IN THE UTAH COURT OF APPEALS

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Orem City, Plaintiff and Appellee, v. James H. Brown, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050463-CA F I L E D (September 14, 2006) 2006 UT App 373

Fourth District, Orem Department, 055204006
The Honorable John C. Backlund

Attorneys: James H. Brown, Orem, Appellant Pro Se
Robert J. Church, Orem, for Appellee

Before Judges Bench, Greenwood, and Davis.

BENCH, Presiding Judge:

Orem City prosecuted defendant James H. Brown under Utah Code section 41-6-53. See Utah Code Ann. § 41-6-53 (2004). Brown informed the trial court that in February 2005, prior to the violation alleged in this case, the legislature renumbered section 41-6-53. The City and the court both erroneously concluded that the newly renumbered and revised statute, Utah Code section 41-6a-701, did not take effect until later in 2005. See Utah Code Ann. § 41-6a-701 (2005). The trial proceeded under section 41-6-53, and the court held that Brown had violated the statute. On appeal, Brown argues, and the City concedes, that section 41-6a-701 is the applicable statute. The City contends, however, that because the wording is "virtually identical" to the prior statute, the error was not prejudicial to Brown. We agree.

Rule 30 of the Utah Rules of Criminal Procedure provides that "[a]ny error, defect, irregularity or variance which does not affect the substantial rights of a party shall be disregarded." Utah R. Crim. P. 30. A verdict will not be reversed on appeal "merely because some error or irregularity may have occurred," but will be overturned only if the error or irregularity "is something substantial and prejudicial in the sense that there is a reasonable likelihood that in its absence

there would have been a different result." State v. Hutchison, 655 P.2d 635, 636 (Utah 1982) (quotations and citation omitted); see also State v. Mitchell, 779 P.2d 1116, 1119 (Utah 1989); State v. Rimmasch, 775 P.2d 388, 407 (Utah 1989). "For an error to require reversal, the likelihood of a different outcome must be sufficiently high to undermine confidence in the verdict." State v. Knight, 734 P.2d 913, 920 (Utah 1987).

When the legislature renumbered section 41-6-53, it also made slight revisions. For example, it moved the exceptions listed in section 41-6-53(1)(b) to a separate subsection numbered as 41-6a-701(2). See Utah Code Ann. § 41-6a-701(2). Although the wording and organization of the statute is slightly different, the revisions did not alter the elements of the offense. As the City correctly points out, "both statutes still prohibit and allow the exact same behavior."[1]

Brown contends that because he prepared his defense using the correct statute, section 41-6a-701, the court's error in using section 41-6-53 is reversible error. However, because the two versions differ only slightly in language and organization, Brown had proper notice of the offense and his defense would have been the same regardless.[2] Further, because of the similarity between the two versions, there is not a "reasonable likelihood that," under section 41-6a-701, "there would have been a different result." Hutchison, 655 P.2d at 636; cf. Hartig v. Evansville-Vanderburgh Sch. Corp., 423 N.E.2d 680, 681 (Ind. Ct. App. 1981) (stating that even if the trial court did apply the wrong statute, "the error was harmless because application of the prior statute yields the same result").

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[1]Brown asserts, without further explanation, that an exception exists in the newly numbered statute that was not available in section 41-6-53. However, we find no difference in the substance of the two versions of the statute.

[2]Brown argued at trial that the "specific code section with which I'm charged specifically says that if there's an obstruction in the road you are allowed to go around to the left . . . as long as you yield to oncoming traffic." Both versions of the statute contain this exception. Both versions also identically state that the exception to enter into the left lane is limited to incidents "when an obstruction requires operating the vehicle to the left of the center of the roadway." Utah Code Ann. §§ 41-6-53 (2004), 41-6a-701(1)(b) (2005). The court concluded that the obstruction did not "require" Brown to enter the left lane. Therefore, Brown's defense and the court's conclusion would be the same under either statute.

Because the court's error did not affect Brown's right of notice or his defense, and the error was not prejudicial, we affirm the conviction.

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Russell W. Bench,
Presiding Judge

WE CONCUR:

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Pamela T. Greenwood,
Associate Presiding Judge

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James Z. Davis, Judge