

1995

Weber County v. Ronnie Earl Chambers : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WEBER COUNTY, :
 :
 Plaintiff/Appellee, : Case No 950322-CA
 :
 v. :
 :
 RONNIE EARL CHAMBERS, : Priority No 2
 :
 Defendant/Appellant. :

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS OF A CLASS C
MISDEMEANOR, IN VIOLATION OF WEBER COUNTY
ZONING ORDINANCE 5-1 ET SEQ., AND A CLASS B
MISDEMEANOR, IN VIOLATION OF THE WEBER FIRE
CODE ORDINANCE 11-1-1 ET SEQ, IN THE SECOND
CIRCUIT COURT IN AND FOR THE STATE OF UTAH,
WEBER COUNTY, OGDEN DEPARTMENT HONORABLE
PARLEY R. BALDWIN, PRESIDING

**UTAH COURT OF APPEALS
BRIEF**

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COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

WEBER COUNTY,	:	
Plaintiff/Appellee,	:	Case No. 950322-CA
v.	:	
RONNIE EARL CHAMBERS,	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF THE PROCEEDINGS

This appeal is from nonjury convictions of a class C misdemeanor, in violation of the Weber County Zoning Ordinance 5-1 *et seq.*, and a class B misdemeanor, in violation of Weber Fire Code Ordinance 11-1-1 *et seq.*

This Court has jurisdiction over this appeal pursuant to Utah Code Annotated 78-2a-3(2)(e).

STATEMENT OF ISSUES AND STANDARD OF APPELLATE REVIEW 1 .

Whether the trial court correctly denied defendant's motion to dismiss after finding that the States's evidence at the close of its case in chief had established a prima facie case against the defendant, specifically as to the element of ownership of the subject property?

A trial court's ruling on a motion to dismiss is a question of law. State v. Maestas, 652 P.2d 903, 905 (Utah 1982) Thus, this Court reviews the trial court's decision for correctness,

with no particular deference to its legal conclusions. State v Mickelson, 848 P.2d 677, 684 (Utah App. 1992) (cited in State v Taylor, 884 P.2d 1293 (Utah App. 1994).

Did the trial court's Findings of Fact and Conclusions of Law, signed on August 28, 1996, expressly and by implication disposed of all issues surrounding the alleged altered exhibit for which this Court ordered a temporary remand?

The claim that the trial court failed to comply with this Court Order is a conclusion of law, which is reviewed for correctness. See State v Pena, 869 P 2d 932 (Utah 1994).

STATUTORY PROVISIONS

Utah Code Ann. § 77-17-3 (1998)

When it appears to the court that there is not sufficient evidence to put a defendant to his defense, it shall forthwith order him discharged.

Utah Rules of Criminal Procedure, Rule 17(o)

At the conclusions of the evidence by the prosecution, or at the conclusion of all the evidence, the court may issue an order dismissing any information or indictment, or any count thereof, upon the ground that the evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

All other relevant text of constitutional, statutory, or rule provisions pertinent to the resolution of the issue presented on appeal is contained in or appended to this brief.

STATEMENT OF THE CASE

Defendant was charged by information with a violation of Weber County Zoning Ordinance 5-1 et seq , a class B misdemeanor, amended prior to trial to a class C misdemeanor, and violation of the Weber County Fire Code Ordinance 11-1-1 et seq , a class B misdemeanor, in relation to the property located at approximately 4425 East Highway 162 in Weber County.

The case was tried to the bench on January 12 and 17, 1995. The trial court found defendant guilty of both charges. On April 20, 1995, the trial court, imposed a \$750.00 fine and 90 days in the Weber County Jail for the zoning violation, suspended \$500.00 of the fine and 90 days in jail on the condition that the equipment be removed from the property, the court imposed the same fine and jail time for the fire code violation, which was also suspended on the same condition as on the zoning violation. Defendant appeals, challenging the trial court's determination that the State's evidence at the close of its case in chief had established a prima facie case against the defendant, specifically as to the element of ownership.

On November 27, 1995, the Utah Court of Appeals mailed the briefing schedule. The letter stated that defendant's brief must be served and filed on or before January 9, 1996. On January 9, 1996, defendant filed his Motion to Stay the Briefing Deadline alleging that an exhibit had been tampered with since the trial. On January 29, 1996, this Court granted defendant's Motion to Stay, temporarily remanding the case to the trial court for a determination as to the alleged exhibit tampering. On August 28, 1996, the Findings of Fact and Conclusions of Law and Order, concerning the alleged alter trial exhibit were signed by the trial court (R. 408-13, Findings of Fact and Conclusions of Law and Order). No subsequent Motions have been filed with the trial court since that date.

STATEMENT OF THE FACTS

1. On or about June 22, 1994, the defendant was charged by information with a violation of the Weber County Zoning Ordinance 5-1, et seq., a class B misdemeanor (which was amended to a class C misdemeanor prior to trial) and with a violation of the Weber County Fire Ordinance

11-1-1- et seq., on property located at approximately 4425 East Highway 162, Weber County (R. 1-2).

2. That on January 12 and 17, 1995 a bench trial was held on the two charges before the Honorable Parley R. Baldwin (R. 60-330).

3. At trial, during the State's case in chief, Mr. Craig C. Barker, testified that he was a seventeen year staff member for the Weber County Planning Commission and was currently the director of the Weber County Planning Commission. He testified that it was during that time he became familiar with the defendant through the process of the initial complaint that was lodged against the property (R. 72). Mr. Barker testified that he was familiar with the defendant's property as a result of his involvement in the complaint process (R. 73). Mr. Baker also testified as to Exhibit 1 as follows:

MS. HURTADO: May the record reflect that this has been marked as Exhibit 1. I'm showing it to defense counsel.

MR. ARNOLD: I've seen it, thank you.

MS. HURTADO: Mr. Baker, let me had this to you. And do you recognize what this is?

MR. BARKER: Yes, I do.

MS. HURTADO: And what is it?

MR. BARKER: This is an enlargement of the property-- Weber County property plat for the property in question--one of the properties shown on this plat.

MS. HURTADO: And does that accurately depict that area that is showing?

MR. BARKER: I believe it does, yes.

MS HURTADO Now, if you would, could you please stand and for the record note where the property in question is on this diagram [referring to Exhibit 1]?

MR BARKER This property identified--this is a partial number of the land serial number for the property which is noted here as 0144. It says Ronnie Earl Chambers on it.

MS HURTADO Mr. Storey--Mr. Storey, I'm sorry. Mr. Barker, you are familiar with this map [referring to Exhibit 1]. Are you familiar with any changes that occurred in this map [referring to Exhibit 1] over the last ten years, for example, as far as ownership?

MR BARKER Yes. I happened to review the property ownership books of prior years--1966, for example--that we have on our--in our office, and noted that the property is--Mr. Chambers' property was not separated from the property noted on there as No. 0027 at that time. It was all one parcel. (R. 76-77)

Later during, redirect Mr. Barker testified as follows:

MS HURTADO To the best of your recollection, did this--the equipment that you saw stored there, was it a continuing use and when did it first occur?

MR BARKER A can only say that the first occurrence that I--is in about the 1989 period when the complaint was filed. And obviously, you become more interested in the property and you notice more what's on the property, and to my knowledge, it's been continuous at least since that time.

MS HURTADO And to your knowledge, do you know who was responsible for that use?

MR BARKER Other than at the time, I believe, the original complaint was addressed to the present owner, which was--at that time was Mr. Storey.

MS HURTADO And at what time did it become addressed to the defendant?

MR BARKER I believe the first addressed to defendant was 1991 or '92. (R. 83)

4 During the State's case in chief, Mr Edward T Reed, testified that he had worked for the Weber County Planning Commission for 30 years as a staff senior planner, or planner 4, retiring in September of 1994 (R 86) He also testified as follows

MS HURTADO Are you familiar with the property that is in question?

MR REED I am, yes

MS HURTADO And how are you familiar with that?

MR. REED I have passed this property on a good number of occasions I have transposed the location of the property onto the maps--various maps we have available in the office That would also include the county recorder's plats

MS. HURTADO Noting this document, [referring to Exhibit 1] do you recognize this, that's on the wall?

MR REED This document is an enlargement of--it appears to be the official county recorder's plats

MS HURTADO And can you identify the defendant's property on that?

MR REED I can yes

MS. HURTADO Will you just point to it?

MR REED This is the defendant's property here

MS HURTADO Thank you When was the first time you had any kind of contact, as far as directly relating to this specific piece of property, with this defendant?

MR REED I believe Mr Chambers was down in our office one time It's been approximately several years ago when we talked to him about it The complaint was brought to my attention--it was taken by a former staff--or former planning director, Graham Sherah (R 87)

Later during, redirect Mr Reed testified as follows

MS. HURTADO: And is there an investigation conducted as far as that observation you made or that complaint?

MR. REED: Yes.

MS. HURTADO: And what kind of investigation is that?

MR. REED: What I would do is I would go back to the office, located it on the maps that we have available, and that would include the county recorder's maps. And we would also secure the date that the county recorder has on file as to the ownership of the property. That would include the--verify the name, that would give the address of the property owner.

MS. HURTADO: On this complaint in particular, did you do the normal investigation?

MR. REED: I worked it up, yes; that's correct.

MS. HURTADO: So, at that time did you verify who was the owner?

MR. REED: At that time, it was Mr. Chambers.

MS. HURTADO: And that was in 1992?

MR. REED: That's correct (R. 101).

Later during redirect, in reference to a document identified by Mr. Reed, he further testified as follows:

MS. HURTADO: What is the date [referring to the document]?

MR. REED: The date is June 17th 1994.

MS. HURTADO: And who was that in reference to?

MR. ARNOLD: Objection, Your Honor.

THE COURT: State your objection.

MR. ARNOLD: I'll withdraw it.

MR. REED: The subject is Ronnie Earl Chambers supplemental site report.

MS. HURTADO: And how did you come to that conclusion that he was the appropriate person to file that complaint on?

MR. ARNOLD: Objection. There's been no testimony that is the complaint.

MS. HURTADO: What is it . . . (inaudible)

THE COURT: You can answer that. Go ahead.

MR. REED: This is a--

MS. HURTADO: On, you don't have to answer that question. How did you determine who that document should be written about?

MR. REED: I determined that by going to the latest plats that we had (R. 105-106).

5. After the State rested from the presentation of its case in chief, the defendant moved to dismiss. The defendant's claim was that "[t]here's been some futile attempts to establish that he is the supposed property owner" but "[t]here's been no tie to my client" (R. 162).

6. The trial court denied the defendant's motion to dismiss after determining that "[t]he testimony has, in fact, been--and is shown up there--that the particular plat--that can be challenged, clearly shows that the owner of this property is the defendant" (R. 162).

7. Upon the conclusion of the bench trial, the trial court found defendant guilty on both charges (R. 327-29).

8. The trial court in the course of its determination that the zoning ordinance had been violated by the defendant, stated as the basis for its ruling:

Some question had been raised about whether or not -- who owns this property. The *prima facie standard* was met when the plats were admitted from the county recorder's office showing the defendant owns that. There is a deed here in '91. The brother has testified that this is the other brother's [referring to the defendant] property and he allows him on with that equipment.

9. On April 20, 1995, the trial court, imposed a \$750.00 fine and 90 days in the Weber County Jail for the zoning violation, suspended \$500.00 of the fine and 90 days in jail on the condition that the equipment be removed from the property, the court imposed the same fine and jail time for the fire code violation, which was also suspended on the same condition as on the zoning violation.

10. The Judgment, Sentence (Commitment) was signed by the trial court on April 20, 1995 and entered that same day (R. 34-35).

11. Defendant filed Notice of Appeal on May 11, 1995 (R. 37-38).

12. On November 27, 1995, the Utah Court of Appeals mailed the briefing schedule. The letter stated that defendant's brief must be served and filed on or before January 9, 1996.

13. On January 9, 1996, defendant filed his Motion to Stay the Briefing Deadline alleging that an exhibit had been tampered with since the trial.

14. On January 29, 1996, this Court granted defendant's Motion to Stay, temporarily remanding the case to the trial court for a determination as to the alleged exhibit tampering.

15. On August 28, 1996, the Findings of Fact and Conclusions of Law and Order, concerning the alleged alter trial exhibit were signed by the trial court (R. 408-13, Findings of Fact and Conclusions of Law and Order). No subsequent Motions have been filed with the trial court since that date.

SUMMARY OF ARGUMENT

The trial court correctly denied defendant's motion to dismiss after finding that the States's evidence at the close of its case in chief had established a prima facie case against the defendant, specifically as to the element of ownership of the subject property. In determining

whether the State established a prima facie case sufficient to establish defendant's ownership of the subject property, the appellate court applies the standard as set forth in State v. Dibello, 780 P.2d 1221, 1225 (Utah 1989). The defendant in Dibello appealed a second degree murder conviction, contending there was insufficient evidence to warrant sending the case to the jury. The Dibello court noted that appellate courts should "uphold the trial court's decision if, upon reviewing the evidence and all inferences that can be reasonably drawn from it, [the court] conclude[s] that some evidence exists from which a reasonable jury" (or finder of fact) "could find that the elements of the crime had been proven beyond a reasonable doubt." Id. In addition, the evidence is to be viewed in a light most favorable to the State. State v. Iverson, 10 Utah 2d 171, 350 P.2d 152, 153, (1960).

Thus, in determining whether the State established a prima facie case sufficient to establish defendant's ownership of the subject property anytime between September 22, 1992 and June 22, 1994 for the zoning violation and at anytime between May 6, 1994 and June 22, 1992 for the fire code violation, this Court shall apply the standard as set forth in State v. Dibello, 780 P.2d 1221, 1225 (Utah 1989). In that case the court noted that appellate courts should "uphold the trial court's decision if, upon reviewing the evidence and all inferences that can be reasonably drawn from it [the court] conclude[s] that some evidence exists from which a reasonable jury" or as in the present case the finder of fact "could find that the elements of the crime had been proven beyond a reasonable doubt." Id. In addition, the evidence is to be viewed in a light most favorable to the State. State v. Iverson, 10 Utah 2d 171, 350 P.2d 152, 153 (Utah 1960).

In the present case the trial court correctly denied defendant's Motion to Dismiss after finding that the State's evidence, consisting of testimony from Mr. Barker and Mr. Reed as to the

their verification of the defendant's ownership of the property in question, the admission of Exhibit 1, an enlarged copy of a Weber County property plat map, and testimony from Mr. Barker and Mr. Reed as to the time period in which the defendant owned the property in question, that when viewed in the light most favorable to the State was such that a reasonable finder of fact could find that the elements as the ownership had been proven beyond a reasonable doubt.

The trial court's Findings of Fact and Conclusions of Law, signed on August 28, 1996, expressly and by implication disposed of all issues surrounding the alleged altered exhibit for which this Court ordered a temporary remand.

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY DENIED DEFENDANT'S MOTION TO DISMISS AFTER FINDING THAT THE STATE'S EVIDENCE AT THE CLOSE OF ITS CASE IN CHIEF HAD ESTABLISHED A PRIMA FACIE CASE AGAINST THE DEFENDANT

The trial court correctly denied defendant's motion to dismiss after finding that the States's evidence at the close of its case in chief had established a prima facie case against the defendant, specifically as to the element of ownership of the subject property.

"A defendant's motion to dismiss for insufficient evidence at the conclusion of the State's case in chief requires the trial court to determine whether the defendant must proceed with the introduction of evidence in his defense." State v. Noren, 704 P.2d 568, 570 (Utah 1985); State v. Smith, 675 P.2d 521 (Utah 1983). See also Utah R.Crim.P. 17(o); Utah Code Ann. § 77-17-3.

Contrary to the defendant's claim, that the trial court must find that the State proved each element of the crimes charged beyond a reasonable doubt or must grant a motion to dismiss, Utah statutory provisions and case law disagree. In determining whether the State established a prima facie case sufficient to establish defendant's ownership of the subject property, the appellate court applies the standard as set forth in State v. Dibello, 780 P.2d 1221, 1225 (Utah 1989). The defendant in Dibello appealed a second degree murder conviction, contending there was insufficient evidence to warrant sending the case to the jury. The Dibello court noted that appellate courts should "uphold the trial court's decision if, upon reviewing the evidence and all inferences that can be reasonably drawn from it, [the court] conclude[s] that some evidence exists from which a reasonable jury" (or finder of fact) "could find that the elements of the crime had been proven beyond a reasonable doubt." Id. In addition, the evidence is to be viewed in a light most favorable to the State. State v. Iverson, 10 Utah 2d 171, 350 P.2d 152, 153, (1960). Because the evidence is to be viewed in a light most favorable to the State, the defendant has the burden of marshaling all the evidence that supports the trial court's determination that some evidence exists from which a reasonable trier of fact could find that the elements of the crime had been proven beyond a reasonable doubt.

In the present case, Defendant was charged by information with a violation of Weber County Zoning Ordinance 5-1 et seq., a class B misdemeanor, amended prior to trial to a class C misdemeanor, and violation of the Weber County Fire Code Ordinance 11-1-1 et seq., a class B misdemeanor, in relation to the property located at approximately 4425 East Highway 162 in Weber County. An element of the crimes charged against defendant is the ownership of the property in question.

The evidence as to the element of ownership present by the State during its case in chief, as set forth verbatim in the above Statement of Facts, when viewed in the light most favorable to the State was such that a reasonable finder of fact could find that the elements of the crime had been proven beyond a reasonable doubt. State v Dibello, 780 P.2d 1221, 1225 (Utah 1989).

First, during the State's case in chief, the State present it's proposed Exhibit 1. During trial when state show it's proposed Exhibit 1 to defendant's counsel he stated that he had already seen it (R. 76, line 13). During Mr. Barker's, the Director of the Weber County Planning Commission, testimony he identified State's proposed Exhibit 1 as an enlargement of a Weber County property plat map, which included the property in question (R. 76, lines 16-21). He further testified that Exhibit 1 accurately depicted that area which it showed (R. 76, line 24). He identified for the court the defendant's property and it's land serial number (R. 77, lines 2-4). When asked if he was familiar with the property ownership as depicted on the plat map, Mr. Barker testified he was because prior to the trial he had review the property ownership books (county plat map books) (R. 77, lines 9-14). Then Mr. Reed, the recently retired thirty year planning staff member, testified the he was familiar with the property in question based on personal observation and because he had transposed the location of the property in question onto various maps including the county recorder's plats (R. 87, lines 2-6). He then identified State's proposed Exhibit 1 as an enlargement of the county recorder's plat map and he pointed out the defendant's property on Exhibit 1 (R. 87, lines 8-14). Mrs. Storey, testified that she and her husband owned the property in question until it was deeded away in 1991. Her testimony showed that Exhibit 1 accurately depicted the division of land that occurred (R. 114-115). After Fire Chief Burton, identified the property in question on Plaintiff's proposed Exhibit 1, State requested

that it be admitted into evidence (R 138-139, lines 19-1) The trial court asked defendant if there were any objections, defendant's counsel said, "I have no objections" (R 139, lines 2-4) The trial court received Exhibit 1 (R 139, line 4)

Second, as to the element of ownership during the time periods alleged in the information between September 22, 1992 and June 22, 1994 for the zoning violation, and between May 6, 1994 and June 22, 1994 for the fire code violation, the State present testimony from Mr Barker and Mr Reed Mr Barker testified that the defendant was the present owner of the property based on his review of the property plat maps and his acknowledgment of the accuracy of Exhibit 1 (R 76-77) Mr Barker also testified that zoning violation complaints by his office were first addressed to the defendant in 1991 or 1992 (R 83) Mr Reed testified that he became familiar with the defendant after the defendant came to the county planning office one time and that he and the former planning director spoke with the defendant about the zoning complaint (R 87) In addition, Mr Reed testified as to how complaints are investigation by the planning staff He stated that in order to determine ownership he would located the property on the maps that the planning staff has available, which include the county recorder's plat maps Then he would secure the date that the county recorder has on file as to the ownership of the property, which would include verification of the name of the property owner, and would give the planning staff the address of the property owner Mr Reed stated that he did the normal investigation on the property in question and verified the name of the owner as Mr Chamber in 1992 (R 101) and again 1994 (R 103) During redirect, Mr Reed testified that on June 17, 1994, he wrote a supplemental site report about the defendant's property and addressed to a Deputy Weber County

Attorney and he determine that the defendant was the owner based upon his review of the latest map plats (R. 106).

Defendant argues that the State's evidence is insufficient as to the element of ownership of the property in question. First, defendant argues that the trial court cannot rely on Exhibit 1 in establishing ownership of the property in question because of the lack of foundation, even though the defendant did not object to the acceptance by the trial court of Exhibit 1 at the time it was admitted in evidence. On the contrary, Mr. Barker and Mr. Reed testimony each identified Exhibit 1, stated his familiarity with what Exhibit 1 depicted, stated his basis for his familiarity with the what Exhibit 1 depicted, and his recognition of the defendant's property, and Mr. Barker stated that it was an accurate depiction of the ownership and area in question.

Second, defendant argues that the State's evidence is insufficient as to the element of ownership of the property in question for the time period alleged in the charges. On the contrary, although defendant does point out that Mr. Reed's memory was unclear as to who the property owner was in 1989, his written documentation was accurate. In addition, the ownership of the property in question for the time period alleged in the charges is from September 22, 1992 until June 22, 1994. And Mr. Reed testified that he verified that the defendant was the owner of the property in 1992 and 1994. As support for his contention that the State's evidence was insufficient as to the time period alleged in the charges the defendant claims that Mr. Barker contradicted his prior testimony and that he actually utilized the correspondence in his file to determine ownership of the property and that he did not recall a property plat. What the defendant fails to mention is that Mr. Barker's replies are in response to questions concerning Mr. Storey, the owner of the property in 1989 and whether there was a property plat in the file which

showed Mr. Storey as the owner of the property in 1989 (R. 84, lines 14-22). Defendant also claims that Mr. Barker stated that there was another person in his office more qualified to answer question concerning ownership of the property. In fact, is was after defense counsel asked Mr. Barker questions concerning what was in the county's complaint file in 1989, and Mr. Barker responded that he did not have the entire complaint file, and he did not recall if there was a property plat in the file, but he stated that there is another member of the planning commission who would be doing the complaints at the time and that individual would be better able to answer questions concerning what was in the file than he could (R. 84, lines 16-25).

Third, defendant's claim that the State's utilization of Plaintiff's Exhibit 1 is troubling because Plaintiff's counsel, failed to inform either the trial court or opposing counsel of the alteration or enhancement of her proposed Exhibit 1. On the contrary, defense counsel claimed he had seen the proposed Exhibit 1 prior to its introduction at trial (R. 17, line 14). In addition, both Mr. Barker and Mr. Reed testified that State's proposed Exhibit 1 was an enlarged copy of a Weber County property plat map (R. 76, lines 19-21; 87, lines 8-9).

Thus, in determining whether the State established a prima facie case sufficient to establish defendant's ownership of the subject property anytime between September 22, 1992 and June 22, 1994 for the zoning violation and at anytime between May 6, 1994 and June 22, 1992 for the fire code violation, this Court shall apply the standard as set forth in State v. Dibello, 780 P.2d 1221, 1225 (Utah 1989). In that case the court noted that appellate courts should "uphold the trial court's decision if, upon reviewing the evidence and all inferences that can be reasonably drawn from it [the court] conclude[s] that some evidence exists from which a reasonable jury" or as in the present case the finder of fact "could find that the elements of the crime had been

proven beyond a reasonable doubt.” Id. In addition, the evidence is to be viewed in a light most favorable to the State. State v. Iverson, 10 Utah 2d 171, 350 P.2d 152, 153 (Utah 1960).

In the present case the trial court correctly denied defendant’s Motion to Dismiss after finding that the State’s evidence, consisting of testimony from Mr. Barker and Mr. Reed as to the their verification of the defendant’s ownership of the property in question, the admission of Exhibit 1, an enlarged copy of a Weber County property plat map, and testimony from Mr. Barker and Mr. Reed as to the time period in which the defendant owned the property in question, that when viewed in the light most favorable to the State was such that a reasonable finder of fact could find that the elements as the ownership had been proven beyond a reasonable doubt.

POINT II

THE TRIAL COURT’S FINDINGS OF FACT AND CONCLUSIONS OF LAW EXPRESSLY AND BY IMPLICATION DISPOSED OF ALL ISSUES SURROUNDING THE ALLEGED ALTERED EXHIBIT FOR WHICH THIS COURT ORDERED A TEMPORARY REMAND.

Rule 52(b), of the Utah Rules of Civil Procedure provides in relevant part that, “[u]pon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly.” Rule 52(b) is made applicable to criminal proceedings by Utah Rules of Civil Procedure 81(e). It states, “[t]hese rules of procedure shall also govern in any aspect of criminal proceedings where there is no other applicable statute or rule, provided, that any rule so applied does not conflict with any statutory or constitutional requirement.”

“If a Rule 52(b) motion is made before judgment and presents a substantial question, and the motion is not disposed of, either expressly or by necessary implication, by the judgment, the running of the time for taking an appeal is suspended under Rule 73(a) until the court disposes of the motion.” Zions First Nat’l Bank v C’est Bon Venture, 613 P.2d 515 (Utah 1980).

On June 26, 1996, the trial court made Finding as to the alleged exhibit tampering issue. In the Findings the trial court directed the State to prepare appropriate Findings of Facts, Conclusions and Order, for the court’s signature and to submit to defendant’s counsel consistent with the appropriate rules. On or about July 22, 1996, defendant filed a Motion to Amend and Clarify Findings. On August 28, 1996, the trial court signed the Findings of Fact and Conclusions of Law and Order as prepared by the State. No subsequent Motion have been filed with the trial court since that date, August 28, 1996.

In defendant’s Motion to Amend and Clarify Findings, he objected to the trial court’s findings that no objections were raised by the defendant either to the introduction, use or acceptance [of Plaintiff’s Exhibit 1].” Defendant claims that the record indicates the defendant’s trial counsel moved to dismiss and objected to the trial court’s reliance on Plaintiff’s Exhibit 1 for lack of foundation and other reasons. The Findings of Fact specifically address this issue in paragraphs 4, 5, 6, 7, and 8 (R 408-13)

4 After having Weber County's proposed Exhibit 1 marked Weber County showed the exhibit to defense counsel (See Transcript p 17 line 13)

5 Defense counsel acknowledged that he had seen Weber County's proposed Exhibit 1 and made no objection. (See Transcript p 17 line 14)

6 Weber County through the use of the following witness Craig Barker, Edward T Reed, and Yvonne Erickson Storey established

the Exhibit 1, was a[n] enlarged copy of a plat map which depicted a specific area, that each witness was familiar with the area, that each witness explained the basis for his or her familiarity with the area, and that each witness verified that Exhibit 1 was accurate. (See transcript p. 17-57.)

7. Mr. Craig Barker, during his testimony, specifically identified the property in question by reading from Exhibit 1 the partial land serial number "0144" for the property as well as reading the name Exhibit 1 bore, "Ronnie Earl Chambers." (See transcript p. 18 lines 2, 3 and 4.)

8. After witness Glenn Harry Burton identified the property in question on Exhibit 1, Weber County requested that proposed Exhibit 1 be admitted into evidence. Defense counsel, Mr. Arnold stated that he had no objections and the Court received Exhibit 1. (See transcript p. 79 line 25, p. 80 lines 1,2,3, and 4.)

Second, the defendant in his Motion to Amend and Clarify Findings, also objected to the trial court's finding as to how and when the names were darkened on the plat map. The Findings of Fact addressed this issue in paragraphs 19 and 21 (R. 408-13.):

19. After the Court granted defendant's Motion for Discovery, defense counsel, Mr. Wiggins requested that the Court go off the record, which was done. While off the record, Mr. Wiggins informed the Court that he had not mean to in any way imply that any of the circuit court clerks were involved in tampering with or altering the exhibit in question.

21. The response to the discovery request provided the following relevant information: (a) that the attorney representing Weber County, in the preparation of the exhibit, had a copy of the plat map enlarged and copied onto a poster board, which was later introduced as Exhibit 1; and (b) that the Attorney representing Weber County felt that it may be difficult to see the names on the map at a distance, so she traced over the letters in ink, prior to the introduction of Exhibit 1 at trial.

Defendant's counsel claims that the letters were not traced over, rather, new and different letters were handwritten in on the plat map. Although Defendant's counsel alleges new and

different letters were handwritten in on the plat map he never alleges that the name on the plat map is not the defendant's name, Ronnie Earl Chambers, as is was identified during the trial by Mr. Baker (R. 77) and addressed in the Findings in paragraph 7 (R. 408-13), regardless of whether it is written as "RONNIE EARL CHAMBERS" or "RONNIE EARL CHAMBERS."

As to defendant's other objections: that the trial court's conclusion that "the exhibit was not tampered with, that any enhancements to the poster [Plaintiff's Exhibit 1] took place prior to the exhibit being offered and then inspected by the attorney for the defendant, and that no objection was raised on the acceptance of the exhibit;" that the trial court neglected to make any findings addressing when the Plaintiff's counsel handwrote on the enlarged copy of the plat map; and that the trial court failed to make any findings as to the failure of Plaintiff's counsel to inform either the trial court or defendant's trial counsel of the enlarged copy of the plat map proposed as Exhibit 1 prior to offering the same as an exhibit at trial. Again the Findings of Fact specifically address each of these issue in paragraphs 4, 5, 6, 7, and 8 (R. 408-13):

4. After having Weber County's proposed Exhibit 1 marked Weber County showed the exhibit to defense counsel. (See Transcript p. 17 line 13.)

5. Defense counsel acknowledged that he had seen Weber County's proposed Exhibit 1 and made no objection. (See Transcript p. 17 line 14.)

6. Weber County through the use of the following witness: Craig Barker, Edward T. Reed, and Yvonne Erickson Storey established the Exhibit 1, was a[n] enlarged copy of a plat map which depicted a specific area, that each witness was familiar with the area, that each witness explained the basis for his or her familiarity with the area, and that each witness verified that Exhibit 1 was accurate. (See transcript p. 17-57.)

7 Mr. Craig Barker, during his testimony, specifically identified the property in question by reading from Exhibit 1 the partial land serial number "0144" for the property as well as reading the name Exhibit 1 bore, "Ronnie Earl Chambers." (See transcript p. 18 lines 2, 3 and 4.)

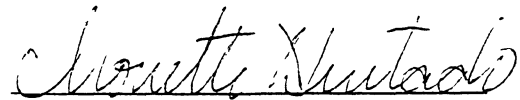
8. After witness Glenn Harry Burton identified the property in question on Exhibit 1, Weber County requested that proposed Exhibit 1 be admitted into evidence. Defense counsel, Mr. Arnold stated that he had no objections and the Court received Exhibit 1. (See transcript p 79 line 25, p 80 lines 1,2,3, and 4.)

The Findings of Fact and Conclusions of Law and Order disposed of all substantial questions raised in Defendant's Motion to Amend and Clarify Findings either expressly or by implication.

CONCLUSION

For the foregoing reason, the State respectfully requests that this Court affirm defendant's convictions and sentences.

RESPECTFULLY SUBMITTED this 17th day of August, 1998.


Monette Hurtado
Deputy Weber County Attorney

CERTIFICATE OF MAILING

I hereby certify that I mailed two (2) true and correct copy of the foregoing BRIEF OF APPELLEE to the Appellant's attorney, Scott L. Wiggins and Mark E. Arnold, Arnold & Wiggins, P.C., American Plaza II, Suite 105, 57 West 200 South, SLC UT 84104, postage prepaid, this 17th day of August, 1998.

