

2000

# John Wells v. City Court of Logan City, County of Cache, State of Utah : Response to Petition for Rehearing

Utah Supreme Court

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BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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JOHN WELLS,

Plaintiff and Appellant,

vs.

CITY COURT OF LOGAN CITY,  
COUNTY OF CACHE, STATE OF UTAH,

Defendant and Respondent.

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CASE NO. 13824

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APPELLANT'S BRIEF IN OPPOSITION TO  
RESPONDENT'S PETITION FOR REHEARING

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Appeal from a judgment of the First District Court  
of Cache County, Honorable VeNoy Christoffersen, Judge

---

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JUN 23 1975

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IN THE SUPREME COURT  
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JOHN WELLS,

Plaintiff and Appellant,

vs.

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Defendant and Respondent.

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Case No. 13824

APPELLANT'S BRIEF IN OPPOSITION TO  
RESPONDENT'S PETITION FOR REHEARING

STATEMENT OF FACTS

The facts are accurately set forth in the majority opinion of the Court  
and need not be restated here.

ARGUMENT

POINT I

THE COURT CORRECTLY CONSTRUED 41-6-166, U.C.A.,  
IN ACCORDANCE WITH THE LEGISLATIVE INTENT.

The clear and unequivocal language of the statute as simply stated by the  
majority opinion of the Court provides that "If a person is arrested for drunk driving by a  
peace officer, or anyone else, he should be immediately taken before a magistrate who

has jurisdiction of such offense and is nearest to the place where such arrest is made." The obvious legislative intent of such a statute is to provide a means whereby persons charged with "driving under the influence of intoxicating liquor", or "hit and run", would be afforded special procedures; otherwise, the legislature would not have delineated these special instances. Argument has been made by the respondent that there is a conflict between the procedures set forth in the traffic section of the Utah Code and the applicable criminal trial procedural statutes, such as 77-13-17, U.C.A. 41-6-166, U.C.A., prescribes the procedure to be followed by the arresting officer where a person is arrested without warrant for alleged "driving under the influence of intoxicating liquor", or "hit and run", and is certainly not intended to dictate the place of trial or determine finally who has exclusive jurisdiction.

As suggested by the majority of the Court, compliance with the provisions of 41-6-166 could have been accomplished by the state producing evidence that the nearest and most accessible magistrate was not available. Moreover, had such a showing been made by the respondent, the accused could have been taken to the Logan City Court, or another available magistrate. Absent such a showing, procedural due process, as provided by the statutes, has not been afforded the defendant. The Supreme Court's decision is in conformity with the general rule of law as stated in 6 C.J.S. Arrest, Section 17(b):

" The officer or private person who made the arrest must produce the person arrested before the proper authority within a reasonable time."

"Statutes usually provide for taking . . . before a magistrate, and designate what magistrate. Such statutes are mandatory."

## POINT II

### THE RULING OF THE COURT DOES NOT DICTATE THE PLACE OR MANNER OF THE TRIAL.

Respondent makes the argument that the Utah statutes provide separate and distinct procedures for handling criminal complaints and that the state's prosecutor should have an election as to which procedure should be taken and that a defendant should not complain. We feel that such an argument has no application to the matter before the Court. 41-6-166, U.C.A., as previously stated, outlines procedures to be followed by arresting officers under the traffic code. 77-13-17, U.C.A., sets forth the procedures to be followed by an arresting officer without warrant in general misdemeanor situations. Neither type of procedural statute dictates, in any manner, how or where the case should be prosecuted. Sections 41-6-167 and 41-6-169 of the Utah Code give further directions as to how the arrested person shall be advised by the officer and magistrate after arrest, where the arrest is made without a warrant. There is no conflict between the traffic code and the criminal code. The arresting officer need merely to follow the directions provided in the traffic code when the arrest is made without warrant, and the directions made under the criminal code when the arrest is made with warrant. Indeed, we feel that the argument made by the respondent is specious and has no application to the matter before the Court.

POINT III

RESPONDENT ARGUES THAT IN MAKING ITS DECISION, THE COURT FAILED TO DETERMINE AS TO WHETHER OR NOT COMPLIANCE WITH SECTION 41-6-166 U.C.A., CONFERS EXCLUSIVE JURISDICTION UPON THE MAGISTRATE BEFORE WHOM AN APPEARANCE IS MADE FOR THE MATTERS OF TRIAL.

A plain and simple reading of the decision indicates that the Court is concerned with procedural due process and that failure to comply with 41-6-166, U.C.A., amounts to lack thereof. After the arrest has been properly made in compliance with Section 41-6-166, U.C.A., it is clear that the trial may be had before any magistrate having jurisdiction of such an offense, which, in this case, would include any justice or city court within the County. See Dillard vs. District Court of Salt Lake County (1926) 69 U. 10, 251 Pac. 1070, and 78-5-4, U.C.A., 1953. Subsequent to the time of arrest, there certainly may be plea bargaining, motions for change of venue, forum non-convenience, etc., or a change of venue by stipulation. The decision of the Court as promulgated by the majority holds plain and simply that the defendant has not been afforded procedural due process as provided in the traffic code statute previously cited. Whether or not failure to comply with 41-6-166, U.C.A., prevents further prosecution is a question which must be decided after the defendant has been properly charged, which has not yet been accomplished, even though the issue was brought to the attention of the Court at an early stage of the proceedings.

Respondent, in his brief, recites many ogres and complications which



respondent feels will result by the application of the majority opinion. Considered in its simplest terms, the case involves procedural due process, particularly the procedure which must be afforded the accused when arrested for allegedly, "driving under the influence of intoxicating liquors", or "hit and run", under Title 41, U.C.A. When the defendant appeared specially in the case before the Court and raised the issue, the Court could have solved the matter simply by dismissing the charges against the defendant, and the prosecutor could have issued a complaint before the proper magistrate. The case could then have proceeded in the normal manner upon its merits. Indeed, "unreasonable delay", and all of the other ogres raised by the respondent have no relevance to the issues before the Court, and have been caused by the State, not the defendant.

### CONCLUSION

Respondent states in his brief that the decision before the Court fails to give direction to arresting peace officers who have to deal with defendants charged with "driving under the influence of intoxicating liquor", "hit and run", etc. On the contrary, we feel that a citizen is entitled to rely on the arresting officer and that a citizen should have confidence that the clearly-defined legislative directions, especially in serious criminal matters which may deprive a citizen of his freedom and property, should be strictly followed by officers and the Courts. When the statute selects two specific crimes and prescribes special procedures which must be followed, the legislative mandate demands

special treatment and immediate confrontation. The decision as promulgated by the majority of the Court defines specifically what a peace officer must do when arresting citizens under the traffic code of the State of Utah. Rather than raising "ogres" and "complications", the decision of the Court leaves nothing in "limbo" and in doing so, the Court insures that the mandate of the legislature shall be followed.

For the reasons set forth hereinabove, we respectfully request that the Petition for Rehearing of the respondents be denied.

Respectfully submitted,

Charles P. Olson, deceased.

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