

2005

# City of Orem v. James H. Brown : Petition for Rehearing

Utah Court of Appeals

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Robert J. Church; Orem City Attorney's Office; Attorney for Appellee.

James Brown; Pro Se Appellant.

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IN THE UTAH COURT OF APPEALS

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CITY OF OREM,

Plaintiff and Appellee,

vs.

JAMES H BROWN,

Defendant and Appellant

Case No. 20050463-CA  
Trial Court Case Number: 055204006

**PETITION FOR REHEARING**

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APPEAL FROM THE MAY 18, 2005 ORDER OF THE  
THE FOURTH JUDICIAL DISTRICT – OREM COURT, UTAH COUNTY,  
THE HONORABLE JOHN C. BACKLUND

Robert J. Church, Esq.  
Orem City Attorney's Office  
56 North State Street  
Orem, UT 84057  
Attorney for Appellee

James Brown  
255 W. 2000 S  
Orem, UT 84058  
Pro Se Appellant

UTAH APPELLATE C

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## GOOD FAITH CERTIFICATION

I certify that this petition is presented in good faith and not for delay.

The Utah Supreme Court, by order dated October 16, 2003, approved the Standards of Professionalism and Civility, which states the following in the preamble (emphasis added): *“A lawyer’s conduct should be characterized at all times by personal courtesy and **professional integrity** in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers, we must be mindful of our obligations to the administration of **justice, which is a truth-seeking process** designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must remain committed to the rule of law as the foundation for a just and peaceful society.*

*“Conduct that may be characterized as **uncivil, abrasive, abusive, hostile, or obstructive** impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. **Such conduct tends to delay and often to deny justice.**”*

It is my opinion that the Appellee, City of Orem (the “City”), has not followed these standards in this case and that their behavior has prejudiced me and violated my constitutional rights.

I believe that Mr. Church’s behavior in ignoring the statute he knew to be in effect at the time of the alleged violation can rightly be characterized as “obstructive” and as a consequence justice has been denied. Had I not previously emailed him citing the proper statute, and had he not prosecuted numerous cases under the new statute prior to mine, and had the original citation he was amending from not been for 41-6a violation, and had

I not objected at trial, and had I not been a pro se defendant, then perhaps you could pass this off as a simple, harmless mistake. However, all of this taken together, I believe, shows an intention to obstruct the process and throw off an inexperienced adversary.

Mr. Church continues to obstruct the process by misstating facts of the case in the Appellee's brief. On page 2 he states, "Southbound traffic was forced to narrow to one lane to get by the accident." This is clearly refuted by the videotape and was discussed at length at trial. See Transcript at ¶25, Line 17 through ¶28, Line 21; and ¶41, Line 11 through ¶42, Line 5. On page 3 of his brief he states "The tape shows that virtually dozens and dozens, if not hundreds of vehicles turned into either parking lot or turned around and headed southbound." Again, this is clearly refuted by the videotape and was discussed at length. See Transcript at ¶50, Lines 6 through 15. These misleading statements in Appellee's brief are not indicative of "*personal courtesy and professional integrity in the fullest sense of those terms.*" I believe that the City's obstructive behavior has delayed and denied justice in this case.

I am not a lawyer; I am an ordinary citizen who is trying to achieve the goal, stated in the above preamble, of "*justice, which is a truth-seeking process*" in this matter. I do not believe that justice has been served and I believe that the City has obstructed the truth-seeking process in numerous ways from the very beginning of this case all the way through the appeals process. Because justice was denied I am petitioning this Court to rehear the appeal and vacate the judgment of the lower court.

## **STATEMENT OF THE ISSUES**

1. At the very outset, officer Snyder acted inappropriately by striking my vehicle as he approached from the rear. He admitted at trial, under direct examination, that he was frustrated. See Transcript at ¶25, Lines 4 through 12. The result of his frustration was that he physically struck my vehicle and verbally assaulted and intimidated my son and me. I requested that officer Snyder simply walk back and look at the arrangement of the police cars so he could see that they were directing traffic around the scene into the southbound traffic. See Transcript at ¶23, Lines 13 through 16. He refused to do this and continued to verbally abuse me. If he had taken a minute to look at the scene, he would have realized, as he did at trial, that they were directing traffic to go exactly where I went, into southbound traffic. See Transcript at ¶21, Lines 10 through 17.

2. Officer Snyder failed to uniformly enforce the law, in compliance with Article I, Section 24 of the Utah State Constitution, when he arbitrarily opted not to enforce the 41-6a-701 provisions on other similarly situated drivers. Officer Snyder testified that he observed several vehicles go around the scene into southbound traffic, then back over the raised median (a separate violation) into the northbound lanes. See Transcript at ¶8, Lines 11 through 16. However, none of these drivers were stopped or cited for any violation. Further, you can see on the videotape evidence that when I went around the scene, six other cars followed me around. Again, none of these cars were stopped or ticketed. To ticket me and not ticket someone similarly situated violates Article I, Section 24 of the Utah State Constitution as interpreted by the Utah Supreme Court.

3. I was not allowed to present my entire defense at trial. I was summarily excused after presenting the videotape and not allowed to finish presenting my defense. While Mr. Church was queried as to whether he was finished, I was not asked and I gave no indication that I was finished. See Transcript at ¶35, Lines 21 through 23; and ¶52, Lines 13 through 18. I was denied a fair trial because I was not allowed to present my entire defense. After reviewing the videotape it was my intention to recall officer Snyder and have him recant the numerous statements in his testimony that clearly contradicted the videotape evidence (e.g. how long he was at the scene before I arrived, how many cars went by, whether other cars went around to the left, whether there were cones on the south side of the scene, how many lanes were blocked, etc.). My intent was to show that he did not have a good recollection of the incident and that he was confusing events that occurred after I arrived with those that occurred before I arrived. I also had an additional aerial photograph of the scene that I intended to introduce showing exactly where the police cars were positioned at the time I arrived, based on the videotape evidence.

4. In rendering his decision, Judge Backlund states as the basis for his decision facts that are completely contrary to the evidence presented both by the prosecution and the defense. For example, he states that everyone before me went either left into Home Base or right into Wal\*Mart. See Transcript at ¶52, Line 23 through ¶8, Line 1. This is completely contrary to the videotape evidence (which shows numerous cars, and a UTA bus, going around to the left) and to the direct testimony of officer Snyder. See Transcript at ¶8, Lines 11 through 16; and ¶48, Line 6 through ¶49, Line 10. He also

asserts that I was not directed to go into the southbound lanes, which, again, is contrary to the testimony of officer Snyder, my son, and myself; and to my basic assertion at the scene and at trial that the arrangement of the police cars was directing traffic into the southbound lanes. See Transcript at ¶9, Line 20 through ¶10, Line 3; ¶10, Line 17 through ¶11, Line 1; ¶21, Lines 10 through 17; ¶23, Lines 13 through 16; ¶38, Line 22 through ¶39, Line 1.

**DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES,  
ORDINANCES, AND RULES**

**Utah Constitution, Article I, Section 24.** [Uniform operation of laws.]

“All laws of a general nature shall have uniform operation.”

Article I, Section 24 of the Utah State Constitution states that “[a]ll laws of general nature shall have uniform operation.” The Utah Supreme Court has shown that a violation of this standard is reversible error. *State v. Mohi*, 901 P.2d 991 (1995). In *Mohi*, the Supreme Court held that “Utah's uniform operation of laws provision establishes different requirements than does the federal Equal Protection Clause. The most important of these requirements, for the present analysis, is the requirement that “for a law to be constitutional under [the provision], it is not enough that it be uniform on its face. What is critical is that the operation of the law be uniform. A law does not operate

uniformly if 'persons similarly situated' are not 'treated similarly' . . . ." Id. ) (quoting Malan, 693 P.2d at 669)." Mohi at 37.

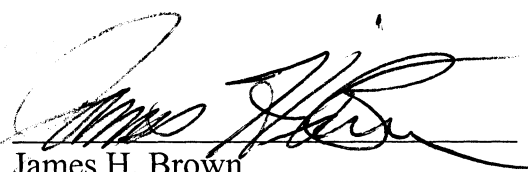
Because the actions of the State in this case fail the test established by the Utah Supreme Court in interpreting Article I, Section 24, the actions of the State amount to reversible error and the judgment of the trial court should be vacated.

### CONCLUSION

At the most basic level this case comes down to the fact that I was singled out (in violation of the Utah Constitution) and convicted for following the instructions of the police who, by officer Snyder's own testimony, were not directing traffic themselves, but instead left their police cars in the road to direct traffic and had them arranged in a manner that directed traffic into the southbound lanes. I am not seeking to overturn the lower court ruling, I am simply asking for a fair and impartial trial where all the facts of the case can be evaluated.

WHEREFORE, for the above-mentioned reasons, the APPELLANT asks this Court for relief, including rehearing the appeal and vacating of the judgment of the lower Court.

DATED this 27<sup>th</sup> day of September, 2006.

  
James H. Brown  
Pro Se Appellant and Defendant