

2001

Layton City v. Lynn Allan Jenkins : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LAYTON CITY,)	
)	
Plaintiff and Appellee,)	
)	
vs.)	Priority No. 2
)	
LYNN ALLAN JENKINS,)	Case No. 20010342-CA
)	
Defendant and Appellant.)	

BRIEF OF APPELLEE

Appeal from the Second District Court, Layton Department,
The Honorable Darwin C. Hansen

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JURISDICTION OF THE COURT

The Appellant appeals his conviction for intoxication, a class C misdemeanor, in the Second District Court, Layton Department. The Court of Appeals has jurisdiction in this matter pursuant to *78-2a-3(2)(e) Utah Code Annotated 2001*.

STATEMENT OF FACTS

On October 12, 2000, Layton Police Officer Scott Byington and Layton Police Officer Todd Derrick responded to a complaint that a person was putting up a fence and would not let anyone through the fence without paying a "toll." The fence crossed over a road. The Officers arrived at the scene and found Appellant to be under the influence of alcohol. The Appellant was arrested for Intoxication, a class C misdemeanor.

On October 30, 2000, Appellant filed a request for jury trial. On January 8, 2001, at a pretrial hearing, the Honorable Darwin C. Hansen (Judge Hansen) denied the Appellant's request for a jury trial because Judge Hansen determined jail time would not be imposed if there was a conviction.

On January 12, 2001, Appellee filed an Information charging Appellant with one count of Intoxication, *76-9-701(1)*, a class C misdemeanor, and one count of Disorderly Conduct, *76-9-102*, an infraction. On February 26, 2001, a bench trial was held, at which time the Honorable Darwin C. Hansen found Appellant guilty of Intoxication, a class C misdemeanor. Appellant now appeals that judgment.

SUMMARY OF THE ARGUMENT

Appellee asserts that all Appellant's claims are without merit, except his claim that he was entitled to a jury trial. In light of a recent Utah Supreme Court ruling, Appellant was improperly denied a jury trial.

ARGUMENT

I. The Court, as the trier of fact, properly weighed the evidence and made findings consistent with the evidence.

Appellant argues the Court erred in finding Appellant guilty of intoxication, given the evidence presented at trial. Appellant must "marshal the evidence in support of the verdict and then demonstrate that the evidence is insufficient when viewed in the light most favorable to the verdict." *State v. Hopkins*, 989 P.2d 1065 (Utah 1992) (quoting *Crookstone v. Fire Ins. Exch.*, 817 P.2d 789, 799 (Utah 1991)). The Court stated in its findings that it found Appellee's witnesses more credible than Appellant's. Appellant seems to place great weight on the fact that the Court made this finding without any indication as to why the Appellee's witnesses are more credible, but Appellant has shown no evidence to support his claim that the Court erred in its findings.

Furthermore, the Utah Supreme Court has recently stated, "We do not sit as a second trier of fact: It is the exclusive function of the jury to weigh the evidence and to determine the credibility of the witnesses." *State v. Boyd*, 25 P.3d 985, 990-91 (Utah

2001) (quotations omitted). The Court, being the fact finder in this case, served that function. Appellant gives no reason why the Court's conclusion regarding credibility should be called into question; this claim is without merit.

II. Appellant was entitled to a jury trial in light of a recent Utah Supreme Court ruling.

Appellant argues the Court erred in denying Appellant a jury trial. Although Appellant had filed a written demand for a jury trial pursuant to Rule 17(d) of the Utah Rules of Criminal Procedure, the Court did not grant that request; instead, the Court insured Appellant that there would be no imposition of any jail time in this case, and did not grant Appellant a jury trial.

In a recent case involving nearly these same facts, the Supreme Court of Utah has ruled that if a person is charged with an offense other than an infraction, has complied with Rule 17(d) by filing a written request for a jury trial, and hasn't waived the right to a jury trial, then that person is entitled to a trial by jury. *Salt Lake City v. Roseto*, 442 Utah Adv. Rep. 22, 23 (Utah 2002). It matters not that the Appellant was guaranteed no jail time would be imposed. Given this recent ruling, the Appellee has no choice but to concede that the Appellant was entitled to a jury trial in the case at bar.

III. Appellant's right to self-representation was infringed upon by the Court.

Appellant elected to represent himself at trial, and now alleges that the Court is not "open" for pro se participation. Appellant quotes the Utah Constitution Article 1, Section 11: "All courts shall be open, and every person, for an injury done to him in his person,

property, or reputation, shall have remedy by due course of law . . . no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party." This specific section of the Utah Constitution refers specifically to civil cases. However, Appellant was charged with a criminal offense, and Rule 8 of the Utah Rules of Criminal Procedure states, "[a] defendant charged with a public offense has the right to self-representation. Appellant exercised this right, without interference from the Court, and therefore no wrong was committed by the Court.

IV. Appellant has no right of appeal to constitutional issues not raised at the trial court level.

Generally, an Appellant is prohibited from asserting a constitutional issue for the first time on appeal, unless plain error is shown or there are "exceptional circumstances." See *State v. Gibbons*, 740 P.2d 1309, 1311 (Utah 1987); *State v. Webb*, 7910 P.2d 65, 78 Utah App.1990).

Appellant alleges in his brief that Appellee violated his constitutional rights by entering his property without a warrant. Appellant also argues that his constitutional rights were violated when the Layton Police used unreasonable and/or unjustifiable force in making an arrest. Appellee did not raise either of these issues at trial, and therefore has no right of appeal regarding these issues.

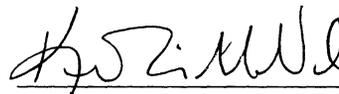
V. The Court made no ruling that Appellant cannot place a fence on his property.

Appellant further argues Appellee cannot keep Appellant from placing a fence around his real property. This issue was not before the trial court. In fact, Judge Hansen several times informed Appellant at the trial that the Court was making no decision regarding ownership regarding the property in question, or regarding the Appellant's right to build a fence on that property. The sole issue at trial was whether Appellant violated the law against intoxication.

CONCLUSION

Although Appellant's other claims are without merit, he was improperly denied a jury trial. Therefore, Appellee requests this case be remanded for a new trial.

DATED this 12th day of April, 2002

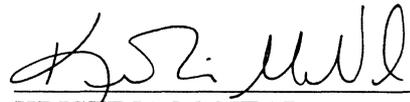


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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing **BRIEF OF APPELLEE** was mailed to the following person(s), postage prepaid, on this 12th day of April, 2002.

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