

2001

Salt Lake City v. Jeppson : Reply Brief

Utah Court of Appeals

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BEFORE THE UTAH COURT OF APPEALS

SALT LAKE CITY,)
)
 Plaintiff /Appellee,)
)
 vs.)
)
 ISAAC JEPPSON,)
)
 Defendant/Appellant.)
 _____)

Court of Appeals Case No. 20010407
Priority Classification No. 2

REPLY BRIEF OF APPELLANT

**APPEAL FROM CONVICTIONS AND SENTENCE FOR DOG AT
LARGE AND ATTACKING DOG IN VIOLATION OF SALT LAKE
CITY ORDINANCES, HONORABLE ROBIN REESE PRESIDING**

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CONSTITUTIONAL PROVISIONS

None

STATUTORY PROVISIONS

77-17-3 U.C.A.	3
76-1-103 U.C.A.	4

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ARGUMENT

POINT I.

**THE COURT SHOULD EXTEND SOME LENIENCY
TO DEFENDANT AS A PRO SE LITIGANT**

The City claims that defendant waived his right to contest his unlawful interrogation by failing to remind the court at the time of trial that a motion to suppress for illegal interrogation was still outstanding.

The defendant filed his motion to suppress in a timely matter. The court and the prosecution were both aware, or should have been aware, that the motion was outstanding and had not been resolved at the time of trial. The City has attempted to claim that the motion itself was stricken. However, a review of the record shows that the only thing that was stricken was the hearing date. This hearing date was stricken so that defendant's counsel could withdraw. The motion itself was never stricken. It is important to note that the officer in question, animal control officer Deborah Snyder herself testified that she had detained defendant Isaac Jeppson for approximately ten to fifteen minutes. Trial

transcript 12 February, 2001 at 23:7 through 12. The animal control officer detained defendant to illicit incriminating statements regarding license and rabies information. Id.

The prosecution, represented by an attorney, itself had a duty to bring to the court's attention the fact that a motion to suppress was outstanding. It is improper for the prosecution to impugn Mr. Jeppson when in fact the prosecution knew, or should have known, of the motion and failed to so advise the court.

The defendant, acting pro se, should not be held to the same standard as an attorney.

POINT II.

THE COURT SHOULD RULE ON THE SUFFICIENCY ARGUMENT BASED ON PLAIN ERROR AND EXCEPTIONAL CIRCUMSTANCES

The City claims that defendant did not bring to the court's attention a claim of insufficiency of evidence with respect to counts 2 and 3.

In fact, a review of the trial transcript February 12, 2001 at 26:3 through 9 shows that the defendant actually queried the court on whether the court felt it was necessary for the defendant to proceed, implicitly raising a question of the sufficiency of the evidence. The defendant, though somewhat inartfully, clearly asked court whether it was necessary for him to even put on a defense. Given defendant's pro se status and obvious lack of sophistication, it would be appropriate for this court to construe defendant's request for a directed verdict liberally and to rule that the defendant did in fact bring to the trial court's attention the question of the sufficiency of the evidence.

Even if this court determines that defendant did not make a sufficient claim for a directed verdict, this court still has two alternative grounds for acquittal with respect to counts 2 and 3 based on insufficient evidence, to wit: plain error and exceptional circumstances.

PLAIN ERROR

As set forth in State v. Holgate, 10 P.3d 346, 350 (UT. 2000) the court may still examine the sufficiency of the evidence if there are exceptional circumstances or there was plain error.

In Holgate, the Utah Supreme Court set forth the standard re-requirements necessary for a defendant to demonstrate plain error. The defendant must show that an error exists, that the error should have been obvious to the trial court and that the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant, or phased differently, our confidence in the verdict is undermined.

In Holgate at 351, the court observed that section 77-17-3 of the Utah Code requires that the trial court shall discharge the defendant when the insufficiency of the evidence is apparent to the court. Going on, the court observed that an example of when insufficient evidence is, or should be, apparent to the trial court is the case in which the State presents no evidence to support an essential element of the criminal charge.

In this instant case, there was absolutely no evidence presented indicating that the defendant “allowed” the dog in question to run at large or to attack. True, the evidence

does reflect that the defendant retrieved the dog following the incident with Mrs. Joseph's poodle, however, there is not absolutely no evidence in the record that this defendant "allowed" the dog to run at large or attack.

Furthermore, the trial court was, or should have been aware of the provision of the Utah Code, 76-1-103, previously cited in defendant's opening brief, wherein it is indicated that the Utah Criminal Code controls with respect to "the punishment for and defenses against any offense...defined outside of this code;"

Intent is an essential element of both offenses. The defendant must "allow" the dog to run at large or attack to be guilty.

The court should ask itself: How did the dog escape and make it to Mrs. Joseph's yard? The answer of course is that there is no evidence in the record with which to answer that question. Did defendant let the dog out? Did the dog escape from the yard through a hole? Did someone else let the dog loose, and therefore allow the dog to run at large and attack? The record is devoid of any facts in this regard.

It is error to find a defendant guilty if the prosecution has failed to prove an element beyond a reasonable doubt.

The error was obvious to the court because both ordinances require proof that defendant "allowed" same conduct by the animal. (See addendum A-1 of defendant's opening brief).

This error was harmful because it caused defendant to be convicted even though there was insufficient evidence.

EXCEPTIONAL CIRCUMSTANCES

The court in Holgate at 350 indicated that the exceptional circumstances exception to the preservation rule is ill-defined and applies primarily to rare procedural anomalies.

This instant case both clearly and directly into the exceptional circumstances category in that the defendant, proceeding as a pro se litigant, did in fact endeavor to make a motion for directed verdict. See trial transcript February 12, 2001 at 26:3 through 9. Furthermore, the defendant was a pro se litigant unskilled in the law. The combination of these two factors creates the rare procedural anomaly referred to in Holgate.

CONCLUSION

This court should not penalize a pro se defendant for alleged errors which should have been remedied by the counsel for the City.

This court should review the sufficiency of the evidence with respect to counts 2 and 3 and determine whether there was sufficient evidence presented at trial from which the trial court could properly conclude that this defendant "allowed" the dog in question to attack and run at large.

DATED this 11 day of December, 2001.



ROBERT BREEZE
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that I personally mailed 2 true and correct copies of the foregoing to:

Jeanne Robison
Associate Salt Lake City Prosecutor
349 South 200 East, Suite 500
Salt Lake City, Utah 84111

this 11 day of December, 2001


