

1999

Utah v. Chamnap In : Reply Brief

Utah Court of Appeals

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Kris C. Leonard; Assistant Attorney General; Jan Graham; Attorney General; Attorneys for Appellee.

Linda M. Jones; Salt Lake Legal Defender Assoc.; Attorney for Appellant.

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Utah Court of Appeals
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Paulette Stagg
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THE STATE OF UTAH,

V.

Defendant/Appellant.

Priority No. 2

Appeal from a judgment of conviction for possession of a dangerous weapon by a restricted person, a third degree felony offense in violation of Utah Code Ann. § 76-10-503(3)(a)(i) (Supp. 1997), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Sandra Peuler presiding.

Attorney for Appellant

Attorneys for Appellee

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
ARGUMENT	
<u>POINT I. IN RESPONSE TO THE FIRST ISSUE ON APPEAL, THE STATE HAS DISREGARDED THE BASIC TOOLS OF STATUTORY CONSTRUCTION. THOSE TOOLS SUPPORT INTERPRETATION OF THE STATUTE AS SET FORTH IN CHAMNAP'S OPENING BRIEF.</u>	1
A. <u>CONTRARY TO THE STATE'S ASSERTION, THIS COURT DID NOT DEFINE THE TERM "CONVICTED" IN <i>GURR</i>.</u>	6
B. <u>THE STATE'S ANALYSIS CONCERNING <i>HUNT</i> IS ARTIFICIAL.</u>	9
C. <u>THE STATE'S COMPARISON OF § 76-10-503(3)(a)(i), WHICH RESTRICTS POSSESSION IF A PERSON IS A "CONVICTED" FELON, AND § 76-10-503(3)(a)(ii), WHICH RESTRICTS POSSESSION IF A PERSON IS "UNDER INDICTMENT," IS SUPERFICIAL AND INCORRECT.</u>	12
D. <u>THE STATE'S RESULT-ORIENTED ARGUMENT CONCERNING FEDERAL STATUTORY LAW AND CASE LAW FAILS TO RECOGNIZE IMPORTANT DISTINCTIONS BETWEEN UTAH'S WEAPONS STATUTE AND THE FEDERAL STATUTE. THE DISTINCTIONS COMPEL DIFFERENT RESULTS.</u>	15
1. <u>Contrary to the State's Assertion, "Federal Authority" Does Not "Require[]" a Specific Interpretation with Respect to Utah's Weapons Act.</u>	15

2. <u>The Utah Act and the Federal Act Differ in Relevant Respect.</u>	16
<u>POINT II. THE STATE RELIES ON DISTINGUISHABLE CASES IN SUPPORT OF ITS ARGUMENT THAT SECTION 76-10-503(3)(a)(i) ADEQUATELY DEFINES THE ELEMENT "CONVICTED."</u>	20
CONCLUSION	25

TABLE OF AUTHORITIES

Page

CASES

<u>Barrett v. United States</u> , 423 U.S. 212 (1976)	17
<u>Greenwood v. City of North Salt Lake</u> , 817 P.2d 816 (Utah 1991)	21
<u>Hansen v. Hansen</u> , 958 P.2d 931 (Utah App. 1998)	3, 6, 18
<u>Hatton-Ward v. Salt Lake City Corp.</u> , 828 P.2d 1071 (Utah App. 1992)	16
<u>Huddleston v. United States</u> , 415 U.S. 814 (1974)	17
<u>Lyon v. Burton</u> , 2000 UT 19, 387 Utah Adv. Rep. 27	2, 3
<u>State v. Blowers</u> , 717 P.2d 1321 (Utah 1986)	21, 24
<u>State v. Duncan</u> , 812 P.2d 60 (Utah App. 1991), <u>cert.</u> <u>denied</u> , 826 P.2d 651 (Utah 1991)	3, 5, 11, 12, 21, 23, 24
<u>State v. Ewell</u> 883 P.2d 1360 (Utah App. 1993)	2, 3
<u>State v. Gurr</u> , 904 P.2d 238 (Utah App. 1995)	6, 7, 8, 9
<u>State v. Hunt</u> , 906 P.2d 311 (Utah 1995)	3, 9, 10, 11, 12, 21, 24
<u>State v. Larsen</u> , 865 P.2d 1355 (Utah 1993)	16
<u>State v. Owens</u> , 638 P.2d 1182 (Utah 1981)	21
<u>State v. Parker</u> , 936 P.2d 1118 (Utah App. 1997)	11
<u>State v. Redd</u> , 954 P.2d 230 (Utah App. 1998) (" <u>Redd I</u> ")	5

	<u>Page</u>
<u>State v. Samter</u> , 479 P.2d 237 (Ore. 1971)	21
<u>State v. Westerman</u> , 945 P.2d 695 (Utah App. 1997)	11
<u>Thiele v. Anderson</u> , 1999 UT App 56, 975 P.2d 481	2, 3, 4, 12, 18
<u>Trujillo v. Utah Department of Transport</u> , 1999 UT App 227, 986 P.2d 752	15
<u>United States v. Dougherty</u> , 895 F.2d 399 (7th Cir. 1990)	18
<u>United States v. Faison</u> , 61 F.3d 22 (11th Cir. 1995)	18
<u>United States v. Reese</u> , 92 U.S. 214, 23 L.Ed. 563 (1875)	24
<u>United States v. Rosenstengel</u> , 323 F. Supp. 499 (E.D. Mo. 1971)	19, 23
<u>Western Coating, Inc. v. Gibbons & Reed Co.</u> , 788 P.2d 503 (Utah 1990)	16

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

18 U.S.C.A. § 921(a) (2000)	17, 20
18 U.S.C.A. § 922 (2000)	16, 17
Utah Code Ann. § 76-3-402 (1995)	5, 23
Utah Code Ann. § 76-10-501(1) (Supp. 1997)	4, 11, 12, 18, 22, 23
Utah Code Ann. § 76-10-501(2)(a) (Supp. 1993)	7, 8
Utah Code Ann. § 76-10-501(2) (1999)	7

	<u>Page</u>
Utah Code Ann. § 76-10-503 (Supp. 1997)	1-12, 14, 16-18, 20-23
Utah Code Ann. § 77-10a-4(1) (1999)	13
Utah Code Ann. § 77-10a-10 (1999)	13
Utah Code Ann. § 77-10a-14(5) (1999)	14
Utah Code Ann. § 77-10a-15 (1999)	14
Utah Code Ann. § 77-10a-16 (1999)	14
Utah Code Ann. § 77-18-9(3) (1995)	5
Utah R. Crim. P. 22 (2000)	5, 6, 11
U.S. Const. amend. XIV, § 1	21
Utah Const. art. I, § 13	13

OTHER AUTHORITIES

Black's Law Dictionary 333-34 (6th ed. 1990)	4
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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

v.

CHAMNAP IN,

Defendant/Appellant.

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Case No. 990710-CA

Priority No. 2

On appeal, Defendant Chamnap In ("Chamnap") maintains that proper interpretation of Utah Code Ann. § 76-10-503(3)(a)(i) (Supp. 1997) supports the determination that at the time of the alleged offense in this case, Chamnap was not a restricted person. (See Brief of Appellant at Point I.) In the event this Court interprets the statute to apply to Chamnap, he also maintains that a conviction under the statute violates his rights under the due process clause of the federal constitution. (Id. at Point II.)

The state disagrees and has relied on distinguishable case law and federal provisions to support its position. For the reasons set forth in the opening Brief of Appellant and as further set forth below, see infra, Points I and II, this Court should find the statute inapplicable to Chamnap.

ARGUMENT

POINT I. IN RESPONSE TO THE FIRST ISSUE ON APPEAL, THE STATE HAS DISREGARDED THE BASIC TOOLS OF STATUTORY CONSTRUCTION. THOSE TOOLS SUPPORT INTERPRETATION OF THE STATUTE AS SET FORTH IN CHAMNAP'S OPENING BRIEF.

Chamnap maintains that he is not a restricted person under § 76-10-503(3)(a)(i).

The state disagrees. That subsection provides the following:

(3)(a) A person may not purchase, possess, or transfer any handgun described in this part who:

(i) has been convicted of any felony offense under the laws of the United States, this state, or any other state[.]

On the date of the incident giving rise to this matter, Chamnap was in possession of a handgun. Chamnap also had previously entered a guilty plea in connection with a charge for a third degree felony offense. He had not been sentenced on the matter, and there was no judgment of conviction against him for a felony offense. Thus, he had not "been convicted of any felony offense."

Based on those facts, Chamnap maintains that § 76-10-503(3)(a)(i) is not applicable to him.

In considering proper application of the statute, both Chamnap and the state agree that this Court will use the tools of statutory construction. According to the state, this Court will "give effect to the legislature's intent in light of the purpose the statute was meant to achieve." (State's Brief of Appellee ("S.B.") at 6 (citing Thiele v. Anderson, 1999 UT App 56, ¶14, 975 P.2d 481).) Also, it will look to the "plain language" of the statute (S.B. at 6-7 (citing Lyon v. Burton, 2000 UT 19, ¶17, 387 Utah Adv. Rep. 27)); presume that "words and phrases used were chosen carefully and advisedly" (S.B. at 6-7 (citing State v. Ewell 883 P.2d 1360, 1363 (Utah App. 1993))); read the statute as a "comprehensive whole" in order that the statute will be construed so that it will be in

"harmony" with other provisions (S.B. at 7 (citing Thiele, 1999 UT App 56, ¶14, and Lyon, 2000 UT 19, ¶17); and ensure that application of the statute is "neither unreasonably confused, inoperable, nor in blatant contradiction of the express purpose of the statute." (S.B. at 7 (citing Hansen v. Hansen, 958 P.2d 931, 934 (Utah App. 1998)); see also Brief of Appellant at 8-20).

The state also has recognized that Utah appellate courts and judges have assigned two separate meanings to the term "convicted." "[One meaning] denotes the establishment of 'guilt by verdict or plea' and one [meaning] refers to 'the final judgment entered on the plea or verdict.'" State v. Hunt, 906 P.2d 311, 313 (Utah 1995) (citing State v. Duncan, 812 P.2d 60, 62 (Utah App. 1991), cert. denied, 826 P.2d 651 (Utah 1991)); (see S.B. at 8 (citing Hunt, 906 P.2d at 313; Duncan, 812 P.2d at 62; Ewell, 883 P.2d at 1364 n.1; id. at 1363 (Jackson, J., concurring); id. at 1365 (Bench, J., dissenting))). Since the different definitions in case law lead to different results, this case hinges on which definition this Court will assign to the phrase "has been convicted of any felony offense," as set forth in Section 76-10-503(3)(a)(i) (Supp. 1997).

The state has recognized that "[the] choice of which definition applies turns on 'the context and the purpose within which the term "convicted" is used.'" (S.B. at 9 (citing Hunt, 906 P.2d at 313).) The "context and purpose" considerations are consistent with the tools of statutory construction. While the state acknowledges that those tools apply, the state disregards the tools in favor of strained analysis.

According to the state, the term "convicted" as used in § 76-10-503(3)(a)(i) refers to the establishment of guilt by verdict or plea. In making that assertion, the state has failed to acknowledge the legislative purpose in enacting the statute as follows:

(1)(a) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state. *Except as specifically provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:*

(i) *prohibited from owning, possessing, . . . or keeping any firearm* at his place of residence, property, business, or in any vehicle lawfully in his possession or lawfully under his control[.]

* * *

(b) This part is uniformly applicable throughout this state and in all its political subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities. Unless specifically authorized by the Legislature by statute, a local authority may not enact or enforce any ordinance, regulation, or rule pertaining to firearms.

Utah Code Ann. § 76-10-501(1) (Supp. 1997) (emphasis added). The legislature intended to control and specifically limit the circumstances under which a person may be restricted in his possession of a handgun. Section 76-10-501(1) is relevant to the analysis since this Court will interpret the statute to "give effect to the legislature's intent in light of the purpose the statute was meant to achieve." Thiele, 1999 UT App 56, ¶14.

The state also has failed to look to the plain language of the statute. While the state has recognized that this Court will construe a statute according to its "plain language" (S.B. at 6-7), the state has disregarded that the term "convicted" has a plain and ordinary meaning as set forth in the dictionary, Utah statutory law, and the Utah rules.

See Black's Law Dictionary 333-34 (6th ed. 1990) (conviction is defined as the result of

a criminal trial which ends in a judgment or sentence; conviction is the final judgment); Utah Code Ann. § 77-18-9(3) (1995) ("conviction" means judgment by a criminal court on a verdict or finding of guilt after trial, a plea of guilty, or a plea of nolo contendere); Utah R. Crim. P. 22(c) (1998) (judgment of conviction occurs upon imposition of sentence). This Court will rely on dictionary definitions "to divine the 'usual meaning'" of the statutory terms. State v. Redd, 954 P.2d 230, 234 (Utah App. 1998) ("Redd I").

The state also has failed to read Section 76-10-503(3)(a)(i) so that it is in "harmony" with relevant provisions. The state has disregarded that a third degree felony offense may be recorded as a misdemeanor offense upon entry of final judgment. Utah Code Ann. § 76-3-402 (1995). In that instance, "a guilty defendant who is considered worthy of a reduced sentence should receive all the advantages that go with such leniency." Duncan, 812 P.2d at 63-64.

If this Court were to construe a conviction under § 76-10-503(3)(a)(i) to occur at the time of the plea, without consideration for the fact that the trial judge may enter the judgment of conviction for a misdemeanor offense, it would have the following effect: First, such an interpretation essentially would create an exception to Section 76-3-402, where defendant would be treated as a felon for a misdemeanor conviction; and second, such an interpretation would have the effect of restricting a person from possessing a handgun based on the fact that his criminal history consisted of a misdemeanor conviction. (See Brief of Appellant at 15-16.)

That is inconsistent with Section 76-10-503(3)(a)(i).

Since Section 76-10-503(3)(a)(i) does not apply to a person who has a misdemeanor conviction, or a person who simply has been found guilty of a felony offense without more, the provision should not be interpreted to apply prior to entry of a final judgment. The state fails to recognize the confusion that its interpretation may present. See Hansen, 958 P.2d at 934 (interpretation must ensure that application of statute is not confused or in contradiction to express purpose of statute).¹

Rather than rely on the basic tools of statutory construction in its argument, the state has relied on distinguishable case law and federal analysis to support its claim that the term "convicted," as used in Section 76-10-503(3)(a)(i), refers to the establishment of guilt by verdict or plea. As set forth below, the state's analysis should be disregarded.

A. CONTRARY TO THE STATE'S ASSERTION, THIS COURT DID NOT DEFINE THE TERM "CONVICTED" IN *GURR*.

The state asserts that "the same words within a statute should be given the same meaning unless there is a contrary legislative intent clearly expressed." (S.B. at 9.)

Chamnap agrees. To that end, the state has recognized that the term "convicted" is used

¹ Under the state's interpretation, if a defendant pleads guilty to a third degree felony offense and the trial court subsequently records the matter as a misdemeanor upon entry of final judgment, the defendant would be a restricted person under § 76-10-503(3)(a)(i) only for the limited period of time between the entry of the plea and the entry of judgment. It is difficult to comprehend the purpose such an interpretation would serve since the defendant would be restricted in his possession of a handgun under § 76-10-503(3)(a)(i) for 2 to 45 days. See Utah R. Crim. P. 22(a) (2000).

twice in § 76-10-503. It is used in subsections (3)(a)(i), which is at issue here, and (1)(a). According to the state, "[use] of the term 'convicted' in subsection (3)(a)(i) has not been addressed by Utah courts to date. However, this Court has addressed the term as used in subsection (1)(a)," in State v. Gurr, 904 P.2d 238 (Utah App. 1995). (S.B. at 9-10.) That is an incorrect assertion.

In Gurr, defendant pled guilty in 1986 to burglary, a third degree felony offense. "Because of circumstances surrounding the charge, the trial court in the 1986 case *sentenced* Gurr as if he had been convicted of a class A misdemeanor." Gurr, 904 P.2d at 240 (emphasis added). Seven years later, in 1993 the state charged Gurr with "possession of a dangerous weapon by a restricted person" pursuant to § 76-10-503(1)(a) based on Gurr's earlier burglary conviction. Id.

When Gurr was charged in 1993, Section 76-10-503(1)(a) provided that "[a]ny person who has been convicted of any crime of violence under the laws of ... this state ... may not own or have in his possession or under his custody or control any dangerous weapons as defined in this part." Gurr, 904 P.2d at 243 (citing Section 76-10-503(1)(a)).

Also, the Utah Weapons Act specifically defined "crime of violence" as follows:

"Crime of violence" means aggravated murder, murder, manslaughter, rape, mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable by imprisonment for more than one year, or an attempt to commit any of these offenses.

Utah Code Ann. § 76-10-501(2)(a) (Supp. 1993) and (1999).

On appeal, Gurr claimed that because he was sentenced on the 1986 burglary charge as if he had been convicted of a misdemeanor, he was not a restricted person. Id. at 243. This Court found Gurr's argument unpersuasive; Section 76-10-503(1)(a) "restricts those previously convicted of *crimes of violence* from possessing dangerous weapons *not because they are felons* but because they have previously used unlawful force against the person or property of another." Id. at 244 (emphasis added).

Stated another way, § 76-10-503(1)(a) restricts a person from possessing a weapon based on the *substance* of the prior offense, *not the felony classification*. Thus, the restricted status under § 76-10-503(1)(a) applies whether a person has been previously convicted of felony burglary or a "de facto lower misdemeanor classification" of that offense (see § 76-10-501(2)(a) identifying lesser offense as "crime of violence"). Gurr, 904 P.2d at 244.

In relying on Gurr, the state fails to recognize that § 76-10-503(3)(a)(i) is the flip side of § 76-10-503(1)(a). Where subsection (1)(a) "restricts people from possessing dangerous weapons *based on the substance rather than the classification* of their criminal history," Gurr, 904 P.2d at 243 (emphasis added), subsection (3)(a)(i) restricts people from possessing handguns based on the *classification* of their criminal history.

With respect to the state's assertion that this Court in Gurr defined "convicted" as "the finding of guilt by plea or verdict" (S.B. at 10), that is incorrect. That assertion misrepresents the posture of the case on appeal in Gurr. When Gurr was charged in 1993

with possession by a restricted person under § 76-10-503(1)(a), he had on his record a 1986 misdemeanor final judgment of conviction for burglary, a "crime of violence." Thus, this Court was not required to consider whether "convicted" should be given any particular meaning. Inasmuch as the state has failed to recognize the differences between § 76-10-503(1)(a) and § 76-10-503(3)(a)(i), and has misconstrued the posture of the prior "conviction" in Gurr, its discussion regarding the matter should be disregarded.

B. THE STATE'S ANALYSIS CONCERNING *HUNT* IS ARTIFICIAL.

Next, the state seems to argue that the *result* in Hunt, 906 P.2d at 312-14, is controlling. (S.B. at 10-11.) In that case, the Utah Supreme Court considered the term "conviction" as it was used in a statute that prohibits the distribution of a controlled substance. Defendant Hunt originally was charged with three counts of distributing marijuana. According to Utah statute, the multiple counts subjected him to an enhanced sentence: "Any person convicted of violating Subsection (1)(a) with respect to ... (ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree felony, and upon a second or subsequent conviction punishable under this subsection is guilty of a second degree felony." Hunt, 906 P.2d at 312 (citing Utah Code Ann. § 58-37-8(1)(b)).

Defendant Hunt argued that "the offenses resulting in the 'second or subsequent conviction' must occur after entry of a first conviction for the penalty to be increased." Hunt, 906 P.2d at 312. That is, according to the defendant, a "second or subsequent" offense may be charged as a second degree felony only if, at the time of the "subsequent"

offense, defendant had a previous judgment of conviction for that same offense. Id.

The supreme court disagreed with defendant's interpretation. In doing so, the court looked to "the 'context and purpose within which the term "convicted" is used.'" Id. at 313. Hunt promotes application of the basic tools of statutory construction.

In drafting the distribution statute at issue in Hunt, the legislature specified that the sentencing *enhancement* was triggered upon imposition of the "second or subsequent conviction"; the phrase did not relate to the timing of the *offenses*, but to the "number of convictions and when they are entered." Hunt, 906 P.2d at 313. In addition, use of the term "second" supported the determination that the first and "second" offenses could be alleged in the same charging document. Thus, final judgment on both offenses could be entered simultaneously. Inasmuch as the legislature specified that the enhancement applied "upon a second or subsequent conviction," the Utah Supreme Court ruled that a conviction of guilt "on one count in an information can be a legal basis for enhancing other convictions based on counts charged in the same information." Hunt, 906 P.2d at 314. Thus, the term "conviction" as used in the statute did not relate to a final judgment.

Applying the same analysis compels a different result in Chamnap's case. Here, the statutory phrase, "has been convicted of any felony offense," specifically relates to the timing and the disposition of the prior offense. That is, unless defendant "has been convicted" of a "felony offense," he is not a restricted person and he may not be charged with a crime under Section 76-10-503(3)(a)(i). Thus, a prior conviction must be in place

before a person may be charged for an offense under Section 76-10-503(3)(a)(i).

Furthermore, in drafting § 76-10-503(3)(a)(i), the legislature "specifically" intended to limit the categories defining the restricted status in order to more fully protect a person's "individual right to keep and bear arms." See Utah Code Ann. § 76-10-501(1) (Supp. 1997). Thus, the words should be given their full force and effect in the "context and the purpose" of the statute. Hunt, 906 P.2d at 313. To that end, the term "convicted" should be interpreted to refer to a final judgment of conviction. That would be consistent with the analysis in Hunt.²

Although the state does not mention Duncan, 812 P.2d at 60, in its analysis, that case initially identified the two definitions for "conviction" that are found in Hunt.

Duncan was published in 1991. In Duncan, this Court considered the definition of

2 The state complains that defendant's "interpretation [of the statute] would permit him to lawfully 'purchase, possess, or transfer' a handgun during the entire time between entry of his guilty plea and sentencing, regardless of the length of delay between the two. That this was not intended by the legislature is clear from the face of the statute." (S.B. at 11.) In accordance with the rules, the time between entry of a guilty plea and sentencing "shall be not less than two nor more than 45 days" after the plea, unless otherwise ordered. Utah R. Crim. P. 22(a) (2000). Thus, under the plain language of the rules, the state's concerns would be inconsequential. Furthermore, since Chamnap's "interpretation" of the provision is based on the tools of statutory construction, if the state has a complaint about the statute, the state should take that up with the legislature. While proper construction of a statute may be "troublesome" to the state, this Court is constrained to interpret the meaning of statutory provisions in accordance with their plain language. See State v. Westerman, 945 P.2d 695, 699 (Utah App. 1997). In addition, it would exceed this Court's authority to interpret the statute beyond what was intended by the legislature. See State v. Parker, 936 P.2d 1118, 1122 (Utah App. 1997) (Court declined to interpret a rule beyond the plain language).

"conviction" for purposes of allowing impeachment testimony at trial. The Court found that the term referred to a final judgment on a guilty verdict or plea. Id. at 64.

Three years after Duncan was published, the 1994 legislature enacted § 76-10-503(3)(a)(i); thereafter, Hunt was decided in 1995. If this Court is inclined to rely on results, it should find the Duncan result applicable. Duncan was in effect when the provision was enacted and may have served to define the term "convicted" in Section 76-10-503(3)(a)(i).

C. THE STATE'S COMPARISON OF § 76-10-503(3)(a)(i), WHICH RESTRICTS POSSESSION IF A PERSON IS A "CONVICTED" FELON, AND § 76-10-503(3)(a)(ii), WHICH RESTRICTS POSSESSION IF A PERSON IS "UNDER INDICTMENT," IS SUPERFICIAL AND INCORRECT.

The state claims § 76-10-503(3)(a)(i) should be construed to apply in its broadest sense. (S.B. at 11.) But see Utah Code Ann. § 76-10-501(1) (Supp. 1997) (legislature intended to control and to specifically limit categories of restricted status); Thiele, 1999 UT App 56, ¶14 (this Court will "give effect to the legislature's intent in light of the purpose the statute was meant to achieve"). In support of that assertion, the state relies on subsection 76-10-503(3)(a)(ii), which restricts possession of a handgun if the person is "under indictment." According to the state, the "indictment" provision "makes clear that it is not the entry of a judgment and sentence [under Section 76-10-503(3)(a)(i)] that renders the individual too dangerous to entrust with a gun: it is the existence of something less, such as mere probable cause to believe he committed an indictable offense [under Section 76-10-503(3)(a)(ii)]." (S.B. at 11-12.)

The state's claim is incorrect and lacks analysis. The state fails to recognize that "indictment" proceedings in this jurisdiction are rare, since the majority of criminal cases are initiated with the filing of an "information" and a preliminary hearing. Indeed, the Utah Constitution specifies a preference for initiating criminal proceedings with the filing of an information. See Utah Const. art. I, § 13 (offenses that were required to be prosecuted by indictment "shall be prosecuted by information"). Section 76-10-503(3)(a)(ii) applies in rare circumstances not relevant here.

In addition, in this jurisdiction the "indictment" proceeding can be as rigorous as entry of a judgment of conviction in a criminal case. Specifically, indictment proceedings include the summoning of a grand jury consisting of 9 to 15 persons (versus 8 persons in a criminal trial). See Utah Code Ann. § 77-10a-4(1) (1999).

In an indictment proceeding, the grand jury has the right to collect evidence and conduct examinations, while a jury in a criminal trial has no such rights. Under Utah law, a grand jury may return an indictment only if it finds "credible evidence of each material element" of the alleged crime. See Utah Code Ann. § 77-10a-10(4) (1999).

The grand jury must be satisfied that "clear and convincing evidence exists" to show that a crime was committed by the person accused before the indictment may issue. Utah Code Ann. § 77-10a-10(5) (1999). The indictment proceedings are not based on a "mere probable cause" standard as represented by the state. (See S.B. at 11-12 (state represents that indictment proceedings are based on "mere probable cause" standard).)

Once a grand jury returns a signed indictment, the managing judge may order that the indictment remain secret until the defendant is "in custody or has been released pending trial." Utah Code Ann. § 77-10a-14(5) (1999). Also, the judge is required to "enter an order transferring the indictment to a court with appropriate jurisdiction and proper venue under Section 76-1-202 to try the matter." Id. at § 77-10a-15 (1999). Thus, the indictment is presented to the district court for prosecution of the accused.

In considering Section 76-10-503(3)(a)(ii), it is reasonable to interpret that provision to support that a defendant may be "under indictment" after he has been arrested or is in custody for the alleged offense. See Utah Code Ann. §§ 77-10a-14(5)(a), (b); 77-10a-15; 77-10a-16. In that instance, the indictment aspect of the process necessarily is completed,³ and defendant would be on notice of his restricted status.

If the "indictment" provision necessarily requires a completed process to place a person on notice of his restricted status, the convicted-felon provision should require the same. A person is on notice of his status as a convicted felon when the process is completed with a final judgment of conviction. Since the state's comparison of § 76-10-503(3)(a)(ii) ("under indictment") and § 76-10-503(3)(a)(i) (convicted felon) fails to provide proper analysis, it is not helpful to the state's case. Indeed, comparison of the provisions may support Chamnap's argument concerning statutory interpretation.

³ A defendant may remain "under indictment" until the criminal proceedings are concluded, but may not actually be "under indictment" until the indictment process is completed.

D. THE STATE’S RESULT-ORIENTED ARGUMENT CONCERNING
FEDERAL STATUTORY LAW AND CASE LAW FAILS TO RECOGNIZE
IMPORTANT DISTINCTIONS BETWEEN UTAH’S WEAPONS STATUTE
AND THE FEDERAL STATUTE. THE DISTINCTIONS COMPEL
DIFFERENT RESULTS.

Finally, the state claims federal law may be persuasive to this Court in construing Utah’s statute. (S.B. at 12.) According to the state, federal circuit and district courts have found that a guilty plea is sufficient to constitute a conviction for purposes of the Federal Gun Control Act. (S.B. at 13.) Again, the state relies on the results reached by other courts in interpreting distinguishable statutes and provisions. The state disregards analysis of the federal statutes and cases at issue, and fails to point out the differences between the federal act and Utah’s Weapons Act. In addition, federal cases interpreting federal statutes are irrelevant, as further set forth below.

1. Contrary to the State’s Assertion "Federal Authority" Does Not "Require[]" a
Specific Interpretation with Respect to Utah’s Weapons Act.

According to the state, “federal authority requires that ‘convicted’ be defined as guilt by entry of a plea or verdict.” (S.B. at 12.) That assertion is incorrect. In considering Utah’s Weapons Act, this Court is not bound by federal authority. See Trujillo v. Utah Dept. of Transp., 1999 UT App 227, ¶27 n.2, 986 P.2d 752 (United States Supreme Court’s interpretation of Federal Tort Claims Act, which is similar to Utah’s act in wording, is not binding on “our interpretation” of the Utah act). Indeed, unless the Utah legislature has specifically required Utah courts to interpret Utah statutory law in lockstep with a parallel federal provision, Utah courts are not required to

do so. See State v. Larsen, 865 P.2d 1355, 1359-60 (Utah 1993) (legislature did not require courts to interpret the Utah Uniform Securities Act in lockstep with parallel federal provisions); see also Hatton-Ward v. Salt Lake City Corp., 828 P.2d 1071, 1074 n. 1 (Utah App. 1992) (although city claimed federal whistle blower act was similar to Utah act, this Court found differences, compelling it to reject city's argument for federal interpretation in construing Utah act).

The Utah Supreme Court has recognized that if the Utah legislature has had the opportunity to copy a federal act, but has declined to do so, the legislature did not intend federal interpretations to apply to the Utah act. See Western Coating, Inc. v. Gibbons & Reed Co., 788 P.2d 503, 506 (Utah 1990) (legislature had opportunity to copy federal act and its interpretations; legislature chose not to, compelling court to conclude that legislature also rejected interpretations).

In considering the statute at issue in this case, Section 76-10-503(3)(a)(i) was enacted in 1994. At that time, certain relevant provisions set forth in the Federal Gun Control Act were in effect. In relevant part, the Utah legislature did not copy the federal act. Thus, the Utah statute should not be interpreted in accordance with the federal act, as further set forth below.

2. The Utah Act and the Federal Act Differ in Relevant Respect.

According to the state, the Federal Gun Control Act, set forth in part at 18 U.S.C.A. § 922(h), provides the following:

It shall be unlawful for any person --

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

* * *

To receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(S.B. at 12.) The state has attached a copy of the federal statute as an addendum to its brief. Significantly, subsection (h) is not as represented by the state. Rather, under the version of the statute attached to the state's brief, subsection (g) makes it unlawful for any person, "(1) who has been convicted in any court [of] a crime punishable by imprisonment for a term exceeding one year," to ship, transport, or possess in commerce any firearm or ammunition. See State's Addendum C; and 18 U.S.C.A. § 922(g) (2000).

While the federal provision is similar to the Utah statute in some respects (compare the categories in 18 U.S.C. § 922(g) to the categories in Section 76-10-503(3)(a)), it also is distinguishable in relevant part.

For example, in adopting the Federal Gun Control Act, Congress specifically identified when a person has been convicted of any crime. 18 U.S.C.A. § 921(a)(20) (statute defines conviction in accordance with the way in which it is defined by state law for the jurisdiction where the crime is charged).

In addition, Congress intended to enact provisions *to keep firearms away from a broad spectrum of persons*. See Barrett v. United States, 423 U.S. 212, 218 (1976).

Congress intended to create a broad rule with wide application and a sweeping effect; it intended the federal provisions to *restrict public access to firearms*. Huddleston v. United States, 415 U.S. 814, 824 (1974). Consistent with Congressional intent, the

federal appellate courts in United States v. Dougherty, 895 F.2d 399, 402-403 (7th Cir. 1990); and United States v. Faison, 61 F.3d 22 (11th Cir. 1995), provided broad, sweeping interpretations to the federal rule to ensure it widely restricted firearms possession. See Dougherty, 895 F.2d at 402-403 (“Congress intended to create a broad rule” with “sweeping” language; “[thus], it is apparent that the phrase ‘convicted by a court’ is not to be given a narrow interpretation”); Faison, 61 F.3d at 22 (relying on broad interpretation consistent with congressional intent and as set forth in Dougherty). The state has relied on those cases in support of its argument. (S.B. at 13.)

They are not helpful in analyzing the Utah provision. The purpose behind enacting the federal provisions is in conflict with the purpose articulated in connection with enacting the Utah Weapons Act. See Utah Code Ann. § 76-10-501(1) (Supp. 1997). Where Congress sought to restrict access to firearms, the Utah legislature identified its own purpose for enacting legislation. The Utah legislature “specifically” sought to control and to limit the categories of restricted persons in order to protect the “individual right to keep and bear arms.” Id.

Thus, consistent with Utah legislative intent, this Court should interpret Section 76-10-503(3)(a)(i) to apply in specific and limited circumstances. Such an interpretation would be consistent with Utah law. See Thiele, 1999 UT App 56, ¶14 (this Court will “give effect to the legislature’s intent in light of the purpose the statute was meant to achieve”); Hansen, 958 P.2d at 934 (Court ensures that interpretation is not in blatant

contradiction of the express purpose of the statute).

In considering the federal act, the state has placed special emphasis on United States v. Rosenstengel, 323 F.Supp. 499 (E.D. Mo. 1971). According to the state, in that case, defendant was charged with possession of a firearm by a convicted felon under the Federal Gun Control Act. Defendant Rosenstengel moved to dismiss the charge against him on the basis that he “could not be a ‘convicted felon’ under the federal statute because, although he had originally pled guilty to a felony, he had not been sentenced at the time he was found to have acquired the firearm.” (S.B. at 12-13 (citing Rosenstengel, 323 F. Supp. at 500-01).) The district court denied the motion to dismiss.⁴

According to the state’s analysis (S.B. at 13), the district court determined that “even if [Rosenstengel] had been *acquitted* of his felony, he was a restricted person for purposes of the federal statute so long as he was ‘under indictment,’ including information.” (Id.) The state’s reliance on Rosenstengel is irrelevant in part because the reasoning of the case is based on a broad interpretation of the federal provision, consistent with Congressional intent to limit access to firearms. Rosenstengel, 323 F.Supp. at 501-02. “In view of the evident intent of Congress [to restrict firearms access], there is no doubt in our mind that the word ‘convicted’ was used in the statute in its broadest sense.” Id.

4 The state refers to Rosenstengel as an appellate case. (See S.B. at 12 (state refers to the matter as an appeal).) Yet, Rosenstengel is a decision from a district court on a motion to dismiss.

As set forth above, Congress and the Utah legislature have diametrically opposing purposes for enacting each respective Gun Control/Weapons Act. The Utah provisions are not as “sweeping” in application as the Gun Control Act. Thus, the Utah provisions should not be interpreted in a manner consistent with the federal provisions.

In addition, the federal district court’s discussion -- comparing a “convicted” felon to a person “‘under indictment’ including information” for purposes of the federal provision -- is not applicable here. As set forth above, supra, Point I.C., Utah’s indictment proceedings are rigorous. In addition, the Utah Weapons Act does not restrict a person in his possession of a firearm if he has been charged by information. Compare Utah Code Ann. § 76-10-503 to 18 U.S.C.A. §921(a)(14) (2000) (Congress defined “indictment” to include “information” under federal law). Since the federal and Utah provisions are so different in language and purpose, federal case law is not helpful in interpreting § 76-10-503(3)(a)(i).

The state’s argument concerning application of Section 76-10-503(3)(a)(i) disregards the basic tools of statutory construction in favor of distinguishable case law. The state also has failed to provide careful and accurate analysis in connection with its arguments. Chamnap respectfully urges this Court to disregard the arguments set forth in the state’s brief, and to rely on the tools of statutory construction in defining application of Section 76-10-503(3)(a)(i) in the context of this case.

POINT II. THE STATE RELIES ON DISTINGUISHABLE CASES IN SUPPORT OF ITS ARGUMENT THAT SECTION 76-10-503(3)(a)(i) ADEQUATELY DEFINES THE ELEMENT “CONVICTED.”

With respect to the second issue on appeal, Chamnap maintains that in the event this Court interprets the term "convicted" in § 76-10-503(3)(a)(i) to refer to the establishment of guilt by a verdict or plea rather than a final judgment, Chamnap has been denied due process of law because § 76-10-503(3)(a)(i) did not give adequate notice to him of the restricted status. See State v. Blowers, 717 P.2d 1321 (Utah 1986); U.S. Const. amend. XIV, § 1. The due process clause provides that a statute must “define an ‘offense with sufficient definiteness that ordinary people can understand what conduct is prohibited.’” Greenwood v. City of North Salt Lake, 817 P.2d 816, 819 (Utah 1991).

Also, in considering whether a statute violates the due process provision, “[the] determinative factor is whether there is a reasonable degree of common understanding of what is encompassed within the general terms of prohibition.” State v. Owens, 638 P.2d 1182, 1183 (Utah 1981) (citing State v. Samter, 479 P.2d 237, 239 (Ore. 1971)). “[A] criminal violation should be described with sufficient certainty so that persons of ordinary intelligence, desiring to obey the law, may know how to govern themselves in conformity with it.” Owens, 638 P.2d at 1183.

When the legislature enacted Section 76-10-503(3)(a)(i) in 1994, it failed to define the term "convicted." As set forth above, both this Court and the Utah Supreme Court have recognized that the term has two meanings: One meaning refers to the establishment of guilt by verdict or plea, and one meaning refers to the final judgment entered on the plea or verdict. Hunt, 906 P.2d at 313; Duncan, 812 P.2d at 62.

Because the term has more than one meaning, an ordinary person would not be on notice as to whether § 76-10-503(3)(a)(i) applied to him upon entry of a guilty plea in connection with a third degree felony offense if final judgment had not yet been entered in the case. Unless this Court interprets § 76-10-503(3)(a)(i) to refer to a final judgment, the statute includes an element that is susceptible of multiple meanings. The different definitions fail to place a person on notice as to when or if his status is restricted prior to final judgment.

In response to Chamnap's constitutional claims, the state asserts the statute is adequate and provides proper notice. According to the state, "context" and "purpose" "strongly suggest[]" that the term "convicted," as used in § 76-10-503(3)(a)(i), refers to a plea of guilt. (S.B. at 17.) In support of its claim, the state asserts that such a definition is consistent with the statute's purpose "of protecting society from individuals identified to be risks to society." (S.B. at 18.) The state's claims lack analysis.

Specifically, the state fails to recognize that Section 76-10-503(3)(a)(i) protects "society from individuals identified to be risks," when the term "convicted" refers to the final judgment. In addition, the state fails to explain how its interpretation is consistent with the specific purpose of the statute as set forth in § 76-10-501(1) (Supp. 1997). The state also fails to explain how its interpretation provides notice to the person who enters a guilty plea, when it is not plain from § 76-10-503(3)(a)(i) that a guilty plea triggers application of the restricted status.

On the other hand, if this Court were to interpret the term "convicted" to refer to final judgment, such an interpretation would adequately protect society from those identified to be a risk. The interpretation also would ensure that those defendants who were considered worthy of a reduction in sentence under § 76-3-402 upon entry of judgment would not fall under its ambit, see Duncan, 812 P.2d at 63-64. Such an interpretation would be consistent with the intent of the legislature in enacting the provision as set forth in Utah Code Ann. § 76-10-501(1) (Supp. 1997) (legislature enacted provisions specifically to keep political subdivisions and municipalities from restricting firearms possession and to limit restricted status in order to ensure right to keep and bear arms); and it would ensure adequate notice to the reasonable person, since the restricted status would become effective at a definitive point, upon entry of a final judgment.

In further support of the state's argument that § 76-10-503(3)(a)(i) provides adequate notice that the term "convicted" refers to the entry of a plea, the state has relied on its arguments concerning application of Section 76-10-503(3)(a)(ii) (the "under indictment" provision), and Rosenstengel. Inasmuch as the "indictment" provision at subsection 76-10-503(3)(a)(ii), and Rosenstengel are distinguishable (see supra, Points I.C. and D., herein), the state's argument should be disregarded.⁵

⁵ With respect to Rosenstengel, the state claims that "once under indictment, the person is restricted *regardless of the outcome of any future trial or plea proceedings*." (S.B. at 18 (emphasis added).) Since neither the federal nor state "indictment" provision is at issue here, that assertion is irrelevant. Nevertheless, the state's assertion seems to exaggerate the situation. It seems inconceivable that once a person is "under indictment," he is

Chamnap also maintains that the legislature's failure to define an important element of the offense unconstitutionally delegates basic policy matters to trial judges for resolution on an ad hoc and subjective basis. Since the statute fails to define "convicted," the legislature has improperly delegated to the trial judges the task of defining that element of the offense. See Blowers, 717 P.2d at 1324 (Howe, J., concurring) (citing, U.S. v. Reese, 92 U.S. 214, 221, 23 L.Ed. 563 (1875)). Such a shift in legislative powers to the trial judges invites arbitrary and inconsistent application of the provision.

In response to Chamnap's argument, the state asserts "there is no basis for defendant's presumption" that judges would apply the statute in an inconsistent and/or arbitrary manner. (S.B. at 19.) The state apparently has disregarded that Utah appellate court judges have already assigned different definitions to the term. See Hunt, 906 P.2d at 313 (supreme court recognizes two separate definition for term); and Duncan, 812 P.2d at 62 (court of appeals recognizes two separate definitions for term). It is reasonable to recognize that trial judges also will apply different definitions, thereby enforcing the statute in unequal, arbitrary, inconsistent respects.

Finally, contrary to the state's assertion, Chamnap does not assert generally that the statute unconstitutionally interferes with the right to keep and bear arms. (See S.B. at 21.) Rather, Chamnap maintains that if this Court were to interpret the term "convicted" to refer to a plea or verdict when a judgment has not been entered, such an interpretation


restricted in his possession of a firearm or handgun regardless of the outcome at trial.

would interfere with the purpose of the statute, and the legislative intent to protect an individual's right to keep and bear arms except under the specific circumstances articulated by the statute. The statute must be interpreted to achieve its legislative purpose. That is, the term "convicted" should be interpreted to refer to a final judgment.

CONCLUSION

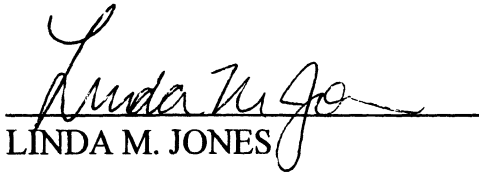
For the reasons set forth herein, Defendant/Appellant Chamnap In respectfully requests that this Court reverse the conviction in this matter and dismiss the underlying charge.

SUBMITTED this 18th day of September, 2000.


LINDA M. JONES
Counsel for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, LINDA M. JONES, hereby certify that I have caused to be hand delivered an original and 7 copies of the foregoing to the Utah Court of Appeals, 450 South State, 5th Floor, 140230, Salt Lake City, Utah 84114-0230 and 4 copies to the Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P.O. Box 140854, this 18th day of September, 2000.


LINDA M. JONES

DELIVERED to the Utah Attorney General's Office and the Utah Court of Appeals Court as indicated above this ___ day of _____, 2000.
