

1992

Utah v. Wagstaff: Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	Case No. 920142-CA
v.	:	Priority No. 11
WADE WAGSTAFF,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

- - - - -

THIS IS AN INTERLOCUTORY APPEAL FROM AN ORDER
DENYING DEFENDANT'S MOTION TO SUPPRESS
EVIDENCE IN THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR CACHE COUNTY, STATE OF UTAH, THE
HONORABLE GORDON J. LOW, PRESIDING.

UTAH COURT OF APPEALS
BRIEF

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Utah Court of Appeals

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.	ii
JURISDICTION AND NATURE OF PROCEEDINGS.	1
STATEMENT OF THE ISSUE PRESENTED ON APPEAL AND STANDARD OF APPELLATE REVIEW	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES	2
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS.	4
SUMMARY OF THE ARGUMENT	4
ARGUMENT	
POINT I THE TRIAL COURT PROPERLY CONCLUDED THAT THE PLAIN LANGUAGE OF UTAH CODE ANN. § 76-8-510 ALLOWS FOR THE PROSECUTION OF A TAMPERING WITH EVIDENCE CHARGE EVEN IF THE MATERIAL WITH WHICH DEFENDANT ALLEGEDLY TAMPERED IS DEEMED INADMISSIBLE FOR OTHER PURPOSES.	5
POINT II A REVIEW OF THE LEGISLATIVE HISTORY OF § 76- 8-510 DEMONSTRATES THAT THE LEGISLATURE INTENDED TO PROHIBIT TAMPERING WITH ANY EVIDENCE, REGARDLESS OF WHETHER THE EVIDENCE WOULD BE ADMISSIBLE FOR OTHER PURPOSES.	7
CONCLUSION.	10

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>Brinkerhoff v. Forsyth</u> , 779 P.2d 685 (Utah 1989).	5
<u>Hansen v. Salt Lake County</u> , 794 P.2d 838 (Utah 1990)	7
<u>Hector, Inc. v. United Savings and Loan Association</u> , 741 P.2d 542 (Utah 1987)	6
<u>State v. Bagshaw</u> , 180 Utah Adv. Rep. 31 (Utah App. February 14, 1992)	6
<u>State v. Swapp</u> , 808 P.2d 115 (Utah App. 1991)	1
<u>Ward v. Richfield City</u> , 798 P.2d 757 (Utah 1990).	1

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 58-37-8 (Supp. 1992)	2
Utah Code Ann. § 76-8-305 (Supp. 1992).	2
Utah Code Ann. § 76-8-510 (1990).	1, 2, 4-10
Utah Code Ann. § 78-2a-3 (1992)	1

OTHER AUTHORITIES

4 Wayne R. LaFave, <u>Search and Seizure, A Treatise on the Fourth Amendment</u> , § 11.4(j) (2d ed. 1987).	9
Martin, <u>Utah Criminal Code Outline</u> , at 211 (1973).	8
Model Penal Code § 241.7 (Proposed Official Draft 1962)	8, 9
Utah State House of Representatives, 40th general session, 47th day of the Utah State Legislature, 3rd reading of H.B. 162, February 23, 1973, Audiograph #224	7

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BRIEF OF APPELLEE

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JURISDICTION AND NATURE OF PROCEEDINGS

This is an interlocutory appeal from an order denying defendant's motion to suppress in the First Judicial District Court in and for Cache County, State of Utah, the Honorable Gordon J. Low, presiding. This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(e) & (f) (1992).

STATEMENT OF THE ISSUE PRESENTED ON APPEAL
AND STANDARD OF APPELLATE REVIEW

Did the trial court properly conclude that there is no requirement under Utah Code Ann. § 76-8-510(1) (1990) that the evidence with which a defendant allegedly tampered be admissible at trial for other purposes in order for a prosecution on tampering with evidence charges to go forward? When reviewing a trial court's interpretation of statutory law, Utah appellate courts apply a correction of error standard and accord no deference to the trial court. Ward v. Richfield City, 798 P.2d 757, 759 (Utah 1990); State v. Swapp, 808 P.2d 115, 120 (Utah App. 1991).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The applicable constitutional provisions, statutes and rules for a determination of this case are as follows:

Utah Code Ann. § 76-8-510. Tampering with evidence.

A person commits a felony of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, he:

- (1) Alters, destroys, conceals, or removes anything with a purpose to impair its verity or availability in the proceeding or investigation; or
- (2) Makes, presents, or uses anything which he knows to be false with a purpose to deceive a public servant who is or may be engaged in a proceeding or investigation.

STATEMENT OF THE CASE

Defendant was charged with tampering with evidence, a second degree felony, in violation of Utah Code Ann. § 76-8-510 (1990), and unlawful possession of a controlled substance, a class B misdemeanor, in violation of Utah Code Ann. § 58-37-8(2)(a)(i) (Supp. 1992) (R. 3). The information was amended to add a third charge, interference with an arresting officer, a class B misdemeanor, in violation of Utah Code Ann. § 76-8-305 (Supp. 1992) (R. 1-2).

Defendant filed a motion to suppress evidence and to dismiss the charges against him (R. 37-67). At the hearing that was held on defendant's motion, the State argued that under the evidence tampering statute, Utah Code Ann. § 76-8-510 (1990), there is no requirement that the evidence forming the basis of the charge be the product of a legal seizure (Transcript of Hearing on Defendant's Motion to Suppress dated February 20, 1992, at 5-6 [hereinafter "Tr."]). Consequently, the State

agreed to stipulate for purposes of the motion, with respect to the charge of tampering with evidence only, that the evidence was illegally seized. The State further indicated to the trial court that if the court agreed with the State's interpretation of the statute and denied defendant's motion with respect to the evidence tampering charge, the State would move to dismiss the two misdemeanor charges with prejudice (Tr. 17-18).

Under these circumstances, the trial court had to resolve a single legal question: Is there any requirement under § 76-8-510 that the evidence with which a defendant allegedly tampered be admissible at a trial for other purposes in order for a prosecution on tampering with evidence charges to go forward? Following the hearing, the court issued a memorandum decision (R. 134-36). In its decision, the trial court explained that resolution of the "issue may turn on the definition of evidence. Evidence to be admitted into the trial is in fact not evidence until it is received. On the other hand[,] evidence under Section 76-8-510, U.C.A., is actually defined as 'anything' which may be used in a proceeding or investigation" (R. 135).

After discussing various policy considerations that supported its interpretation of the provision, the trial court concluded that the statute did not require that evidence be admissible for other purposes in order for a tampering with evidence charge to proceed. On that basis alone, the trial court denied defendant's motion to suppress with respect to the charge of tampering with evidence. It indicated that the balance of the

motion would still be addressable as to the two misdemeanor counts, but noted that the State had previously stated that it would dismiss those charges (R. 134-35).

The State prepared the appropriate order and moved to dismiss the remaining charges against defendant. Defendant petitioned for permission to appeal from an interlocutory order, and this Court granted defendant's petition (R. 128-33, 144).

STATEMENT OF THE FACTS

Given the nature of the issue presented in this interlocutory appeal, and the procedural facts provided in the Statement of the Case section of this brief, there is no reason to recite the facts of this case in detail. Moreover, given the trial court's decision to resolve defendant's motion to suppress based solely on the question of statutory interpretation, there is a paucity of facts in the record.

SUMMARY OF THE ARGUMENT

The trial court correctly interpreted Utah Code Ann. § 76-8-510 (1990). Nothing in the plain language of the statute requires that the evidence with which one is accused of tampering be evidence that would otherwise be admissible at trial. Indeed, the plain language of § 76-8-510(1) prohibits the alteration, destruction, concealment or removal of "anything with a purpose to impair its verity or availability in the proceeding or investigation" (emphasis added). The trial court properly construed the term "anything" according to its common meaning, and applied the statute in keeping with its plain language.

Moreover, defendant's assertion that the term "anything," as used in the statute, "must be construed as 'anything which might be used by the state as evidence,'" is unsupported by legislative intent. Br. of Appellant at 9. A review of the statute's legislative history indicates that it is based on a virtually identical provision of the Model Penal Code. The commentary accompanying the Model Penal Code provision makes clear that a person may be prosecuted for tampering with evidence, regardless of whether that evidence would be admissible at a trial.

The trial court correctly interpreted the plain language of the statute, and its interpretation is in accord with the legislative intent underlying the provision. This Court should therefore uphold the trial court's interpretation of § 76-8-510 and affirm its denial of defendant's motion to suppress.

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY CONCLUDED THAT THE PLAIN LANGUAGE OF UTAH CODE ANN. § 76-8-510 ALLOWS FOR THE PROSECUTION OF A TAMPERING WITH EVIDENCE CHARGE EVEN IF THE MATERIAL WITH WHICH DEFENDANT ALLEGEDLY TAMPERED IS DEEMED INADMISSIBLE FOR OTHER PURPOSES.

The trial court properly focused its interpretation of § 76-8-510 on the plain language of the provision and correctly interpreted that language.

It is well established that where statutory language is plain and unambiguous, Utah courts construe the statute according to its plain language. See, e.g., Brinkerhoff v. Forsyth, 779

P.2d 685, 686 (Utah 1989); State v. Bagshaw, 180 Utah Adv. Rep. 31, 32 (Utah App. February 14, 1992). Moreover, when interpreting a statute, Utah courts "generally assume each term of the statute should, if possible, be given an interpretation that is in accord with the commonly accepted meanings of its words." Hector, Inc. v. United Savings and Loan Association, 741 P.2d 542, 546 (Utah 1987) (citations omitted).

The language of Utah's evidence tampering statute is plain and unambiguous:

A person commits a felony of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(1) Alters, destroys, conceals, or removes anything with a purpose to impair its verity or availability in the proceeding or investigation[.]

Utah Code Ann. § 76-8-510(1) (1990) (emphasis added).

Nothing in the plain language of the statute suggests that admissibility of the evidence for other purposes is a prerequisite to the prosecution of an evidence tampering charge. Rather, as the trial court recognized, the statute prohibits tampering with "anything" that may be used in an investigation or proceeding, regardless of its admissibility.

The trial court properly construed the term "anything" in keeping with its commonly accepted meaning. In so doing, the trial court refused to insinuate a technical and legalistic definition where the legislature elected to use non-legalistic, common terminology. In short, the trial court applied § 76-8-510(1) in keeping with its plain language based on fundamental principles of statutory construction and interpretation. On that

basis alone this Court should uphold the trial court's ruling.

Should this Court nevertheless decide to consider the legislative intent underlying § 76-8-510(1), an examination of the statute's legislative history provides additional support for the trial court's interpretation of the provision.

POINT II

A REVIEW OF THE LEGISLATIVE HISTORY OF § 76-8-510 DEMONSTRATES THAT THE LEGISLATURE INTENDED TO PROHIBIT TAMPERING WITH ANY EVIDENCE, REGARDLESS OF WHETHER THE EVIDENCE WOULD BE ADMISSIBLE FOR OTHER PURPOSES.

If this Court decides that the language of § 76-8-510 is not plain and unambiguous, then it should "try to discover the underlying intent of the legislature, guided by the meaning and purpose of the statute as a whole and the legislative history." Hansen v. Salt Lake County, 794 P.2d 838, 841 (Utah 1990) (citations omitted). A review of the statute's legislative history demonstrates that the trial court correctly divined the legislative intent underlying § 76-8-510.

Section 76-8-510 was enacted in 1973 as part of a bill sponsored by Senator Darwin C. Hansen. When debating the bill on the House floor, Senator Hansen explained that its provisions were based on the Model Penal Code.¹ The evidence tampering provision of the Model Penal Code reads as follows:

A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or

¹ Utah State House of Representatives, 318 State Capitol, Salt Lake City, 40th general session, 47th day of the Utah State Legislature, 3rd reading of H.B. 162, February 23, 1973, Audiograph #224, lines 7-9.

about to be instituted, he:

(a) alters, destroys, conceals, or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents, or uses any record, document or thing knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

Model Penal Code § 241.7 (Proposed Official Draft 1962).

The language of Utah's evidence tampering statute is very similar to that of the Model Penal Code, with two notable differences. First, the Utah provision replaces the phrase "any record, document or thing" with the single term "anything." Second, while the model penal code classifies evidence tampering as a misdemeanor, § 76-8-510 categorizes evidence tampering as a second degree felony.² These two differences suggest that the Utah Legislature intended to prohibit an expansive range of conduct and impose more harsh penalties than those called for under the Model Penal Code. Consequently, an understanding of M.P.C. § 241.7 must play a central role in the interpretation of § 76-8-510.

The commentary accompanying § 241.7 makes clear that admissibility of the evidence for other purposes is not a

² The Utah Legislature is not alone in its decision to provide for a more stringent penalty for evidence tampering than that called for by the Model Penal Code. Indeed, the legislative history of § 76-8-510 indicates not only that it was based on the Model Penal Code, but that the enhanced penalty was likely prompted by similar action by the New Hampshire Legislature. See Martin, Utah Criminal Code Outline, at 211 (1973) (identifying N.H. Rev. Stat. Ann. § 641.6 (1955) as the source for § 76-8-510). The New Hampshire statute and M.P.C. § 241.7 are virtually identical except that the New Hampshire statute classifies evidence tampering as a class B felony instead of a misdemeanor.

requirement for an evidence tampering charge. The commentary, in pertinent part, reads as follows:

Avoidance of the word "evidence" indicates that liability for tampering does not depend on the admissibility at trial of the document or object involved. The question of admissibility is too elusive to serve as a determinant of liability for tampering. Evidence may be admissible for one purpose but not for another, allowable against one defendant but excludable by another, crucial to one charge but irrelevant to another. Thus, the issue of admissibility may not be subject to authoritative resolution in a hypothetical context. More importantly, evidence not admissible at trial may play a helpful and perfectly legitimate role in an investigation. It may lead to evidence that will be allowed at trial. Thus, restricting the tampering offense to actions that preclude the use or undermine the integrity of admissible evidence would be inconsistent with the essential rationale of preventing and punishing obstruction of justice. Virtually every revised code proscribes tampering with evidence without regard to its admissibility at trial, and a few statutes make explicit provision to that effect.

Model Penal Code § 241.7, comments on section, at 179-80

(Proposed Official Draft 1962) (footnotes omitted).

The Model Penal Code commentary supports the trial court's determination that § 76-8-510 does not require that the evidence with which defendant tampered be admissible at trial for other purposes. Had the legislature intended otherwise, it could have expressed its dissatisfaction with the Model Penal Code commentary.³

³ Cf. 4 Wayne R. LaFare, Search and Seizure, A Treatise on the Fourth Amendment, § 11.4(j) at 459-60 (2d ed. 1987) ("[I]ncriminating admissions and attempts to dispose of

(continued...)


To summarize briefly, both the plain language of § 76-8-510 and the legislative history of the statute demonstrate that admissibility of the evidence at trial for other purposes is not a prerequisite for the prosecution of an evidence tampering charge. Based on this narrow issue, the trial court properly denied defendant's motion to suppress with respect to the evidence tampering charge.

CONCLUSION

Based on the foregoing arguments, this Court should uphold the trial court's ruling and affirm its interlocutory order denying defendant's motion to suppress.

RESPECTFULLY SUBMITTED this 8th day of September, 1992.

R. PAUL VAN DAM
Attorney General


TODD A. UTZINGER
Assistant Attorney General

³(...continued)
incriminating evidence are common and predictable consequences of illegal arrests and searches, and thus to admit such evidence would encourage such Fourth Amendment violations in future cases.").

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing brief of appellee was mailed, postage prepaid, to Edwin T. Peterson, attorney for appellant, P.O. Box 57206, Murray, Utah 84157, this 8th day of September, 1992.

Todd A. Utzinger