

1999

Utah v. Rick Preece : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David E. Yocum; District Attorney for Salt Lake County; Kelly Sheffield; Deputy District Attorney; Attorneys for Appellee.

Jared W. Eldridge; Salt Lake Legal Defender Assoc.; Attorney for Appellant.

Recommended Citation

Brief of Appellant, *Utah v. Rick Preece*, No. 990966 (Utah Court of Appeals, 1999).

https://digitalcommons.law.byu.edu/byu_ca2/2413

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
 :
 Plaintiff/Appellee, : Case No. 990966-CA
 :
 v. :
 :
 RICK PREECE, : Priority No. 2
 :
 Defendant/Appellant. :

BRIEF OF APPELLANT

Appeal from a judgment of conviction for violation of a protective order, a Class A misdemeanor, Utah Code Ann. § 76-5-108 (1999), in the Third Judicial District Court, West Valley Department, in and for Salt Lake County, State of Utah, the Honorable Ann Boyden presiding.

JARED W. ELDRIDGE (8176)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant/Defendant

DAVID E. YOCUM
District Attorney for Salt Lake County
KELLY SHEFFIELD
Deputy District Attorney
2001 South State Street #S3700
Salt Lake City, Utah 84190-1210

Attorney for Appellee/Plaintiff

FILED
Utah Court of Appeals
APR 05 2000
Julia D'Alesandro
Clerk of the Court

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee, : Case No. 990966-CA
v. :
RICK PREECE, : Priority No. 2
Defendant/Appellant. :

BRIEF OF APPELLANT

Appeal from a judgment of conviction for violation of a protective order, a Class A misdemeanor, Utah Code Ann. § 76-5-108 (1999), in the Third Judicial District Court, West Valley Department, in and for Salt Lake County, State of Utah, the Honorable Ann Boyden presiding.

JARED W. ELDRIDGE (8176)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant/Defendant

DAVID E. YOCUM
District Attorney for Salt Lake County
KELLY SHEFFIELD
Deputy District Attorney
2001 South State Street #S3700
Salt Lake City, Utah 84190-1210

Attorney for Appellee/Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUE AND STANDARD OF REVIEW	1
PRESERVATION OF ARGUMENT	2
STATUTES, RULES AND CONSTITUTIONAL PROVISIONS	2
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENT	8
ARGUMENT	8
INSUFFICIENT EVIDENCE SUPPORTS MR. PREECE’S CONVICTION FOR VIOLATION OF A PROTECTIVE ORDER.	8
CONCLUSION	13
ADDENDUM A: Copy of the judgment	
ADDENDUM B: Text of relevant statutes	

TABLE OF AUTHORITIES

CASES

<u>Spanish Fork City v. Bryan</u> , 975 P.2d 501 (Utah App. 1999)	10, 13
<u>State v. Petree</u> , 659 P.2d 443 (Utah 1983)	2, 13

STATUTES

Utah Code Ann. § 76-2-101 (1983)	2, 9
Utah Code Ann. § 76-2-102 (1983)	2, 9
Utah Code Ann. § 76-2-103 (1974)	2, 10, 12
Utah Code Ann. § 76-5-108 (1999)	1, 2, 9
Utah Code Ann. § 78-2a-3 (1996)	1, 2

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee, : Case No. 990966-CA
v. :
RICK PREECE, : Priority No. 2
Defendant/Appellant. :

JURISDICTIONAL STATEMENT

The Appellant/Defendant, Rick Preece, appeals his conviction for violation of a protective order, a Class A misdemeanor, Utah Code Ann. § 76-5-108 (1999), in the Third Judicial District Court, West Valley Department, in and for Salt Lake County, State of Utah, the Honorable Ann Boyden presiding. A copy of the judgment is included as Addendum A. Jurisdiction is conferred on this Court pursuant to Utah Code Ann. § 78-2a-3(2)(e) (1996).

STATEMENT OF ISSUE AND STANDARD OF REVIEW

1. Was sufficient evidence presented at trial to sustain Mr. Preece's conviction for violation of a protective order?

Standard of Review: In considering whether a conviction is supported by sufficient evidence, this Court reviews the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict. This Court may reverse a decision

only when the evidence is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted. State v. Petree, 659 P.2d 443, 444 (Utah 1983).

PRESERVATION OF ARGUMENT

The issue of sufficiency of evidence is preserved by the defendant's motion for directed verdict. R. 42:23-25.

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

The following statutes are relevant to this matter and are set forth in Addendum B:

Utah Code Ann. § 76-2-101 (1983)
Utah Code Ann. § 76-2-102 (1983)
Utah Code Ann. § 76-2-103 (1974)
Utah Code Ann. § 76-5-108 (1999)
Utah Code Ann. § 78-2a-3 (1996)

STATEMENT OF THE CASE

Mr. Preece was charged with violating a protective order on May 25, 1999, in violation of Utah Code Ann. § 76-5-108 (1999), a Class A misdemeanor. Mr. Preece exercised his right to a bench trial on August 13, 1999.

At the trial, defense counsel stipulated that a valid protective order was indeed in effect. The alleged victim, Ms. Shosted, testified that on May 25, Mr. Preece pulled his car into her driveway. Upon seeing Mr. Preece, Ms. Shosted quickly grabbed her kids, went inside her house and locked the door behind her. She then states Mr. Preece pounded on the door. In response, Ms. Shosted opened the door and told Mr. Preece to go

away. Ms. Shosted testified that Mr. Preece's response was that he was not going to leave until he had seen his kids.

Ms. Shosted admitted Mr. Preece was allowed standard visitation by the protective order and read into the record the paragraph from the protective order allowing him standard visitation. Ms. Shosted also testified that prior to May 25, Mr. Preece had not established a pattern of visitation.

After the State rested, the defense counsel moved the court for a directed verdict on the basis that Mr. Preece did not intentionally or knowingly violate the protective order. Defense counsel relied on the paragraph of the protective order allowing Mr. Preece standard visitation rights and Ms. Shosted's admission that Mr. Preece told her he would not leave until he had seen his kids. The court denied the motion.

After the defense presented its case, including Mr. Preece's testimony, the court found Mr. Preece guilty of violating a protective order. The court based its ruling on the fact that a protective order was in place and that Mr. Preece was at the protected address and had contact with Ms. Shosted, the protected person.

STATEMENT OF FACTS

Sherry Shosted obtained a protective order against Rick Preece. R. 42:13. The order permitted Mr. Preece to exercise "[s]tandard visitation according to Utah Code." R. 42:21.

On May 25, 1999, Ms. Shosted was outside vacuuming her car when it began to rain. R. 42:13. Ms. Shosted took the vacuum inside and returned to the car to lock the doors. R. 42:13. As she was locking the doors, she heard a car pull up in her driveway. R. 42:13. Ms. Shosted identified the driver of the car as Mr. Preece. R. 42:13. At that time, two of Ms. Shosted's children were next door playing while the third child, Rachel, was inside the house. R. 42:14. Upon seeing Mr. Preece, Ms. Shosted grabbed her two children from next door, went inside the house and locked the door. R. 42:14.

Ms. Shosted testified that Mr. Preece then began pounding on the door. R. 42:14. Ms. Shosted opened the door and told Mr. Preece to leave. R. 42:14. Mr. Preece told Ms. Shosted that "he wasn't going to leave until he's seen [sic] the kids." R. 42:14-15. Ms. Shosted refused visitation and then called the police. R. 42:15. According to Ms. Shosted, Mr. Preece left three to five minutes before the police arrived. R. 42:15.

Deputy James Wright was dispatched to 7272 West Adams Road on a "report of a woman reporting that her ex-husband was pounding on the front door, threatening her." R. 42:3. When Deputy Wright arrived, he saw Deputy Palmer was already at the scene with Ms. Shosted. R. 42:4.

Deputy Wright contacted Ms. Shosted and asked her why she had called the police. R. 42:4. Ms. Shosted informed him that Mr. Preece "had attempted to enter the house." R. 42:5. Ms. Shosted indicated that Mr. Preece had done so by trying to "kick in

the front door." R. 42:5. Deputy Wright testified that he did not see any damage to any part of the door or house. R. 42:5.

Deputy Wright searched the area for Mr. Preece for about five to ten minutes but did not find Mr. Preece. R. 42:5, 7-8. Deputy Wright never questioned or spoke with any of the three children who were present at the time of the incident. R. 42:9.

Ms. Shosted admitted that she was convicted of a crime of dishonesty in 1996 because she issued a check to the Flower Patch knowing it would not be paid. R. 42:21-22.

At trial, Ms. Shosted testified that there had been no pattern established for Mr. Preece to visit his child, Rachel. R. 42:22. At the conclusion of the State's case, defense counsel moved for a directed verdict on the basis that the Court could not find that Mr. Preece had violated the protective order because the plain language of the protective order allowed Mr. Preece standard visitation rights. R. 42:23-24. Defense counsel argued that since Mr. Preece was allowed standard visitation with his child by the protective order and because he informed Ms. Shosted when he arrived at her home that he wanted to see his child, the protective order was not violated. R. 42:23-24.

The court denied defense counsel's motion, concluding that although Mr. Preece had informed Ms. Shosted that he was not leaving until he saw the children, absent a pattern of visitation, the state had presented a prima facie case that a protective order violation could have occurred. R. 42:24-25.

Defense counsel called Mr. Preece to testify. Mr. Preece testified that he had attempted to exercise visitation numerous times but Ms. Shosted had denied all of his visitation attempts. R. 42:26-27. Mr. Preece admitted that it is possible that he was at Ms. Shosted's house on May 25, and that if he had been there, it was to exercise visitation. R. 42:27.

Mr. Preece testified that he had visitation rights for one night per week and on weekends. He further testified that if he went to Ms. Shosted's home on May 25, he would have called her the Sunday before to tell her he would be exercising visitation on Tuesday, May 25. R. 42:27. Mr. Preece denied going to Ms. Shosted's home for any purpose other than visitation. R. 42:28. He also testified that he had gone to Ms. Shosted's house a number of times in the past and had similarly been denied visitation with his daughter. R. 42:28. Mr. Preece denied he kicked Ms. Shosted's door. R. 42:28.

Mr. Preece testified that he had telephoned Ms. Shosted on a number of occasions to set up visitation but had been unable to do so because "[s]he won't answer her phone. She's got an answering machine, when she hears somebody, she'll answer, that she knows. Obviously she won't answer to me. So I've tried. You know, I've tried." R. 42:29.

Following Mr. Preece's testimony, the prosecutor argued that because Mr. Preece had not set up a visitation schedule and his visit to Ms. Shosted's home was unexpected, the court should find that Mr. Preece had violated the protective order. R. 42:30-31.

Defense counsel argued that the protective order permitted Mr. Preece to exercise standard visitation and that Mr. Preece told Ms. Shosted he was there to see his child; consequently, his presence did not constitute a violation of the protective order.

Defense counsel pointed out that there was no damage to the door, no neighbors called to complain, and the children apparently did not see anything or at least were not questioned. R. 42:32. Finally, defense counsel emphasized that Ms. Shosted has a conviction for a crime involving dishonesty and harbors a great deal of anger and bad feelings for Mr. Preece. R. 42:32. These factors provide the motive for Ms. Shosted to testify less than truthfully and to call the police when she did not want Mr. Preece to have visitation with his child. R. 42:32.

Following closing argument, the court found Mr. Preece guilty of violating the protective order. Specifically, the court concluded as follows:

The only issue, legally, is whether or not the paragraph that Ms. Shosted read into the record since it was simply a stipulation, that the protective order is in place and the protective order was never placed on the record or into evidence, simply the paragraph that Miss Shosted read that said Mr. Preece is entitled to the visitation as allowed by Code. I'm very familiar with that statute, I'm very familiar with the protective order paragraph that uses that as standard language. Clearly it is a presumption that will be standardized visitation and that standardized visitation is according to age and according to schedule, oftentimes according to supervision. All of that is set out by the Court. It is not something that one party or the other just determines on his own that he is just going to go to the house and work this out outside of a locked door.

If Mr. Preece is having a difficult time getting statutory visitation his remedy is to go to the courts and get it set up. He is entitled to statutory

visitation. The protective order carries no form whatsoever and no protection whatsoever if the fact that he is entitled to visit a young child under the age of five on the weekends and on the evening and there is no scheduled visitation set up, allows him to just go to a protected location anytime without notice, even if it is his intended reason. Then the protective order carries no protection at all and that is, I simply find that that is not the basis of the paragraph that says Mr. Preece is allowed statutory visitation. That was read in the paragraph.

That statutory visitation is to be set up by the court and to be done through a schedule according to the code which is very strict and involves a great deal of court intervention. It is not to be handled on a violation of protective order. It is not this judge's prerogative or this Court's role to set up that visitation schedule. It is simply to determine if a protective order was in place. That has been stipulated to. And based upon the testimony of Ms. Shosted, that was violated because Mr. Preece appeared at that particular location and had contact with Ms. Shosted.

Therefore I'm finding you guilty of the violation of a protective order, a Class A misdemeanor, because of a stipulation to the protective order.

R. 42:35-37.

SUMMARY OF ARGUMENT

The trial court erred in concluding the evidence presented at trial was sufficient to demonstrate that Mr. Preece intentionally or knowingly violated the protective order by attempting to exercise his right to standard visitation with his child.

ARGUMENT

INSUFFICIENT EVIDENCE SUPPORTS MR. PREECE'S CONVICTION FOR VIOLATION OF A PROTECTIVE ORDER.

A finding that a valid protective order was in place and that Mr. Preece was present at a protected address and had contact with the protected person is insufficient to

find him in violation of a protective order where the protective order specifically entitles Mr. Preece standard visitation.¹ Ms. Shosted, the alleged victim, testified that the first conversation between she and Mr. Preece was that she told him to leave and Mr. Preece responded that he was not going to leave until he had seen his kids. R. 42:14-15.

Mr. Preece was charged with violating a protective order pursuant to Utah Code Ann. § 76-5-108. This section provides that a person, "who **intentionally or knowingly violates that order** after having been properly served, is guilty of a Class A misdemeanor." Utah Code Ann. § 76-5-108 (1999) (emphasis added). However, "no person is guilty of an offense unless his conduct is prohibited by law and: (1) [h]e acts intentionally, knowingly" Utah Code Ann. § 76-2-101 (1983). Additionally, the next code section states, "Every offense not involving strict liability **shall require a culpable mental state**." Utah Code Ann. § 76-2-102 (1983) (emphasis added).

¹ The State marshaled the following evidence against Mr. Preece during the bench trial:

- (1) That a protective order was in place, at least on the day of the trial. R. 42:13.
- (2) The person that the protective order was to be served upon was "Rick." R. 42:11-12.
- (3) That on May 25, 1999 Mr. Preece was present at Ms. Shosted's residence located at 7272 West Adams Rd. R. 42:11, 13-14.
- (4) That Mr. Preece pounded and kicked her door. R. 42:15.
- (5) Following the pounding on the door, a conversation took place between Ms. Shosted and Mr. Preece. R. 42:14-15, 16.
- (6) The protective order allowed standard visitation to Mr. Preece and that he had not established a pattern of visitation. R. 42:20-22.

The mens rea of intentional is defined as, "[i]ntentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result." Utah Code Ann. § 76-2-103(1) (1974). Knowingly is defined as, "[k]nowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result." Utah Code Ann. § 76-2-103(2).

The Utah Supreme Court stated, "before we can uphold a conviction it must be supported by a quantum of evidence concerning **each element of the crime as charged** from which the [factfinder] may base its conclusion of guilt beyond a reasonable doubt." Spanish Fork City v. Bryan, 975 P.2d 501, 502 (Utah App. 1999) (quoting State v. Murphy, 617 P.2d 399, 402 (Utah 1980)) (emphasis added).

The question at issue in this case is not whether there was a valid protective order in place or even whether Mr. Preece was present at the protected address and had contact with the protected person.² The issue is whether Mr. Preece was attempting to exercise his visitation rights as allowed by the protective order. If Mr. Preece was attempting to

² Although, the stipulation was, "there is a protective order in place." R. 42:13. From the record this only seems to stipulate that a protective order was in place on the day of trial, not whether a protective order was in place on May 25, 1999 when the alleged violation took place. No other evidence that a protective order was in effect on May 25 was ever introduced.

exercise his visitation rights, then he clearly could not be found to have intentionally or knowingly violated a valid protective order.

On this issue, during the trial Ms. Shosted testified that when she asked Mr. Preece to leave he told her that, "he wasn't going to leave until he's seen [sic] the kids." R. 14-15. In fact, this was apparently the first communication between the two according to the record. R. 42:13-15. Additionally, Mr. Preece testified that although he did not have a specific recollection of the day the alleged violation occurred, he admitted it was entirely likely that he was in fact at Ms. Shosted's house on the date in question. R. 42:27. Mr. Preece also stated that if he was present at Ms. Shosted's house it was to visit his daughter and that it was his practice to call the Sunday prior to his visitation in order to put Ms. Shosted on notice that he intended to exercise visitation on a particular day and time. R.42:27, 29-30.

Mr. Preece testified that generally when he called Ms. Shosted she would not answer the phone and he would leave a message on an answering machine so she would know what day and time he was coming to visit his daughter. R. 42:27.

The testimony of both Ms. Shosted and Mr. Preece seem to be in agreement that Mr. Preece wanted to visit his daughter. R. 42:14-15, 27-28.

In its findings of fact the trial court did not make a ruling on whether Mr. Preece was exercising visitation or not. The court stated,

That statutory visitation is to be set up by the courts and to be done through a schedule according to the code which is very strict and involves a great deal of court intervention. It is not to be handled on a violation of a protective order. **It is not this judge's prerogative or this Court's role to set up that visitation schedule. It is simply to determine if a protective order was in place. That has been stipulated to. And based upon the testimony of Ms. Shosted, that was violated because Mr. Preece appeared at that particular location and had contact with Ms. Shosted.**

Therefore, I'm finding you guilty of the violation of protective order, a class A misdemeanor, because of a stipulation to the protective order.

R. 42:36-37 (emphasis added).

The court based its ruling simply on the fact that a valid protective order was in place and that Mr. Preece was in fact at the protected address and had contact with Ms. Shosted, the protected person. R. 42:36-37. The court made absolutely no finding that Mr. Preece knowingly or intentionally violated that order.

If Mr. Preece was in fact attempting to exercise visitation with his daughter, it is clear that he was pursuing what he believed to be a proper activity allowed by the protective order. This fact negates the necessary mental state that would require Mr. Preece's conscious objective was to violate the protective order or that he was aware that his conduct would reasonably result in the violation of a protective order. Utah Code Ann. § 76-2-103.

In this case, just as in Petree, even if Mr. Preece was technically in violation of the letter of the protective order, the evidence is, "manifestly insufficient to prove the he did


so 'intentionally or knowingly'." 659 P.2d at 447. No evidence was presented to the court to establish that Mr. Preece was present for any reason other than to visit his daughter.

As a result, in Mr. Preece's mind he was in compliance with the protective order. Therefore, a sufficient quantum of evidence of the requisite mental state element of this crime has not been established. Bryan, 975 P.2d at 502.

CONCLUSION

Based on the reasons stated above, the judgement of conviction should be reversed.

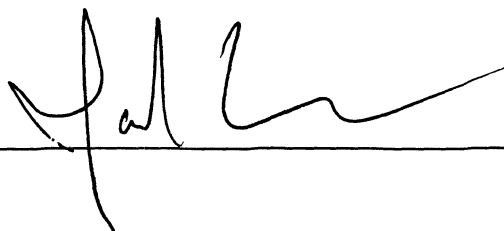
SUBMITTED this 5th day of April, 2000.



JARED W. ELDRIDGE
Attorney for Appellant/Defendant

CERTIFICATE OF DELIVERY

I, JARED W. ELDRIDGE, hereby certify that I have caused to be delivered the original and seven of the foregoing to the Utah Court of Appeals, 450 South State, 5th Floor, P.O. Box 140230, Salt Lake City, Utah 84114-0230, and two copies of the foregoing to the District Attorney's Office, 2001 South State Street #S3700, Salt Lake City, Utah 84190-1210, this 5th day of April, 2000.



Delivered this _____ day of April, 2000.

ADDENDUM A:

Copy of the judgment

Third District Court, State of Utah
Salt Lake City, West Valley Department
3636 S. Constitution Blvd., WVC, UT 84119

SENTENCE / JUDGMENT FORM

CITY / STATE _____ -VS- _____

Rick Preece

Plaintiff

Defendant

DOB 1/10/63

CASE NUMBER 991102291

DATE 10/8/99

JUDGE ABoyden

CLERK SBarrons

Plaintiff Counsel K. Sheffield

Defense Counsel L. Garner

Interpreter _____

CHARGES

MA - violation of protective order

AMENDED:

THE COURT SENTENCED THE DEFENDANT AS FOLLOWS:

(1) FINE AMT	\$ _____	SUSP	\$ _____	JAIL	<u>305</u>	SUSP	<u>335</u>
FINE AMT	\$ _____	SUSP	\$ _____	JAIL	_____	SUSP	_____
FINE AMT	\$ _____	SUSP	\$ _____	JAIL	_____	SUSP	_____
FINE AMT	\$ _____	SUSP	\$ _____	JAIL	_____	SUSP	_____
FINE AMT	\$ _____	SUSP	\$ _____	JAIL	_____	SUSP	_____
FINE AMT	\$ _____	SUSP	\$ _____	JAIL	_____	SUSP	_____

(2) RESTITUTION \$ _____ Pay to _____ Court _____ Victim _____ Show Proof to Court

(3) COURT COSTS \$ _____

(4) ATTORNEY FEES \$ 200⁰⁰ - handled thru APP

TOTAL DUE \$ _____

Payment Schedule: Pay \$ _____ mo _____ 1st Pmt Due _____ Last Pmt Due _____

(5) Community Service in lieu of Jail / Fine _____ Hrs _____ Date Due _____

(6) Probation / TUA 12 Mos _____ Court AP & P ACEC _____

(7) TERMS OF PROBATION / TUA

☒ No Further Violations

☐ AA Meetings _____ /wk _____ /month

☒ Random UA's

☒ No Alcohol/non prescribed Cont Subs

☐ Antabuse

☐ ~~Complete 30 days Jail. Comply all terms~~

☐ OTHER APP. Have drug & alcohol evaluation and

Comply with recommendations, complete an extension

APPEAL MUST BE FILED WITHIN

30 DAYS OF JUDGMENT

Drug clauses

x in custody

District Court Judge

[Signature]

ADDENDUM B:

Text of relevant statutes

Utah Code § 76-2-101

**UTAH CODE, 1953
WEST'S UTAH CODE
TITLE 76. CRIMINAL CODE
CHAPTER 2. PRINCIPLES OF
CRIMINAL RESPONSIBILITY
PART 1. CULPABILITY
GENERALLY**

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

Current through End of 1999 General Sess.

§ 76-2-101. Requirements of criminal conduct and criminal responsibility

No person is guilty of an offense unless his conduct is prohibited by law and:

(1) He acts intentionally, knowingly, recklessly, with criminal negligence, or with a

mental state otherwise specified in the statute defining the offense, as the definition of the offense requires; or

(2) His acts constitute an offense involving strict liability.

These standards of criminal responsibility shall not apply to the violations set forth in Title 41, Chapter 6, unless specifically provided by law.

As last amended by Chapters 90 and 98, Laws of Utah 1983

WEST'S UTAH CODE

TITLE 76. CRIMINAL CODE

**CHAPTER 2. PRINCIPLES OF
CRIMINAL RESPONSIBILITY**

PART 1. CULPABILITY GENERALLY

Search this disc for cases citing this section.

Utah Code § 76-2-102

**UTAH CODE, 1953
WEST'S UTAH CODE
TITLE 76. CRIMINAL CODE
CHAPTER 2. PRINCIPLES OF
CRIMINAL RESPONSIBILITY
PART 1. CULPABILITY
GENERALLY**

**(Information regarding effective dates,
repeals, etc. is provided subsequently in
this document.)**

Current through End of 1999 General Sess.

**§ 76-2-102. Culpable mental state
required--Strict liability**

Every offense not involving strict liability
shall require a culpable mental state, and when

the definition of the offense does not specify a
culpable mental state and the offense does not
involve strict liability, intent, knowledge, or
recklessness shall suffice to establish criminal
responsibility. An offense shall involve strict
liability if the statute defining the offense
clearly indicates a legislative purpose to impose
criminal responsibility for commission of the
conduct prohibited by the statute without
requiring proof of any culpable mental state.

As last amended by Chapter 90, Laws of Utah 1983.

WEST'S UTAH CODE

TITLE 76. CRIMINAL CODE

**CHAPTER 2. PRINCIPLES OF
CRIMINAL RESPONSIBILITY**

PART 1. CULPABILITY GENERALLY

Search this disc for cases citing this section.

Utah Code § 76-2-103

**UTAH CODE, 1953
WEST'S UTAH CODE
TITLE 76. CRIMINAL CODE
CHAPTER 2. PRINCIPLES OF
CRIMINAL RESPONSIBILITY
PART 1. CULPABILITY
GENERALLY**

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

Current through End of 1999 General Sess.

§ 76-2-103. Definitions of "intentionally, or with intent or willfully"; "knowingly, or with knowledge"; "recklessly, or maliciously"; and "criminal negligence or criminally negligent

A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is

reasonably certain to cause the result.

(3) Recklessly, or maliciously, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

As last amended by Chapter 32, Laws of Utah 1974.

WEST'S UTAH CODE

TITLE 76. CRIMINAL CODE

**CHAPTER 2. PRINCIPLES OF
CRIMINAL RESPONSIBILITY**

PART 1. CULPABILITY GENERALLY

Search this disc for cases citing this section.

Utah Code § 76-5-108

**UTAH CODE, 1953
WEST'S UTAH CODE
TITLE 76. CRIMINAL CODE
CHAPTER 5. OFFENSES AGAINST
THE PERSON
PART 1. ASSAULT AND RELATED
OFFENSES**

**(Information regarding effective dates,
repeals, etc. is provided subsequently in
this document.)**

Current through End of 1999 General Sess.

**§ 76-5-108. Protective orders restraining
abuse of another--Violations**

(1) Any person who is the respondent or defendant subject to a protective order or ex parte protective order issued under Title 30, Chapter 6, Cohabitant Abuse Act, or Title 78, Chapter 3a, Juvenile Court Act of 1996, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or a foreign protective order as described in

Section 30-6-12, who intentionally or knowingly violates that order after having been properly served, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(2) Violation of an order as described in Subsection (1) is a domestic violence offense under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

Amended by Laws 1993, c 137, Laws 1995, c 300, § 15, eff July 1, 1995, Laws 1996, c 244, § 9, eff April 29, 1996, Laws 1999, c 246, § 1, eff May 3, 1999

WEST'S UTAH CODE

TITLE 76. CRIMINAL CODE

**CHAPTER 5. OFFENSES AGAINST
THE PERSON**

**PART 1. ASSAULT AND RELATED
OFFENSES**

Search this disc for cases citing this section.

Utah Code § 78-2a-3

**UTAH CODE, 1953
WEST'S UTAH CODE
TITLE 78. JUDICIAL CODE
PART I. COURTS
CHAPTER 2A. COURT OF
APPEALS**

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

Current through End of 1999 General Sess.

§ 78-2a-3. Court of Appeals jurisdiction

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

***27162** (i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Amended by Laws 1994, c. 13; Laws 1995, c. 299, § 47, eff. May 1, 1995; Laws 1996, c. 159, § 19, eff. July 1, 1996; Laws 1996, c. 198, § 49, eff. July 1, 1996.

PART I. COURTS

WEST'S UTAH CODE

CHAPTER 2A. COURT OF APPEALS

TITLE 78. JUDICIAL CODE

Search this disc for cases citing this section.