

1989

Logan City v. Don W. Dunbar : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LOGAN CITY,		
Plaintiff and Appellee,		Case No. 890731-CA
vs.		Case Type: APPEAL
DON W. DUNBAR,		Priority No. 2
Defendant and Appellant.		

REPLY BRIEF OF APPELLANT

AN APPEAL OF RIGHT FROM THE FIRST CIRCUIT COURT,
COUNTY OF CACHE, STATE OF UTAH, LOGAN CITY DEPARTMENT,
THE HONORABLE PAMELA J. HEFFERNAN, PRESIDING,
THE HONORABLE CLINTON B. JUDKINS, PRESIDING,
THE HONORABLE PARLEY R. BALDWIN, PRESIDING.

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**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO.

890731-CA

FILED

APR 17 1991

Mary T Noonan
Clerk of the Court
Utah Court of Appeals

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U.C.A. Sec. 41-6-104.....	
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IN THE UTAH COURT OF APPEALS

LOGAN CITY,		
Plaintiff and Appellee,		Case No. 890731-CA
vs.		Case Type: APPEAL
DON W. DUNBAR,		Priority No. 2
Defendant and Appellant.		

REPLY BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

The first issue that must be decided by the Utah court of Appeals is the question of jurisdiction. The appellant, Mr. Dunbar, alleges that there is no Constitutional or statutory basis for the Utah Court of Appeals to exist or to exercise any judicial powers, that the creation of the court was unlawful and unconstitutional and that the purported statute creating the Utah Court of appeals is unofficial and is unauthorized by law.

Mr. Dunbar here states that Utah Code Annotated, Title 78, Chapter 2a in its entirety, including Section 78-2a-3(2)(d), was enacted contrary to Utah Code Annotated, Sections 52-1-2, 52-2-1, 78-8-203, and contrary to the Constitution of the State of Utah, Article IV, Section 10, Article I, Section 25, and contrary to 1 Stat 23 and Article VI, of the Constitution of the United States.

It is a matter of public record in the Utah Division of Archives that there were insufficient oath of office certificates

on file during the years 1977 to January 15, 1991 for there to be a majority of persons elected to the Utah Senate to make a majority. A majority of persons elected to the Utah Senate is necessary in order for the Senate to carry on any business. It is therefore a matter of public record that there was no majority in the Utah Senate in 1977, when legislation to create the Utah Circuit Court system was proposed, or in 1986 when the legislation to create the Utah Court of Appeals was proposed.

When the jurisdiction of any court is challenged in writing it is mandatory that the challenge to jurisdiction be answered in writing by the court whose jurisdiction is challenged. It is necessary to prove Jurisdiction in the record once it has been challenged in writing by one of the parties to the action.

Where the court below was unofficial, unconstitutional and unlawful and its creation void, no court of appeals can assume jurisdiction over the case. The conviction was void for lack of jurisdiction and the appeal and conviction are null and void as a matter of law. The Utah Court of Appeals is invalid on the same grounds as the Utah Circuit Courts. The purported legislation creating the circuit courts and the Utah Court of Appeal is invalid for failure to file the oath of office required by Article VI of the United States Constitution by the persons elected to the Utah Senate making all of their actions void as a matter of law. Parker v. Overman, 59 U.S. 137, 15 L.Ed 316.

Subscribing and filing an oath of office certificate which has been administered and recorded by a person authorized by law to administer such oaths is absolutely necessary in order for a

person elected or appointed to become a member of any state legislature or to become an executive or judicial officer of any state. If a person has failed to file the required oath to support the United States Constitution, the person has not qualified to hold public office as a legislator, an executive officer or a judicial officer in the state of Utah under Article VI of the United States Constitution. The timely filing of such oath in Utah is material. Late filing is ineffective and confers no power to act in a public office.

If the legislation creating the office is unconstitutional then no office is created and no person can fill a legally non-existent office.

The Appellee, Logan City, has not presented any evidence to prove its claim that the Utah Court of Appeals is in fact a lawful Court. Absence proof on the record in this case that U.S.C. 78-2a-3(2)(d) is Constitutional, leaves the Utah Court of appeals without power to render a valid decision affirming the unofficial judgments of the unofficial Circuit Court in Utah.

STATEMENT CONCERNING ISSUES PRESENTED

The appellant's brief raised 16 issues. Logan City raised 10 issues in appellee's brief. The issues raised by the appellant affect jurisdiction due to unconstitutional legislation which affects his substantive rights and procedural due process rights. The issues raised by Logan City are more limited to procedural matters such as whether it was a pretext stop, evidence of actual physical control, giving compelled evidence, was arrest justifiable arrest, standing to challenge validity of intoxilizer

machine tests, failure of the prosecutor to file an oath of office, court error for allowing a defendant in civil suits to prosecute the plaintiff in those suits, sufficiency of evidence, burden of proof error and ineffective assistance of counsel.

The appellant raise issues as to whether the trial and appeal courts lack jurisdiction because the statutes creating them are unconstitutional thus denying every aspect of due process, equal protection of the laws, effective assistance of counsel, a fair trial, denial of federally protected rights, through unconstitutional government in Utah, resulting in an unconstitutional conviction, where no valid law was violated where actual physical control of a motor vehicle, probable cause, reasonable suspicion and the corpus delicti were established in the minds of the jurors by perjury and illegally obtained evidence.

If the jurisdiction is lacking in both the trial and appellate courts the issues raised by the appellee are not material nor relevant since the 2 year statute of limitations has expired. They can only be relevant when and if the two courts had jurisdiction and in both cases jurisdiction can only be created by valid statutes because there are no Constitutional provisions specifying the establishment of circuit courts or a court of appeals. The appellant, Mr. Dunbar, believes that all attempted state legislation in Utah between December 31, 1974 and April 17, 1991 is invalid because those attempting to exercise the legislative powers vested in the Utah Senate failed to qualify for legislative office pursuant to Article VI of the

Constitution of the United States of America within the time prescribed by law, a fact which is readily available to the appellee at the Utah Division of Archives. Parker v. Overman, supra, State Ex Rel. Stain v. Christensen, 84 Utah 185, 35 P.2d 775 (1943).

STATEMENT OF THE CASE

Some of the pages relating facts in appellant Dunbar's brief were inserted out of proper sequence so that some facts are given before the Statement of the Case and some facts are given after. Some of the facts not presented at trial were included in Mr. Dunbar's brief because they were jurisdictional facts discovered after the trial and they affect the power to try the case and the power to decide the case on appeal.

It is not the fault of appellant Dunbar that the persons who were elected to 112 public offices in Utah's state government did not file the required oath of office within the time prescribed by law, or even that the man who prosecuted him failed to file his oath within the time prescribed by law, those persons must each bear their own responsibility for such failure, not the appellant. It is not the fault of the persons appointed to be judges in the circuit courts or the Utah court of appeals that the persons elected to the Senate failed to file oaths of office for more than sixteen years, but it is the duty of every citizen who knows about such failure to report the matter to other citizens and to law enforcement officers and public prosecutors and magistrates. The people of Utah have a right to know that their state government has been and is unconstitutional and corrupt,

regardless of how it happened. The problem must be resolved as provide by law.

Mr. Dunbar's false arrest, imprisonment, unfair trial, and void conviction, have given him grounds for defending his rights which caused him to search deeper into the principles of freedom and constitutional law than he might otherwise have done, had he been treated more fairly. Even his unofficial appointed counsel had a built in conflict of interest. As an officer of an unofficial court he was reluctant to challenge the validity of the unofficial legislation which created the court of which he claimed to be an officer. That is the nature of the type of corruption which now exists in the state of Utah, which appellant Dunbar has been faced with throughout his unofficial unlawful and unconstitutional prosecution. To whom can he go to receive a fair hearing. The very nature of this case is such that those who prosecuted him, tried him and sentenced him were all acting without authority of law, and those who will hear his case on appeal also will act without authority of law, but none of them have been lawabiding enough to admit the truth of the matter. This clearly a denial of due process of law.

It is a class B misdemeanor to exercise the functions of a public office when you have not taken and filed the oath of office required by the Constitution of the United States. That has been the law in Utah since at least 1907. Mr. Dunbar was accused of committing two class B misdemeanors under two invalid Logan City ordinances, so two invalid state laws were substituted in the amended information filed by an unofficial prosecutor who

claimed that an invalid state statute made his unofficial acts official.

SUMMARY OF ARGUMENT

The appellant first argues that both the trial court and the Utah Court of Appeals are not official courts of the State of Utah and that all of their offices and actions are unlawful and unconstitutional and therefore wholly void, and that his arrest and conviction were unlawful, unconstitutional and denied him of his substantive rights and his rights to procedural due process in violation of the fifth and fourteenth amendments to the Constitution of the United States which resulted in his false arrest which deprived him of his liberty without due proces of law and in violation of his right to equal protection of law.

Appellant Dunbar also argues that Clyde Baugh testified that the appellant's vehicle was parked on the side of the road, not on the travelled portion of the road. That the engine was not running. That Dunbar was sitting sideways on the driver's side of the vehicle with both feet facing outside the vehicle while Mr. Baugh talked with him. That the vehicle was parked when Mr. Baugh first saw it and was not operated while Baugh was present. And that Mr. Dunbar got out of his vehicle and walked across the street when the Logan City patrol car pulled up behind the Baugh vehicle which was headed west, with its engine running, perhaps partway in the travelled portion of the road but off toward the right side from the center of the road so that cars could and did pass between the Dunbar and the Baugh vehicles while Dunbar and Baugh conversed, and Baugh also testified that the reason he was away from the curb as far as he was was because of the snow.

Judicial notice should be taken of the fact that the road at 200 South only runs one block west from Main Street in Logan, so it is not a heavily travelled road, because all traffic must go either north or south on 100 West.

Mr. Dunbar argues that the allegation that both vehicles were parked in the travelled portion of the roadway and that the vehicles were only two or three feet apart from each other, was concocted by the officers after Mr. Dunbar was arrested, to give them a pretext for stopping Mr. Dunbar and depriving him of his liberty without either probable cause or reasonable suspicion.

Both officers, Roper and Peterson, gave false testimony at Mr. Dunbar's trial, which was aided by the fact that the exclusionary rule was not invoked by Mr. Dunbar's public defender, even though he knew of the false and contradicting statements made by the officers in the previous hearings.

Dunbar argues that his own testimony at the suppression hearing corroborated Clyde Baugh's testimony at that hearing and at the trial, but his public defender failed to defend him in an effective manner so that the jury members could clearly see that the testimony of the officers' and the testimony of Clyde Baugh could not both be true. Baugh's testimony contradicted every major point of the officers' testimony, except that Mr. Dunbar had been in his vehicle at some point before he was first contacted by either officer. Dunbar also argues that his public defender refused to call him as a witness and let him testify at his trial even though the appellant wanted to testify in his own defense. The evidence did and does not prove beyond a reasonable

doubt that Dunbar was under the influence of alcohol to an unlawful degree, nor that he was in actual physical control of a motor vehicle when any witnesses were present who testified. And the actual unchallenged evidence, which had been unlawfully obtained, as to how much alcohol had been consumed by Mr. Dunbar was about 3 ounces of beer. It is unreasonable to believe that 3.2% beer could give Mr. Dunbar a blood alcohol content of 0.08% Where only 3 ounces were consumed.

Dunbar also argues that in addition to the deliberate perjury by the officer's against him, which is obvious from the record, the the prosecution has gone to extreme measures to prevent him from having assistance of counsel on appeal, including using his own counsel, the public defender, to obtain a court order denying him counsel on appeal under false pretenses, by misrepresenting his residence, by telling the court he was in Tok, Alaska, when he was not, among other falsehoods. And then the prosecutors for Logan City arranged for an Order to Show Cause to be issued on the very same day the Brief of the Appellant was to be delivered to Mr. Dunbar in Salt Lake City, and then arranged further for an arrest warrant to issue with excessive bail, which warrant was executed and resulted in Mr. Dunbars arrest and transportation to the Cache County Jail where he was held for bail of 2585 dollars or more, when Mr. Dunbar was impecunious. Now Mr. Dunbar is deeper in debt because of the deceitfulness and treachery of the Logan City Attorneys. All this was done when the Logan City Attorneys had a full knowledge of Mr. Dunbar's challenge to the Jurisdiction of the Circuit Courts because of unofficial

conduct or misconduct over a period of Sixteen years in the Utah Senate, and then the order to show cause was issued without any supporting affidavit, was not personally served on Mr. Dunbar, and it was signed by a person who had been recused from the case due to bias and whose signature was illegible, and who signed the order to show cause without any authority of law, thus subjecting appellant Dunbar to further unconstitutional and unlawful persecution and prosecution and further denying him due process and equal protection of the Constitutional laws of the land.

It is a fact in this case that valid laws are being violated by the prosecutors and the unofficial courts, while at the same time those prosecutors and unofficial courts uphold those laws which are unconstitutional and void.

Probable Cause and Reasonable Suspicion were only established by perjury by the police officers who were not subjected to the exclusionary rule.

If Dunbar had had effective assistance of Counsel he would have had a different result. Jeffrey "R" Burbank would not have been permitted to commence and prosecute the case without first filing the required oath of office, nor would he have been allowed to falsify a public record by backdating his oath of office after May 3, 1989, when it was not on file with the Logan City recorder as required by Utah Law. His oath was not on file in the Logan City Records office when the amended information was filed, The City recorder could not produce it for Dunbar even

on May 3, 1989, well after the trial.

All of the ordinances and statutes under which Mr. Dunbar was charged were passed after December 31, 1974, and therefore they were all enacted in a manner which is repugnant to the Constitution of the United States of America and are void. Even U.C.A. Sections 10-3-827, 10-3-828 and 10-3-829 are not constitutional. They were enacted by an unofficial Utah Senate when no oaths of office were on file for any senator elected in either 1974 or 1976, so the whole senate was unofficial, and it was impossible for there to have been a majority to make a law.

The burden of proof is upon Logan City to prove the Utah Senate was official when it uses the validity of any legislation to prosecute a citizen. It was error for the court to instruct the jury that the laws used in the prosecution of Mr. Dunbar were the law, when in fact they were not the law and their enactment was done in direct violation of the Constitution and Laws of the United States and the Constitution and laws of the State of Utah.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES
RULES AND REGULATIONS DETERMINATIVE OF ISSUES.

United States Constitution, Articles I through VII and
Amendments I through XXVI, Particularly Amendments 1, 4, 5, 6, 8,
9, 10, 13 and 14.

United States Statutes: United States Statutes at Large, 1
Stat 23; United State Code, Title 42 Section 1983. United States
Code, Title 18 Section 241.

Utah Constitution: Article I, Sections 1, 2, 3, 7, 10, 12,
13, 14, 25, 26, 27; Article IV, Section 10; Article V, Article VI,
Article VII, Article VIII, and Article XI, Section 5.

Utah Code Annotated, Sections 10-3-827 (1977), 10-3-828
(1977), 10-3-829 (1977), 41-6-1 (1979), 41-6-43 (1983), 41-6-44
(1983), 41-6-44.3 (1983), 44-6-44.5 1983) 44-6-44.10 (1983),
44-6-44.30, (1984), 52-1-2, 52-2-1, 76-1-301, 76-8-203 (1973),
76-8-402 (1973), 76-8-412 (1973), 76-8-413 (1973), 76-8-414
(1973), 77-7-1, 77-7-15, 77-35-12(g), 78-27-18.

Logan City Ordinances: Section 2-3-1, Section 42-6-1, 42-6-
13a

IN THE UTAH COURT OF APPEALS

DON W. DUNBAR,)	
Appellant,)	Case No. 890731-CA
vs.)	CERTIFICATE OF SERVICE
LOGAN CITY,)	PRIORITY CATAGORY 2
Respondent.)	

CERTIFICATE OF SERVICE

I hereby certify that I mailed two true and correct copies of the foregoing Reply Brief of the Appellant to the office of the Logan City Attorney at the address below on this _____ day of April, 1991 A.D.

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