

1995

Layton City v. Kenneth Kemp : Addendum to Opening Brief of Defendant-Appellant

Utah Court of Appeals

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**UTAH COURT OF APPEALS
BRIEF**

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 950293-CA

LAYTON CITY,	:	
	:	
Plaintiff-Appellee,	:	ADDENDUM TO
	:	OPENING BRIEF OF
v.	:	DEFENDANT-APPELLANT
	:	
KENNETH KEMP,	:	Case No. 950293-CA
	:	
Defendant-Appellant.	:	Category 2

APPEAL FROM A CONVICTION IN THE SECOND CIRCUIT COURT, LAYTON DEPARTMENT, HONORABLE K. ROGER BEAN, PRESIDING, OF INTERFERENCE WITH A PUBLIC SERVANT, IN VIOLATION OF UTAH CODE ANN. § 76-8-301.

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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ADDENDUM A

SECOND CIRCUIT COURT, STATE OF UTAH

DAVIS COUNTY, LAYTON DEPARTMENT

AMENDED MEMORANDUM
OF DECISION

LAYTON CITY, a Municipal Corporation,
Plaintiff,

vs.

KENNETH KEMP,
Defendant

No. 941001360

Date 4-7-95

Judge Bean

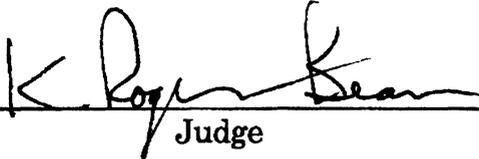
MATTER: DECISION ON DEFENDANT'S MOTION TO DISMISS

At the close of the prosecution's case, Defendant moved to dismiss. Counsel relied on three decisions, furnished to the Court. Having considered those, and having reviewed the evidence, the Court now denies that Motion.

In the *Little* case, the defendant objected to the inspector's proposed search of her apartment, and refused to unlock her door. In *Goodman*, the juvenile cursed the deputy sheriff and called him vulgar names. The *Bradshaw* case dealt with the defendant's disregard of the officer's telling him he was under arrest, daring the officer to shoot, and walking away. In none of them did the defendant affirmatively and physically interfere with the officer's doing his job.

In this case, there was more than name calling; it went beyond the verbal. Had Defendant stayed aside and expressed his criticism of what the constable was doing, we'd have had another scenario entirely. As the Court said in *Little*, remonstrating against an officer's intended acts (i.e., presenting reasons for opposition or grievance, urging or pleading in protest) is not considered interference. Here we had more on Defendant's part. It was his physical interference, his repeated placing of himself between the constable and the person the constable was dealing with that went too far. It was the positioning of Defendant's person, his body, between the constable and Defendant's girl friend and his making statements which could reasonably be taken as threatening that constituted the interference. Defendant forced the constable

either to cease doing his job or use force against Defendant. A person may not impose that choice on a public servant attempting to carry out his responsibilities. As in *State v. Gardiner*, 814 P.2d 568 (Utah 1991), Defendant's demeanor here was hostile and threatening. An officer is not required to mix it up in a street fight with a defendant's live-in boyfriend in order to carry out a personal property execution and a warrant of arrest.



Judge

ADDENDUM B

**AMENDMENTS TO THE
CONSTITUTION OF
THE UNITED
STATES**

AMENDMENTS I-X [BILL OF RIGHTS]
AMENDMENTS XI-XXVI

AMENDMENT I

[Religious and political freedom.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

[Right to bear arms.]

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III

[Quartering soldiers.]

No Soldier shall, in time of peace, be **quartered** in any house, without the consent of the Owner, nor in time of war, **but in a manner to be prescribed by law.**

AMENDMENT IV

[Unreasonable searches and seizures.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT XIV

Section	Section
1. [Citizenship — Due process of law — Equal protection.]	4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]
2. [Representatives — Power to reduce appointment.]	5. [Power to enforce amendment.]
3. [Disqualification to hold office.]	

Section 1. [Citizenship — Due process of law — Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. [Representatives — Power to reduce appointment.]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.]

No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5. [Power to enforce amendment.]

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

History: Proposed by Congress on June 16, 1866; declared to have been ratified by three-fourths of all the states on July 28, 1868.

AMENDMENT XV

Section	Section
1. [Right of citizens to vote — Race or color not to disqualify.]	2. [Power to enforce amendment.]

Section 1. [Right of citizens to vote — Race or color not to disqualify.]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Sec. 2. [Power to enforce amendment.]

The Congress shall have power to enforce this article by appropriate legislation.

History: Proposed by Congress on February 27, 1869; declared to have been ratified by more than three-fourths of all the states on March 30, 1870.

AMENDMENT XVI

[Income tax.]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE I
DECLARATION OF
RIGHTS

Section

1. [Inherent and inalienable rights.]
2. [All political power inherent in the people.]
3. [Utah inseparable from the Union.]
4. [Religious liberty — No property qualification to vote or hold office.]
5. [Habeas corpus.]
6. [Right to bear arms.]
7. [Due process of law.]
8. [Offenses bailable.]
9. [Excessive bail and fines — Cruel punishments.]
10. [Trial by jury.]
11. [Courts open — Redress of injuries.]
12. [Rights of accused persons.]
13. [Prosecution by information or indictment — Grand jury.]
14. [Unreasonable searches forbidden — Issuance of warrant.]

Section

15. [Freedom of speech and of the press — Libel.]
16. [No imprisonment for debt — Exception.]
17. [Elections to be free — Soldiers voting.]
18. [Attainder — Ex post facto laws — Impairing contracts.]
19. [Treason defined — Proof.]
20. [Military subordinate to the civil power.]
21. [Slavery forbidden.]
22. [Private property for public use.]
23. [Irrevocable franchises forbidden.]
24. [Uniform operation of laws.]
25. [Rights retained by people.]
26. [Provisions mandatory and prohibitory.]
27. [Fundamental rights.]

Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

History: Const. 1896.

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

History: Const. 1896.

Cross-References. — Eminent domain generally, § 78-34-1 et seq.

Sec. 15. [Freedom of speech and of the press — Libel.]

No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

or other writings appertaining or belonging to his office or mutilates or destroys or takes away the same.

(2) Unofficial misconduct is a class B misdemeanor.

History: C. 1953, 76-8-203, enacted by L. 1973, ch. 196, § 76-8-203.

COLLATERAL REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d Public Officers and Employees § 407.

C.J.S. — 67 C.J.S. Officers § 255 et seq.
Key Numbers. — Officers ⇌ 121.

PART 3

OBSTRUCTING GOVERNMENTAL OPERATIONS

76-8-301. Interference with public servant.

(1) A person is guilty of a class B misdemeanor if he uses force, violence, intimidation, or engages in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function.

(2) For purposes of this section, “public servant” does not include jurors.

History: C. 1953, 76-8-301, enacted by L. 1973, ch. 196, § 76-8-301; 1993, ch. 42, § 3.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, added the (1) designation and added Subsection (2).

Amendment Notes. — The 1993 amend-

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Game wardens.
Interference.
Official function.

Constitutionality.

This section is not unconstitutionally vague. *State v. Theobald*, 645 P.2d 50 (Utah 1982).

Game wardens.

Game wardens were by law peace officers who had same power and followed same procedure in making arrests as other peace officers. *State v. Sandman*, 4 Utah 2d 69, 286 P.2d 1060 (1955).

Defendant's refusal to permit game warden to inspect his bait and subsequent disposal of bait amounted to obstruction or resistance of officer in performance of his duty; since game warden had identified himself after his suspicions had been aroused, his request to see bait was not unreasonable and was consistent with

his duty. *State v. Sandman*, 4 Utah 2d 69, 286 P.2d 1060 (1955).

Interference.

Employer who refused to bring employee out of factory so that deputy sheriff could serve her with small claims court order was not obstructing officer in performing his duty where employer had no objections to service during various work breaks, but not during working hours, since particular manufacturing process became dangerous if work was impeded. *State v. Ludlow*, 28 Utah 2d 434, 503 P.2d 1210 (1972).

Official function.

University security officer who arrested student in area where sole interests of university were location of fraternity and religious institute for students was not discharging, or attempting to discharge, any duty of his office, and subsequent interference with arrest by fellow student was not resistance or obstruction of officer in discharge of duty. *State ex rel. Hurley*, 28 Utah 2d 248, 501 P.2d 111 (1972).

CERTIFICATE OF SERVICE

I certify that a copy of this Addendum to Opening Brief of Defendant-Appellant was placed in the United States Mail, postage prepaid addressed to the following on this 21st day of May, 1996:

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