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The State of Utah v. Ernesto Hernandez : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

APR 24 2003

Paulette Stagg
Clerk of the Court

THE STATE OF UTAH,)
)
 Plaintiff and Appellee,) REPLY BRIEF
 vs.) OF THE APPELLANT
)
 ERNESTO HERNANDEZ, (Case No. 20020576-CA
)
 Defendant and Appellant. (

Appeal from a conviction of Driving Under the Influence of Alcohol with a Passenger under Sixteen Years of Age in the Vehicle, a Class A misdemeanor in violation of Utah Code Ann. § 41-6-44 (1941 as amended) as entered by the Honorable Ann Boyden, Third Judicial District Court Judge, Salt Lake County, State of Utah.

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ARGUMENT

POINT I. THE TRIAL COURT ERRONEOUSLY CONCLUDED THAT MR. HERNANDEZ WAS GUILTY OF DRIVING UNDER THE INFLUENCE OF ALCOHOL WITH A PASSENGER UNDER THE AGE OF SIXTEEN YEARS IN THE VEHICLE RATHER THAN THE CRIME OF RECKLESS DRIVING.

In his opening brief Mr. Hernandez documented the appropriate rules of statutory construction. The plain language contained within a statute is to be interpreted as the intent of the statute unless an ambiguity exists within the language. See Brief of Appellant, pages 10-13.

Where statutory language is plain and unambiguous, this Court will not look beyond the same to divine legislative intent. Rather, we are guided by the rule that a statute should generally be construed according to its plain language. ... When language is clear and unambiguous, it must be held to mean what it expresses, and no room is left for construction.

Brendle v. City of Draper, 937 P.2d 1044, (Utah Ct. App. 1997) (quotations and citations omitted).

The Reckless Driving statute reads:

41-6-45. Reckless driving - Penalty.

- (1) *A person is guilty of reckless driving who operates a vehicle:*
(a) in willful or wanton disregard for the safety of persons or property;
or
(b) *while committing three or more moving traffic violations under Title 41, Chapter 6, Traffic Rules and Regulations, in a series of acts within a single continuous period of driving.*
(2) A person who violates Subsection (1) is guilty of a class B misdemeanor.

Utah Code Ann. § 41-6-45 (2000)(emphasis added). Mr. Hernandez insists that the language in 41-6-45(1)(b) is so plain on its face that any and all moving traffic violations as pronounced by the legislature in Title 41, Chapter 6 are expressly adopted as potential elements of the (1)(b) violation if committed in a series of violations with two or more others. The State says that the DUI statute is somehow exempted from this plain reading of the statute despite conceding that DUI is a moving traffic violation that falls under Title 41, Chapter 6, of the Traffic Rules and Regulations section of the code. Brief of Appellee at P.10, text and n. 1.

In short, the State disagrees with the plain meaning encouraged by Mr. Hernandez because it does not like the result. For example, the State does not cite to any specific language within the statute which is somehow or in some way ambiguous. Each of the result-oriented interpretations by

the State requires this court to reach beyond the plain language of the legislature and contort a different meaning. None of the interpretations of the State are justified first, because the language is unambiguous thereby forbidding any new construction of the plain language; and second, the State fails to provide any extended analysis, historic or otherwise, which supports its position other than to impermissibly rewrite the statute and claim disdain for the result. The statute does not require to be read in conjunction with the DUI statute; the DUI statute is now an included part of the statute provided the other two requisite violations are present as well.

The State says, "The defendant fails to explain how eliminating prosecutions under Utah's DUI statutes would achieve securing the public's safety." Brief of Appellee at 11. Neither Mr. Hernandez nor this Court is required to address this contention of the state. The legislature wrote the statute; if the plain meaning of the statute is something other than that which is desired, then the legislature can rewrite the statute as is their prerogative. As discussed in Mr. Hernandez' opening brief, our Utah Supreme Court has addressed this very issue in a Shondel analysis in 1985. There the Court stated:

This Court does not declare statutes unenforceable or unconstitutional because they could have been better drafted; indeed it has long been the law that we attempt to construe statutes to be constitutional. Nor are we concerned with legislative policy decisions embodied in statutes. Nevertheless, we cannot disregard our responsibility to assure the rational and evenhanded application of the criminal laws. Equal protection of the law guarantees like treatment of all those who

are similarly situated. Accordingly, the criminal laws must be written so that there are significant differences between offenses and so that the exact same conduct is not subject to different penalties depending under which of two statutory sections a prosecutor chooses to charge. That would be a form of arbitrariness that is foreign to our system of law. The Legislature may make automobile homicide committed recklessly either a misdemeanor or a felony, but it cannot make the crime both a felony and a misdemeanor, leaving the choice to the prosecutor as to whether he charges a felony or a misdemeanor.

State v. Bryan, 709 P.2d 257, 263 (citations omitted). See extended argument in Brief of Appellant at 15-16.

This Court should resist the result-oriented interpretations provided by the State to affirm the trial court's erroneous decision, undoubtedly equally motivated by the same desire to read a contrary result into an otherwise clearly articulated statute. This Court should reverse and remand the Hernandez matter to the lower court to enter a sentence on the Reckless Driving violation as clearly indicated in the statute.

POINT II. THE TRIAL COURT ERRONEOUSLY RULED THAT THE SHONDEL LINE OF CASES DID NOT REQUIRE THAT MR. HERNANDEZ' CONVICTION BE ENTERED FOR THE LESSER PUNISHED CRIME OF RECKLESS DRIVING.

The State of Utah claims that Shondel does not apply because the traffic offenses of Reckless Driving and DUI have different elements. A review of both statutes prior to the 2000 amendment would likely support

the claim of the state. However, this claim inarguably fails when applied to the current language of § 41-6-45(1)(b). The statute now reads as follows:

41-6-45. Reckless driving - Penalty.

(1) *A person is guilty of reckless driving who operates a vehicle:*

(a) in willful or wanton disregard for the safety of persons or property;

or

(b) *while committing three or more moving traffic violations under Title 41, Chapter 6, Traffic Rules and Regulations, in a series of acts within a single continuous period of driving.*

(2) A person who violates Subsection (1) is guilty of a class B misdemeanor.

Utah Code Ann. § 41-6-45 (2000)(emphasis added). In section (1)(b) the legislature has expressly made each and every moving violation in Title 41, Chapter 6, as a crime and an element of reckless driving.¹ Once any three of those offenses are established then the three offenses merge together to create a reckless driving charge. As indicated above, DUI is not exempted from this statute. The States argument refuses to recognize that the DUI statute, in its entirety, is an included offense just as are all other traffic offenses from Title 41, Chapter 6. Their position to the contrary is without merit. Because DUI, on the facts of this case, is an element of the new reckless driving offense of subsection (1)(b), Shondel most certainly applies and the lower punishment of a B misdemeanor necessarily applies.

¹ The State of Utah concedes that DUI is a moving traffic violation within 41-6. Brief of Appellee at 10.

POINT III. REQUEST FOR ORAL ARGUMENT

The State incredulously states that oral argument would not significantly aid the Court in deciding the case. Mr. Hernandez disagrees. Rule 29 of the Utah Rules of Appellate Procedure delineates that "oral argument will be allowed in all cases unless the court concludes: the appeal is frivolous, the issue has recently been authoritatively decided, or that the decisional process would not be significantly aided by the oral argument. This issue has been determined to not be frivolous as indicated by the court's decision to withdraw its motion for summary disposition after filing of Mr. Hernandez' objection to that process. This newly amended Reckless Driving statute has not yet been reviewed by the Court. Oral argument can help to clarify the positions of the parties that are only briefly provided to the court in these pleadings. Mr. Hernandez respectfully requests the opportunity to address the Court and believes oral argument unquestionably will aide the decisional process.

CONCLUSION

Appellant Ernesto Hernandez respectfully requests that this Court to review the statutory construction issues and supporting Shondel argument presented herein, and for all or any of the reasons stated, to correct the

decision of the trial court and reverse the conviction for Driving Under the Influence and remand the matter for a new sentencing for the corrected offense of Reckless Driving.

RESPECTFULLY SUBMITTED this 24th day of April, 2003.



BENJAMIN A. HAMILTON
Attorney for Appellant

CERTIFICATION

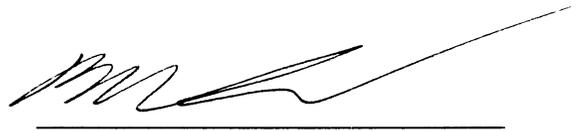
I, BENJAMIN A. HAMILTON, hereby certify that I have caused eight copies of the foregoing Brief of the Appellant to be delivered to the Utah Court of Appeals, 450 South State Street, Salt Lake City, Utah 84114, and two copies of the foregoing Brief of the Appellant were delivered to the Office of the District Attorney for Salt Lake County, 2001 South State Street, S-3700, Salt Lake City, Utah 84119 on this 24th day of April, 2003.



BENJAMIN A. HAMILTON
Attorney for Appellant

DELIVERY

I, Ben Hamilton, have delivered the copies of this Brief of Appellant as indicated in the preceding certificate this 24th day of April, 2003.



A handwritten signature in black ink, appearing to read "Ben Hamilton", is written above a horizontal line.