2006

State of Utah v. Darrell Dean Anderson : Reply Brief

Utah Court of Appeals

Kenneth A. Bronston; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Brenda J. Beaton; Deputy Weber County Attorney; Attorneys for Appellant.
Merlin G. Calver; Attorney for Appellee.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, **Plaintiff/Appellant-Cross-Appellee,** **vs.** **DARRELL DEAN ANDERSON,** **Defendant/Appellee-Cross-Appellant.**	**Case No. 20060099-CA**

REPLY BRIEF OF APPELLEE/CROSS-APPELLANT

KENNETH A. BRONSTON (4470)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Heber M. Wells Building
160 East 300 South, 6th Fl.
PO BOX 140854
Salt Lake City, UT 84114-0854
Telephone: (801) 366-0180

BRENDA J. BEATON
Deputy Weber County Attorney

Telephone (801) 366-0100

Attorneys for Appellant/Cross-Appellee

MERLIN G. CALVER (0549)
234 24th St.
Ogden, UT 84401-1403

Telephone (801) 621-2911

Attorney for Appellee/Cross-Appellant

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, **Plaintiff/Appellant-** **Cross-Appellee,** **vs.** **DARRELL DEAN ANDERSON,** **Defendant/Appellee-** **Cross-Appellant.**	**Case No. 20060099-CA**

REPLY BRIEF OF APPELLEE/CROSS-APPELLANT

KENNETH A. BRONSTON (4470)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Heber M. Wells Building
160 East 300 South, 6th Fl.
PO BOX 140854
Salt Lake City, UT 84114-0854
Telephone: (801) 366-0180

BRENDA J. BEATON
Deputy Weber County Attorney

Telephone (801) 366-0100

Attorneys for Appellant/Cross-Appellee

MERLIN G. CALVER (0549)
234 24th St.
Ogden, UT 84401-1403

Telephone (801) 621-2911

Attorney for Appellee/Cross-Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, **Plaintiff/Appellant-** **Cross-Appellee,** **vs.** **DARRELL DEAN ANDERSON,** **Defendant/Appellee-** **Cross-Appellant.**	**Case No. 20060099 CA**

REPLY TO PLAINTIFF'S RESPONSIVE BRIEF

In their reply brief the State noted that defendant addressed the following two issues in his cross-appeal:

1. Whether the trial courts conclusion of law that the defendant had a prior conviction for domestic violence was supported by adequate facts to reach this conclusion.
2. Whether the definition off "cohabitant" in subdivision (c) of Utah Code §30-6-1(2) is facially vague and ambiguous as applied to the defendant.

POINT NUMBER ONE

THE TRIAL COURT FAILED TO FACTUALLY SUPPORT ITS CONCLUSION THAT THE DEFENDANT HAD A PREVIOUS DOMESTIC VIOLENCE CONVICTION.

Standard of review: An appellate court will review "...a trial court's legal conclusions for correctness, according the trial court no particular deference." *Orton v.*

Carter, 970 P.2d 1254, 1256 (Utah 1998); *State v. Barnett*, 2005 UT App. 88, ¶ 14, 127 P.3d 682. This review will include a determination of whether the court's conclusions of law are "predicated upon and find support in the findings of fact", *Gilmor v. Wright*, 850 P.2d 431, 436 (Utah 1983). These findings must be articulated with sufficient detail so that the basis of the ultimate conclusion can be understood. *Reid v. Mutual of Omaha Ins. Co.*, 776 P.2d 896 (899)(Utah 1989).

ARGUMENT

The plaintiff mistakenly asserts the trial court's findings are sufficient to support the legal conclusion defendant had a prior domestic violence conviction. (R395-396). However, the record does not support this conclusion. The defendant in his cross-appeal (Dfs. BR, pp. 9-10) noted that the plea in abeyance was only entered to disorderly conduct. The charging citation with the "D. V." notation issued by the Roy City Police Department is not determinative of what occurred in this case. If this were so, all misdemeanor citations issued with a "D. V." notation would automatically allow the issuing officer to make the ultimate decision that domestic violence had occurred and was the proper charge. At the defendant's hearing for the violation of his plea in abeyance, because Judge Baldwin was unable to determine factually that the defendant had originally plead to a domestic violence related charge, he entered the conviction against the defendant for the disorderly conduct charge only. (R352).

In light of Judge Baldwin's uncertainty regarding the Roy court proceeding, it was incumbent upon Judge Dutson to articulate with clarity the underlying facts upon which

he based his legal conclusion that the defendant had a prior domestic violence conviction. "Failure of the trial court to make findings on all material issues is reversible error, unless the facts in the record are 'clear, uncontroverted, and capable of supporting *only a finding in favor of the judgment.*'"(Emphasis added.) "The findings of fact must show that the Court's judgment or decree follows logically from, and is supported by, the evidence. The findings should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." *Butler, Crockett, et. al. v. Pinecrest Pipeline*, 909 P.2d 225, 231 (Utah 1995).

POINT NUMBER TWO

SUBDIVISION (C) OF UTAH CODE §30-6-1(2), DEFINING "COHABITANT" AS "A PERSON...WHO: (C) IS RELATED BY BLOOD OR MARRIAGE TO THE OTHER PARTY" IS OVERBROAD AND IMPERMISSIBLY VAGUE, AS APPLIED TO THE DEFENDANT.

***Standard of review*:** The plaintiff correctly cites *State v. Norris*, 2007 UT 5, "Whether a statute is unconstitutionally overbroad or vague is a question of law reviewed for correctness." "When addressing such a challenge, the court presumes that the statute is valid, and resolves any reasonable doubts in favor of constitutionality." *State v. Morrison*, 31 P.3d 547, ¶ 5 (Utah 2001), citing internally *State v. Lopes*, 1999 UT 24, ¶ 6, 980 P.2d 191.

ARGUMENT

The assertion by the plaintiff that the defendant did not have "standing" to challenge the constitutional infirmities of subdivision (c) of Utah Code §30-6-1(2) is patently incorrect. The record is clear that the language of subdivision (c) was the basis for enhancing the charges against the defendant to felonies against the defendant. The plaintiff's reliance on *Norris* to assert the defendant lacked standing is incorrect. The court in *Norris* declined to consider the constitutional challenges, noting the defendant, by entering an unconditional guilty plea, had waived his right to challenge the basis of his conviction on the merits.

The essence of the defendant's argument is that the definition of "cohabitant" in subdivision (c) is unconstitutionally overbroad and vague as it was applied to him. The definition fails to provide the kind of notice that would enable ordinary people to understand what prohibited conduct was applied to them, and the statute encourages arbitrary and discriminatory enforcement. *State v. McGuire*, 84 P.3d 1171 (Utah 2004). The "void-for-vagueness" doctrine requires the legislature to define the criminal offence in a manner that does not encourage arbitrary and discriminatory enforcement. *University of Utah v. Shurtleff,* 2006 UT 51. The legislature has given the term "cohabitant" specific meaning by expressly defining what a cohabitant is for purposes of Utah's Cohabitant Abuse Act. The Act defines a "cohabitant" as "an emancipated person...or a person of 16 years of age or older who...(c) is related by blood or marriage to the other party..." In *Greenwood v. City of North Salt Lake*, 817 P.2d 816, the court noted "The void-for-

vagueness doctrine requires...that a legislature establish a minimal guide to govern law enforcement."

This court, in *Keene v. Bosner*, 107 P.3d 693 (Utah App. 2005) gave direction for analyzing the definition of "cohabitant" as used in the spousal abuse connotation, but noted that a court "must make a factual determination on a case-by-case basis."(*Keene*, ¶ 6) While this court has previously determined that the application of the definition of a "cohabitant" is confined to the content of cohabitant abuse, see *Hill v. Hill*, 968 P.2d 866, 868 (Utah App. 1998), appellate courts in Utah have not specifically addressed just how broadly the Act's definition of "cohabitant" is to be construed, in the context of "related by blood or marriage."

The term "related by blood or marriage" is ambiguous and vague, providing no guidelines as to the context in which it applies. "When it is obvious that an attempt to give a statute universal and literal application leads to incongruous results which were never intended, the statute should be considered in light of its background and purpose, together with other aspects of the law which have a bearing on the problem involved." *State v. Bradshaw,* 2004 UT 298. "The purpose of the Cohabitant Abuse Act was to create a timely and simplified process whereby some level of protection and safety could be afforded to victims who had previously been outside the umbrella of orders available to persons involved in criminal prosecutions. These orders would require the parties subject to the protective order to leave the victim alone and provide for some measurable and enforceable safeguards, as determined by the court." *Bailey v. Bayles*, 18 P.3d 1129,

n4. In view of the fact that it is possible for one to be related by blood, but have no knowledge of that relationship, this language has the constitutional infirmity of vagueness. The term "related by marriage" is equally vague. For instance, would this language apply to a common law relationship?

The interpretive standards, provided by appellate courts, would suggest that this court rule that the definition of "cohabitant" contained in subdivision (c) of Utah Code §30-6-1(2) is vague, as it is applied to the defendant. The purpose of the Cohabitant Abuse Act, as set forth by this court in *Bailey v. Bayles*, ibid., does not justify the determination that the language of subdivision (c), i.e., "...related by blood or marriage..." should be applied to the defendant.

The disorderly conduct citation given to the defendant stems from an incident which occurred on August 22, 2002, while the original incident involving the victim, the defendant's wife, did not occur until August 2003, approximately a year later. Simply stated, there is no nexis between the actions involving the father-in-law and those involving the victim a year later.

When interpreting a statute, the reviewing court seeks to "evidence the true intent and purpose of the legislature," which, absent ambiguity, is best derived from the statute's plain meaning. *State v. Maestas*, 2002 UT 23 (¶ 52, 60 and 63 P.3d 621.) More significantly, the phrase "related by marriage" is not defined by the legislature, and is ambiguous as to its meaning. The term could apply to an alleged "common law" relationship, a relationship between cousins, brother- or sister-in-laws, etc. It is

ambiguous with regard to determining whether, as with the defendant, a father-in-law can be considered to be "related by marriage." Appellant, on page 10 of their reply brief, notes "The Cohabitant Abuse Act is defined for the purpose of protecting persons against abuse or domestic violence...any cohabitant who has been subject to abuse or domestic violence may seek an ex-parte protective order...". (App BR, p.10.)

The definition contained in subdivision (c), as applied to the defendant, is void for vagueness, and does not provide guidelines to avoid arbitrary and discriminatory enforcement. The definition failed to provide the defendant with knowledge that he was within the ambit of the definition.

In conclusion, it is therefore submitted that subdivision (c) of the statute is impermissibly vague as to its application. Given the difficulty in determining what "related by marriage" means, and to whom it must apply, a person of normal intelligence familiar with the language of this subsection would not know what behavior is being criminalized and allows for the arbitrary and capricious application of the definition. The Appellee/Cross-Appellant respectfully requests this court to find subdivision (c) vague and overbroad, as it applies to him.

RESPECTFULLY SUBMITTED this 5th day of March **2007.**

MERLIN G. CALVER
Attorney for Appellee/Cross-Appellant

CERTIFICATE OF MAILING

I hereby certify that on this 5th day of March **2007**, a true and correct copy of the foregoing **REPLY TO PLAINTIFF'S RESPONSIVE BRIEF** was mailed via United States Postal Service, first class and postage pre-paid to the following:

KENNETH A. BRONSTON
Assistant Utah Attorney General
PO Box 140854
Salt Lake City, UT 84414-0854

D. MICHAEL SHURTLEFF
Legal Assistant