

2005

Lynn A. Jenkins, I. v. National Product Sales, Inc., dba NPS : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS FOR THE STATE OF UTAH

LYNN A. JENKINS, I,)	
)	
Plaintiff/Appellant,)	
)	
v.)	
)	
NATIONAL PRODUCT SALES, INC., dba)	CASE NO. 20050795 CA
NPS,)	(Oral Argument Requested)
)	
Defendant/Appellee)	
)	

BRIEF OF APPELLEE

Appeal from a Judgment of Third Judicial District Court
of Salt Lake County, State of Utah
Honorable John Paul Kennedy

Lynn A. Jenkins, I.
3 East 2750 South
Bountiful, UT 84010

Plaintiff/Appellant, pro se

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FILED
UTAH APPELLATE COURTS
MAY 24 2006

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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over this matter pursuant to Article VIII § 5 of the Utah Constitution, Utah Code Ann. § 78-2-2(3)(j) and (4), Utah Code Ann. § 78-2(a)-3(2)(j), and Rule 3 of the Utah Rules of Appellate Procedure. The appeal in this case was taken from the entering of a no-cause of action against Plaintiff-Appellant after a jury trial on August 12, 2005, before the Honorable John Paul Kennedy. The case was appealed to the Utah Supreme Court and subsequently transferred to the Utah Court of Appeals.

STATEMENT OF ISSUES PRESENTED FOR APPEAL

The issues presented for appeal, as stated by Appellant, are as follows:

1. The Court erred when it gave instructions to the jury to determine the law of a citizen's arrest.

Standard of Review: Review for correctness. See Green v. Louder, 2001 UT 62 P14, 29 P.3d 638 (holding that review of challenges to jury instructions are under a "correctness" standard).

2. The Court's jury instructions to determine the facts of a citizen's arrest were in error.

Standard of Review: Review for correctness. See Green v. Louder, 2001 UT 62 P14, 29 P.3d 638 (holding that review of challenges to jury instructions are under a "correctness" standard).

3. The Court erred when it ordered Appellant to pay the Appellee's court costs.

Standard of Review: Abuse of discretion. See Jensen v. Sawyers, 2005 UT 81 P140, 130 P.3d 325 (holding that the trial court's decision to award costs under Rule 54(d)(2) of the Utah Rules of Civil Procedure is reviewed under an abuse of discretion standard).

4. The Court erred when it denied the Appellant damages awarded to him by the jury.

Standard of Review: Appellant's argument on its fourth point on appeal appears to claim that the statute upon which the jury instruction regarding Appellee having a lawful right to detain Appellant is unconstitutional. Accordingly, it appears that the Appellant is challenging both the instruction and the constitutionality of the underlying statute. Both issues are issues of law which are reviewed for correctness. See Green v. Louder, 2001 UT 62 P14, 29 P.3d 638 (holding that review of challenges to jury instructions are under a "correctness" standard); and State v. Thomas, 2002 UT 128 P4, 63 P.3d 672 (holding that conclusions of law of a district court are reviewed for correctness).

DETERMINATIVE LAW

The following statutes and rules are set out verbatim in the addendum attached hereto:

Utah Code Ann. §78-11-18

Rule 24 of the Utah Rules of Appellate Procedure

Rule 33 of the Utah Rules of Appellate Procedure

Rule 34 of the Utah Rules of Appellate Procedure

Rule 40 of the Utah Rules of Appellate Procedure

Rule 54 of the Utah Rules of Civil Procedure

STATEMENT OF THE CASE

This case involves the claim of Lynn Jenkins (“Appellant”) for false imprisonment as the result of being detained by employees of National Product Sales (“Appellee”), after returning to Appellee’s store after removing a truck bumper from the store and taking it to Bountiful. Appellant alleged at trial that he had permission to take the merchandise with him to Bountiful, while Appellee alleged that Appellant had only been given permission to take the bumper to the store parking lot to check it for fit. A jury trial was held on August 12, 2005, in which the jury entered a no-cause verdict based on a finding that Appellee’s actions were within the scope of limited immunity for merchants as outlined in Utah Code Ann. §78-11-18. This appeal followed.

RELEVANT FACTS

Appellant has not provided a statement of relevant facts, or any citations to the record to support any such facts. The only references to material that would appear in the record are references to portions of the Verdict Form. The Verdict Form is in the record at pages 250 - 253. As Appellant has not provided a statement of relevant facts or made any other attempt to marshal the facts in support of his issues on appeal, it must be

assumed that the jury's findings were adequately supported by evidence at trial. See Harding v. Bell, 2002 UT 108 P19, 57 P.3d 1093.

SUMMARY OF THE ARGUMENT

Appellee contends as a preliminary matter that Appellant's Issues Nos. 1, 3, and 4 fail as a matter of law on appeal as Appellant has failed to adequately brief these issues. Appellant has made bald citations to cases on these points without attempting to analyze or otherwise explain the relevance of the cases, or to make any meaningful analysis of these issues and the alleged errors of the trial court. In fact, with respect to Issue No. 1, it is not even clear what Appellant's issue on appeal really is.

With respect to Appellant's Issue No. 1, Appellee further contends that as the law of citizen's arrest was not the basis for the jury's entry of a no-cause verdict against Appellant, then any mistake as to the law of citizen's arrest was harmless error by the Court.

With respect to Appellant Issue No. 2, Appellee contends that there was no error in the jury instructions regarding citizen's arrest as the jury instructions include the very requirements that Appellant claims are lacking. Appellee also contends that as citizen's arrest was not the basis for the no-cause verdict against Appellant, that any error that may have occurred is harmless.

With respect to Appellant Issue No. 3, Appellee contends that pursuant to Rule 54(d)(2) of the Utah Rules of Civil Procedure, Appellee was entitled to an award of costs as the prevailing party.

With respect to Appellant Issue No. 4, Appellee further contends that Utah Code Ann. §78-11-18 is not unconstitutional as it does not abrogate an existing cause of action, and even if it did, it is constitutional as it is a reasonable means of eliminating a clear social and economic evil.

ARGUMENT

I. APPELLANT’S FIRST POINT ON APPEAL FAILS BECAUSE APPELLANT HAS FAILED TO PROPERLY BRIEF THE ISSUE AND BECAUSE THE LAW OF CITIZEN’S ARREST WAS NOT THE BASIS FOR THE ENTRY OF A NO-CAUSE OF ACTION AGAINST APPELLANT.

Appellant’s first issue on appeal is that “the court clearly erred when it gave instructions to the jury to determine the law of a citizen’s arrest.” Appellant’s Brief, page 5. Appellant’s Brief on this point is deficient under Rule 24 of the Utah Rules of Appellate Procedure and should not be considered. Appellant’s entire argument on this issue is as follows:

Standard of Review: State v. Trane, 2002 Utah Lexis 138,*; 2002 UT 97; 57 P.2d 1052, [*12] “The actual issue in this case is whether the [NPS] officers had authority and probable cause to arrest [plaintiff].” See Appellant’s Brief, page 1.

and

As to Issue: I., the court clearly erred when it gave instructions to the jury to determine the law of a citizen's arrest. Determinative law: The Supreme Court has stated an arrest is an issue of law. See: State v. Trane, 2002 Utah LEXIS 138,*; 2002 UT 97; 57 P.3d 1052, "Further, the questions of whether an arrest ... is constitutional are questions of law State v. Harmon, 910 P.2d 1196, 1199; State v. Brown, 853 P.2d 851, 855 (Utah 1992)." See Appellant's Brief, page 5.

This argument fails to even properly identify how the trial court allowed the jury to determine the law of citizen's arrest or even which instructions purportedly allow the jury to determine the law of citizen's arrest. It is also not clear how this point on appeal is distinguishable from Appellant's second point on appeal which claims that the instructions to determine the facts of citizen's arrest were in error. Further, Appellant has not provided any meaningful analysis or development of the cited authority to explain how citations from cases dealing with criminal convictions have any bearing in a civil suit for false imprisonment. Absent development and reasoned analysis of the cited authority, this issue has not been adequately briefed. See Spencer v. Pleasant View City, 2003 UT App 379 P20, 80 P.3d 546.

Most importantly, any alleged error on this point is harmless. A proper citizen's arrest is a defense to a claim for false imprisonment. See McFarland v. Skaggs Cos., 678 P.2d 298, 300-303 (Utah 1984) (analyzing the authority to make a citizen's arrest as a defense to a false imprisonment claim). The jury found that Appellant was intentionally detained by the Appellee without Appellant's consent. See Verdict Form, page 1, R.250. The jury also found that Appellant was aware of the detention or was damaged by the

detention. See Verdict Form, page 1, R.250. Accordingly, Appellant had established his *prima facie* case for false imprisonment and cannot contend that he was prevented from establishing his *prima facie* case because of any improper instruction. See Watters v. Querry, 626 P.2d 455, 459 (Utah 1981) (holding that “no flaw in the court’s instructions relating to negligence can inure to the plaintiff’s detriment” because the jury had found in the plaintiff’s favor on this issue, but dismissed on the issue of causation).

The jury subsequently found that the Appellee had the lawful right to detain the Appellant. See Verdict Form, pages 1-2, R.250-251. However, this finding was not based on the citizen’s arrest privilege, but on the merchant’s authority to detain under Utah Code Ann. §78-11-18. Under Utah law, it is harmless error to give an improper jury instruction if a jury could have reached a no-cause verdict on alternate theories and the jury did not identify which theory it relied upon in reaching a no-cause verdict. See Butler v. Naylor, 1999 UT 85 P21, 987 P.2d 41 (holding harmless error to give improper jury instruction if jury could have reached no-cause verdict on alternate theories presented by defense, where jury did not identify theory relied upon in the verdict). In the instant case, the jury specifically found the Appellee’s conduct to be lawful under the merchant’s authority to detain outlined in Utah Code Ann. §78-11-18, not under the theory of a proper citizen’s arrest. Therefore, any improper instruction regarding the law of citizen’s arrest was harmless error because it was not the basis for the jury’s decision.

II. APPELLANT'S SECOND POINT ON APPEAL FAILS BECAUSE THE COURT'S JURY INSTRUCTION REGARDING CITIZEN'S ARREST WAS PROPER AND BECAUSE ANY ERROR IN THE INSTRUCTION WAS HARMLESS.

Appellant states as his second issue on appeal that the “court’s jury instructions to determine the facts of the citizen’s arrest were in error.” See Appellate Brief, page 6. In his Statement of the Issues Presented for Review, Appellant apparently contends that it was Paragraph 3 of the Verdict Form that was in error.¹ However, Paragraph 3 of the Verdict Form is not the instruction regarding the law of citizen’s arrest. Rather, it is Paragraph 4 of the Verdict Form which contains the instruction regarding the law of citizen’s arrest.

Appellant correctly notes that for a citizen’s arrest to be lawful, the person making the arrest must be given notice at the time of the detention or arrest of the arresting person’s intention, cause and authority to make the arrest. See Appellate’s Brief, page 6. However, Appellant fails to recognize that this precise instruction was given in Paragraph 4 of the Verdict Form, and as part of Instruction No. 31. Paragraph 4 of the Verdict Form and of Jury Instruction No. 31 reads:

¹ The substance of the Verdict Form was also included in the jury instructions as Instruction No. 31. It should be noted that a typographical error resulted in two Paragraphs being identified as paragraph “3”, with the first paragraph of these two paragraphs being renumbered by the Court as Paragraph 2(a) when the jury requested a clarification on this issue. See Transcript of Trial, R.312 (page 234 of the transcript). It appears that the jury did not actually correct the typographical error. It is the first Paragraph 3, which should be renumbered as 2(a) which Appellant refers to in his Statement of Issues Presented for Review.

If you find that the Defendant or its employees performed a “citizens’ arrest”, then do you also find that the Defendant or its employees and/or agents provided notice to the Plaintiff at the time of the detention of his intention to detain Plaintiff, the cause of the detention, and the person’s authority to make the detention.

See Paragraph 4 of Instruction 31, R.281 and Paragraph 4 of Verdict Form, R.252.

Accordingly, there is no error in the jury instructions because the jury instruction Appellant claims should have been included, was in fact, included in the jury instructions and verdict form. See Brewer v. Denver & Rio Grande W.R.R., 2001 UT 77 PP38 and 41, 31 P.3d 557 (holding no error where requested jury instruction was properly covered in other jury instructions).

Further, even if Paragraph 4 was not a proper statement of the law, the error is harmless. Utah courts “will not reverse for errors in jury instructions if the complaining party ‘fails to demonstrate how the court’s refusal to adopt their proposed jury instructions prejudiced them.’” Cheves v. Williams, 1999 UT 86 P37, 993 P.2d 191 (citing Walker Drug Co. V. La Sal Oil Co., 972 P.2d 1238, 1249 (Utah 1998)). In the instant case, Appellant has failed to indicate how he has been prejudiced by any alleged deficiency regarding the instructions on citizen’s arrest at trial. As discussed in Section I supra, Appellant established his *prima facie* case for false imprisonment, meaning that any error in the instructions regarding citizen’s arrest did not prevent him from establishing his case. The jury returned a no-cause verdict specifically based on merchant’s immunity under Utah Code Ann. § 78-11-18, not the citizen’s arrest privilege.

Accordingly, even if the jury instructions on citizen's arrest were in error, Appellant has not been prejudiced by any such error.

III. APPELLANT'S THIRD POINT ON APPEAL FAILS BECAUSE THE COURT PROPERLY ORDERED THE APPELLANT TO PAY APPELLEE'S COSTS AS APPELLEE WAS THE PREVAILING PARTY AT TRIAL.

As a preliminary matter, Appellant has failed to properly brief this issue and this point should be disregarded on appeal. Appellant's entire argument on this issue consists of two quotes from the decision in Eddy v. Albertson's, Inc., 2001 UT 88, 34 P.3d 781, into which Appellant has inserted "NPS", "Appellee" and "Appellant" in place of the names of the parties in that case.

In his Statement of the Issues Presented for Review, Appellant quotes the Eddy decision as follows:

The jury was justified in concluding that the [NPS] employees detained [appellant] on suspicion of shoplifting and that they failed to satisfy the citizen's arrest statutory requirements. While there was other evidence supportive of [appellee's] version of events, the jury was entitled to make its own judgments on controverted testimony regarding the facts.

See Appellant's Brief, pages 2 and 3 (citing Eddy at P16). In his Argument section on this point, Appellant again quotes Eddy as follows:

The jury found that [NPS had] falsely imprisoned [appellant], but did not find intentional infliction of emotional distress. Accordingly, the jury awarded \$5616 in damages and costs.

See Appellant's Brief, page 6 (citing Eddy at P8). This argument fails to comply with the requirements of Rule 24 of the Utah Rules of Appellate procedure as outlined in Spencer,

supra. Appellant has failed to provide any meaningful analysis of this issue and has failed to provide any analysis or reasoning regarding his citations to legal authority. It is not a proper argument to insert the current party's names into quotes from prior decisions.

Further, the Eddy decision is not on point on this issue. Eddy was an appeal from a denial of the defendant's motion for a directed verdict after a jury found in favor of the plaintiff in a false imprisonment case. Id. at P8. As a prevailing party, the plaintiff in that case would be entitled to damages and costs. In the instant case, the opposite situation is presented. Appellant was not the prevailing party at trial because the jury entered a no-cause verdict. Accordingly, the Appellee is the prevailing party at trial and is entitled to its costs pursuant to Rule 54(d)(2) of the Utah Rules of Civil Procedure. Appellant has not provided any citation to law or facts, or any analysis of any such citation, to explain how the trial court abused its discretion in awarding costs to Appellee.

IV. APPELLANT'S FOURTH POINT ON APPEAL FAILS BECAUSE APPELLANT HAS FAILED TO ADEQUATELY BRIEF THE ISSUE AND BECAUSE THE COURT WAS CORRECT TO NOT AWARD DAMAGES TO APPELLANT.

Appellant has failed to properly brief his claim that the court erred by not awarding damages as found by the jury. Appellant's argument begins with another citation from the Eddy decision, supra, into which Appellant again inserts the current parties' names

into a statement containing factual determinations from the Eddy decision, rather than the current decision. Appellant states:

Based on th[e] evidence, it was reasonable for the jury to conclude that the two [appellee's] employees were acting on suspicion of shoplifting, and that under the circumstances the suspicion was unfounded and could not give rise to a right to arrest and detain.

See Appellant's Brief, page 7 (citing Eddy at P11). Whatever was reasonable for the jury to conclude in the Eddy decision, based on the evidence presented in that case, has no bearing on the current matter before the Court. The Eddy decision does not, in any way, indicate that Appellee in the instant case did not have a right to detain the Appellant. Appellant has not provided any argument or analysis to explain how Eddy in anyway is relevant to the issue of whether Appellant was entitled to prevail at trial in his own case.

The only other argument in support of Appellant's fourth claim of error consists of citations to the decisions of Laney v. Fairview City, 2002 UT 79, 57 P.3d 1007 (citing Berry v. Beech Aircraft Corp., 517 P.2d 670 (Utah 1985) and Gallivan v. Walker, 2002 UT 89, 54 P.3d 1069, regarding various provisions of the Utah Constitution, and an assertion that "appellee's immunity, granted by the jury, failed to meet the immunity standard established by the Laney decision and equal protection requirements outlined in Gallivan. See Appellant's Brief, pages 7-8. Appellant is apparently asking this Court to declare at Utah Code Ann. §78-11-18 unconstitutional.

Under the decision of State v. Thomas, 961 P.2d 299, 305 (Utah 1998), the Supreme Court noted that the "court is not a depository in which the appealing party may

dump the burden of argument and research.” (Internal citations omitted). However, Appellant has failed to identify the test outlined in Laney to evaluate the statute and has failed to provide any analysis of the equal protection requirements the statute is claimed to violate. Appellant is merely throwing an issue before the Court and forcing the Court to argue and research the issue on his behalf. Such assertions fail to comply with the briefing requirements under Rule 24 of the Utah Rules of Appellate Procedure, particularly where the question is one of constitutional analysis.

Further, §78-11-18 does meet the standard in Laney, as taken from the decision in Berry. The Laney decision requires that a preliminary determination that a cause of action has been abrogated by statute. Id. at P49. If a cause of action has been abrogated, Laney then outlines a two-pronged analysis to determine whether the statute provides either a reasonable alternate remedy or eliminates a clear social or economic evil and that the elimination of the existing legal remedy is not an arbitrary or unreasonable means for achieving the objective. Id. at PP 54-55.

Section 78-11-18 does not abrogate a cause of action, but rather provides an affirmative defense, in the event that the merchant is able to prove the necessary elements of the defense. The fact that an affirmative defense is codified or created does not abrogate a cause of action. This is particularly true where the affirmative defense relied upon requires that the merchant’s actions be reasonable. A merchant can still be liable for

false arrest if a jury determines the merchant's actions do not meet the requirements of §78-11-18.

Even if §78-11-18 abrogates an existing legal remedy, §78-11-18 would still be constitutional under the second prong of the Laney test, as the legislature has acted to eliminate a clear social or economic evil. The Utah Supreme Court, as part of a discussion regarding the imposition of punitive damages in shoplifting cases, has noted that:

The very real problem of shoplifting pits two important considerations against each other--the right of the merchant to protect his inventory and the right of the citizen to be free from unwarranted detention and accusation. The common law rule of strict tort liability protected the patron, but at the expense of the merchant's property interest. On the other hand, absolute immunity for the merchant would go too far in allowing one private citizen the right to detain, search and question another.

McFarland at 304. Shoplifting is a significant problem in modern society. Shoplifting results in increased costs to both merchants and consumers. In order to allow merchants to better protect their inventory, the Legislature granted an affirmative defense to false arrest claims by §78-11-18. The statute is not an arbitrary or unreasonable means to meet the objective. Claims against merchants for detentions are not barred completely; rather, the merchant is given an affirmative defense, upon which the merchant bears the burden of proof at trial, that grants immunity to suit if the merchant's actions are reasonable and otherwise comply with §78-11-18. As a result, in the majority of cases, there will be issues of fact to be presented to a jury. Injured parties will have an opportunity to have

their case heard, and a jury will determine whether the merchant acted in a reasonable fashion.

CONCLUSION

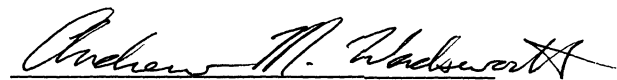
Appellant's Issues Nos. 1, 3, and 4 on appeal fail because Appellant has failed to adequately brief these issues so as to allow the Court to conduct a meaningful review of the alleged errors. Further, Issue No. 1 fails because the no-cause verdict was not based on the law of citizen's arrest, rendering any possible error on that issue harmless. Issue No. 2 also fails because the no-cause verdict was not based on the law of citizen's arrest, making any possible error harmless, and because the purported errors claimed in Issue No. 2 were covered in other jury instructions. Issue No. 3, in addition to being inadequately briefed, fails because Appellee was the prevailing party on appeal, and Appellant has not provided any reason why the trial court's discretion on the imposition of costs should be overturned. Finally, Issue No. 4, in addition to being inadequately briefed, fails because §78-11-18 does not abrogate an existing legal remedy, and even if it did, it is constitutional under the second prong of the test outlined in Laney as eliminating a clear social and economic evil, with the elimination of the remedy not being arbitrary or unreasonable.

Based on a review of Appellant's brief, Appellee contends that such appeal is frivolous as it is not grounded in fact, not warranted by existing law, and cannot be said to be based on a good faith argument to extend, modify, or reverse existing law. Pursuant to

O'Brien v. Rush, 744 P.2d 306, 310 (Utah Ct. App. 1987), a frivolous appeal is defined as “having no reasonable legal or factual basis as defined in Rule 40(a) [of the Utah Rules of Appellate Procedure]”, but does not require an examination of the issue of good faith. On at least three of Appellant’s four issues on appeal, Appellant has failed to adequately brief the issues, and the briefing on the remaining issue is cursory at best. The majority of the cases cited by Appellant have no bearing on the issues on appeal, and Appellant fails to provide any analysis of cases that are arguably relevant. Accordingly, Appellee asks that the judgment entered by the trial court be affirmed in all respects; that Appellee be granted damages on appeal pursuant to Rule 33 of the Utah Rules of Appellate Procedure for a frivolous appeal; and that Appellee be granted costs on appeal pursuant to Rule 34 of the Utah Rules of Appellate Procedure.

DATED this 24th day of May, 2006.

PLANT, CHRISTENSEN & KANELL



TERRY M. PLANT


ANDREW M. WADSWORTH

Attorneys for Defendant National Product Sales

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing Appellee's Brief was mailed, postage prepaid, this ~~28th~~ day of May, 2006.

Lynn A. Jenkins, I
3 East 2750 South
Bountiful, UT 84010
Plaintiff



ADDENDUM

- 1 Verdict Form
- 2 Utah Code Ann. § 78-11-18
- 3 Rule 24 of the Utah Rules of Appellate Procedure
- 4 Rule 33 of the Utah Rules of Appellate Procedure
- 5 Rule 34 of the Utah Rules of Appellate Procedure
- 6 Rule 40 of the Utah Rules of Appellate Procedure
- 7 Rule 54 of the Utah Rules of Civil Procedure

Tab 1

**THIRD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

LYNN A. JENKINS, I.,

Plaintiff,

vs.

NATIONAL PRODUCT SALES,
INC.,

Defendant.

VERDICT

Case No. 010911737
Judge John Paul Kennedy

FILED DISTRICT COURT
Third Judicial District

AUG 12 2005

SALT LAKE COUNTY

By *JK* Deputy Clerk

We, at least six of the Jurors in the above case, find as follows:

1. Plaintiff was detained by Defendant or its employees or agents who acted intentionally and without Plaintiff's consent.

Yes X

No

2. Plaintiff was aware of the detention or was damaged by the detention.

Yes X

No

3. Defendant, or its employees or agents, had the lawful right to detain the Plaintiff because:

- a. The Defendant, and or its employee or agent, had reason to believe that merchandise had been wrongfully taken by the Plaintiff, and the merchandise can be recovered by detaining the Plaintiff in a reasonable

manner for a reasonable length of time, for the purpose of attempting to effect the recovery of the merchandise or for the purpose of informing a peace officer of the circumstances of the detention.

Yes X

No _____

- b. The Defendant, and or its employee or agent, had probable cause to believe that Plaintiff had committed a retail theft or had taken the goods with an intent to steal them, if the detention is for a reasonable length of time for all or any of the following purposes: to recover the goods, or to make reasonable inquiry as to whether Plaintiff has in his possession unpurchased merchandise; to request and/or verify identification.

Yes _____

No X

- c. to inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer.

Yes _____

No X

3. Did Defendant show by a preponderance of the evidence that the person causing the detention of the Plaintiff had probable cause to believe that Plaintiff had committed retail theft and that the Defendant and its employees and agents acted reasonably in detaining Plaintiff under all circumstances of this case.

Yes

No

 X

4. If you find that the Defendant or its employees performed a “citizens’ arrest”, then do you also find that the Defendant or its employees and/or agents provided notice to the Plaintiff at the time of the detention of his intention to detain Plaintiff, the cause of the detention, and the person’s authority to make the detention.

Yes

 X

No

5. If you find that the Defendant or its employees performed a “citizens’ arrest”, and if your answer to No. 4 is “no”, was there reason to believe that the notice will endanger the life or safety of the person making the arrest, or will likely enable the Plaintiff to escape; or at the time of the detention the Plaintiff was actually engaged in the commission of, or attempted commission of, a crime; or, the Plaintiff is being detained as a part of his pursuit immediately after the commission of a crime?

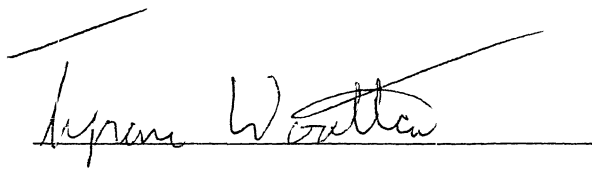
Yes

No

6. If you find that Plaintiff was detained, please state the dollar amount of damage, if any, Plaintiff proved by a preponderance of the evidence that he suffered as a direct and proximate consequence of the detention.

\$ 5,000

DATED this 12th day of August, 2005.

A handwritten signature in cursive script, appearing to read "Tyrone W. Sutton", is written over a horizontal line. The signature is fluid and somewhat stylized, with a long horizontal stroke at the end.

Foreperson

Tab 2

Utah Code Ann. § 78-11-18

LEXSTAT UCA 78-11-18

UTAH CODE ANNOTATED

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*** STATUTES CURRENT THROUGH THE 2005 SECOND SPECIAL SESSION ***

*** ANNOTATIONS CURRENT THROUGH 2006 UT 7, 2006 UT APP 33 ***

*** FEBRUARY 9, 2006(FEDERAL CASES) ***

TITLE 78. JUDICIAL CODE

PART II. ACTIONS, VENUE, LIMITATION OF ACTIONS

CHAPTER 11. ACTIONS -- RIGHT TO SUE AND BE SUED

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Utah Code Ann. § 78-11-18 (2006)

§ 78-11-18. Merchant's authority to detain

Any merchant who has reason to believe that merchandise has been wrongfully taken by an individual contrary to Section 78-11-15 or 78-11-16 and that he can recover such merchandise by taking such individual into custody and detaining him may, for the purpose of attempting to effect such recovery or for the purpose of informing a peace officer of the circumstances of such detention, take the individual into custody and detain him in a reasonable manner and for a reasonable length of time. Such taking into custody and detention by a merchant or his employee shall not render such merchant or his employee criminally or civilly liable for false arrest, false imprisonment, slander or unlawful detention or for any other type of claim or action unless the custody and detention are unreasonable under all the circumstances.

HISTORY: L. 1975, ch. 136, § 5; 1981, ch. 93, § 4.

Tab 3

Utah R App P Rule 24

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STATE RULES
UTAH RULES OF APPELLATE PROCEDURE
TITLE V GENERAL PROVISIONS

Utah R App P Rule 24 (2006)

Review Court Orders which may amend this Rule

Rule 24 Briefs

(a) Brief of the appellant The brief of the appellant shall contain under appropriate headings and in the order indicated

(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties The list should be set out on a separate page which appears immediately inside the cover

(2) A table of contents, including the contents of the addendum, with page references

(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited

(4) A brief statement showing the jurisdiction of the appellate court

(5) A statement of the issues presented for review, including for each issue the standard of appellate review with supporting authority, and

(A) citation to the record showing that the issue was preserved in the trial court, or

(B) a statement of grounds for seeking review of an issue not preserved in the trial court

(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule

(7) A statement of the case The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below A statement of the facts relevant to the issues presented for review shall follow All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule

(8) Summary of arguments The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief It shall not be a mere repetition of the heading under which the argument is arranged

(9) An argument The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on A party challenging a fact finding must first marshal all record evidence that supports the challenged finding A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award

(10) A short conclusion stating the precise relief sought

Utah R. App. P. Rule 24

(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of

(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief,

(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion, in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service, and

(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include

(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant, or

(2) an addendum, except to provide material not included in the addendum of the appellant. The appellee may refer to the addendum of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraph (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs. Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule. In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

(g) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant for the purposes of this rule and Rule 26, unless the parties otherwise agree or the court otherwise orders. The brief of the appellant shall not exceed 50 pages in length. The brief of the appellee/cross-appellant shall contain the issues and arguments involved in the cross-appeal as well as the answer to the brief of the appellant and shall not exceed 50 pages in length. The appellant shall then file a brief which contains an answer to the original issues raised by the appellee/cross-appellant and a reply to the appellee's response to the issues raised in the appellant's opening brief. The appellant's second brief shall not exceed 25 pages in length. The appellee/cross-appellant may then file a second brief, not to exceed 25 pages in length, which contains only a reply to the appellant's answer to the original issues raised by the appellee/cross-appellant's first brief. The lengths specified by this paragraph are exclusive of table of contents, table of authorities, and addenda.

(h) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages requested, and the good cause for granting the motion. A motion filed at least seven days before the date the brief is due or seeking five or fewer additional pages need not be

Utah R App P Rule 24

accompanied by a copy of the brief. A motion filed less than seven days before the date the brief is due and seeking more than 5 additional pages shall be accompanied by a copy of the draft brief for in camera inspection. If the motion is granted, any responding party is entitled to an equal number of additional pages without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(i) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made within 7 days of filing and shall be similarly limited.

(k) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

HISTORY: Amended effective October 1, 1992, July 1, 1994, April 1, 1995, April 1, 1998, November 1, 1999, April 1, 2003, November 1, 2004, April 1, 2006

NOTES:

Advisory Committee Note -- Rule 24 (a)(9) now reflects what Utah appellate courts have long held. See *In re Beesley*, 883 P.2d 1343, 1349 (Utah 1994), *Newmeyer v. Newmeyer*, 745 P.2d 1276, 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate counsel must play the devil's advocate. '[Attorneys] must extricate [themselves] from the client's shoes and fully assume the adversary's position. In order to properly discharge the [marshalling] duty, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.'" *ONEIDA/SLIC, v. ONEIDA Cold Storage and Warehouse, Inc.*, 872 P.2d 1051, 1052-53 (Utah App. 1994) (alteration in original) (quoting *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah App. 1991)). See also *State ex rel. M.S. v. Salata*, 806 P.2d 1216, 1218 (Utah App. 1991), *Bell v. Elder*, 782 P.2d 545, 547 (Utah App. 1989), *State v. Moore*, 802 P.2d 732, 738-39 (Utah App. 1990).

The brief must contain for each issue raised on appeal, a statement of the applicable standard of review and citation of supporting authority.

Amendment Notes -- The 2003 amendment deleted Subdivision (k) pertaining to brief covers.

The 2004 amendment added the last sentence in Subdivision (a)(9).

The 2006 amendment substituted "this paragraph" for "this rule" in the last sentence in Subdivision (g), deleted "and may be exceeded only by permission of the court. The court shall grant reasonable requests, for good cause shown" from the end of Subdivision (b), and added Subdivision (h), making related changes.

Tab 4

Utah R. App P. Rule 33

1 of 1 DOCUMENT

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STATE RULES
UTAH RULES OF APPELLATE PROCEDURE
TITLE V. GENERAL PROVISIONS

Utah R App P Rule 33 (2006)

Review Court Orders which may amend this Rule

Rule 33 Damages for delay or frivolous appeal; recovery of attorney's fees.

(a) Damages for delay or frivolous appeal. Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.

(b) Definitions. For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

(c) Procedures.

(1) The court may award damages upon request of any party or upon its own motion. A party may request damages under this rule only as part of the appellee's motion for summary disposition under Rule 10, as part of the appellee's brief, or as part of a party's response to a motion or other paper.

(2) If the award of damages is upon the motion of the court, the court shall issue to the party or the party's attorney or both an order to show cause why such damages should not be awarded. The order to show cause shall set forth the allegations which form the basis of the damages and permit at least ten days in which to respond unless otherwise ordered for good cause shown. The order to show cause may be part of the notice of oral argument.

(3) If requested by a party against whom damages may be awarded, the court shall grant a hearing.

NOTES:

Advisory Committee Note. -- Rule 33 is substantially redrafted to provide definitions and procedures for assessing penalties for delays and frivolous appeals.

If an appeal is found to be frivolous, the court must award damages. This is in keeping with Rule 11 of the Utah Rules of Civil Procedure. However, the amount of damages -- single or double costs or attorney fees or both -- is left to the discretion of the court. Rule 33 is amended to make express the authority of the court to impose sanctions upon the party or upon counsel for the party. This rule does not apply to a first appeal of right in a criminal case to avoid the conflict created for appointed counsel by *Anders v California*, 386 US 738 (1967) and *State v Clayton*, 639 P 2d 168 (Utah 1981). Under the law of these cases, appointed counsel must file an appeal and brief if requested by the defendant, and the court must find the appeal to be frivolous in order to dismiss the appeal.

Tab 5

Utah R. App. P. Rule 34

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STATE RULES
UTAH RULES OF APPELLATE PROCEDURE
TITLE V. GENERAL PROVISIONS

Utah R App P Rule 34 (2006)

Review Court Orders which may amend this Rule

Rule 34. Award of costs

(a) To whom allowed. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment or order is affirmed, costs shall be taxed against appellant unless otherwise ordered; if a judgment or order is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment or order is affirmed or reversed in part, or is vacated, costs shall be allowed as ordered by the court. Costs shall not be allowed or taxed in a criminal case.

(b) Costs for and against the state of Utah. In cases involving the state of Utah or an agency or officer thereof, an award of costs for or against the state shall be at the discretion of the court unless specifically required or prohibited by law.

(c) Costs of briefs and attachments, record, bonds and other expenses on appeal. The following may be taxed as costs in favor of the prevailing party in the appeal: the actual costs of a printed or typewritten brief or memoranda and attachments not to exceed \$ 3.00 for each page, actual costs incurred in the preparation and transmission of the record, including costs of the reporter's transcript unless otherwise ordered by the court, premiums paid for supersedeas or cost bonds to preserve rights pending appeal, and the fees for filing and docketing the appeal.

(d) Bill of costs taxed after remittitur. A party claiming costs shall, within 15 days after the remittitur is filed with the clerk of the trial court, serve upon the adverse party and file with the clerk of the trial court an itemized and verified bill of costs. The adverse party may, within 5 days of service of the bill of costs, serve and file a notice of objection, together with a motion to have the costs taxed by the trial court. If there is no objection to the cost bill within the allotted time, the clerk of the trial court shall tax the costs as filed and enter judgment for the party entitled thereto, which judgment shall be entered in the judgment docket with the same force and effect as in the case of other judgments of record. If the cost bill of the prevailing party is timely opposed, the clerk, upon reasonable notice and hearing, shall tax the costs and enter a final determination and judgment which shall thereupon be entered in the judgment docket with the same force and effect as in the case of other judgments of record. The determination of the clerk shall be reviewable by the trial court upon the request of either party made within 5 days of the entry of the judgment.

(e) Costs in other proceedings and agency appeals. In all other matters before the court, including appeals from an agency, costs may be allowed as in cases on appeal from a trial court. Within 15 days after the expiration of the time in which a petition for rehearing may be filed or within 15 days after an order denying such a petition, the party to whom costs have been awarded may file with the clerk of the appellate court and serve upon the adverse party an itemized and verified bill of costs. The adverse party may, within 5 days after the service of the bill of costs file a notice of objection and a motion to have the costs taxed by the clerk. If no objection to the cost bill is filed within the allotted time, the clerk shall thereupon tax the costs and enter judgment against the adverse party. If the adverse party timely objects to the cost bill, the clerk, upon reasonable notice and hearing, shall determine and settle the costs, tax the same, and a judgment shall be entered thereon against the adverse party. The determination by the clerk shall be reviewable by the court upon the request of either party made within 5 days of the entry of judgment; unless otherwise ordered, oral argument shall not be permitted. A judgment under this section may be filed with the clerk of any district court in the

Utah R. App. P. Rule 34

state, who shall docket a certified copy of the same in the manner and with the same force and effect as judgments of the district court.

HISTORY: Amended effective November 1, 1999

Tab 6

Utah R. App. P Rule 40

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UTAH RULES OF APPELLATE PROCEDURE
TITLE V. GENERAL PROVISIONS

Utah R App P Rule 40 (2006)

Review Court Orders which may amend this Rule

Rule 40 Attorney's or party's certificate, sanctions and discipline.

(a) Attorney's or party's certificate. Every motion, brief, and other paper of a party represented by an attorney shall be signed by at least one attorney of record who is an active member in good standing of the Bar of this state. The attorney shall sign his or her individual name and give his or her business address, telephone number, and Utah State Bar number. A party who is not represented by an attorney shall sign any motion, brief, or other paper and state the party's address and telephone number. Except when otherwise specifically provided by rule or statute, motions, briefs, or other papers need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate that the attorney or party has read the motion, brief, or other paper; that to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, it is not frivolous or interposed for the purpose of delay as defined in Rule 33. If a motion, brief, or other paper is not signed as required by this rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the attorney or party. If a motion, brief, or other paper is signed in violation of this rule, the authority and the procedures of the court provided by Rule 33 shall apply.

(b) Sanctions and discipline of attorneys and parties. The court may, after reasonable notice and an opportunity to show cause to the contrary, and upon hearing, if requested, take appropriate action against any attorney or person who practices before it for inadequate representation of a client, conduct unbecoming a member of the Bar or a person allowed to appear before the court, or for failure to comply with these rules or order of the court. Any action to suspend or disbar a member of the Utah State Bar shall be referred to the Office of Professional Conduct of the Utah State Bar.

(c) Rule does not affect contempt power. This rule shall not be construed to limit or impair the court's inherent and statutory contempt powers.

(d) Appearance of counsel pro hac vice. An attorney who is licensed to practice before the bar of another state or a foreign country but who is not a member of the Bar of this state, may appear, pro hac vice upon motion, filed pursuant to the Code of Judicial Administration. A separate motion is not required in the appellate court if the attorney has previously been admitted pro hac vice in the lower tribunal, but the attorney shall file in the appellate court a notice of appearance pro hac vice to that effect.

HISTORY: Amended effective November 1, 1999

Tab 7

URCP Rule 54

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STATE RULES
UTAH RULES OF CIVIL PROCEDURE
PART VII. JUDGMENT

URCP Rule 54 (2006)

Review Court Orders which may amend this Rule

Rule 54. Judgments; costs.

(a) Definition; form "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment need not contain a recital of pleadings, the report of a master, or the record of prior proceedings. Judgments shall state whether they are entered upon trial, stipulation, motion or the court's initiative; and, unless otherwise directed by the court, a judgment shall not include any matter by reference.

(b) Judgment upon multiple claims and/or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, and/or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for judgment.

(1) Generally. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves.

(2) Judgment by default. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

(d) Costs.

(1) To whom awarded. Except when express provision therefor is made either in a statute of this state or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; provided, however, where an appeal or other proceeding for review is taken, costs of the action, other than costs in connection with such appeal or other proceeding for review, shall abide the final determination of the cause. Costs against the state of Utah, its officers and agencies shall be imposed only to the extent permitted by law.

(2) How assessed. The party who claims his costs must within five days after the entry of judgment serve upon the adverse party against whom costs are claimed, a copy of a memorandum of the items of his costs and necessary disbursements in the action, and file with the court a like memorandum thereof duly verified stating that to affiant's knowledge the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed may, within seven days after service of the memorandum of costs, file a motion to have the bill of costs taxed by the court.

URCP Rule 54

A memorandum of costs served and filed after the verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions of law, but before the entry of judgment, shall nevertheless be considered as served and filed on the date judgment is entered

(e) Interest and costs to be included in the judgment The clerk must include in any judgment signed by him any interest on the verdict or decision from the time it was rendered, and the costs, if the same have been taxed or ascertained. The clerk must, within two days after the costs have been taxed or ascertained, in any case where not included in the judgment, insert the amount thereof in a blank left in the judgment for that purpose, and make a similar notation thereof in the register of actions and in the judgment docket.

HISTORY: Amended effective January 1, 1985, November 1, 2003