

1992

# Utah v. Brandon Gresham : Brief of Appellee

Utah Court of Appeals

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B.G. Pro Se.

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BRIEF

FROM  
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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 920629  
STATE OF UTAH, :

Plaintiff/Appellee, : Case No. 920629-CA

v. :

IN RE B.G. : Priority No. 2

Defendant/Appellant, :

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BRIEF OF APPELLEE

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THIS IS AN APPEAL FROM A JUDGMENT FOR DISORDERLY CONDUCT, A CLASS C MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 76-9-102(1)(b)(ii) & (3)(1990), IN THE SECOND JUDICIAL DISTRICT COURT, JUVENILE DEPARTMENT, IN AND FOR WEBER COUNTY, THE HONORABLE STEPHEN A. VAN DYKE, PRESIDING.

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**FILED**  
Utah Court of Appeals

MAR 19 1993

*Mary T. Noonan*  
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Clerk of the Court

IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, :  
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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, :  
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v. :  
IN RE B.G. : Priority No. 2  
Defendant/Appellant. :

---

BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a judgment for disorderly conduct, a class C misdemeanor, in violation of Utah Code Ann. § 76-9-102(1)(b)(ii) & (3) (1990), in the Second Judicial District Court, Juvenile Department, in and for Weber County, the Honorable Stephen A. Van Dyke, presiding.

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(c) (Supp. 1992), as the appeal is from a decision of a juvenile court.

STATEMENT OF ISSUES PRESENTED AND STANDARDS OF REVIEW

Defendant's brief is inadequate to raise any issue for review on appeal. The brief fails to comply with Rule 24 of the Utah Rules of Appellate Procedure, and also fails to set forth any meaningful factual and legal analysis. Additionally, defendant has failed to provide an adequate record in support of his claims of error. Thus, there is no applicable standard of review. Rather, this Court must assume the regularity of the proceedings below and affirm the juvenile court's findings and

ruling. State v. Miller, 718 P.2d 403, 405 (Utah 1986) ("If an appellant fails to provide an adequate record on appeal, [reviewing court] must assume the regularity of the proceedings below."). See Utah R. App. P. 24 ("[b]riefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court"); State v. Price, 827 P.2d 247, 249-50 (Utah App. 1992) (refusing to consider defendant's appellate arguments due to failure to comply with Rule 24).

#### CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional provisions, statutes and rules pertinent to the resolution of the issues presented on appeal is contained in the body of this brief.

#### STATEMENT OF THE CASE

Defendant was charged with disorderly conduct, a class C misdemeanor, in violation of Utah Code Ann. § 76-9-102(1)(b)(ii) & (3) (1990) (R. 17).

On January 15, 1992 defendant's parents attempted to file a "motion for postponement" in the juvenile court; however, they refused to pay a five dollar filing fee and the motion was denied (R. 7). The juvenile court informed defendant's parents that if the filing fee were paid, the court would entertain the motion again (R. 7). The fee was not paid prior to trial scheduled for February 6, 1992 (R. 6-7).

Although notified of the trial date, neither defendant nor his parents appeared in juvenile court on February 6, 1992 (R. 6). The juvenile court granted the State's motion to proceed

in defendant's absence (R. 6). Following presentation of the State's case, the juvenile court entered a default judgment against defendant (R. 6). The court further ordered defendant to appear and show cause why he should not be found in contempt of court (R. 6, 11).

On May 14, 1992, the State moved to set aside the default judgment and asked that the matter be sent back for consideration of a non-judicial closure (R. 13). The juvenile court granted the State's motion on the ground that if a non-judicial closure was not possible, the matter would come back before it for sentencing purposes (R. 13). Additionally, the juvenile court dismissed the contempt charge pending against defendant (R. 13).

Defense counsel withdrew on July 2, 1992 (R. 14). On July 30, 1992, the trial court appointed counsel to represent defendant on retrial (R. 14 15-16, 18).

On August 24, 1992, defendant moved to transfer the case to district court (R. 19). Additionally, defendant moved to dismiss on the grounds that juvenile court had failed to provide discovery, and had also failed to appoint legal counsel (R. 20-21). The juvenile court denied defendant's motions, prior to retrial on August 28, 1992 (R. 22).

At retrial, defendant exercised his fifth amendment right to remain silent and presented no defense (R. 22). He further refused to cross-examine the State's witnesses (R. 22). Following presentation of the State's evidence, the juvenile



court found the charge of disorderly conduct to be true (R. 22) (the trial court's judgment is reproduced in the Addendum).

The juvenile court assessed a fifty dollar fine against defendant, which fine was suspended upon the condition that defendant incur no juvenile court referrals for a one year period (R. 24).

#### STATEMENT OF THE FACTS

As defendant has not provided a transcript of the proceedings below, it is not possible, on this record, to set forth the underlying substantive facts. Thus, the pertinent facts are as set forth in the above Statement of The Case.

#### SUMMARY OF THE ARGUMENT

The juvenile court's judgment for disorderly conduct is proper. Defendant's brief on appeal is inadequate for meaningful review. The brief should be rejected because it fails to comply with the briefing rule and lacks any meaningful legal and/or factual analysis. Additionally, defendant has failed to provide an adequate record to support his allegations of error. Consequently, the juvenile court's findings and ruling must remain undisturbed.

## ARGUMENT

DEFENDANT'S BRIEF FAILS TO COMPLY WITH THE BRIEFING RULE AND IS THUS INADEQUATE FOR MEANINGFUL REVIEW; ADDITIONALLY, DEFENDANT FAILS TO SUPPORT HIS ALLEGATIONS OF ERROR WITH ADEQUATE RECORD SUPPORT

### A. Failure to Comply with Briefing Rule

This Court should decline to consider the various allegations raised in defendant's brief on appeal because the brief fails to comply with the requirements of Rule 24 of the Utah Rules of Appellate Procedure. Utah R. App. P. 24(k) ("[b]riefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court"). See also State v. Price, 827 P.2d 247, 249-50 (Utah App. 1992) (refusing to consider defendant's argument on appeal due to non-compliance with rule 24). Specifically, defendant's brief fails to set forth a statement of issues and appropriate standard of review for each issue with supporting authority. Utah R. App. 24(a)(5). Additionally, the brief contains no coherent statement of the case indicating the nature and course of proceedings or the disposition below. Utah R. App. P. 24(a)(7). Nor does the brief include a statement of relevant facts properly documented by citations to the record. Utah R. App. P. 24(a)(7). Finally, defendant fails to refer to the portions of the record relied on in making his arguments. Utah R. App. P. 24(a)(9).

These deficiencies preclude meaningful appellate review of defendant's allegations. Price, 827 P.2d at 249-50. As observed in Price, this Court "routinely refuse[s] to consider

arguments which do not include a statement of the facts properly supported by citations to the record." 827 P.2d at 249 n.4. See also State v. Larsen, 828 P.2d 487, 491 (Utah App. 1992) ("A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." (quoting State v. Bishop, 753 P.2d 439, 450 (Utah 1988) (citation omitted))).

#### **B. Failure to Provide Meaningful Analysis**

Additionally, this Court has declined to reach the merits of an issue on appeal due to inadequate factual and legal analysis. State v. Day, 815 P.2d 1345, 1351 (Utah App. 1991). Here, defendant alleges several violations of his rights to due process, confrontation and counsel, but neglects "to establish any of these arguments in the record or by legal authority." Id. at 1351; Price, 827 P.2d at 249. Although defendant's brief is not totally devoid of citation to legal authority, he fails to analyze the cited authority and demonstrate its applicability to the issues. As a result, defendant's brief fails to provide any meaningful legal or factual analysis and should be rejected. Price 827 P.2d at 250.

#### **C. Failure to Provide Adequate Record**

Finally, this Court should reject defendant's argument on appeal for failure to provide an adequate record. State v. Miller, 718 P.2d 403, 405 (Utah 1986) ("If an appellant fails to provide an adequate record on appeal, [reviewing court] must

assume the regularity of the proceedings below." ). Defendant challenges the fairness of his trial claiming that he was denied the right to cross-examine the witnesses against him; that the juvenile court, the prosecutor and one of the State's witnesses conspired against him; and that the juvenile court refused to let defendant's father assist in his defense. "The burden of showing error is on the party who seeks to upset the judgment." State v. Jones, 657 P.2d 1263, 1267 (Utah 1982). Since defendant has failed to supply a trial transcript on appeal, it is not possible for the State, or for the Court, to meaningfully review defendant's allegations. Id. Accordingly, this Court must assume the regularity of the proceedings below and affirm the juvenile court's judgment. State v. Robbins, 709 P.2d 771, 773 (Utah 1985).

Additionally, the available record indicates that at least one of defendant's arguments is not meritorious. As noted in the Statement of the Case, supra, defendant was notified of his first trial but failed to appear (R. 6). At retrial defendant was again afforded the opportunity to cross-examine the State's witnesses, but refused to do so (R. 22).

#### CONCLUSION

In short, defendant's brief is inadequate under Rule 24. He has also failed to provide an adequate record in support of his allegations of error, or to provide any meaningful factual and legal analysis that would enable the Court to locate error in the record and to demonstrate why the error necessitates

reversal.<sup>1</sup> Thus, the Court should assume the correctness of the juvenile court's findings and ruling and affirm its judgment.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of March, 1993.

JAN GRAHAM  
Attorney General

*Marian Decker*  
MARIAN DECKER  
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to B. G., pro se, 2072 West 4600 South, Roy, Utah 84067, this 19<sup>th</sup> day of March, 1993.

*Marian Decker*

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<sup>1</sup> Should this Court decide to reach defendant's arguments, notwithstanding the inadequacies in his brief, the State would request the opportunity to address the issues in a supplemental brief.

**ADDENDUM**



# JUVENILE COURT

IN THE DISTRICT JUVENILE COURT

FOR WEBER COUNTY, STATE OF UTAH

STATE OF UTAH, in the interest of	)	MINUTES, FINDINGS AND ORDER
	)	
ESHAM, Brandon	)	Case Number: 811962
	)	
person eighteen years of age	)	T#256; C#1108; R-2
	)	T#257; C#0001;

PRESENT: Brandon Gresham, child; Normen and Dawna Smith, parents; other; Michelle Heward, Deputy County Attorney; Diane Wood, Joseph Liu, and Lesklie Ramonas, Witnesses for the State; and Kenny Ala, probation officer.

This matter came before the Court for re-trial on the petition filed August 20, 1991, incident (001). Two motions for dismissal are made to the court by Brandon. The motions are denied. One motion is made by Brandon to transfer the case to District Court for trial as an adult. Pursuant to 78-3A-16 Utah Code Annotated the court denies the motion. (Lack of jurisdiction in the District Court.)

State makes opening arguments.

Defense pleads the 5th amendment and states intention to remain silent during the course of the trial.

Witnesses for the state are sworn and testify.

Defense refuses to cross examine and remains silent.

State rests.

Defense presents no evidence.

State makes closing arguments.

Defense makes no opposing argument.

### FINDINGS AND CONCLUSIONS

The court finds incident (001), for the charge(s) of disorderly conduct to be true. Said child comes within the provisions of the Utah Juvenile Court Act.

### ORDER

IT IS ORDERED, ADJUDGED, AND DECREED, that: The above-entitled matter is continued for disposition on incident (001) to September 10, 1992, at 9:45 a.m. All parties shall appear.

STATE OF UTAH )  
Juvenile Court )

YOUR COPY OF THIS COURT ORDER IS YOUR PERSONAL NOTICE TO APPEAR FOR THE ABOVE HEARING. YOU WILL NOT RECEIVE FURTHER NOTICE.

Page 1 of 2

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of the State of Utah, this 29th day of



JUVENILE COURT

RESHAM, Brandon  
1962  
Page 2

Dated this 28th day of August, 1992.

Failure to comply with the order of this court may result in your being found in contempt of court and could result in placement in a detention center.

You have a right to appeal this matter to the Utah Court of Appeals. Appeals must be filed within 30 days from this date.

BY THE COURT

*Stephen A. Van Dyke*

Stephen A. Van Dyke, Judge

COPY OF ORDER TO: (X) father; (X) mother ( ) child ( ) agency (X) attorney  
( ) Guardian ad litem (X) P.O. ( ) other \_\_\_\_\_

STATE OF UTAH  
Juvenile Court ) ss

I, the undersigned Deputy Clerk of the Juvenile Court of the Second Judicial District of the State of Utah, a court of record, have compared this copy with the original copy of record in said court and there is no discrepancy between the two copies thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of said court this 29th day of

September, A.D. 1992

*Jeanette Dobbins*  
Deputy Clerk