

2006

Walter Noel Stewart v. Bountiful City : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

**WALTER NOEL STEWART,
Appellant,**

vs.

**BOUNTIFUL CITY,
Appellee.**

Case No. 20060047

**BENCH TRIAL NOVEMBER 10TH, 2005, ORDER OF THE SECOND DISTRICT
COURT, DAVIS COUNTY, STATE OF UTAH BOUNTIFUL DEPARTMENT
BEFORE THE HONORABLE THOMAS L. KAY**

Case No. 055801909

REPLY BRIEF FOR APPELLANT

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UTAH APPELLATE COURTS

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TABLE OF AUTHORITIES

Rule 24 (a) (5)(B), Utah Rules of Appellant Procedure

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ARGUMENT

A. OPENING BRIEF COULD NOT PROVIDE WHAT DID NOT EXIST.

1. In Appellee's reply, cited case law and statute is flawed application, and truly without merit since opening brief of Appellant did state the issues and nature of the trial court's decision making. The critical question remains, did the trial court err when entering a judgement unsubstantiated by the evidence, particularly respecting any criteria "beyond a reasonable doubt"? Evidence preserved at trial did not support any basis in the record for the district court's decision, vis-a'-vis, Rule 24(a)(5)(B) Utah Rules of App. P.

2. As demonstrated in Appellant's opening brief, the trial officer's censure occupies significant lengths of the short record without shedding any light on how it was derived from the evidence (Op. Br. pg. 2; pg.13-16; Record [Rd]: pg. 62: 2-7). Because the district court's decision rested on invective rather than reasoned objective representative of the evidence, does not place any onus on Appellant beyond that submitted in opening brief (Op. Br. pg. 2; pg. 8 at para 3, pg. 9: para 2&3, pg. 13: para. 19, pg 13-14: para 20.& para. 21).

3. In fact, Appellee's reply, offers its own misconstrued derivative of the trial evidence to bootstrap an unsubstantiated litany as attributable basis for the trial court's ruling. Despite preponderance of case law cited by Appellee, neither Appellant or Appellee could have, or did, provided what is not there (Rp. pg. 61 para. 3 & pg. 32 para. 1).

B. APPELLEE'S DISTORTIONS OF OPENING BRIEF ARE DISINGENUOUS

4. Examples of reply's selective-error-filled renditions are lengthy and patently erroneous including that opening brief was Appellant arguing that he "was in an emergency situation and should be allowed to violate traffic laws" (Rp. pg. 10: para. 5). Neither has Appellant (nor as a Defendant at trial) made any such arguments (Op. Br. pgs. 15-16). Stewart called 911 sometime upon entering the southbound I-15 freeway, after being injured at a remote construction sight location that was difficult to find even for experienced sub-contractors who had directions (Op. Br. pgs. 3-4: para. 1-2). By that time he elected to proceed to a location with which he was familiar in Bountiful City, also declining ambulance service, which did not impact Stewart's following traffic laws and driving prudently to get to emergency care (ibid also Op. Br. pgs. 7-8 1st para.). Whether Stewart was prudent in deciding his welfare rested on himself rather than waiting for ideally deployed ambulance care to arrive is not at issue (Op. Br. pg. 3 para 2).

5. What Appellee does not venture with replay is any basis in fact for the trial court ignoring the evidence (including its own finding) that Stewart was proceeding at all times with "heavy rush hour traffic" (Op. Br. pg. 11 para. 16; pg. 12 para. 17). Exceptionally this is shown in opening brief for the relevant point along 1000 to 1100 East where 500 South street narrows from two lanes to one lane and traffic flow though concomitant signals would have no prospect to have

exceeded the speed limit (ibid). Further, it is unquestioned and only lightly acknowledged in Appellee's replay, that Stewart's truck attracted Officer Bell's attention for no other reason than its emergency lights were activated. She did not have her radar gun activated and could not have selected Stewart's or any vehicle from heavy enfilade traffic flow (Rp. pg. 5: para. 3; pg. 10-11: 1st para; Op.Br. pg. 11 para. 14; pg. 8: 2nd para).

6. There is no contradiction that Stewart did appropriately stop for Bell at the 1100 East 500 South intersection and for which Bell admitted that she "[I] was not pursuing your vehicle" (Rd. pg. 10: 6; Op.Rp. 12: para 18). At best the trial court ignored its own rather significant experience and finding that 500 South "had heavy traffic" at such times of the day (and evidently did not find Bell credible that there was not any traffic). It is not plausible finding for Stewart to be speeding where this road junctions to one lane and all traffic comes to nearly a stand still going through traffic lights (Op. Br. pg. 4-5 para. 4). The trial officer's ruling for failure to stop is not supportable by the record and contradict Bell's admission that she was not pursuing Stewart (Op. Br. pg. 5: para 7).

7. To suggest Stewart was evading after having stopped at 1100 East intersection to inform Bell of his serious injury and intentions to proceed to the Lake View Emergency, is blatantly false argument (Op. Br. pg. 9 2nd para.). This is depicted from Bell's actions in deactivating her pursuit lights upon calling Bountiful communications for the first time, and conclusively a showing she was not

thereafter in pursuit of Stewart (Rp. pg. 22 1st para; Op.Br. pg. 13 para. 19).

Whether trial court is accustomed to a conspicuous disregard for the evidence should not be excused by an appeal to demeanor findings here by Appellee (Rp. pg. 17 2nd para).

8. If anything, as stated in opening brief, the trial was rife with judicial over-reaching and abuses which among others, the hearing officer subjecting the Defendant (Appellant) to leading, often verbose and loaded questioning. Several such instances are evident at trial where the Defendant was confronted with ameliorating his answers to avoid entrapment (Op. Br. pg. 13 at para 20, also Record 54: 16-25; 55).

C. THE DISTRICT COURT'S DEMEANOR FINDINGS, IF ANY, ARE UNDERMINED AND DEFIED BY THE RECORD

9. Appellee wishes to bolster its arguments for dismissal on technical grounds by suggesting the hearing officer somehow made adverse credibility findings to the Defendant that effectively erases overpowering evidence (Rp. 23 3rd para). In fact, if the hearing officer ever made such demeanor finding it would be in defiance of the record, but is not anywhere supportable that he did. The contrary is shown in any evidence that differed from that presented at trial by Stewart, such as Bell's recollections and dissembling testimony including: memory regarding advice of superiors Creil and Gilbert to "let this matter drop;" whether

hospital staff advised her she could not enter emergency treatment room for Stewart, regarding traffic flow relevant to “rush hour” conditions for which even the hearing officer evidently was aware from his own experiences (Op. Br. 8: para 3;12: 17; 12-13: para. 18; Rd: 57: 17-18; 62:19-21; 23-25; 63: 1-2), whether informed at the traffic stop of Stewart’s injury (Op.Br. pg. 5 para. 7; pg. 6 para. 8), and others.

10. Appellant will agree the hearing officer attempted to attribute Stewart with having “an attitude;” but this is not substantiated at any place in the evidence. The opposite was true of Stewart’s actions and against a convoluted mind set to suggesting that he was somehow responsible for Bell’s behavior. His statement that Bell could not be expected “to be perfect “ while castigating Stewart for moving with traffic to get to the hospital for medical attention is culpable (Rd. 63: 17-20). Nothing exists to support that Stewart was not in compliance of even Bell’s egregious order for a blood-soaked Stewart to re-park his truck before being allowed to enter the hospital for emergency treatment of a severe wound (Op. Br. 13-14: para. 20-21; Rd. 63: 14-20). Bell admitted prima fascia that she was “not pursuing Stewart” (Op.Br. pg. 6: para. 7); that within one block of encountering Stewart she did not have her radar gun turned on. (Op.Br. pg. 5 para. 5). One block later, where Stewart had stopped and informed Bell of injury and intentions to proceed to hospital, Bell made her first call to Bountiful Communications and turned off her pursuit lights (Op.Br. pg. 6). During testimony, Bell denied any

knowledge of superiors and hospital staff attempts at lending the situation with reasonable judgement. Instead of proving assistance in an emergency, Bell presented herself as an impediment to the situation. These are glaring errors that show a dilemma for the hearing office to arrive at where he did. Such should not lend itself even for "traffic court" and should be dealt with according to the equities.

CONCLUSIONS

Appellee's treatment of the nexus of the case is out of context excerpts. Such are misleading both going to evidentiary or even demeanor findings adverse to Appellant. Even Bell's own testimony shows otherwise. Appellee's reply is characterized by the deceptive postulate that Stewart thought "he was in an emergency situation and should be allowed to violate traffic laws." Appellee's reply is rife with half truths and outright false statements. Therefore, Appellee's reply should be compared with opening brief, and the record side by side to determine the context of actual circumstances. One example, is suggesting that somehow Bell activating her emergency lights (if she did) while traveling in the opposite direction, would be known to Stewart and/or the line up of rush hour traffic going in a direction opposed to that of Bell. Or for that matter, that they would have had room to pull off the road in such traffic? This all materialized within one block of where Bell first noticed Stewart at 1000 East and he turned around at 1100 East intersection? The fact that Bell did not arrive to the 1100 East intersection to even know that Stewart had stopped there to ask directions speaks how this evolved

(Op. Br. pg. 11 para. 14). Without making verbatim quotations, Appellant's opening brief did fairly represent the trial court's decision making for what it was, an unbecoming denunciation, not supportable by the evidence or even by the trial officer's own experience and finding for 500 South traffic conditions (at 7:00 p.m summer rush hour conditions). The record and opening brief poise substantial factual basis for what should have been reasoned decision making by the district court. Appellee here suggests technical basis and a contrived reading of the record to support dismissal without consideration of the equities. Certainly, Appellant is not asking a de novo review, as suggested by Appellee, but that at some point (herein) the equities be determinative. These unabashed characterizations are out of context for opening brief. This is thin tissue Appellee suggests for salvaging a suspect and conclusively flawed trial. It should be taken for what it is worth and this matter reversed in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Walter Noel Stewart". The signature is fluid and cursive, with a large initial "W" and a long, sweeping underline.

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CERTIFICATE OF SERVICE

I, Walter Noel Stewart, filing Pro Se state that on this November 3rd, 2006, the foregoing "REPLY BRIEF OF APPELLANT" was hand delivered to the Court of Appeals and sent by regular U.S.A. mail to:

John C. Ynchausti
790 South 100 East
Bountiful, Utah 84010

A handwritten signature in black ink, appearing to read "Walter Noel Stewart". The signature is written in a cursive, flowing style with a prominent horizontal line across the middle.

Walter Noel Stewart