2011

American Fork City v. Everet D. Robinson : Appeal Brief of Appellant

Utah Court of Appeals

Everett D. Robinson; Respondent and Apellant. Representing Pro Se.
Hansen Writght Eddy & Haws, P.C. Attn: Attys Hansen or Merrill. Plantiff and Appellee.

IN THE UTAH COURT OF APPEALS

AMERICAN FORK CITY Plaintiff and Appellee, vs. **EVERETT D. ROBINSON** Defendant and Appellant.	**APPEAL BRIEF OF THE APPELLANT** Appellate Case No. 20110845 - CA District Court No. 111100670 by appeal from the Fourth Judicial District Court of Utah County in the State of Utah Judge Christine S. Johnson

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I. List Of All Parties

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American Fork City, Petitioner and Appellee

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Utah Cases:

IV. Jurisdictional Statement

This Court has jurisdiction by Utah Code §78A-4-103(2)(e).

V. Statement of Issues & Standard of Review

1. Under what circumstances can a person refuse to obey a police command without being culpable under U.C.A. § 76-8-305? Can a person freely leave an encounter with an officer if no apparent criminal investigation is underway without risk of violating U.C.A. § 76-8-305? Is a person who is the subject of the detention referred to under U.C.A. § 76-8-305 entitled to notice that a criminal investigation is underway?

Standard of Review: "Constitutional issues, including that of due process, are questions of law which we review for correctness." *In re K.M.*, 965 P.2d 576, 578 (Utah Ct. App. 1998).

Preservation of Review: These related issues were before the trial court when it found him guilty of violating U.C.A. § 76-8-305. (Transcript pg. 57 line 25 to pg. 59 line 9.)

2. Does a conviction under U.C.A. § 76-8-305 require a judicial evaluation of whether the involved arrest or detention was lawful?

Standard of review: Statutory interpretation questions are questions of law reviewed for correctness "The proper interpretation and application of a statute is a question of law which we review for correctness, affording no deference to the district court's legal conclusion[s]." *Ellison v. Stam*, 2006 UT App 150, ¶ 16, 136 P.3d 1242.

Preservation of Review: This issue was before the trial court when it found him guilty of violating U.C.A. § 76-8-305. (Transcript pg. 57 lines 12-24.)

3. Is the criteria set forth in Utah v. Hansen, 2002 UT 125, 63 P.3d 650 and related case law regarding levels of police encounters relevant for determining whether a detention or arrest is lawful for a conviction under U.C.A. § 76-8-305? If so, does a conviction require a showing of a "reasonable suspicion" of criminal activity?

Standard of Review: "Constitutional issues, including that of due process, are questions of law which we review for correctness." *In re K.M.*, 965 P.2d 576, 578 (Utah Ct. App. 1998).

Preservation of Review: This issue was before the trial court when it found him guilty of violating U.C.A. § 76-8-305. (Transcript pg. 57 lines 12-24.)

4. For determining whether reasonable care was used to determine whether or not a peace officer was seeking to effect a lawful arrest or detention under U.C.A. § 76-8-305, whose perspective(s) can be used?

Standard of review: Statutory interpretation questions are questions of law reviewed for correctness "The proper interpretation and application of a statute is a question of law which we review for correctness, affording no deference to the district court's legal conclusion[s]." *Ellison v. Stam*, 2006 UT App 150, ¶ 16, 136 P.3d 1242.

Preservation of Review: This issue was before the trial court when it found him guilty of violating U.C.A. § 76-8-305. (Transcript pg. 58 lines 6-22.)

5. Under U.C.A. § 76-8-305, how much of the evidence should be considered by the court in determining what a defendant "should have knowledge" of to have known whether or not a lawful arrest or detention was underway.

Standard of Review: "The question of whether evidence is admissible can be either a question of discretion, [reviewed under an] abuse of discretion [standard], or a question of law, which we review for correctness." *State v. Martin*, 2002 UT 34, ¶ 29, 44 P.3d 805. See also *D.A. v. State of Utah*, 2002 UT 127.

Preservation of Review: This issue was before the trial court when it found him guilty of violating U.C.A. § 76-8-305. (Transcript pg. 57 line 24 to pg. 59 line 3.)

VI. Statutory Provisions

VII. Statement of Case

On May 4, 2011 the Defendant/Appellant entered the Fourth District Courthouse in American Fork to speak with the American Fork Police about a matter of record. The Police and the Defendant had a disagreement and subsequent confrontation, whereupon the Defendant was booked into the Utah County Jail for violating U.C.A. § 76-9-102 "Disorderly conduct" and U.C.A. § 76-8-305 "Interference with arresting officer". On June 1, 2011 the Defendant was arraigned and plead "not guilty" to both charges. On May 6, 2011 the Defendant transmitted a request under U.C.A. § 63G-2 "GRAMA" for evidence from American Fork City, which the City answered by June of 2011. On August 22, 2011 a trial was held whereupon the Defendant was found innocent of disorderly conduct, but guilty to interference with arresting officer, from which this appeal originates.

VIII. Statement of Facts

On May 4, 2011 the Defendant/Appellant called the American Fork Police Department to attempt to resolve an issue concerning a protective order and a custody exchange to occur the following Friday. The person answering the Defendant informed him that she couldn't help him over the telephone due to questions of identity, and that he'd have to come in for help. (See Exhibit B, track 1.)

So later in the day the Defendant traveled to the American Fork Police Department Lobby, which is located within the Fourth District Courthouse in American Fork. To reach the Lobby, the Defendant first had to pass through the courthouse security checkpoint and be cleared of carrying any weapons. Once reaching the Police Lobby the Defendant requested of the clerk if the Police would take action against him if he attempted to drop his children off in front of a residence listed on a protective order which had been dismissed some three months earlier. After passing materials proving his identity, the clerk would not confirm that action would not be taken. So the Defendant exited the building, went to his car, and brought back a copy of the Order of Dismissal for the protective order. (Exhibit C.) After passing the paper to the clerk through a drawer under a piece of security glass between he and the clerk, the Defendant was informed that the Police consult only with a statewide database containing protective order terms on such events. After a disagreement with the clerk about whether the Order of Dismissal would be recognized, the Defendant warned the clerk that the Police Department was now on notice of that dismissal, and if he were arrested for violating that order the Police would be guilty of making a false arrest. The clerk then demanded that the Defendant take the Order of Dismissal back, but he left the room without doing so.

As the Defendant was leaving the Courthouse, an alarm or pager sounded overhead and he was approached by several non-uniformed men. There is some dispute over what happened between the Defendant, the clerk and with these men, but the Defendant was wearing a portable audio recorder at the time and was able to make and

present a DVD of the incident to the lower court through a GRAMA request of the internal building cameras. (Exhibit B, track 2.) The recorded audio shows that, when approached, the Defendant explained that he had delivered a dismissal of a protective order to the Police, and he'd put them on notice of it. One of the men insisted that the Defendant retrieve his paper, and ordered him to "come on back in here". The Defendant told him he could shred the paper, following which the man told the Defendant that "It's not an option. O.K.? You come back, right now." The Defendant told the men he was leaving, and then took two steps toward the exit.

Two of the men grabbed the Defendant, turned him around and forced him against the wall. Physically doing nothing more than to attempt to walk out of the building, keep his balance and keep the contents of the file folder he was holding from falling on the floor, the Defendant was then told he was going to jail and arrested. The events of the incident are well documented on the DVD presented to the lower court and shown repeatedly at the trial. (Defendant's Exhibit B on Track 2.)

The Defendant/Appellant was then charged with disorderly conduct and a violation of U.C.A. § 76-8-305 ("interference with peace officer making lawful arrest" or hereinafter just "resisting arrest".) After viewing the DVD, the Defendant was found by the lower court to be innocent of the charge of disorderly conduct, yet guilty of resisting arrest.

During the trial the accuracy of the City's main witnesses was shown to be seriously lacking against the DVD. Speaking of the order of dismissal, the Defendant

was accused by Clerk Reimschiissel of "trying to shove it back through the door at me". (Transcript, pg. 8 lines 9-10.) When directly questioned about this, the clerk initially testified clearly that she recalled the Defendant shoving or "pushing the box back at me with the paperwork in it." (Transcript, pg. 11 lines 8-13.) The woman who was present in the room, Ms. Brown, also testified that "he kept pushing it back through". (Transcript, pg. 18 line 8.) On cross-examination, after viewing the DVD, the Defendant questioned the clerk if it was "still your testimony that I pushed the document back at you through the drawer?" The answer was: "Apparently not." (Transcript, pg. 31 lines 18-22.) Judge Johnson also noticed from the DVD that, at the time in question, the Defendant had stepped away from the window under which the drawer was located, and it was physically impossible for the Defendant to have pushed the drawer. (Transcript, pg. 55 lines 18-22 and pg. 56 lines 24-25.)

Concerning the warning the Defendant had given regarding false arrest liability, Det. Paul initially testified that the Defendant told him that the Police "were liable if something were to happen or if he were to get arrested." After viewing the DVD and asking where on the recording that occurred, Det. Paul withdrew that testimony. (Transcript, pg. 35 lines 5-11.) From the similarity of his erroneous testimony to that of Clerk Reimschiissel (Transcript, pg. 7 lines 5-19), and the fact that Det. Paul was not present when false arrest was mentioned, it was apparent these witnesses had discussed the event before the trial.

When Det. Paul was asked what the grounds were for detaining the Defendant, his response was: "Well, obviously, a disturbance had occurred, okay? … Based on the totality of the circumstances and the alarm that was caused … I feel that I had probable cause to detain you for further investigation into possible disorderly conduct charges." (Transcript, pg. 35 line 24 to pg. 36 line 5.) He continued: "Now, this never had to go this far in the first place. All we were asking you to do is to come back to the lobby, hang tight while we talked to the secretaries and to get your paperwork back. But I feel that I had probable cause to detain you for further investigation into discorderly conduct, especially when you became uncooperative." (Transcript, pg. 36 lines 6-11.) Det. Paul also testified that he saw it as his role to get the story from both sides (Transcript, pg. 26 line 21.)

IX. Summary of Arguments

The Appellant/Defendant now argues that:

1. Just prior to his arrest, the police encounter with the Defendant was a "level-one encounter" under *Utah v. Hansen*, 2002 UT 125, 63 P.3d 650 and related case law, and the Defendant was correspondingly free to go. Being free to go, the Defendant could not have violated U.C.A. § 76-8-305 because any detention against his desire to go would be unlawful.

2. A person who is the subject of a detention under U.C.A. § 76-8-305 is entitled to notice that a criminal investigation is underway. Because the confrontation between the Police and the Defendant prior to his arrest concerned whether the Police would honor a court-ordered Order of Dismissal for a protective order, whether the Police were on notice of that Order and whether the Defendant would be forced to take the copy he had provided back, and because the Police provided no effective notice that they had undertaken a criminal investigation or were making a detention, a person exercising reasonable care would not have had the knowledge needed for a violation of U.C.A. § 76-8-305.

3. The determination of what the Defendant should have known in the application of U.C.A. § 76-8-305 was improper, because (1) it factored in the knowledge and/or intent of others involved in the incident and (2) excluded prior contextual speech between the involved parties that weighed against a determination that the Defendant should have known that a lawful detention was being attempted.

X. Argument

A. The Lower Court did not consider whether the detention or arrest was objectively lawful under U.C.A. § 76-8-305.

By its language, a person is guilty of violating U.C.A. § 76-8-305 only if, by the exercise of reasonable care should have knowledge, a peace officer is seeking not just to effect an arrest or detention, but by explicit language a lawful arrest or detention. This is required by the preamble of the statute for "lawful" arrests and detentions and specifically for a conviction made under section 2 for "lawful order", which this conviction is. (we "avoid interpretations that will render portions of a statute superfluous or inoperative." *Hall v. State Dep't of Corr.*, 2001 UT 34, ¶ 15, 24 P.3d 958.) Therefore, the Lower Court is not only required to make a determination of whether a detention or arrest was attempted, but whether that attempt encompassed a lawful arrest or detention and a lawful order. The reasoning for this is logical and simple: the State of Utah does not wish to punish people for resisting or refusing to perform acts that are not required by law. The Lower Court did not consider the lawfulness of the officers' actions, but only concluded that (1) a reasonable person would have recognized that he was being detained, and (2) a reasonable person would not try to leave. (Transcript pg. 58, lines 6-15.) The Lower Court says nothing about the lawfulness of the detention. That alone is sufficient to reverse the conviction.

In convicting the Defendant the Lower Court concluded that "By the exercise of reasonable care … the defendant ought to have known that he was being detained" and "if the defendant had stayed, if he'd had the conversation with the police and explained what had happened, he may not have been cited at all. They may have simply let him go had he taken the time to sit down and talk with them instead of demanding to leave when he was being asked to stay". (Transcript pg. 58 line 13 to pg. 59 line 2.) The Lower Court seems not to recognize that citizens do have rights to leave some encounters with police even when "asked" (ordered) to stay.

1. The Fourth Amendment to the Constitution

The Lower Court overlooked entirely the Fourth Amendment to the Constitution as interpreted by *Terry v. Ohio*, 392 U.S. 1 (1968) and subsequent law. The Defendant will now make such an attempt.

Current Utah law regarding detentions and stops is summarized well in *Utah v. Hansen*, 2002 UT 125, which the Defendant will now recount. Encounters are divided into three levels, as follows. A level-one encounter is one made between a peace officer and a citizen by consent. The citizen is free to leave at any point; there is no seizure. (*Hansen*, ¶ 34 referring to *Florida v. Royer*, 460 U.S. 491 at 498-99.) In contrast, a level-three encounter is highly intrusive, involves a lengthy detention, and involves arrest. (*Hansen* ¶ 35 referring to *United States v. Werking*, 915 F.2d 1404, 1407 (10th Cir.

1990).) A level-two encounter is in-between these two, investigative, brief and non-intrusive. (*Hansen* ¶ 35 referring to *United States v. Evans*, 937 F.2d 1534, 1537 (10th Cir. 1991).) A "Terry Stop" is one kind of level-two encounter. Probable cause is not required to make a level-two stop, but "reasonable suspicion" must be present with "specific and articulable facts and rational inferences" that "give rise to a reasonable suspicion a person has or is committing a crime". (Id.) Hansen further explains that: "Once the purpose of the initial stop is concluded, however, the person must be allowed to depart. "'Any further temporary detention for investigative questioning after [fulfilling] the purpose for the initial traffic stop'" constitutes an illegal seizure, unless an officer has probable cause or a reasonable suspicion of a further illegality." (*Hansen* ¶ 31 citing *State v. Godina-Luna*, 826 P.2d 652, 655 (Utah Ct. App. 1992) (quoting *State v. Robinson*, 797 P.2d 431, 435 (Utah Ct. App. 1990)).)

At the time of his arrest, the Defendant was attempting to leave the building and the presence of the officers. There was therefore a disagreement between the detectives and the Defendant whether or not their encounter had deescalated to level-one. The detectives insisted that the Defendant must stay, with the Defendant informing them he was leaving. If the detectives were required by law to discontinue their level-two encounter behavior, and did not, then their detention was not lawful under U.C.A. § 76-8-305.

At the moment the Defendant was taken into custody, the attendant detectives knew what the disagreement was about. The Defendant had informed them that "The

problem is I've just given them a document and they don't want to take it. That's all it is." (See 12:47 – 14:17 on Exhibit B and the corresponding transcript from pages 6-7.) One of the detectives remarked "O.K. It sounds like you need to come and get your paper too." (Id.) That shows that they had confirmation of what the Defendant had told them. The Defendant had informed them "I am leaving" just before he was taken into custody, treating the encounter at that moment at level-one.

So, did the police have the necessary reasonable suspicion under Hansen to continue a level-two encounter? When Det. Paul was asked what the grounds were for detaining the Defendant, his response was: "Well, obviously, a disturbance had occurred, okay? … Based on the totality of the circumstances and the alarm that was caused … I feel that I had probable cause to detain you for further investigation into possible disorderly conduct charges." (Transcript, pg. 35 line 24 to pg. 36 line 5.) So the grounds were (1) that a disturbance had occurred, and (2) that alarm was caused. The Defendant will now speak to these:

The detectives knew without question that the Defendant had had a verbal disagreement with the police clerk, Ms. Reimschiissel, over a paper. The detectives also knew they had been called out to stop the Defendant from leaving. None of that provides "specific and articulable facts and rational inferences" that "give rise to a reasonable suspicion a person has or is committing a crime". (*Hansen*, ¶ 35.) The lower court watched the entire encounter twice on video, and found the Defendant innocent of the crime of disorderly conduct; there was no other crime at issue. The stop was therefore

unlawful from the moment that the detectives pressured or stopped the Defendant from leaving after confirming what had happened with Clerk Reimschiissel. (The Clerk is audible at about 13:25 of the Exhibit B DVD, track 2 speaking to the detectives about the paper and the disagreement.) The detectives knew they had been called out for a "problem", but that is far from reasonable suspicion that the Defendant was involved in any crime. Reasonable suspicion is required for a detention to be made; lacking such, the detectives had no lawful reason to detain the Defendant from going on his way.

But there is no mystery to why the detectives continued. Det. Paul continued: "Now, this never had to go this far in the first place. All we were asking you to do is to come back to the lobby, hang tight while we talked to the secretaries and to get your paperwork back." (Transcript, pg. 36 lines 6-9.) The Detective was very clear that it was his intent only to see that the Defendant was forced to retrieve his paper, and was not concerned whether he was charged with a crime. It was apparent that the purpose of any initial investigative stop was concluded, and by law the Defendant "must be allowed to depart." (*Hansen* ¶ 31.) If the Detective was actually conducting a criminal investigation, he would not have dismissed the possibility of an arrest so quickly on the stand.

Det. Paul continued in a further demonstration of his unfamiliarity with the law as it comes to level-two and level-three stops: "But I feel that I had probable cause to detain you for further investigation into disorderly conduct, especially when you became uncooperative." (Transcript, pg. 36 lines 9-11.) The Defendant respectfully submits that

an absence of cooperation is not probable cause that a crime has been committed, not even the crime of disorderly conduct. For the law to be otherwise would render the State's citizens mere minions of its police.

2. The Limitations of State Law

In the statute, U.C.A. §§ 77-7-2, 77-7-6 and 77-7-15 give perhaps the best stated requirements that persons making an arrest, detention or stop must meet before they can lawfully act. Thus, those sections provide an expectation to the general public of circumstances in which they could be arrested or detained, and upon which a peace officer might take lawful action the interference of which would be a crime under U.C.A. § 76-8-305. Situations outside of those circumstances would leave a law-abiding citizen with an expectation that he would not be involved in a detention or an arrest.

For example, a person knowingly committing an offense in the presence of a police officer should have the expectation that he will be arrested under U.C.A. § 77-7-2(1). Likewise, a person having committed a felony or Class A misdemeanor should have an expectation of a future arrest under U.C.A. § 77-7-2(2), and should not resist if he has reason to know that a peace officer is attempting an arrest. Similarly, persons fleeing arrest or destroying evidence should not resist the apparent attempts of the police to stop them under U.C.A. § 77-7-2(3), and so forth. Thus, U.C.A. § 77-7-2 provides a

substantial guide to when a reasonable person involved in a crime "should have knowledge" of "a lawful arrest" under U.C.A. § 76-8-305.

Had the Defendant committed a crime, it would be reasonable for him to expect to be detained by the police. Here, however, the Defendant was found to be innocent. The only other charge brought against the Defendant was that of disorderly conduct. After viewing the entire incident on video, the Lower Court considered the conduct of the Defendant in detail against the statute, and found him not guilty. (Transcript, pg. 54 line 16 to pg. 57 line 11.)

So what of a person who reasonably believes he is not involved in a crime? An innocent person should ordinarily have an expectation that he will not be arrested nor extensively detained, unless there is some independent reason to which he is made aware. Providing notice to an arrestee is made essential by U.C.A. § 77-7-2(1), which requires that he be informed of the peace officer's "intention, cause, and authority to arrest him." Someone being detained to a lesser extent by the police should similarly have some notice that a criminal investigation is underway. That section sets forth exceptions to this notice requirement where there is a danger of safety, a danger of escape, or where the arrestee is pursued during or immediately after the commission of an offense. But where a person is not given notice, has not committed a crime, does not pose a danger, and has already given his name, address and an explanation of his actions under U.C.A. § 77-7-15 as the Defendant had, from his reasonable perspective there is no lawful reason for his arrest or detention.

The record unquestionably shows that the Defendant was doing nothing more offensive than delivering notice of a court order to a police clerk, and having a brief argument with her through a piece of security glass and an intermittently working intercom over whether the Police would respect that court order and whether the Defendant would take back the delivered notice. At the time of his arrest, objectively there was no reasonable suspicion that a crime had been committed. The clerk behind the glass testified that at the time of the argument, "the situation was escalating" (Transcript, pg. 8 line 8), but the DVD and other evidence shows that it was escalated almost entirely by the Police! By their own admission the Defendant was trying to leave the confrontation they had created. (Transcript, pg. 27 line 1.)

The incident took place entirely within the walls of the courthouse, in full view of the clerk, in front of the security cameras, and in front of a citizen witness. There should have been no uncertainty from the perspective of the Police that no crime had been committed. After viewing the incident on DVD, the Defendant was found innocent by the lower court of the charge upon which the detention was based. (Transcript, pg. 35 line 25 to pg. 36 line 5.)

Appellant argues U.C.A. § 76-8-305 explicitly requires that a lawful reason for a detention to be made be found for a valid conviction, which is absent from the judgment of the Lower Court.

B. The Lower Court did not apply the perspective of a reasonable person in the position of the accused as required for a conviction under U.C.A. § 76-8-305.

U.C.A. § 76-8-305 requires that the convicted have "knowledge, or by the exercise of reasonable care should have knowledge, that a peace officer is seeking to effect a lawful arrest or detention of that person or another". The City could not show that the Defendant had actual knowledge that a detention was being sought, therefore the reasonable care standard applies. The Lower Court's analysis of reasonable care for this case against the statue runs in the Transcript from page 57 line 23 to page 59 line 9.

1. The Lower Court inappropriately factored in the justifiability of the officers' actions in considering reasonable care under the statute.

First, the Lower Court applied justifiability to its analysis of what constituted reasonable care under the statute. The statute is explicit that to be found guilty, it is the accused who must "by the exercise of reasonable care should have knowledge..." and not any other person. So the proper analysis can only consider what is known to the accused at the time of the supposedly criminal acts.

Yet in reaching its judgment, the Lower Court from page 58 line 16 to page 59 line 3 considers (1) "the policy of the City", the detectives (2) "intent to separate Mr. Robinson", and (3) "to get to the bottom of what had happened." The lower court spends

substantially all of this language speaking to the justifiability of the actions of the officers making an arrest on apparently flawed grounds. Both Det. Paul and the Lower Court expressed that "this never had to go this far in the first place" (Transcript pg. 36 lines 6-7) or that "this didn't need to come to what it did" (Transcript pg. 59 lines 4-5), apparently assigning blame for this confrontation upon the Defendant. The Lower Court fails to account for the fact that the policy of the city is not widely known, nor was the detectives intent known to the Defendant at the time. Though their policy and intent might be admirable, it was wrong for the Lower Court to consider them because these could not be used by the Defendant through the exercise of reasonable care as required by the statute. They are irrelevant to guilt or innocence.

2. The Lower Court failed to consider the evidence in a meaningful way to determine whether the Defendant exercised reasonable care under U.C.A. § 76-8-305.

The lower court adjudged that a reasonable person would have recognized that a person in the Defendant's circumstances was being detained. The legal reasoning within the judgment is found mainly from page 57 line 25 to page 58 line 15. The reasoning is, in sum, that a person should know that he was being detained (1) having been told by peace officers that "You come back with us right now", (2) having been told again that he needs to stay, and (3) and where physical force is placed on him being grabbed on the arm.

First, it is the judgment of the Lower Court that a person having been told to come back or stay with officers (e.g. not to leave), he should understand through the use of reasonable care that he is being detained. The Lower Court failed to consider the prior contextual conversation. Seen on Exhibit B, in the DVD and the accompanying transcript, on track 2 at 12:47 is the following conversation:

Mr. Robinson: The problem is I've just given them a document and they don't want to take it. That's all it is.

Person 1: It's obviously turned into more than that because we're out here.

Mr. Robinson: Well, I have no idea why you're out here. Do we need to talk about something?

Person 2: What kind of document is it?

Mr. Robinson: It's a dismissal of a protective order. I'm putting you on notice, the Police Department on notice that it's been dismissed. That's all I'm doing. All right?

Person 1: O.K. It sounds like you need to come and get your paper too.

Mr. Robinson: Look, you can decide what you want to do with it.

Person 2: Come on back in here.

Mr. Robinson: If you want to shred it, that's fine with me.

Person 2: Sir!

Person 1: It's not an option. O.K.? You come back, right now.

Mr. Robinson: I am leaving.

Person 1: O.K. You're going to be (unintelligible due to Person 1 and Person 2 trying to talk over each other) … in a minute. Come back with us right now.

The Lower Court fails to consider that a person exercising reasonable care might hear first a command "to come and get your paper too" followed by another command to "come on back in here" and another command to "come back, right now" to be all tied to the same purpose. Nowhere does anyone indicate to the Defendant that he is being investigated for a crime or even that a crime might have been committed; he only knows that the attendant police want him to come back and get his paper.

This understanding was largely confirmed by Det. Paul in his testimony: "All we were asking you to do is to come back to the lobby, hang tight while we talked to the secretaries and to get your paperwork back." (Transcript, pg. 36 lines 7-9.) The Defendant gave the men two opportunities to advise him that he was being investigated and/or detained. The first, when he asked if he and the men needed to talk. (Exhibit B, track 2, shortly after 12:47.) The second shortly after, when he informed them he was going to leave.

If the Defendant was not told and could reasonably misunderstand that he was being asked to stay for a criminal investigation, then it cannot be shown that he was capable of possessing the knowledge or forming the intent required for a violation of U.C.A. § 76-8-305 of a person exercising reasonable care. Lacking such intent, the lower court's reasoning would reduce down to a question of what a reasonable person would do if a stranger demanded his presence or suddenly grabbed him on the arm. The Defendant submits that a reasonable person might tell that stranger he was leaving, and might also have a reaction to twist away if he were suddenly grabbed without first being informed

that he was being lawfully detained. If that is so, the basis stated in paragraph 2 is not legally sufficient for the conviction.

The judgment of the Lower Court has one final difficulty: the moment that physical force was used on the Defendant, the officers had conducted an arrest upon him under the law. U.C.A. § 77-7-1 sets forth that "An arrest is an actual restraint of the person arrested or submission to custody." Explicitly by statute, a person is arrested when any actual restraint is used. Handcuffs nor any other specific restraints are required. If an officer grabs a subject's arm, he is by law under arrest and whatever that subject does after cannot logically be a factor into his guilt or innocence of non-cooperation with a detention, which this conviction is. The inclusion of that factor in the reasoning of the Lower Court renders its judgment clearly incorrect here.

XI. Conclusion

Appellant requests that this Court find that:

1. Just prior to his arrest, the police encounter with the Defendant was a "level-one encounter" under Utah v. Hansen, 2002 UT 125, and related case law, and the Defendant was correspondingly free to go.

2. Being free to go, the Defendant could not have violated U.C.A. § 76-8-305 because any detention against his desire to go would be unlawful.

3. A person who is the subject of a detention under U.C.A. § 76-8-305 is entitled to notice that a criminal investigation is underway.

4. Because the disagreement between the Defendant and the police lacked an investigatory nexus, the Defendant lacked the notice required under U.C.A. § 76-8-305 that a criminal investigation was underway.

5. Under U.C.A. § 76-8-305, a court's determination of what an accused "should have knowledge of" in determining whether or not a lawful arrest or detention is underway,

requires only consideration of what the accused would know at the time and may not factor in the knowledge or intent of others involved.

6. Under U.C.A. § 76-8-305, a court's consideration of what an accused heard and "should have knowledge of" in favoring a determination that he should have known that a lawful arrest or detention was underway, may not exclude any prior contextual speech to the contrary.

7. A person, having been exposed to what the Defendant had prior to his arrest and exercising reasonable care, would not have known that a lawful detention was underway.

The Appellant hereby requests:

1. The Defendant's conviction be reversed, and the Defendant found to be innocent of the crime of "interference with arresting officer", U.C.A. § 76-8-305 against the judgment of the District Court.

2. Absent reversal, remand to the District Court to adjudge (1) the lawfulness or unlawfulness of the detention of the Defendant prior to his arrest, (2) application of U.C.A. § 76-8-305 using only the perspective of a person in the position of the Defendant at the time of his arrest to determine the proper scope of the exercise of reasonable care under the statute.

Everett D. Robinson
Pro Se

Date: March 16, 2012

CERTIFICATE OF SERVICE

I certify that a copy of the attached Appeal Brief of the Appellant, with its Addendum, was served upon the following parties listed below by mailing it by first class mail, personal delivery, or fax to the following addresses:

Name:	American Fork City	Sent Via:
Address:	HANSEN WRIGHT EDDY & HAWS, P.C. Attn: Attys Hansen or Merrill 233 S. Pleasant Grove Blvd., Suite 202 Pleasant Grove, UT 84062	___ Mail (postage prepaid) ___ Personal Delivery ___ Fax #_____

By: _____
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Date: _____