

1995

## Utah v. Mark Dean Anderson : Brief of Appellant

Utah Court of Appeals

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Scott M. Burns; Iron County Attorney; Attorney for Respondent.

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IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH,	)	
	)	
Plaintiff-Respondent,	)	
	)	Case No. 950778-CA
vs.	)	
	)	
MARK DEAN ANDERSON,	)	
	)	Classification Priority 2
Defendant-Appellant.	)	

---

BRIEF OF APPELLANT

---

Appeal from a Judgment, Sentence, Stay of Execution of Sentence, Order of Probation, and Commitment dated the 23rd day of October, 1995, in the Fifth Judicial District Court, in and for Iron County, State of Utah, the Honorable Robert T. Braithwaite, presiding.

---

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FILE

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COURT OF AP.

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THE STATE OF UTAH,	)	
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IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH,	)	
	)	
Plaintiff-Respondent,	)	
	)	
vs.	)	Case No. 950778-CA
	)	
MARK DEAN ANDERSON,	)	
	)	
Defendant-Respondent.	)	

---

JURISDICTION OF THE COURT OF APPEALS

The jurisdiction of the Court of Appeals is established by Section 78-2a-3(2)(f), Utah Code Annotated, 1953, as amended.

NATURE OF THE PROCEEDINGS

This is an appeal from the Judgment, Sentence, Stay of Execution of Sentence, Order of Probation, and Commitment from the Fifth Judicial District Court for Iron County, State of Utah, following a conviction of Driving Under the Influence of Alcohol, a Class A Misdemeanor; Driving on Suspension, a Class B Misdemeanor and False Information to a Peace Officer, a Class B Misdemeanor, on or about April 24, 1995.

ISSUES PRESENTED ON APPEAL

1. Did the trial court abuse its discretion in sentencing the Defendant to a maximum of eighteen months in jail after taking into consideration the Pre-Sentence Investigation Report?

2 Did the trial court err at the time of sentencing by imposing a consecutive sentence requiring Defendant to serve an

additional six months in jail when all three crimes to which the Defendant plead guilty were a result of the same criminal episode?

3. Did the trial court err at the time of sentencing by imposing cruel and/or unusual punishment in violation of the Eighth Amendment of the United States Constitution and Article I, Section IX, of the Constitution of the State of Utah?

#### DETERMINATIVE AUTHORITIES

1. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U. S. Const., Amend. 8.

2. "Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor." Utah Const., Art. I, Section 9.

#### STATEMENT OF THE CASE

##### A. Nature of the Case

This is an appeal from a criminal conviction under a Judgment, Sentence, Stay of Execution of Sentence, Order of Probation, and Commitment from the Fifth Judicial District Court of Iron County.

##### B. Course of the Proceedings

On or about April 24, 1995, Defendant was convicted of Driving Under the Influence of Alcohol, a Class A Misdemeanor; Driving on Suspension, a Class B Misdemeanor; and False Information to a Peace Officer, a Class B Misdemeanor. Following a pre-sentence investigation and Pre-Sentence Investigation Report, sentencing was held on October 10, 1995.

#### C. Disposition at Trial Court

The Defendant, Mark Dean Anderson, was convicted of Driving Under the Influence of Alcohol, a Class A Misdemeanor; Driving on Suspension, a Class B Misdemeanor; and False Information to a Peace Officer, a Class A Misdemeanor.

The Court ordered the preparation of a Pre-Sentence Investigation Report. Thereafter, the Defendant appeared for sentencing on October 10, 1995, at which time the Honorable Robert T. Braithwaite sentenced Defendant to one year in jail on the Class A Misdemeanor, Driving Under the Influence of Alcohol, to run consecutively with six months to be served for the Class B Misdemeanor, Driving on Suspension, and that the sentence for False Information to a Peace Office, a Class B Misdemeanor, run concurrently. (Tr., 9-10).

#### D. Statement of the Facts

The Defendant, Mark Dean Anderson, was convicted of Driving Under the Influence of Alcohol, a Class A Misdemeanor; Driving on Suspension, a Class B Misdemeanor; and False Information to a Police Officer, a Class A Misdemeanor. The Defendant underwent presentence investigation and the Presentence Investigation Report recommended that Defendant serve eighteen months in the Iron County Jail. The Court, after hearing argument of counsel, ordered Defendant to serve eighteen months in the Iron County Jail, imposed a \$900.00 fine, and \$5,000.00 in restitution (Tr. 9-10).



### SUMMARY OF ARGUMENT

The Court clearly abused its discretion by sentencing Defendant to the maximum sentence. The Court, by imposing such a sentence, subjected Defendant to cruel and/or unusual punishment.

### ARGUMENT

#### POINT ONE

THE TRIAL COURT CLEARLY ABUSED ITS DISCRETION  
IN SENTENCING DEFENDANT TO A PRISON TERM OF  
EIGHTEEN MONTHS.

This Court has held that "we will set aside a sentence imposed by the trial court if the sentence represents an abuse of discretion, if the trial judge fails to consider all legally relevant factors, or if the sentence exceeds the limits prescribed by law." State v. Gentlewind, 844 P.2d 372, 375 (Utah Ct. App. 1992).

The Defendant argues that Judge Braithwaite was aggravated at the Defendant because said Defendant was allegedly not honest with the court. Judge Braithwaite stated, "I think you've been deceptive with the court. Dishonest with the court. You have a severe drinking problem, criminal problem. This, to me, is a clear-cut case that requires the maximum sentence." (Tr. 9).

The Defendant believes that the court clearly abused its discretion because of the circumstances surrounding the statements made by Judge Braithwaite prior to sentencing of the Defendant.

## POINT TWO

THE TRIAL COURT VIOLATED THE DEFENDANT'S RIGHTS PURSUANT TO THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 9 OF THE UTAH CONSTITUTION BY IMPOSING CRUEL AND UNUSUAL PUNISHMENT.

Article I, Section 9 of the Constitution of Utah specifically states:

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Person arrested or in prison shall not be treated with unnecessary rigor.

Amendment Eight of the United States Constitution states:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

While there is a long line of cases explaining what may or may not constitute cruel or unusual punishment, it is apparent that each case is fact sensitive, and for that this Defendant relies on the Utah Constitution as well as the United States Constitution.


Defendant firmly argues and believes that the lower court inflicted cruel and usual punishment by sentencing Defendant to the maximum sentence. This Defendant reasserts arguments set forth in Point I as basis for the argument that the court imposed cruel and unusual punishment when the Court became personally and emotionally involved in this case.

## CONCLUSION

Because the trial court's ruling at the time of sentencing was clearly erroneous and because the trial court thus

clearly abused its discretion, this Defendant requests that the matter be remanded to the trial court for alternative disposition.


RESPECTFULLY SUBMITTED this 23 day of <sup>Jan</sup>~~December~~, 1995.

  
\_\_\_\_\_  
KEITH C. BARNES  
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that I mailed a ~~two (2)~~ true and correct copies of the above and foregoing BRIEF OF APPELLANT to Scott M. Burns, Iron County Attorney, P.O. Box 428, Cedar City, UT 84720, this 23 day of ~~December~~, 1995, first class postage fully prepaid.

*January 1996*

  
\_\_\_\_\_  
KEITH C. BARNES

A D D E N D U M

## UNITED STATES CONSTITUTION

### AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## CONSTITUTION OF UTAH

### Art. I, § 9

#### Sec. 9. [Excessive bail and fines — Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor. 1896

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5th JUDICIAL DIST COURT - IRON COUNTY

OCT 23 1995

CLERK  
DEPUTY

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IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,  
STATE OF UTAH

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STATE OF UTAH,	)	JUDGMENT, SENTENCE, STAY
	)	OF EXECUTION OF SENTENCE,
Plaintiff,	)	ORDER OF PROBATION, AND
	)	COMMITMENT
vs.	)	***NO GOOD TIME RECOMMENDED***
	)	By: <u>RT Braithwaite</u>
MARK D. ANDERSON,	)	
	)	Criminal No. 941500984
Defendant.	)	Judge Robert T. Braithwaite

---

The Defendant, MARK D. ANDERSON, having been convicted of DRIVING UNDER THE INFLUENCE OF ALCOHOL, a Class A Misdemeanor; DRIVING ON SUSPENSION, a Class B Misdemeanor; and FALSE INFORMATION TO A PEACE OFFICER, a Class B Misdemeanor; on April 24, 1995, and the Court having entered said verdict of guilty and thereafter having ordered the preparation of a presentence investigation report, and after said report was prepared and presented to the Court, the Court having called the above-entitled matter on for sentencing on October 10, 1995, in Cedar City, Utah, and the above-named Defendant, MARK D ANDERSON, having appeared before the Court in person together with his attorney of record, James M. Park, and the State of Utah having appeared by and through Iron County Attorney Scott M Burns, and the Court having reviewed the presentence investigation report and having further reviewed the file in detail and

thereafter having heard statements from the Defendant, his attorney, and the Iron County Attorney, and the Court being fully advised in the premises now makes and enters the following Judgment, Sentence, Stay of Execution of Sentence, Order of Probation, and Commitment, to wit:

### **JUDGMENT**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, MARK D. ANDERSON, has been convicted of the offenses of DRIVING UNDER THE INFLUENCE OF ALCOHOL, a Class A Misdemeanor, DRIVING ON SUSPENSION, a Class B Misdemeanor; and FALSE INFORMATION TO A PEACE OFFICER, a Class B Misdemeanor, and the Court having asked whether the Defendant had anything to say in regard to why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, it is adjudged that the Defendant is guilty as charged and convicted.

### **SENTENCE**

IT IS HEREBY ORDERED that the Defendant, MARK D. ANDERSON, and pursuant to his conviction of DRIVING UNDER THE INFLUENCE OF ALCOHOL, a Class A Misdemeanor, is hereby sentenced to a term of incarceration in the Iron County Jail for a period of one (1) year, and the Defendant is hereby placed in the custody of the Iron County Sheriff.

IT IS FURTHER ORDERED that the Defendant, MARK D. ANDERSON, pay a fine in the sum and amount of nine hundred dollars (\$900), plus an eighty-five percent (85%) surcharge, for his conviction of the offense of DRIVING UNDER THE INFLUENCE OF ALCOHOL, a Class A Misdemeanor

IT IS FURTHER ORDERED that the Defendant, MARK D. ANDERSON, and pursuant to his conviction of DRIVING ON SUSPENSION, a Class B Misdemeanor, is hereby sentenced to a

term of incarceration in the Iron County Jail for a period of six (6) months, and the Defendant is hereby placed in the custody of the Iron County Sheriff

IT IS FURTHER ORDERED that the Defendant, MARK D. ANDERSON, and pursuant to his conviction of FALSE INFORMATION TO A PEACE OFFICER, a Class B Misdemeanor, is hereby sentenced to a term of incarceration in the Iron County Jail for a period of six (6) months, and the Defendant is hereby placed in the custody of the Iron County Sheriff.

IT IS FURTHER ORDERED that the terms of incarceration for DRIVING UNDER THE INFLUENCE OF ALCOHOL, a Class A Misdemeanor (one year), and DRIVING ON SUSPENSION, a Class B Misdemeanor (six months), shall be served consecutively, and the Defendant is committed to the Iron County Jail for a period of eighteen (18) months

**STAY OF EXECUTION OF SENTENCE FOR  
FALSE INFORMATION TO A PEACE OFFICER**

IT IS HEREBY ORDERED that the execution of the term of incarceration imposed as relating to the offense of FALSE INFORMATION TO A PEACE OFFICER, a Class B Misdemeanor (six months), is hereby stayed, pending the Defendant's strict adherence to and compliance with the following terms and conditions of probation.

IT IS FURTHER ORDERED that the Stay of Execution of Sentence for False Information to a Peace Officer (six months in the Iron County Jail) is the only term of incarceration stayed, and the Defendant is ordered to serve the eighteen- (18-) month jail sentence set forth above

**ORDER OF PROBATION**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, MARK D. ANDERSON, is hereby placed on probation for a period of thirty-six (36) months under the



supervision of the Court (bench probation), strictly within the following terms, provisions, and conditions, said probation relating only to the offense of False Information to a Peace Officer, a Class B Misdemeanor, to wit

1. The Defendant shall commit no law violations during the period of this probation.
2. That the Defendant shall pay restitution to the victim, with payments made through the Iron County Attorney's Office, in the sum and amount of five thousand dollars (\$5,000)
3. That the Defendant shall pay a fine and surcharge in the amount of nine hundred dollars (\$900)

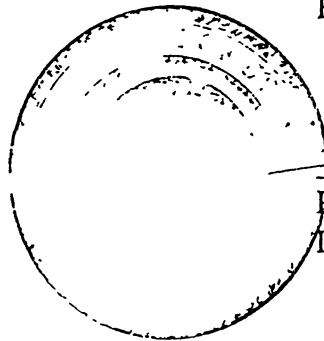
#### COMMITMENT


TO THE SHERIFF OF IRON COUNTY, STATE OF UTAH

YOU ARE HEREBY COMMANDED to take the Defendant, MARK D ANDERSON, and deliver him to the Iron County/Utah State Correctional Facility, there to be kept and confined in accordance with the above and foregoing Judgment, Sentence, Stay of Execution of Sentence, Order of Probation, and Commitment

DATED this 20 day of October, 1995.

BY THE COURT



  
ROBERT T BRAITHWAITE  
District Court Judge

STATE OF UTAH )  
COUNTY OF IRON ) ss.

WITNESS my hand and the seal of said office in Cedar City, County of Iron, State of Utah,  
this 23rd day of October, 1995.

( S E A L )

LINDA WILLIAMSON

LINDA WILLIAMSON  
District Court Clerk

By: Tamara A. Carter  
Deputy District Court Clerk