

1992

Utah v. Wagstaff : Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS FOR THE STATE OF UTAH

STATE OF UTAH	:	
	:	Case No. 920142-CA
Plaintiff/Appellee	:	
vs.	:	
WADE WAGSTAFF,	:	
Defendant/Appellant	:	Argument Priority (b) (11)

Reply Brief of Appellant

Appeal from Final Order Denying
Motion to Suppress
entered by the First District Court
Cache County, Utah

Honorable Gordon J. Low

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INTRODUCTION

The analysis in Plaintiff/Appellee's Response Brief fails to address the primary issue presented in this case, that is; can something which is obtained in violation of an individuals state and federal constitutional rights be the basis for charged under U.C.A. 76-8-510(1). The Plaintiff/Appellee's brief is devoid of analysis of the unconstitutional seizure of evidence which is central to the charge against Defendant/Appellant. Defendant/Appellant has presented case law from two sister jurisdictions which analyze the impact of unconstitutional seizure of evidence in the prosecution of person charged under similar state laws. Both decisions required the dismissal of the charges of "tampering with evidence" brought under similar state statutes. Plaintiff/Appellee has failed to address these precedence which therefore stand unrebutted. Plaintiff/Appellee failed to distinguish those cases because no American court has allowed

prosecution for tampering with evidence when the charge was based upon illegal search and seizure and the "evidence" was the fruit of the poisonous tree.

In an effort to sanitize the State's position the Plaintiff/Appellee's brief fails to use the word "unconstitutional" in either of its arguments. The State's position discusses "the admissability of evidence" as if there is some sort of foundation or relevance objection pending in a trial. The fact that the "evidence" is the fruit of the poisonous tree is not addressed.

PLAINTIFF/APPELLEE'S FIRST POINT

The first point of Plaintiff/Appellee's brief can be fairly summarized as arguing that "anything means anything." However, Plaintiff/Appellee in its brief (p. 6) modifies its initial position by stating:

Rather, as the trial court recognized, the statute prohibits tampering with "anything" that may be used in an investigation or proceeding, regardless of its admissability.

(Emphasis added herein, not in original text).

The reality of the case before the court is that whatever it was that was unconstitutionally taken from Defendant/Appellant and is the subject of the alleged tampering may not be used for any purpose because it is the fruit of the poisonous tree (T. p.23, L. 23-25).

Plaintiff/Appellee argues that "the language of Utah's evidence tampering statute is plain and unambiguous" and then goes on to argue that the statutes use of the term "anything" is not

restricted by the modifying terminology which directly follows it in the statute, thereby expanding the application of the law far beyond the normal meaning of evidence. Defendant/Appellant would suggest the plain language of the statute has only to do with evidence and that Plaintiff/Appellee's plain language argument would only apply to a statute entitled "tampering with anything." As discussed in Defendant/Appellant's brief (p.9) the concept of the statute's application to "anything" as advanced by Plaintiff/Appellee would require an unconstitutionally broad application of the statute. This Court in interpreting the language of a statute has the obligation to interpret the law in a fashion which is constitutional, if possible.

The Utah Supreme Court in Utah State Road Com'n v. Frieberg, 687 P.2d 81 (Utah 1984) articulated the duty of the Court in interpreting statutory language. The Court stated:

In the first place, a fundamental principle of statutory construction is that a statute should be construed as a whole, and its terms should be construed to be harmonious with each other and the overall objective of the statute. Cannon v. McDonald, Utah, 615 P.2d 1268 (1980); Crist v. Bishop, Utah, 615 P.2d 196 (1974). Moreover, we are constrained to construe statutory terms to avoid any unconstitutional application of the statute. State v. Wood, Utah, 648 P.2d 71 (1982); In re: Boyer, Utah 636 P.2d 1085 (1981).

Plaintiff/Appellee's discussion of the language of U.C.A. 76-8-510(1) centers on a single word without discussion of the modifiers used or the objective of the statute.

It is reasonable to conclude that the terms of a statute entitled "Tampering with Evidence" should most likely have some-

thing to do with evidence. If that evidence is tainted by unconstitutional conduct it must then be suppressed and it cannot "be used in an investigation or proceeding" (Plaintiff/Appellee's brief, p. 6). Plaintiff/Appellee urges upon the Court an interpretation of U.C.A. 76-8-510(1) which is unconstitutionally broad and therefore should be rejected.

PLAINTIFF/APPELLEE'S SECOND POINT

Plaintiff/Appellee's second point involves legislative intent. Plaintiff/Appellee's notes that in debate of the legislation enacting, among other statutes, Section 76-08-510(1) the Model Penal Code was mentioned. Plaintiff/Appellee concludes, therefore, that the commentary accompanying the Model Penal Code was known to the lawmakers and intended by the legislature to be relevant. Plaintiff/Appellee fails to note that the Model Penal Code language and discussion were not adopted or even mentioned in the final draft of the legislation. Plaintiff/Appellee asks this court to make assumptions about the legislative intent which are not evident in the history of the statute. When no clear intent of the legislature is historically recorded the Court should not participate in speculation as urged by Plaintiff/Appellee. If the legislature intended the commentary of the Model Penal Code to be directive in future analysis it would have noted it in the history and analysis of the law. In answer to the Plaintiff/Appellee's assertion that the Model Penal Code would allow the prosecution of a tampering with evidence charge when the "evidence" is illegally obtained, Plaintiff/Appellee would point out that the Florida

statute (see Plaintiff/Appellee Addendum 5) which was interpreted in Sites v. Florida 582 So.2d 813 (Fla. App. 4th Dist. 1991) discussed in Plaintiff/Appellee's brief (p. 15-16) employs, in relevant part, the exact language of the Model Penal Code (See Plaintiff/Appellee's brief p. 8) while Utah's equivalent has been changed somewhat. The factual scenario in Sites, supra, as discussed in Plaintiff/Appellee's brief, is hauntingly similar to this case and the Court, after determining that the "evidence" was unconstitutionally seized, dismissed the charge of tampering with evidence.

The Model Penal Code commentary cited in Plaintiff/Appellee's brief (at p. 9) discusses "the preventing and punishing obstruction of justice." While Plaintiff/Appellee refuses to accept the application of the commentary as binding upon the Court's analysis of U.C.A. 76-8-510(1), the discussion is valuable in examining the Utah Supreme Court's treatment of an analogous scenario.

The Supreme Court of Utah in State in the Interest of Hurley, 501 P.2d 111 (Utah 1972) considered a factual scenario wherein a University of Utah police officer, while patrolling an area which was not on the University campus was involved in an altercation with two juveniles. The Court analyzed the elements of the charge of obstructing and found that because the officer was not strictly within the defined jurisdictional limits of his authority, the element of the offense requiring the state to show that the officer was "engaged in the performance of an official duty" had not been established and the conviction of the lower court was reversed.

In Hurley, unlike the present case, the actions of the officer were not in violation of constitutional principles but were merely not "an official duty." The present case presents a far more compelling factual scenario for this court to consider the deterrent effect (cited in footnote 3 of Plaintiff/Appellee's Brief, p. 9) discussed by Professor LaFave. To allow a prosecution for "tampering" with evidence which was seized in violation of state and federal constitutional protections would encourage the further violation of these principles by the police. When analyzing a charge analogous to obstruction of justice it is proper to consider the word "justice." Justice cannot be served by allowing officers to trample the most important constitutional protections available to the citizens and withdraw a valid indictment from the wreckage.

The Model Penal Code discussion does not address unconstitutionally obtained evidence, and its hypothetical and somewhat metaphysical analysis has no relevance to this case. This case is concerned with the violation of Article I, Section 14 of the Constitution of Utah and the Fourth and Fourteenth Amendments to this Constitution of the United States, issues which were omitted from Plaintiff/Appellee's analysis. (Plaintiff/Appellee's brief p.2)

CONCLUSION

Plaintiff/Appellee has urged an unreasonable and unconstitutionally broad interpretation of U.C.A. 76-8-510(1) upon

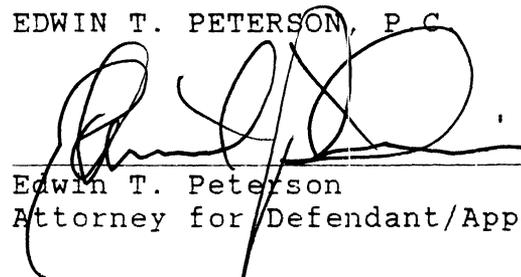
this court which should be rejected. Defendant/Appellant's position can be fairly summarized as follows:

Whatever the Utah Legislature intended when it drafted U.C.A. 76-8-510(1), when applied to the case at hand, the word "anything" cannot include that which is the fruit of the poisonous tree.

Both relevant case law from sister state jurisdictions which have previously considered this issue and policy consideration of constitutional protection require the reversal of the decision of the lower court. The charge of tampering with evidence against Defendant/Appellant should therefore be dismissed.

Respectfully submitted this 15 day of October, 1992.

EDWIN T. PETERSON, P.C.



Edwin T. Peterson
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CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of October, 1992, I mailed, via United States Mail, postage prepaid thereon, a true a correct copy of the foregoing Reply Brief of Appellant to Todd A. Utzinger, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah 84114

