

2016

**THE STATE OF UTAH, Plaintiff/Appellee v. ROBERT EARL CLINE,
Defendant/Appellant. : Reply Brief of Appellant**

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Utah v. Cline*, No. 20160181 (Utah Court of Appeals, 2016).
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No. 20160181-CA

IN THE UTAH COURT OF APPEALS

FILED
UTAH APPELLATE COURTS

THE STATE OF UTAH,
Plaintiff/Appellee

OCT 11 2016

v.

ROBERT EARL CLINE,
Defendant/Appellant.

Appellant is not incarcerated

REPLY BRIEF OF APPELLANT

Appeal from a sentence following a plea to one count of Attempted Distribution of an Intimate Image, a class B misdemeanor, in violation of Utah Code § 76-5-103(2)(b), in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Keith Kelly presiding.

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INTRODUCTION

As required by Utah Rule of Appellate Procedure 24(c), this reply brief is “limited to answering any new matter set forth in the opposing brief.” The brief does not restate arguments from the opening brief or address matters that do not merit reply.

ARGUMENT

I. The Appellee improperly included reference to a new charge which is outside the scope of appeal and was not considered by the sentencing judge.

In its brief, the Appellee states that Mr. Cline has been charged with a new stalking charge. Appellee Brief Page 6. The charge is alleged to have been committed on June 9, 2016. Since Mr. Cline was sentenced on February 12, 2016, this new offense could not have been considered by the sentencing judge. It is therefore highly inappropriate that Appellee mentioned it. It is

inappropriate because it was not information known to the sentencing judge and therefore plays no role in this appeal other than to create the possibility of prejudice against Mr. Cline.

Despite its fifteen-page response to the six page brief of Appellant, Appellee finds it necessary to attack Mr. Cline outside the scope of his appeal. In its argument that the sentencing court acted within its discretion, Appellee states, "In fact, since his sentencing, Cline has been charged with another stalking offense involving the same victim from his previous stalking and criminal trespass charges." Appellee brief Page 11

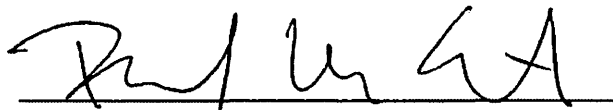
There is no possible way the sentencing judge could have considered an offense that would be alleged to have been committed four months after the current case was sentenced.

Therefore, this issue is not properly before the Court and should not be considered.

CONCLUSION

The information about a new charge could not be considered by the sentencing judge and therefore should not be considered by this Court.

SUBMITTED this 11th day of October, 2016.


BRADY MINOW SMITH
Attorney for Defendant/Appellant

CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I certify that this brief contains 7,000 words, excluding the table of contents, table of authorities, addenda, and certificates of compliance and delivery. In compliance with the typeface requirements of Utah R. App. P. 27(b), I certify that this brief has been prepared in a proportionally spaced font using Microsoft Word 2016 in Georgia 13 point.


BRADY MINOW SMITH

CERTIFICATE OF DELIVERY

I, BRADY MINOW SMITH, hereby certify that I have caused to be hand-delivered an original and six copies of the foregoing to the Utah Court of Appeals, 450 South State Street, 5th Floor, Salt Lake City, Utah 84114; and three copies to the Salt Lake County District Attorney's Office, 111 East Broadway #400, Salt Lake City, Utah 84111, this 11th day of October, 2016.


BRADY MINOW SMITH

DELIVERED this 11 day of October, 2016.

