

1995

West Valley City v. Kent R. Fullmer : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 950793-CA

IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,

Appellant,

vs.

KENT R. FULLMER,

Appellee.

Appellate No. 950793-CA

Priority No. 15

BRIEF OF APPELLANT

Appeal from the final judgment of the Third Circuit Court, State
of Utah, in and for Salt Lake County, West Valley Department.
The Honorable William A. Thorne

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COURT OF APPEALS

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BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

Because this case is an appeal from the final judgment of the Third Circuit Court, the Utah Court of Appeals has jurisdiction pursuant to Section 78-2a-3(2)(d), Utah Code Ann. (Supp. 1995).

STATEMENT OF THE ISSUE AND STANDARD OF REVIEW

ISSUE: Did the trial judge correctly dismiss the charge against Appellee by holding that as a matter of law, Section 76-10-504 of the Utah Code requires that a concealed dangerous weapon must be carried in a moving vehicle? (See Transcript of Verdict, *West Valley City v. Fullmer*, at 1-4.)

STANDARD OF REVIEW: A trial court's interpretation of statutes is a question of law that is reviewed under a correction of error standard. *State v. Larsen*, 865 P.2d 1355, 1357 (Utah 1993); *State v. Shipler*, 869 P.2d 968, 969 (Utah App. 1994). "This court review[s] questions of law under a correction of error

standard, without deference to the trial court." *Shipler*, 869 P.2d at 969 (citation omitted).

DETERMINATIVE CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTIONAL PROVISIONS

This appeal does not involve an interpretation of any provision from the federal or Utah Constitutions.

STATUTES

Utah Code Ann. § 76-10-501

Utah Code Ann. § 76-10-504

These sections are included in the Addendum to this Brief.

RULES

No procedural rules are at issue in this case.

STATEMENT OF THE CASE

This appeal concerns the trial judge's dismissal of the charge against Appellee by ruling that Section 76-10-504 of the Utah Code requires that a concealed dangerous weapon be physically moved in order for it to be "carried." This interpretation of Section 76-10-504 contradicts the plain language of the statute and the case law that has interpreted it. A copy of the trial judge's ruling is included in the Addendum to this Brief.

RELEVANT FACTS

These facts were introduced at trial, but the only discussion of the trial judge's interpretation of Section 76-10-504 was in his final verdict. Since this appeal concerns the trial judge's final ruling and not the evidence, only that final ruling was

transcribed. These facts are presented here for background purposes.

Early in the morning of May 8, 1995, officers from the West Valley City Police Department responded to a call reporting a suspicious person in the parking lot of an apartment complex. The police officers arrived and discovered Appellee, Kent R. Fullmer, ("Fullmer") inside the passenger compartment of a vehicle. The officers approached and requested identification from Fullmer, which he provided.

The officers conducted a routine check for outstanding warrants, which revealed that there were outstanding warrants for Fullmer. Upon learning this, the officers took Fullmer into custody. The officers also searched Fullmer's vehicle as part of the lawful arrest. The officers discovered a Davis .380 caliber handgun under the arm rest between the two front seats. The gun contained a full clip of bullets, although there was not a bullet in the chamber. Another full clip was found next to the gun. Both clips contained five rounds.

Fullmer was charged with violating Section 76-10-504 of the Utah Code, carrying a concealed dangerous weapon. At a bench trial held on October 16, 1995, the trial judge dismissed the charge. He held that the term "carrying" in the statute required that the weapon be physically moved. Under that interpretation of Section 76-10-504, the trial judge held that as a matter of law the crime had not been committed. (Transcript of Verdict, *West Valley City v. Fullmer*, at p. 3, ln. 11-14).

SUMMARY OF THE ARGUMENT

THE TRIAL JUDGE IMPROPERLY DISMISSED THE CHARGE AGAINST FULLMER BECAUSE HIS INTERPRETATION THAT SECTION 76-10-504 REQUIRES THAT A WEAPON BE PHYSICALLY MOVED IN A VEHICLE IN ORDER TO BE "CARRIED" CONTRADICTS THE LANGUAGE OF THE STATUTE AND CASES THAT HAVE INTERPRETED THE STATUTE.

The trial judge's dismissal of the charges against Fullmer contradicts the language of the Utah Code and Utah case law. The Utah Code does not require physical movement of a concealed weapon, only that it be "readily accessible for immediate use." Utah Code Ann. § 76-10-501(2)(a) (Supp. 1995). A weapon is readily accessible for immediate use if it "is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person." *Id.* § 76-10-501(2)(l). Nothing in this language requires movement or implies that movement is necessary. In fact, a weapon could be secreted in non-moving vehicle, and still be "carried," if a person has control over the weapon and is close enough that the weapon could be easily retrieved. Thus, the Utah Code does not require that a weapon must be physically moved in order for it to be "carried."

Furthermore, the Utah Supreme Court has clarified the meaning of the term "carried." In *State v. Williams*, 636 P.2d 1092 (Utah 1981), the court held that the term "carry" means having the weapon under control and within immediate, easy, or ready access. *Williams*, 636 P.2d at 1094. In *Williams*, a handgun was secreted on the front seat of a vehicle, much like the present case. Whether

the vehicle had moved or not made no difference to the court's analysis. In fact, the court specifically agreed that its interpretation extended to weapons concealed within vehicles, whether or not the vehicle moved. *Williams*, 636 P.2d at 1095. In similar fashion, the charges against Fullmer should not have been dismissed simply because his vehicle did not move.

The trial judge's interpretation of Section 76-10-504 was incorrect. The ruling has no basis in the statute and directly contradicts Utah case law. Carrying a concealed dangerous weapon is criminal conduct because of the danger that is posed to the public, not because of the transportability of the weapon in a vehicle or on a person's clothing. Carrying is not determined by movement, but by accessibility. The trial judge improperly dismissed the charge simply because the vehicle had not moved. The trial judge's ruling should therefore be set aside and this case retried.

ARGUMENT

THE TRIAL JUDGE IMPROPERLY DISMISSED THE CHARGE AGAINST FULLMER BECAUSE HIS INTERPRETATION THAT SECTION 76-10-504 REQUIRES THAT A WEAPON BE PHYSICALLY MOVED IN A VEHICLE IN ORDER TO BE "CARRIED" CONTRADICTS THE LANGUAGE OF THE STATUTE AND CASES THAT HAVE INTERPRETED THE STATUTE.

The trial judge improperly dismissed the charge against Fullmer because his interpretation of Section 76-10-504 contradicts the plain language of the statute and case law that has interpreted it. Nothing in the statute or in cases interpreting the statute requires that a weapon be physically moved in order to be

"carried." Since the trial judge based his decision to dismiss the charge on this erroneous interpretation of Section 76-10-504, the decision should be set aside, and the case retried.

The trial judge's interpretation of Section 76-10-504 is not supported by the plain language of the statute. Nothing in the language of Sections 76-10-501 to -504, which deal with carrying a concealed dangerous weapon, requires that a concealed dangerous weapon be physically moved in order to be "carried." Although the statute does not define the term "carry," it does define a concealed dangerous weapon as one "that is covered, hidden, or secreted . . . and is readily accessible for immediate use." Utah Code Ann. § 76-10-501(2)(a)(i) (Supp. 1995). "'Readily accessible for immediate use' means that a . . . weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person." *Id.* § 76-10-501(2)(l). Thus, if a weapon is hidden but still easily retrievable, it may be a concealed dangerous weapon, regardless of whether it physically moves or not.

For example, a handgun could be brought to a vehicle parked on a street, where it could be hidden where it is readily accessible for immediate use by a person seated inside. According to the statute, a concealed dangerous weapon is one that is carried on the person, or is within such close proximity that it can be retrieved and used as readily as if carried on the person. Even though the vehicle does not physically move, the handgun would be a concealed

dangerous weapon. Physical movement of the weapon is not a requirement of "carrying."

The trial judge's ruling also contradicts the interpretation given to the statute by the Utah Supreme Court. The court clarified the meaning of the term "carry" in *State v. Williams*, 636 P.2d 1092 (Utah 1981). In that case, police officers pulled the defendant over for a traffic violation, and did a routine check for outstanding warrants. Because the defendant had outstanding warrants, he was placed under arrest and his car impounded. The officers discovered a handgun in a satchel that was placed on the front seat of the vehicle, easily accessible to defendant. The defendant was charged with carrying a concealed dangerous weapon under the predecessor statute to Section 76-10-504.¹ *Id.* 636 P.2d at 1093-94.

On appeal, the defendant argued that he was not "carrying" the weapon on his person, and should not have been convicted of carrying a concealed dangerous weapon. The trial judge had instructed the jury that the weapon only needed to be accessible, but not necessarily on the person of the defendant. The defendant had requested an instruction that limited the offense to weapons actually carried on person of the offender. *Id.*, 636 P.2d at 1094.

The Utah Supreme Court affirmed the trial judge's interpretation of the statute, and held that a person is carrying

¹ The Utah Legislature has changed Section 76-10-504 twice since 1981. The statute was reworded in 1982 and 1995. However, the language at issue has remained unchanged since *Williams* was decided. See 1995 Utah Laws ch. 80, § 2; 1982 Utah Laws ch. 17, § 1.

a weapon when the weapon is in the person's control and within immediate, easy, or ready access. The court focused on the purpose of Section 76-10-504:

Clearly, the purpose of concealed weapons statutes is to protect the public by preventing an individual from having on hand a weapon of which the public is unaware and which the individual might use should he be so inclined. . . . As a factual matter, where the concealed weapon is shown to be under defendant's control and within his immediate, easy or ready access, he will be deemed to be "carrying" the weapon.

Williams, 636 P.2d at 1094. Whether the vehicle moved or not made no difference to the court's analysis. A weapon may be under a person's control and within his or her immediate access without being moved in a vehicle. In fact, the court specifically agreed that its interpretation applied to weapons hidden in vehicles within easy reach of a person. *Id.*, 636 P.2d at 1095. According to the court, accessibility is the determining factor, not mobility. Therefore, an individual is "carrying" a weapon when that weapon is secreted in an automobile within the immediate, easy, or ready access of the person. Whether the automobile moves or not is immaterial.

The charge against Fullmer should not have been dismissed because this case is nearly identical factually to *State v. Williams*. The only significant difference between the present case and *Williams* is that the vehicle in *Williams* moved while it contained a hidden handgun, and in the present case the vehicle had not moved. The other facts are nearly the same. Fullmer was first approached by officers investigating a complaint, and Williams was pulled over in a routine traffic stop. Both Fullmer and Williams

were taken into custody because a routine check revealed outstanding warrants. Both vehicles were searched because of the lawful arrests. A handgun was discovered in both vehicles. Williams was found to have carried a concealed dangerous weapon, and so should Fullmer. Whether the vehicle moved or not is irrelevant. Because his interpretation of Section 76-10-504 contradicts the Utah Supreme Court, the trial judge improperly dismissed the charge against Fullmer, and that decision should be set aside.

The trial judge discussed *Williams* when he announced his final decision. He held that *Williams* did not apply to this case because the car was not moving.

State v. Williams, though [dealt with] a vehicle that's moving as opposed to one that's stationary. If [Fullmer's vehicle] had been moving, clearly carrying extends to a vehicle that's moving; but if it's not moving, then it's not any different than placing it in a room some place.

. . . .

In this case, the vehicle wasn't moving and had not been moving with the weapon in that location, so I'm going to find that it doesn't meet the definition as carried.

(Transcript of Verdict, *West Valley City v. Fullmer*, at p. 3, ln. 2-14). As has been discussed, this interpretation has no basis in the statute or in case law.

The judge's ruling impermissibly creates a loophole in Section 76-10-504: A person is not carrying a concealed dangerous weapon if he or she can show that the weapon did not move. The legislature criminalized this conduct because of the severe threat to public safety caused by concealed weapons. See *Williams*, 636

P.2d at 1094-95. The threat is equally severe whether the weapons are located in moving or non-moving vehicles. If the legislature had intended to excuse weapons that are not actually moved while concealed, the legislature would have done so. Instead, the offense is defined in terms of accessibility, whether the weapon has been moved or not.

The trial judge held that a vehicle must move with the weapon before the weapon will be deemed to be "carried," and thus dismissed the charges against Fullmer. This interpretation contradicts the plain meaning of the statute and the interpretation given to the statute by the Utah Supreme Court. It also creates a ridiculous exemption from the law if the individual can show that the weapon was concealed in a non-moving vehicle. Therefore, the ruling was in error, and it should be set aside.

CONCLUSION

"Clearly, where the weapon is immediately and easily accessible, the fair import of the law is that the individual is 'carrying' the weapon." *State v. Williams*, 636 P.2d 1092, 1095 (Utah 1981). The Utah Supreme Court could not have used plainer language to define "carrying" for the purposes of Section 76-10-504. Movement of a vehicle has nothing to do with whether a weapon was "carried" or not. The relevant question is whether Fullmer had ready access to the weapon, not whether his automobile moved while it contained the weapon.

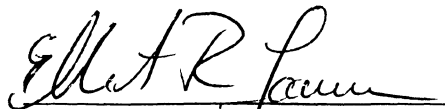
The language of Section 76-10-501 states that a concealed dangerous weapon is one that is hidden but readily accessible for

immediate use. Movement in a vehicle is not critical. A weapon in a non-moving vehicle is still a concealed dangerous weapon, and the threat to the public from that weapon is as real as when the vehicle moves. However, the interpretation of the trial judge exempts people who conceal weapons in non-moving vehicles. This interpretation has no basis in the statute or in the decision of the Utah Supreme Court that defines the term "carrying."

In *State v. Williams* the court found that the defendant "carried" a handgun by hiding it in his vehicle where he could easily access it. The only significant difference between *Williams* and the present case is that in *Williams* the vehicle had moved with the handgun, and in the present case the vehicle had not moved. Such a difference is immaterial to the question of whether the weapon was under Fullmer's control and readily accessible for immediate use. The trial judge impermissibly found that distinction material, and dismissed the charges simply because Fullmer's vehicle had not moved while it contained the weapon. That decision was in error, and it should be set aside

Appellant respectfully requests that this Court set aside the trial court's order dismissing the charges against Fullmer, and allow the case to be retried.

RESPECTFULLY SUBMITTED this 1st day of April, 1996.


ELLIOT R. LAWRENCE
Attorney for Appellant

CERTIFICATE OF MAILING

This certifies that a copy of the foregoing Appellant's Brief
was mailed to the following address:

Boyd M. Fullmer
3211 South 2045 East
Salt Lake City, Utah 84109

DATED this 1st day of April, 1996.


ELLIOT R. LAWRENCE
Attorney for Appellant

ADDENDUM 1
Utah Code Annotated §§ 76-10-501 to -504.

nitrate, ammonium nitrate, fuel oil mixtures, cast primers and boosters, R.D.X., P.E.T.N., electric and nonelectric blasting caps, exploding cords commonly called detonating cord, detcord, or primacord, picric acid explosives, T.N.T. and T.N.T. mixtures, nitroglycerin and nitroglycerin mixtures, or any other chemical mixture intended to explode with fire or force;

(ii) any explosive bomb, grenade, missile, or similar device; and

(iii) any incendiary bomb, grenade, fire bomb, chemical bomb, or similar device, including any device, except kerosene lamps, if criminal intent has not been established, which consists of or includes a breakable container including a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting the flammable liquid or compound or any breakable container which consists of, or includes a chemical mixture that explodes with fire or force and can be carried, thrown, or placed.

(b) "Explosive, chemical, or incendiary device" shall not include rifle, pistol, or shotgun ammunition.

(c) "Explosive, chemical, or incendiary parts" means any substances or materials or combinations which have been prepared or altered for use in the creation of an explosive, chemical, or incendiary device. These substances or materials include:

(i) timing device, clock, or watch which has been altered in such a manner as to be used as the arming device in an explosive;

(ii) pipe, end caps, or metal tubing which has been prepared for a pipe bomb; and

(iii) mechanical timers, mechanical triggers, chemical time delays, electronic time delays, or commercially made or improvised items which, when used singly or in combination, may be used in the construction of a timing delay mechanism, booby trap, or activating mechanism for any explosive, chemical, or incendiary device.

(d) "Explosive, chemical, or incendiary parts" shall not include rifle, pistol, or shotgun ammunition, or any signaling device customarily used in operation of railroad equipment.

(2) The provisions in Subsections (3) and (6) shall not apply to:

(a) any public safety officer while acting in his official capacity transporting or otherwise handling explosives, chemical, or incendiary devices;

(b) any member of the armed forces of the United States or Utah National Guard while acting in his official capacity;

(c) any person possessing a valid permit issued under the provisions of Uniform Fire Code, Article 77, or any employee of such permittee acting within the scope of his employment;

(d) any person possessing a valid license as an importer, wholesaler, or display operator under the provisions of the Utah Fireworks Act, Sections 11-3-3.2 and 11-3-3.5; and

(e) any person or entity possessing or controlling an explosive, chemical, or incendiary device as part of its lawful business operations.

(3) Any person who knowingly, intentionally, or recklessly possesses or controls an explosive, chemical, or incendiary device is guilty of a felony of the second degree.

(4) Any person who knowingly, intentionally, or recklessly:

(a) uses or causes to be used an explosive, chemical, or incendiary device in the commission of or an attempt to commit a felony; or

(b) injures another or attempts to injure another in his person or property through the use of an explosive, chemical, or incendiary device, is guilty of a felony of the first degree.

(5) Any person who knowingly, intentionally, or recklessly removes or causes to be removed or carries away any explosive, chemical, or incendiary device from the premises where said explosive, chemical, or incendiary device is kept by the lawful user, vendor, transporter, or manufacturer without the consent or direction of the lawful possessor is guilty of a felony of the second degree.

(6) Any person who knowingly, intentionally, or recklessly possesses any explosive, chemical, or incendiary parts is guilty of a felony of the third degree. 1993

76-10-307. Delivery to common carrier, mailing, or placement on premises.

Every person who delivers or causes to be delivered to any express or railway company or other common carrier, or to any person, any explosive, chemical, or incendiary device, knowing it to be the device, without informing the common carrier or person of its nature, sends it through the mail, or throws or places it on or about the premises or property of another or in any place where another may be injured thereby in his person or property, is guilty of a felony of the second degree. 1993

76-10-308. Explosive, chemical, or incendiary device — Venue of prosecution for shipping.

Any person who knowingly, intentionally, or recklessly delivers any explosive, chemical, or incendiary device to any person for transmission without the consent or direction of the lawful possessor may be prosecuted in the county in which he delivers it or in the county to which it is transmitted. 1993

76-10-309. Repealed.

1993

PART 4

FENCES

76-10-401. Fencing of shafts and wells.

Any person who has sunk or shall sink a shaft or well on the public domain for any purpose shall inclose it with a substantial curb or fence, which shall be at least four and one-half feet high. Any person violating the provisions of this section is guilty of a class B misdemeanor. 1973

PART 5

WEAPONS

76-10-501. Uniform law — Definitions.

(1) (a) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state. Except as specifically provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:

(i) prohibited from owning, possessing, purchasing, transporting, or keeping any firearm at his place of residence, property, business, or in any vehicle under his control; or

(ii) required to have a permit or license to purchase, own, possess, transport, or keep a firearm.

(b) This part is uniformly applicable throughout this state and in all its political subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities. Unless specifically authorized by the Legislature by statute, a local authority may not enact or enforce any ordinance, regulation, or rule pertaining to firearms.

(2) As used in this part:

(a) (i) "Concealed dangerous weapon" means a dangerous weapon that is covered, hidden, or secreted in a manner that the public would not be aware of its presence and is readily accessible for immediate use.

(ii) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a firearm which is unloaded and is securely encased.

(b) "Crime of violence" means aggravated murder, murder, manslaughter, rape, mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable by imprisonment for more than one year, or an attempt to commit any of these offenses.

(c) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun through the division or the local law enforcement agency where the firearms dealer conducts business.

(d) "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. The following factors shall be used in determining whether a knife, or any other item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon:

- (i) the character of the instrument, object, or thing;
- (ii) the character of the wound produced, if any;
- (iii) the manner in which the instrument, object, or thing was used; and
- (iv) the other lawful purposes for which the instrument, object, or thing may be used.

(e) "Dealer" means every person who is licensed under crimes and criminal procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

(f) "Division" means the Law Enforcement and Technical Services Division of the Department of Public Safety, created in Section 53-5-103.

(g) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

(h) "Fully automatic weapon" means any firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.

(i) "Firearms transaction record form" means a form created by the division to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

(j) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

(k) "Prohibited area" means any place where it is unlawful to discharge a firearm.

(l) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person.

(m) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or any danger-

ous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

(n) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.

1996

76-10-502. When weapon deemed loaded.

(1) For the purpose of this chapter, any pistol, revolver, shotgun, rifle, or other weapon described in this part shall be deemed to be loaded when there is an unexpended cartridge, shell, or projectile in the firing position.

(2) Pistols and revolvers shall also be deemed to be loaded when an unexpended cartridge, shell, or projectile is in a position whereby the manual operation of any mechanism once would cause the unexpended cartridge, shell, or projectile to be fired.

(3) A muzzle loading firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinders.

1990

76-10-503. Purchase or possession of dangerous weapon/handgun — Persons not permitted to have — Penalties.

(1) (a) Any person who has been convicted of any crime of violence under the laws of the United States, this state, or any other state, government, or country, or who is addicted to the use of any narcotic drug, or who has been declared mentally incompetent may not own or have in his possession or under his custody or control any dangerous weapon as defined in this part.

(b) Any person who violates this subsection is guilty of a class A misdemeanor, and if the dangerous weapon is a firearm or sawed-off shotgun, he is guilty of a third degree felony.

(2) (a) Any person who is on parole or probation for a felony may not have in his possession or under his custody or control any dangerous weapon as defined in this part.

(b) Any person who violates this subsection is guilty of a third degree felony, but if the dangerous weapon is a firearm, explosive, or incendiary device he is guilty of a second degree felony.

(3) (a) A person may not purchase, possess, or transfer any handgun described in this part who:

(i) has been convicted of any felony offense under the laws of the United States, this state, or any other state;

(ii) is under indictment;

(iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

(iv) is a drug dependent person as defined in Section 58-37-2;

(v) has been adjudicated as mentally defective, as provided in the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed to a mental institution;

(vi) is an alien who is illegally or unlawfully in the United States;

(vii) has been discharged from the Armed Forces under dishonorable conditions; or

(viii) is a person who, having been a citizen of the United States, has renounced such citizenship.

(b) Any person who violates Subsection (3) is guilty of a third degree felony.

1994

76-10-504. Carrying concealed dangerous weapon.

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

(a) a person who carries a concealed dangerous weapon 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

(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 crime of violence as defined in Section 76-10-501, 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 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 6 1

1995

76-10-505 Carrying loaded firearm in vehicle, on street, or in prohibited area.

(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

1990

76-10-505.5. Possession of a dangerous weapon, firearm, or sawed-off shotgun on or about school premises — Penalty.

(1) A person may not possess any dangerous weapon, firearm, or sawed-off shotgun at a place that the person knows, or has reasonable cause to believe, is on or about school premises

(2) (a) Possession of a dangerous weapon on or about school premises is a class B misdemeanor

(b) Possession of a firearm or sawed off shotgun on or about school premises is a class A misdemeanor

(3) This section applies to any person, except persons authorized to possess a firearm as provided under Sections 53 5 704, 53 5 705, 53A 3 502, 76 10 510, 76 10 511, 76 10 523, and Subsection 76 10 504(2) and as otherwise authorized by law

(4) This section does not prohibit prosecution of a more serious weapons offense that may occur on or about school premises

1993

76-10-506. Threatening with or using dangerous weapon in fight or quarrel.

Every person, except those persons described in Section 76 10 503, who, not in necessary self defense in the presence of two or more persons, draws or exhibits any dangerous weapon in an angry and threatening manner or unlawfully uses the same in any fight or quarrel is guilty of a class A misdemeanor

1992

76-10-507. Possession of deadly weapon with intent to assault.

Every person having upon his person any dangerous weapon with intent to unlawfully assault another is guilty of a class A misdemeanor

1973

76-10-508. Discharge of firearm from a vehicle, near highway, or in direction of any person, building, or vehicle.

(1) (a) A person may not discharge any kind of dangerous weapon or firearm

(i) from an automobile or other vehicle,

(ii) from, upon, or across any highway,

(iii) at any road signs placed upon any highways of the state,

(iv) at any communications equipment or property of public utilities including facilities, lines, poles, or devices of transmission or distribution,

(v) at railroad equipment or facilities including any sign or signal,

(vi) within Utah State Park buildings, designated camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches, or

(vii) without written permission to discharge the dangerous weapon from the owner or person in charge of the property within 600 feet of

(A) a house, dwelling, or any other building, or

(B) any structure in which a domestic animal is kept or fed, including a barn, poultry yard, corral, feeding pen, or stockyard

(b) It shall be a defense to any charge for violating this section that the person being accused had actual permission of the owner or person in charge of the property at the time in question

(2) A violation of any provision of this section is a class B misdemeanor unless the actor discharges a firearm under any of the following circumstances not amounting to criminal homicide or attempted criminal homicide, in which case it is a third degree felony

(a) the actor discharges a firearm in the direction of any person or persons, knowing or having reason to believe that any person may be endangered,

(b) the actor, with intent to intimidate or harass another or with intent to damage a habitable structure as defined in Subsection 76-6-101(2), discharges a firearm in the direction of any building, or

(c) the actor, with intent to intimidate or harass another, discharges a firearm in the direction of any vehicle

(3) This section does not apply to a person

(a) who discharges any kind of firearm when that person is in lawful defense of self or others, or

(b) who is performing official duties as provided in Sections 23 20-1 5 and 76-10-523 and as otherwise provided by law

1995

76-10-509 Possession of dangerous weapon by minor.

(1) A minor under 18 years of age may not possess a dangerous weapon unless he

(a) has the permission of his parent or guardian to have the weapon, or

(b) is accompanied by a parent or guardian while he has the weapon in his possession

(2) Any minor under 14 years of age in possession of a dangerous weapon shall be accompanied by a responsible adult

(3) Any person who violates this section is guilty of

(a) a class B misdemeanor upon the first offense, and

(b) a class A misdemeanor for each subsequent offense

1993 (2nd SS)

76-10-509.4. Prohibition of possession of certain weapons by minors.

(1) A minor under 18 years of age may not possess a handgun

(2) Except as provided by federal law, a minor under 18 years of age may not possess the following

ADDENDUM 2
Transcript of Trial Judge's Verdict

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IN THE THIRD CIRCUIT COURT IN AND FOR THE STATE OF UTAH
WEST VALLEY CITY DEPARTMENT

-o0o-

WEST VALLEY CITY,)	
)	
Plaintiff,)	Case No. 951002144 MC
)	
vs.)	<u>VERDICT</u>
)	
KENT R. FULLMER,)	
)	
Defendant.)	

-o0o-

BE IT REMEMBERED that on the 16th day of October,
1995, the above-entitled matter came on for hearing before
the HONORABLE WILLIAM A. THORNE, sitting as Judge in the
above-named Court for the purpose of this cause, and that
the following proceedings were had.

-o0o-

A P P E A R A N C E S

For the City:	VALERIE O'BRIEN
	Attorney at Law
	Office of the City Attorney
	3600 Constitution Boulevard
	West Valley City, Utah 84119
For the Defendant:	KENT R. FULLMER
	Appearing Pro Se



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THE COURT: I'm going to find that the weapon does in fact meet the requirements of 76-10-501(2)(d), dangerous weapon. Defines it as any item that in its manner of its use or intended use, clearly it is intended to fire projectiles from there, whether or not it is capable because of a malfunction exceeds the definition. The definition talks in terms of its intended use; but 76-10-504(1)(b) is a person without a valid concealed firearm permit who carries a concealed dangerous weapon.

In this case the testimony that certainly has credible--credibility problems, but the only testimony is that the weapon was placed in the vehicle, it had not been moved in the vehicle. If the vehicle had been stopped while it was traveling, anything in the vehicle that's within certainly arm's length, readily accessible under 501(2)(L) could be said to be carried. Says carried on the person or is in such close proximity.

MS. O'BRIEN: Your Honor, can I interject something?

THE COURT: Go ahead.

MS. O'BRIEN: It's my understanding under State v. Williams that they did discuss in their "carrying", the meaning of "carrying" under the section and



1 it did not require--

2 THE COURT: Okay. And the State vs.
3 Williams, though, is a vehicle that's moving as opposed to
4 one that's stationary. If this had been moving, clearly
5 carrying extends to a vehicle that's moving; but if it's not
6 moving, then it's not any different than placing it in a
7 room some place.

8 MS. O'BRIEN: But any time an officer
9 stops a vehicle, the vehicle's not going to be moving.

10 THE COURT: No, but they have seen the
11 vehicle move. In this case, the vehicle wasn't moving and
12 had not been moving with the weapon in that location, so I'm
13 going to find that it doesn't meet the definition as
14 carried.

15 If they had pulled the car over and found the
16 weapon there, clearly he was carrying the weapon in close
17 proximity; but the vehicle had not been moved. The
18 testimony, such as it is, was that it was carried out of the
19 apartment and placed on the seat.

20 If he had encased it and put it away before the
21 vehicle moved, he wouldn't be carrying it. But the vehicle
22 wasn't moving and it falls through the cracks. I'm going to
23 find him not guilty.

24 MR. FULLMER: Thank you, your Honor.

25 THE COURT: The City can certainly

1 appeal since it is a ruling based on a matter of law. If you
2 want to appeal it, Ms. O'Brien, I'll require that the weapon
3 be held pending the appeal.

4 MS. O'BRIEN: Okay.

5 THE COURT: Do you want to at least
6 consider that option?

7 MS. O'BRIEN: I do, your Honor.

8 THE COURT: Okay. The weapon will be
9 held during the duration of the appeal time.

10 (Whereupon, this hearing was concluded.)

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