

2006

## Utah v. Hill : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,	:	
PLAINTIFF/APPELLEE,	:	CASE No. 20060667-CA
v	:	
BRENT E. HILL,	:	
DEFENDANT/ APPELLANT	:	

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BRIEF OF APPELLEE

This is an appeal in a case involving a Class A misdemeanor charge of Carrying a Concealed Dangerous Weapon, in violation of Utah Code Ann. § 76-10-504, entered in the Second Judicial District Court for Morgan County, State of Utah, the Honorable Judge Michael D. Lyon, presiding.

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FILED  
UTAH APPELLATE  
MAR 16 2007

IN THE UTAH COURT OF APPEALS

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### **JURISDICTIONAL STATEMENT AND NATURE OF PROCEEDINGS**

Defendant appeals from a judgment and conviction for Carrying a Concealed Dangerous Weapon, in violation of, Utah Code Ann. § 76-10-504 (2005) a class A misdemeanor, in the Second Judicial District Court, Morgan County, the Honorable Michael D. Lyon presiding. This Court has jurisdiction under Utah Code Ann. § 78-2a-3(2)(e)(Supp. 2001).

## **STATEMENT OF THE ISSUES**

1. The issues were preserved in the trial court by filing a PLEA AGREEMENT AND SERY PLEA RESERVATION OF RIGHTS TO APPEAL WEAPONS CHARGE prepared by Defendant's counsel, signed by both counsel, and filed on June 23<sup>rd</sup>, 2006, and found in the record at 00085.

*Standard of Review:* This Court reviews the trial court's factual findings and legal conclusions for correctness. E. g. State v. Swink, 2000 UT App 262, ¶ 6, 11p.3d 299.

2. Did the trial court properly rule that defendant was guilty under Utah Code Ann. § 76-10-504(2005), and that it applied to the loaded weapons in Defendant's vehicle based on the facts of this case?
3. Did the County Attorney properly use his discretion in choosing to charge the Defendant under U.C.A. §76-10-504 rather than under §76-10-505?

## **CONSTITUTIONAL PROVISIONS, STATUTES AND RULES**

The text of all pertinent constitutional provisions, statutes and rules are contained in the body of this brief.

## **STATEMENT OF THE CASE**

Defendant was stopped by a Morgan County Sheriff's Deputy on August 13<sup>th</sup>, 2005 on Interstate 84 westbound in Morgan County, Utah. The arresting officer arrested the Defendant for DUI and for two counts of carrying a concealed dangerous weapon. The Defendant was pulled over for erratic driving and had alcohol containers in plain view in his vehicle. When asked by a Deputy Sheriff if there were weapons in the vehicle he stated; "there shouldn't be." The

Defendant then proceeded to claim that he was currently a police officer in Challis, Idaho.

Defendant could not produce credentials to back up his claim. After being arrested for DUI and being asked a second time if there were weapons in the vehicle the Defendant knowing that his vehicle was going to be impounded, admitted that there were two pistols inside the vehicle. A subsequent search of the vehicle revealed a loaded Smith and Wesson 357 in the pocket of the driver's side door. Additionally, a loaded Ruger 22 was recovered from under the vehicle's middle folding consol. Both pistols were within the immediate reach of the Defendant at the time of the stop. Neither pistol was securely encased, both were in holsters and were wrapped with a small piece of cloth. When no police credentials were found; the Defendant was confronted with that fact and changed his story to say that he had previously been a police officer in Idaho.

At the hearing on the Defendant's motion to suppress, the Court agreed that Utah Code Ann. §76-10-504 applied to the loaded weapons and denied Defendant's Motion to Suppress. Thereafter the Defendant plead guilty to one of the concealed dangerous weapon charges, and appeals his conviction as a "Sery" plea.

### **STATEMENT OF RELEVANT FACTS**

1. The Defendant in this case carried two concealed dangerous weapons which were both readily accessible for immediate use, were not securely encased and contained ammunition.

2. The previous Morgan County Attorney, (Kelly W. Wright) screened the charges filed by the arresting Deputy and made the determination as the representative of the State that the charges were appropriate and that there was probable cause to bring the charges as filed.

3. In choosing to operate a motor vehicle in the State of Utah the Defendant was subject to the laws of the State of Utah.

4. The judge accepted Defendant's guilty plea on June 23, 2006.

### **SUMMARY OF ARGUMENT**

The State did not have to prove that Defendant knew of the existence of the law or that his conduct would violate the law. Defendant's rights were not violated when the trial court denied his Motion to Suppress. Defendant's appeal appears to be based on the charging decision of the prosecuting attorney rather than on alleged error by the trial court.

Defendant admits that he had two loaded pistols in his vehicle. Defendant further admits that he did not have a valid concealed firearm permit. Defendant tries to explain his actions away with arguments about his intent, his interpretation of proper firearm storage and what the legislature intended by the term "securely encased." Defendant states that he was not "obsessed with having the immediate access for the purpose of firing them." See Appellant's Opening Brief at pg. 7. Additionally, Defendant argues; "the intention of the owner of the weapons was not to conceal them for any unlawful purpose, but to store them for the time when the need may arise."

Id. Both of these arguments fail since the code has no concern whether the Defendant was "obsessed" with having immediate access to his fire arms or if his intent in concealing the weapons was for a lawful or unlawful purpose. It may be supposed that the Defendant's conduct in the present case is what the legislature must have contemplated when they passed the current version of the law. The purpose is to keep unauthorized people from having concealed, loaded, dangerous weapons hid or stored for immediate use on their person or in their vehicle.

The charging decision on whether to use Utah Code §76-10-504 or §505 falls under the discretion of the prosecuting attorney reviewing the case. Section 505 is a blanket code regarding the carrying a loaded firearm in a vehicle, public streets or other posted prohibited area. Alternately, section 504 while still concerned with loaded weapons more specifically looks at the firearm being “readily accessible for immediate use” and whether the firearm is “securely encased.” See U.C.A. § 76-10-504. Defendant’s actions taken as a whole coupled with his dishonesty when initially questioned by the Deputy sustain the decision by the prosecutor to charge him under the more serious code even though it is true that other codes with a lesser penalty may also have applied to the Defendant’s conduct.

In choosing to operate a motor vehicle in Utah the Defendant was subject to the laws of the State of Utah.

## **ARGUMENT**

### **I. THE TRIAL COURT PROPERLY DENIED DEFENDANTS MOTION TO SUPPRESS.**

#### **A. Defendant’s alleged ignorance or mistake of law is not a defense in this case.**

The Defendant wants to claim that he should not be guilty of this offense because he was (allegedly) not aware of the existence of the law requiring him to be licensed to carry a concealed weapon. He claims that this (alleged) ignorance of the law should be a defense. In a Utah Supreme Court case almost a century ago Skeen v. Craig, 86 P. 487, 491 (Utah 1906), the Utah Supreme Court stated that “there is no principle of law more closely adhered to and followed than the rule that every person is presumed to know the law; and when a party is accused of a



crime he cannot be heard to say and to successfully plead as a defense that he was ignorant of the law which he is charged with having violated. In no case can one enter a court...with the sole and naked defense that when he did the thing explained of he did not know of the existence of the law which he violated.” Id.

**B. The County Attorney had prosecutorial discretion under Utah Code Ann. § 17-18-01 to prosecute Defendant under § 76-10-504.**

The County Attorney as the screening prosecutor has discretion in deciding the appropriate charge or charges to be filed on behalf of the State of Utah. Defendant argues that it is not countenanced under the law to allow County Attorneys such discretion in charging. Defendants argument is counter to the authority given County Attorneys under Utah Code Ann. §17-18-01.

The charging decision on whether to use 76-10-504 or 505 falls under the discretion of the prosecuting attorney reviewing the case. Section 505 is a blanket code regarding the carrying a loaded firearm in a vehicle, public streets or other posted prohibited area. Alternately, section 504 while still concerned with loaded weapons more specifically looks at the firearm being “readily accessible for immediate use” and whether the firearm is “securely encased.” See U.C.A. § 76-10-504. Defendant’s packaging of his loaded firearms was not adequate to be considered “securely encased” under Utah Code. Further, they were “readily accessible” for “immediate use.”

### **CONCLUSION**

Defendant chose to operate a motor vehicle in the State of Utah. By so doing Defendant was subject to the laws of the State of Utah. The State of Utah has laws regarding the carrying of loaded firearms on ones person as well as in ones vehicle. Defendant's decision to drive while under the influence of alcohol and subsequently to be stopped by law enforcement officers was at his peril. Defendant's lack of honesty and cooperation during his arrest coupled with the two concealed loaded firearms in his immediate control where more than adequate to suggest the charging of the more serious of two separate statutes available to the arresting officer and more specifically the prosecuting attorney.

### **ORAL ARGUMENT AND PUBLISHED OPINION**

Because this case presents no complex or novel question, and because the facts and legal arguments are adequately presented in the briefs and record, the State requests neither oral argument nor a published opinion in this case.

DATED THIS 13<sup>th</sup> day of March, 2007

  
JANN L. FARRIS  
MORGAN COUNTY ATTORNEY

**CERTIFICATE OF MAILING OR DELIVERY**

This is to certify that a true and correct copy of the foregoing was mailed postage paid, to:

J. FRANKLIN ALLRED A 0058  
J. Franklin Allred P.C.  
Attorney for Appellant  
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4047 North Highway 36  
Erda, Utah 84074-9426

DATED this 17<sup>th</sup> day of March, 2007.

Monika Ballantine

# ADDENDUM

**17-18-1. Powers -- Duties of county attorney -- Prohibitions.**

(1) (a) In each county which is not within a prosecution district, the county attorney is a public prosecutor and shall:

(i) conduct on behalf of the state all prosecutions for public offenses committed within the county, except for prosecutions undertaken by the city attorney under Section **10-3-928** and appeals from them;

(ii) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of any public offense when in possession of information that the offense has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

(iii) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved.

(b) All the duties and powers of public prosecutor shall be assumed and discharged by the county attorney.

(2) The county attorney:

(a) shall appear and prosecute for the state in the district court of the county in all criminal prosecutions;

(b) may appear and prosecute in all civil cases in which the state may be interested; and

(c) shall render assistance and cooperation as required by the attorney general in:

(i) all cases that may be appealed to the Supreme Court and shall prosecute the appeal from any crime charged by the county attorney as a misdemeanor in the district court; and

(ii) investigations involving the Office of the Attorney General, including those described in Subsection **67-5-18(3)(f)**.

(3) The county attorney shall:

(a) attend the deliberations of the grand jury;

(b) draw all indictments and informations for offenses against the laws of this state within the county;

(c) cause all persons indicted or informed against to be speedily arraigned;

(d) cause all witnesses for the state to be subpoenaed to appear before the court or grand jury;

(e) examine carefully into the sufficiency of all appearance bonds that may be tendered to the district court of the county;

(f) upon the order of the court, institute proceedings in the name of the state for recovery upon the forfeiture of any appearance or other bonds running to the state and enforce the collection of them; and

(g) perform other duties as required by law.

(4) The county attorney shall:

(a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;

(b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and

(c) file a copy of the list in the office of the state auditor and of the attorney general.

(5) The county attorney shall:

(a) each year on the first business day of August file a report with the attorney general

covering the preceding fiscal year, stating the number of criminal prosecutions in the district, the character of the offenses charged, the number of convictions, the amount of fines and penalties imposed, and the amount collected; and

(b) call attention to any defect in the operation of the laws and suggest amendments to correct the defect.

(6) The county attorney shall:

(a) appear and prosecute for the state in the juvenile court of the county in any proceeding involving delinquency;

(b) represent the state in any proceeding pending before the juvenile court if any rights to the custody of any juvenile are asserted by any third person; and

(c) prosecute before the court any person charged with abuse, neglect, or contributing to the delinquency or dependency of a juvenile.

(7) The county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, and precinct officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(8) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the state any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an indictment or information without the consent of the court.

(9) If at any time after investigation by the district judge involved, the judge finds and recommends that the county attorney in any county is unable to satisfactorily and adequately perform the duties in prosecuting a criminal case without additional legal assistance, the attorney general shall provide the additional assistance.

Amended by Chapter 130, 2002 General Session

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*Last revised: Monday, December 18, 2006*

**76-10-504. Carrying concealed dangerous weapon -- Penalties.**

(1) Except as provided in Section **76-10-503** and in Subsections (2) and (3):

(a) a person who carries a concealed dangerous weapon, as defined in Section **76-10-501**, which is not a firearm on his person or one that is readily accessible for immediate use which is not securely encased, as defined in this part, in a place other than his residence, property, or business under his control is guilty of a class B misdemeanor; and

(b) a person without a valid concealed firearm permit who carries a concealed dangerous weapon which is a firearm and that contains no ammunition is guilty of a class B misdemeanor, but if the firearm contains ammunition the person is guilty of a class A misdemeanor.

(2) A person who carries concealed a sawed-off shotgun or a sawed-off rifle is guilty of a second degree felony.

(3) If the concealed firearm is used in the commission of a violent felony as defined in Section **76-3-203.5**, and the person is a party to the offense, the person is guilty of a second degree felony.

(4) Nothing in Subsection (1) shall prohibit a person engaged in the lawful taking of protected or unprotected wildlife as defined in Title 23, Wildlife Resources Code, from carrying a concealed weapon or a concealed firearm with a barrel length of four inches or greater as long as the taking of wildlife does not occur:

(a) within the limits of a municipality in violation of that municipality's ordinances; or

(b) upon the highways of the state as defined in Section **41-6a-102**.

Amended by Chapter 2, 2005 General Session

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*Last revised: Monday, December 18, 2006*

**76-10-505. Carrying loaded firearm in vehicle or on street.**

- (1) Unless otherwise authorized by law, a person may not carry a loaded firearm:
- (a) in or on a vehicle;
  - (b) on any public street; or
  - (c) in a posted prohibited area.
- (2) A violation of this section is a class B misdemeanor.

Amended by Chapter 328, 1990 General Session

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