rationally allow for acquittal of injury to a jail and, at the same time, allow for a conviction of criminal mischief.” *Jaimez*, 817 P.2d at 827. Thus, the scope of these two statutes, in terms of the degree of damage, are the same. Any damage to property is punishable under either statute, and the only difference between the scope of the statutes is the type of property which is damaged.

State v. Pharris, 846 P.2d 454 (Utah App. 1993) affirms this broad interpretation of the scope of the statute. In *Pharris*, defendant made the same claim that defendant makes in this case, that the damaging jails statute only refers to “substantial damage,” and that its application to the relatively minor damage caused in that case (breaking of a bunk weld and damage to an automatic clock on a back-up generator in the basement) constituted a denial of due process, since defendant had no notice that such minor damage would violate the damaging jails statute. In rejecting this argument, the court observed that “as recognized in *Jaimez*, the statutory language

includes ‘any damage to the facility’ within the plain meaning of ‘injury.’” *Pharris*, 846 P.2d at 466. The court thus rejected defendant’s claim that the damaging jails statute only refers to substantial damage because the broad language of the statute must be accepted as written. “This broad interpretation of the word ‘injury’ negates defendant’s claim that the statute failed to give him fair warning that his actions could result in a felony conviction.” *Id.*

Of course, one may quibble about the relative seriousness of the damage or the relative costs of the repairs caused under the specific facts of *Jaimez*, *Pharris*, or this case. However, such an inquiry into whether it is more costly or dangerous to repair a bunk bracket, as in *Pharris*, or repaint a cell door, as in this case, is irrelevant. The court’s rulings in *Jaimez* and *Pharris* were not based upon some calculation as to the relative seriousness of the particular damage done in those cases. Instead, these decisions are based on the court’s basic finding that, by its plain language, the damaging jails statute applies to all damage, of whatever degree.

This valuation concept is immaterial in the context of protecting the functioning of a jail. While costly damage could have minimal impact on the safe functioning of the facility, minimal damage to critical parts of the physical facilities could have disastrous consequences. For this reason, we conclude that protecting each essential part of the facility without regard to the cost of repairing it is rationally related to the goal of inmate and public safety.

Pharris, 846 P.2d at 468 (emphasis added). There is no evidence in record as to how much it cost to repair the cell door damaged by defendant in this case, or regarding the

degree of disruption to the operation of the jail and danger to others caused by the fact that this cell was unusable for some period of time during the repairs. Such evidence is irrelevant because the statute does not require the state to prove that some minimum of cost, danger, or disruption to jail operations has occurred in order for the statute to have been violated.

Two other states with damaging jails statutes have also broadly interpreted the scope of the same language used in the Utah statute. In *State v. Ash*, 493 P.2d 701 (Idaho 1971), the court considered the scope of the Idaho statute prohibiting damage to a jail as a felony, which is essentially identical to the Utah statute, and held that it applied to a broken window. *Id.*, 493 P.2d at 705. In *State v. Mathews*, 633 P.2d 1039 (Arizona 1981), the court ruled that the Arizona statute, which is also identical to the Utah statute, applied to defendant's jamming of a lock by "bottling the mechanism with toilet paper." *Id.*, 633 P.2d at 1041.

B. The doctrines of *noscitur a sociis* and *ejusdem generis* need not be used to interpret the unambiguous language in this statute.

In his motion to dismiss, defendant argued that the doctrines of *noscitur a sociis* ("it is known from its associates") and *ejusdem generis* ("of the same kind") should be applied to this statute in order to determine its intended meaning. These related principles provide that "when general terms follow specific ones, the general terms must be given a meaning that is restricted to a sense analogous to the preceding specific

terms.” *State v. Vogt*, 824 P.2d 455, 458 (Utah App. 1991). In its Ruling dismissing the charge in this case, the trial court found 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.” R.101. The court’s application of this interpretive doctrine is not appropriate in light of the unambiguous language of the statute.¹

A court may resort to such canons of statutory interpretation as *noscitur a sociis* or *ejusdem generis* only if it first makes a finding that the plain language of the statute is ambiguous in some way:

When we construe a statute, we first explore its plain language and use other modes of interpretation only if the language contains ambiguities. Unless a literal reading would render the statute's wording unreasonably inoperable or confusing, we accord the wording its “‘usual and accepted

¹ The trial court’s ruling also states that “[c]ourts must apply a case-by-case approach to determine whether any injury to a jail constitutes ‘damage’ under the statute,” citing *Pharris*, 846 P.2d at 466. However, *Pharris* does not require such case-by-case determination of the relative seriousness of the damage caused. Indeed, there was no evidence in *Pharris* as to the cost of the repairs or the level of disruption caused, and, as noted above, *Pharris* expressly disclaimed the need for any such case-by-case assessment. *Id.* at 468. In concluding that *Pharris* dictates a case-by-case evaluation of the nature of the damages caused, the trial court apparently relied on the *Pharris* court’s refusal to consider the defendant’s argument that the statute was void-for-vagueness *on its face* because of the court’s finding that the statute was not unconstitutionally vague *as applied* to the undisputably physical damage alleged in that case. *Id.* at 466. Thus, although some theoretical application of the statute to harm to or disruption of the facility that is non-physical in nature may be unconstitutional (because there are no meaningful standards to apply in such a case), where an actual physical injury of some sort is alleged, there is no vagueness problem. “The statute sets the standard that any injury to a physical facility used for jail functions can be punished under the statute.” *Id.*

meaning’” and do not “‘look beyond plain and unambiguous language to ascertain legislative intent.’” We merely assume the Legislature carefully and advisedly chose the statute’s words and phrases.

Deland v. Uintah County, 945 P.2d 172, 174 (Utah App. 1997) (quoting *Gull Lab.,*

Inc. v. Utah State Tax Comm’n, 936 P.2d 1082, 1084 (Utah App. 1997) and *US*

Xpress, Inc. v. Utah State Tax Comm’n, 886 P.2d 1115, 1117 (Utah App. 1994)). The

plain language of this statute, which applies to anyone who “breaks down, pulls down,

destroys, floods, or otherwise damages” a jail is clear on its face, and is neither

“inoperable” nor “confusing.” Both *Jaimez* and *Pharris* interpreted the statute

according to this plain meaning. See *Pharris*, 846 P.2d at 466 n. 10 (“[*Jaimez*]

construed the ‘injury to a jail’ statute ‘according to the fair import of its terms’ as

required by Utah Code Annotated section 76-1-106 (1990),² and interpreted it according

to the rule of construction focusing on ‘plain meaning.’”).

Since *Jaimez* and *Pharris*, the ‘damaging jails’ statute was amended, but the

amendment did not alter the substance of the language, and its meaning is still clear on

its face. In 1996, the phrase “or otherwise destroys or injures any public jail . . .” was

² This code section provides as follows:

The rule that a penal statute is to be strictly construed shall not apply to this code, any of its provisions, or any offense defined by the laws of this state. All provisions of this code and offenses defined by the laws of this state shall be construed according to the fair import of their terms to promote justice and to effect the objects of the law and general purposes of Section 76-1-104.

substituted with the even less ambiguous phrase “or otherwise damages any public jail . . .” The plain meaning of these phrases is the same, and is on its face not limited to any particular type or degree of damage. *See Pharris*, 846 P.2d at 466 (“As recognized in *Jaimez*, the statutory language includes ‘any damage to the facility’ within the plain meaning of ‘injury’”). There is simply no ambiguity in this statute which would require the court to consider anything other than its plain language. *See Vogt*, 824 P.2d at 458 (finding that *noscitur a sociis* and *ejusdem generis* should be applied to construe the meaning of the ambiguous phrase “any other act of gross lewdness”).³

C. Legislative history supports a broad reading of the statute.

The ‘damaging jails’ statute was originally derived from a California Penal Code section, and remained essentially unchanged from its adoption in 1898 until it was amended in 1996. *See Utah Revised Statutes*, Penal Code § 4433 (1898) (Addendum

³ Even if the court were apply *noscitur a sociis* and *ejusdem generis* and consider the other terms of the statute in order to construe the meaning of “otherwise damages,” these doctrines would not dictate a more limited reading of the statute. If the scope of the statute was construed to be limited to the types of harm implied by the words “breaks down, pulls down, destroys, [or] floods,” there are two options. First, these terms could be read with a limited scope, meaning an almost complete destruction of the jail structure. However, as *Jaimez* and *Pharris* show, that is not the intent of the statute. Second, these vague terms could be construed more broadly; e.g., “breaks down” could mean to break down some piece or part of the jail. If this is true, there is no logical reason to limit the application of the terms to breaking down some unspecified “significant” part of the jail.

1). The fact that the original statutory language from the **California Penal Code was intended to cover all damage to a jail, no matter how minor, is made clear by later amendments to the statute in California. In 1957, California amended its statute to add an exception which made damages worth less than \$200⁴ a misdemeanor. Cal. Penal Code § 4600 (West 1996) (Addendum 2). The implication is that, without the later exception, the original language, as adopted in Utah, included all damage to a jail.**

The later amendment to the Utah statute also confirms its intended broad scope.

In 1996, § 76-8-418 was amended to add 'flooding' as a violation of the statute, as follows:

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

See Utah Code Ann. Amendment Notes. In proposing this amendment, Rep. M. Keele Johnson stated:

Thank you Mr. Speaker. House Bill 44 came to me from some of our county attorneys who've been having problems with inmates, who are state inmates they were holding in the county facilities, **who were taking their towels and shirts and sheets and other things and putting them in the toilets until they flooded the jail.** Current statute says a person who willfully or intentionally breaks down, pulls down, destroys, injures any other public jail or place of confinement is guilty of a felony of third degree. But flooding is not in there, this simply adds the word – adds flooding to that in both adult and juvenile facilities. Thank you. I appreciate your support.

⁴ This amount was raised to \$400 in 1983.

February 13, 1996 House AM Tape 1 at 804 (emphasis added) (*see* Defendant's Memorandum in Support of Motion to Dismiss, R.50). Accordingly, the word "floods" was added in order to address the problem of inmates making their toilets overflow, causing minor flooding which presumably did not cause any physical damage to the jail other than the necessity for cleanup. If physical damage to a jail caused by more extensive flooding were being addressed, there would be no need for an amendment, as *Jaimez* and *Pharris*, which both addressed flooding which caused some actual physical damage, make clear. By adding a provision which covers the relatively minor problem of overflowing toilets, and which does not even require the existence of physical harm to the jail, the legislature made clear its intent that *any* damage to a jail is meant to be covered by the statute. *See Ash*, 493 P.2d at 705 ("The legislature has concluded that damaging a jail is a more serious criminal act than damaging other real or personal property").

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 21 day of September, 1999.

JAN GRAHAM
Attorney General

A handwritten signature in black ink, appearing to read "Scott Wilson", written over the printed name of Scott Keith Wilson.

SCOTT KEITH WILSON
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief of Appellant were mailed by first class mail this 21 day of September, 1999 to:

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A handwritten signature in black ink, appearing to read "Margaret P. Lindsay", is written over a horizontal line.

ADDENDA

ADDENDUM A

THE
REVISED STATUTES

OF THE
STATE OF UTAH,

IN FORCE

JAN. 1, 1898.



Revised, Annotated, and Published by Authority of the Legislature,

BY

RICHARD W. YOUNG,

GRANT H. SMITH,

WILLIAM A. LEE,

Code Commissioners.

TOGETHER WITH THE CONSTITUTION OF THE UNITED STATES, THE
CONSTITUTION OF UTAH, THE ENABLING ACT, AND
THE NATURALIZATION LAWS.

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks,—is guilty of a misdemeanor. [C. L. § 4712*.

Cal. Pen. C. § 605*.

U. S. monuments, etc., § 4436

4433. Injuring or destroying jail. Every person who wilfully intentionally breaks down, pulls down, or otherwise destroys or injures public jail or other place of confinement, is guilty of a felony. [C. L. § 4713*.

Cal. Pen. C. § 606*.

4434. Injuring or destroying canal, reservoir, etc. Every person who wilfully and maliciously cuts, breaks, injures, or destroys any bridge, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed marsh land, or to conduct water for mining, manufacturing, reclamation, or other cultural purposes, or for the supply of the inhabitants of any city or town, or any embankment necessary to the same, or either of them; or wilfully or maliciously makes or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground used for securing any lake or river bank or walls, or any dock, quay, jetty or lock, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the state prison not exceeding two years, or by both such fine and imprisonment. [C. L. § 4714*.

Cal. Pen. C. § 607*.

Interfering with water faucet, etc., §§ 4448, 4449 Interference with or larceny of water, § 4373

4435. Burning or destroying lumber, etc. Boats. Every person who wilfully and maliciously burns, injures, or destroys any pile or raft of wood plank, boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or any part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, boat, or skiff, the property of another, is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the county jail not exceeding six months. [C. L. § 4715.

Cal. Pen. C. § 608*.

Burning property not the subject of arson, § 4434

4436. Injuring or defacing U. S. monuments, etc. Every person who wilfully injures, defaces, or removes any signal, monument, building, appurtenance thereto, placed, erected, or used by persons engaged in the United States or state survey, is guilty of a misdemeanor. [C. L. § 4716*.

Cal. Pen. C. § 615*.

Removing or defacing other monuments, § 4435

4437. Injuring or destroying toll-house or gate. Every person who maliciously injures or destroys any toll-house or turnpike gate, is guilty of a misdemeanor. [C. L. § 4702.

Cal. Pen. C. § 589.

4438. Removing or injuring mile post, etc. Every person who maliciously removes or injures any mile board, post, or stone, or guide post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor. [C. L. § 4703.

Cal. Pen. C. § 590.

4439. Defacing or destroying official notice or proclamation. Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript, or extract from, or of, any law of the United States, or of the state, or any proclamation, advertisement, or notification set up at any place in this state, by authority of any law of the United States or of this state, or in order of any court or of any public officer, before the expiration of the time for which the same was to remain set up, is punishable by fine not less than twenty

ADDENDUM B

WEST'S ANNOTATED CALIFORNIA CODES
PENAL CODE
PART 3. OF IMPRISONMENT AND THE DEATH PENALTY
TITLE 5. OFFENSES RELATING TO PRISONS AND PRISONERS
CHAPTER 4. DEMOLISHING PRISONS AND JAILS

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Current through End of 1997-98 Reg. Sess. and 1st Ex. Sess.

§ 4600. Punishment; restitution

(a) Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any jail, prison, or any public property in any jail or prison, is punishable by a fine not exceeding ten thousand dollars (\$10,000), and by imprisonment in the state prison, except that where the damage or injury to any city, city and county, or county jail property or prison property is determined to be four hundred dollars (\$400) or less, that person is guilty of a misdemeanor.

(b) In any case in which a person is convicted of violating this section, the court may order the defendant to make restitution to the public entity that owns the property damaged by the defendant. The court shall specify in the order that the public entity that owns the property damaged by the defendant shall not enforce the order until the defendant satisfies all outstanding fines, penalties, assessments, restitution fines, and restitution orders.

CREDIT(S)

1982 Main Volume

(Added by Stats.1941, c. 106, p. 1126, § 15. Amended by Stats.1957, c. 1733, p. 3117, § 2; Stats.1976, c. 1139, p. 5157, § 293.5, operative July 1, 1977; Stats.1978, c. 1186, p. 3837, § 2; Stats.1979, c. 255, p. 562, § 31.)

1999 Electronic Update

(Amended by Stats.1983, c. 1092, § 325, eff. Sept. 27, 1983, operative Jan. 1, 1984; Stats.1996, c. 803 (A.B.573), § 1.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Update

1983 Amendment. Substituted "four hundred dollars (\$400)" for "two hundred dollars (\$200)".

1996 Legislation

The 1996 amendment designated the existing section as subd. (a) and added subd. (b) relating to restitution.

1982 Main Volume

The 1957 amendment added the exception at the end of the section.

The 1976 amendment deleted "not exceeding five years" following "in the state prison."

The 1978 amendment inserted "any public property in any jail or prison" and deleted "a" before "fine".

The 1979 amendment included as a misdemeanor damage to "prison property" of \$200 or less.

Derivation: Pen.C. § 606, amended by Stats.1941, c. 106, p. 1082, § 9.

CROSS REFERENCES

Felony,