

1995

Weber County v. Ronnie Earl Chambers : Reply Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WEBER COUNTY,)	
)	Case No. 950322-CA
Plaintiff / Appellee,)	
)	
v.)	
)	
RONNIE EARL CHAMBERS,)	PRIORITY NO. 2
)	
Defendant / Appellant.)	ORAL ARGUMENT REQUESTED

REPLY BRIEF OF APPELLANT

Appeal from Judgment and Sentence of conviction of zoning ordinance violation, a class C misdemeanor, in violation of Weber County Zoning Ordinance 5-1 et seq., and fire ordinance violation, a class B misdemeanor, in violation of Weber Fire Code Ordinance 11-1-1 et seq., in the Second Judicial District Court in and for Weber County, the Honorable Parley R. Baldwin presiding.

UTAH COURT OF APPEALS
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DOCKET NO. 950322-CA

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ARGUMENT

- I. REVERSAL OF DEFENDANT'S CONVICTION IS NOT ONLY WARRANTED BY WEBER COUNTY'S FAILURE TO PROVE THE ELEMENT OF OWNERSHIP OF THE PROPERTY BEYOND A REASONABLE DOUBT, BUT REVERSAL IS REQUIRED BY VIRTUE OF DEPUTY WEBER COUNTY ATTORNEY HURTADO'S PROSECUTORIAL MISCONDUCT OF STEALTHILY HANDWRITING DEFENDANT'S NAME, PRIOR TO TRIAL, ON THE PLAT MAP UTILIZED AS PLAINTIFF'S EXHIBIT 1 AT TRIAL.

In its Brief, Weber County argues that the trial court correctly denied Defendant's Motion to Dismiss inasmuch as it had established "a prima facie case against the defendant, specifically as to the element of ownership of the subject property." (See Brief of Appellee, p. 11). Weber County's argument is seriously flawed for the reasons set forth below.

"A prima facie case is proven when evidence has been introduced which, in the absence of contrary evidence, would entitle the party with the burden of proof to judgment as a matter of law." *State v. Real Property at 633 East 640 North*, 942 P.2d 925, 931 n.1 (Utah 1997) (Payne, D.J., concurring in result) (citing *State v. Wood*, 2 Utah 2d 34, 38, 268 P.2d 998, 1001 (1954) (citation omitted)). Contrary to Weber County's standard of review stated in the Brief of Appellee, a determination of whether a party has established a prima facie case is a question of law, which the appellate court reviews

for correctness. See *Sorenson v. Kennecott-Utah Copper Corp.*, 873 P.2d 1141, 1144 (Utah Ct. App. 1994). The appellate court, in such instances, typically views "the evidence in a light most favorable to the trial court's findings." *Id.*¹

The record reveals that the trial court substantially, if not exclusively, based its denial of Defendant's Motion to Dismiss on Plaintiff's Exhibit 1,² which is the plat map that Weber County's counsel, Deputy Weber County Monette Hurtado, ultimately admitted

¹Arguably the evidence in the instant case should not be viewed in a light most favorable to the trial court's findings because the trial court's determination that Weber County had proved a prima facie case was substantially, if not exclusively, premised upon Plaintiff's Exhibit 1. At the time of the trial court's ruling, it was unaware that the plat map, i.e., Plaintiff's Exhibit 1, had been altered by Deputy Weber County Attorney Hurtado prior to trial by her handwriting the name "Ronnie Earl Chambers" on the plat map. This also directly contravenes Weber County's argument concerning the standard of review that typically applies in an insufficiency of the evidence type of case. Furthermore, the trial court, as the record indicates, did not enter any written findings of fact in support of its ruling. In fact, the transcript of the trial court's ruling is essentially devoid of any verbal findings of fact in support of its ruling. Notwithstanding, even if the instant case is reviewed under a less rigorous standard of review, reversal is appropriate in light of the prosecutorial misconduct in the instant case.

²After Weber County's case-in-chief, Mr. Ronnie Earl Chambers' trial counsel moved to dismiss on the grounds that Weber County had failed to tie the charges to Defendant, and that Weber County had failed to establish Defendant as the property owner (R. 162, lines 4-14, Transcript of Trial). In the course of denying the Motion to Dismiss, the trial court stated, "The testimony has, in fact, been -- and is shown up there [referring to Plaintiff's Exhibit 1] -- that that particular plat [Plaintiff's Exhibit 1] -- that can be challenged, clearly -- shows that the owner of this property is the defendant. As a result of that, the motion is denied at this point." (R. 162, lines 19-23, Transcript of Trial).

altering by handwriting the name "Ronnie Earl Chambers" on it (R. 369, Response of Weber County to Request Nos. 3, 4, and 7 of Defendant's Motion For Discovery; see also Statement of Facts, ¶¶20-26 of Brief of Appellant). Ms. Hurtado's action of handwriting Defendant's name on the plat map that she, as the prosecutor, utilized throughout Defendant's trial to establish the element of ownership for purposes of the alleged zoning and fire code ordinance violations, constitutes prosecutorial misconduct. This prosecutorial misconduct, as discussed below, seriously taints Defendant's convictions.

Utah appellate courts reverse on the basis of prosecutorial misconduct if

the actions or remarks of the [prosecuting] counsel call to the attention of the [judge or] jury a matter it would not be justified in considering in determining its verdict and, if so, under the circumstances of the particular case, whether the error is substantial and prejudicial such that there is a reasonable likelihood that, in its absence, there would have been a more favorable result.

State v. Peters, 796 P.2d 708, 712 (Utah Ct. App. 1990), cert. denied, 853 P.2d 897 (Utah 1993); see also *State v. Span*, 801 P.2d 329, 335 (Utah 1991); *State v. Longshaw*, 961 P.2d 925, 927 (Utah Ct. App. 1998); *State v. Boyatt*, 854 P.2d 550, 554-55 (Utah Ct. App.), cert. denied, 862 P.2d 1356 (Utah 1993). As shown below, this two-part test is more than satisfied in the instant case.

First, by utilizing the plat map altered by herself on the morning prior to trial, Deputy Weber County Attorney Hurtado called to the attention of the judge a matter or item of critical evidence that it would not be justified in considering in arriving at Defendants' convictions. In fact, the record is replete with both the use by Ms. Hurtado of the plat map, *i.e.*, Plaintiff's Exhibit 1, and the testimony by witnesses at trial in reference to the Exhibit in the course of Weber County's attempts to prove Defendant's ownership of the subject property (*See, e.g.*, R. 76-77, Transcript of Trial; R. 87, lines 6-14, Transcript of Trial; R. 99, lines 5-16, Transcript of Trial). Further, the record evinces that the trial court substantially, if not exclusively, relied upon Plaintiff's Exhibit 1 in the course of denying Defendant's Motion to Dismiss for failure to prove the element of ownership and in ultimately arriving at Defendant's convictions (R. 163, lines 19-23, Transcript of Trial; R. 327, lines 5-8, Transcript of Trial).

The utilization by Ms. Hurtado of the altered plat map, *i.e.*, Plaintiff's Exhibit 1, is exacerbated by Ms. Hurtado's failure, as an officer of the court, to inform either the trial court or opposing counsel of her alteration to the trial exhibit prior to utilizing Plaintiff's Exhibit 1 as evidence at trial.³ This failure underscores

³Ms. Hurtado's alteration of Plaintiff's Exhibit 1, *i.e.*, the plat map, is further exacerbated by the fact that on remand she, in response to inquiries concerning the altered Exhibit, initially represented that a Kinko's employee, per her instructions, had

the serious nature of the prosecutorial misconduct, not to mention the failure by the prosecution to prove every element of the crimes charged beyond a reasonable doubt. See *State v. Harman*, 767 P.2d 567, 568 (Utah Ct. App. 1989) ("Every element of the crime[s] charged must be proven beyond a reasonable doubt. If the evidence does not support those elements, the verdict must fail.").

With respect to the second part of the prosecutorial misconduct test, the circumstances of the instant case, including the quantum of evidence presented at trial, establish that there is at least a reasonable likelihood that in the absence of the altered plat map utilized as Plaintiff's Exhibit 1, there would have been a more favorable result. See *State v. Troy*, 688 P.2d 483, 486 (Utah 1984) ("If proof of defendant's guilt is strong, the challenged conduct or remark will not be presumed prejudicial." Likewise in a case with less compelling proof, [an appellate court] will more closely scrutinize the conduct.") (quoting *State v. Seeger*, 479 P.2d 240, 241

handwritten the name "Ronnie Earl Chambers" on the plat map utilized as Plaintiff's Exhibit 1 at trial (See R. 345-46, letter from appellate counsel to Deputy Weber County Attorney Hurtado, dated February 13, 1996, and filed on February 20, 1996). Only upon formal methods of discovery and the trial court requiring Weber County, by way of Ms. Hurtado, to respond to Defendant's request for discovery, did Ms. Hurtado, as Plaintiff's counsel, admit that she had altered the plat map (See R. 359, letter from Ms. Monette Hurtado to appellate counsel, dated February 14, 1996, attached to the Motion for Continuance of Hearing as Attachment 2; R. 347-50, Motion for Discovery; R. #65-66, Order; R. 368-69, Weber County's Response to Defendant's Discovery Request Nos. 1, 3, 4, and 7 of Defendant's Motion For Discovery).

(Or. 1971)). As previously discussed, Weber County, in the course of trial, almost exclusively relied upon the altered plat map in the course of attempting to prove ownership by Defendant of the subject property (See, e.g., R. 76-77, Transcript of Trial; R. 87, lines 6-14, Transcript of Trial; R. 99, lines 5-16, Transcript of Trial). Moreover, the trial court relied upon the altered Exhibit not only as grounds for denying Defendant's Motion to Dismiss for failure to prove the element of ownership at the close of Weber County's case-in-chief, but it relied upon the altered Exhibit as grounds for the ultimate determination of Defendant's convictions (See R. 163, lines 19-23, Transcript of Trial; R. 327, lines 5-8, Transcript of Trial).

As to the prejudice part of the prosecutorial misconduct test, it is important to note that this is not a case where the prosecutor inadvertently or unintentionally misstated the law and the trial court either had or took the opportunity to cure the mistake. Rather, Deputy Weber County Attorney Hurtado, as previously discussed, intentionally altered the plat map by handwriting the name "Ronnie Earl Chambers" on the Exhibit on the morning prior to Defendant's trial (R. 368-69, Weber County's Response to Defendant's Discovery Request Nos. 1 3, 4, and 7 of Defendant's Motion For Discovery). Ms. Hurtado did not disclose the alteration to the trial court or Defendant's counsel before attempting to utilize the plat map as evidence at trial. On remand, Ms. Hurtado initially misrepresented to Defendant's appellate counsel that a Kinko's

employee had altered the plat map, i.e., Plaintiff's Exhibit 1, per her instructions (R. 345-46, letter from appellate counsel to Deputy Weber County Attorney Hurtado, dated February 13, 1996, and filed on February 20, 1996). Only after a Motion For Discovery, a hearing before the trial court, and an Order requiring Weber County, through Ms. Hurtado, to respond to Defendant's discovery requests, did Ms. Hurtado disclose that she had in fact altered the plat map (See R. 359, letter from Ms. Monette Hurtado to appellate counsel, dated February 14, 1996, attached to the Motion for Continuance of Hearing as Attachment 2; R. 347-50, Motion For Discovery; R. 365-66, Order; R. 368-69, Weber County's Response to Defendant's Discovery Request Nos. 1, 3, 4, and 7 of Defendant's Motion For Discovery).

Because the evidence of Defendant's guilt in the instant case is weak, there is a presumption that the misconduct of the prosecutor is prejudicial. See *Troy*, 688 P.2d at 486. Notwithstanding the prosecutorial misconduct of altering the plat map, during Weber County's case-in-chief, in the course of Ms. Hurtado presenting Plaintiff's Exhibit 1, Weber County failed to make the requisite foundational showing necessary to authenticate the Exhibit as an accurate plat map from the Weber County Recorder's Office (See Brief of Appellant, pp. 30-31). By so doing, Weber County failed to prove Defendant's ownership of the subject property during the alleged time periods attendant to the charged crimes. In addition, Mr. Barker's testimony, as Director of the Weber County Planning Commission,

during Weber County's case-in-chief, further indicates that he utilized ownership books from his own office rather than those from the Weber County Recorder's Office to research ownership of the property (R. 76-77, Transcript of Trial). On cross-examination, Mr. Barker admitted, in contradiction to his prior testimony, that he actually utilized the correspondence in his file to determine ownership of the property (*see id.* at R. 84-85), that there was another person in his office more qualified to answer questions concerning ownership of the property (*see id.* at R. 84, lines 22-24), and that he did not recall a property plat (*see id.* at R. 84, lines 21-22). Further, during the State's case-in-chief, Ms. Yvonne E. Storey, a prior owner of the subject property, testified that, according to her understanding, the subject property had been "deeded" to Mr. Earl Chambers, Defendant's father (See R. 111, Transcript of Trial). This testimony is indicative of the confusion that existed at trial, both on the part of the prosecution and the trial court, concerning the crucial distinction to be made between the identity of Defendant, Ronnie Earl Chambers, and his father, Earl Chambers (See, e.g., R. 139-41, Transcript of Trial; see also Brief of Appellant, Statement of Facts, ¶11).⁴ The confusion between

⁴See Plaintiff's Exhibit 14 (Letter dated June 16, 1994, from Mr. Glen H. Burton, Weber District Fire Chief, to Deputy County Attorney Hurtado, a true and correct copy of which is attached hereto as Addenda C), in which Mr. Burton represents to Ms. Hurtado that the subject property "is a construction equipment storage site owned by Earl Chambers." Mr. Earl Chambers is Defendant's father.

Defendant, Ronnie Earl Chambers, and his father, Earl Chambers, at trial is of particular significance in light of the alteration by Ms. Hurtado when she handwrote the name "Ronnie Earl Chambers" on the plat map utilized as Plaintiff's Exhibit 1.⁵ By virtue of the foregoing, there existed at least a hypothesis that someone other than Defendant owned the subject property. The evidence at trial also supports the existence of the hypothesis that even if one were to assume that Defendant did own the subject property, that he did not own the property during the time periods alleged in the Information. The existence of these hypotheses necessarily raises a reasonable doubt as to Defendant's guilt. Consequently, the evidence is insufficient to support Defendant's convictions. See *State v. Hill*, 727 P.2d 221, 222 (Utah 1986); see Utah Code Ann. § 76-1-501.⁶

⁵At page 16 of the Brief of Appellee, Weber County argues that the Ms. Hurtado's alteration of the plat map, i.e., Plaintiff's Exhibit 1, is mitigated by Defendant's trial counsel having seen the Exhibit prior to trial. Notwithstanding, Deputy Weber County Attorney Hurtado, as an officer of the court, had a duty to disclose her unilateral alteration of the plat map to both the trial court and opposing counsel prior to utilizing it as a trial exhibit. Further, Defendant's trial counsel reasonably relied on the representation that a true and correct copy of the plat map, when, in fact, it did not by virtue of the alteration. Finally, Defendant's trial counsel, even without the knowledge that the plat map had been altered, vigorously objected to the Exhibit based on lack of foundation grounds (See R. 162, lines 4-14, Transcript of Trial; R. 163, Transcript of Trial).

⁶Utah Code Ann. § 76-1-501 provides, in relevant part:

(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In absence of such proof,

In its Brief, Weber County goes so far as to assert that both Utah case law and statutory law do not require the State to prove each element of the alleged crime beyond a reasonable doubt (*Id.* at p. 12). Contrary to Weber County's assertion, "it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required." *In re Winship*, 397 U.S. 358, 362, 90 S.Ct. 1068, 1071 (1970). Further, "[i]t is the duty of the Government to establish . . . guilt beyond a reasonable doubt. This notion -- basic in our law and rightly one of the boasts of a free society -- is a requirement and a safeguard of due process of law in the historic, procedural content of 'due process.'" *Leland v. Oregon*, 343 U.S. 790, 802-03, 72 S.Ct. 1002, 1009 (1952) (Frankfurter, J., dissenting); see also *Patterson v. New York*, 432 U.S. 197, 210, 97 S.Ct. 2319, 2327 (1977) ("the Due Process Clause requires the prosecution to prove beyond a reasonable doubt all of the elements included in the definition of the offense of which the defendant is charged").

the defendant shall be acquitted.

(2) As used in this part the words "elements of the offense" mean:

(a) The conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; or

(b) The culpable mental state required.

. . . .

II. BY REFUSING TO RULE ON DEFENDANT'S PENDING MOTIONS, THE TRIAL COURT NOT ONLY FAILED TO ADDRESS ALL THE ISSUES SURROUNDING THE ALTERED EXHIBIT AS REQUIRED BY THIS COURT'S ORDER CONCERNING TEMPORARY REMAND, BUT IT FRUSTRATED THE JUDICIAL PROCESS BY ITS FAILURE TO RESOLVE THE MATTERS BEFORE IT PERTAINING TO THE ALTERED TRIAL EXHIBIT.

Weber County argues that the trial court in its Findings of Fact and Conclusions of Law and Order either expressly or implicitly ruled on Defendant's pending motions. Such a position is untenable inasmuch as the trial court, among other failures, completely failed to rule on Defendant's Motion to Amend and Clarify Findings and his Objection to the proposed Findings of Fact and Conclusions of Law and Order, which incorporated the Motion to Amend and Clarify Findings filed on July 22, 1996.⁷ By so doing, the trial court both failed and refused to completely address the issues concerning the alteration of the Exhibit as Ordered by this Court on January 29, 1996. By so doing, the trial court frustrated the judicial process and failed to comply with this Court's Order concerning temporary remand (See Brief of Appellant, pp. 36-39).

⁷The trial court's date of signature of the Findings of Fact and Conclusions of Law and Order, i.e., August 28, 1996, and the file date stamp of August 28, 1996, of Defendant's Objection to Proposed Findings of Fact and Conclusions of Law and Order, which incorporated Defendant's Motion to Amend and Clarify Findings of Fact and the supporting Memorandum of Law filed on July 22, 1996, are indicative of the trial court's failure to rule on Defendant's pending Motions.

CONCLUSION

Based on the foregoing, Defendant respectfully asks that this Court reverse Defendant's convictions and remand for further proceedings consistent with this Court's directions as stated in its opinion.

STATEMENT REGARDING ORAL ARGUMENT
AND METHOD OF DISPOSITION

Defendant requests oral argument because oral argument will materially enhance the decisional process due to the significant and novel issues in the instant appeal dealing with the constitutional right to due process by requiring the State to prove all elements of the charged crimes beyond a reasonable doubt, which, based on the facts of the instant appeal, involve issues requiring further development in these areas of criminal law for the benefit of bar and public. Counsel for Defendant further requests that the method of disposition of the instant appeal be by opinion designated by the Court "For Official Publication" for purposes of precedential value and direction in future cases.

RESPECTFULLY SUBMITTED this 28th day of October, 1998.

ARNOLD & WIGGINS, P.C.

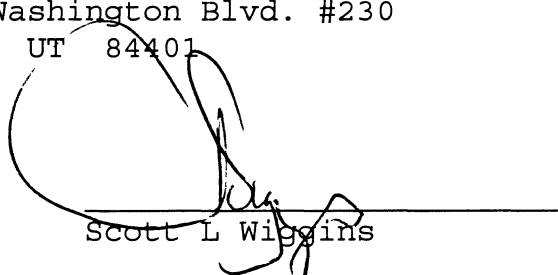


Scott L. Wiggins
Attorneys for Defendant

CERTIFICATE OF MAILING

I, SCOTT L WIGGINS, hereby certify that I personally caused to be mailed two (2) true and correct copies of the foregoing Reply Brief of Appellant, postage prepaid, to the following, on this 28th day of October, 1998:

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Scott L Wiggins

ADDENDUM

No Addendum is necessary pursuant to Utah Rule of Appellate Procedure 24(a)(11).