

1968

Randy Dimmitt v. Maurice C. Jones and J. Patton
Neeley, Judges of the City Court of Salt Lake City;
and The City Court of Salt Lake City :
Respondents' Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Paul G. Grant; Attorney for Respondents Ronald N. Boyce; Attorney for Appellant

Recommended Citation

Brief of Respondent, *Dimmitt v. Jones*, No. 11137 (Utah Supreme Court, 1968).
https://digitalcommons.law.byu.edu/uofu_sc2/62

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

RANDY DIMMITT,
Plaintiff and Appellant,

vs.

MAURICE C. JONES and J. PAT-
TON NEELEY, Judges of the City
Court of Salt Lake City; and the
CITY COURT OF SALT LAKE
CITY, *Defendants and Respondents.*

Case No.
11187

RESPONDENTS' BRIEF

Appeal from the Judgment of the
Third District Court for Salt Lake County
Honorable Bryant H. Croft, Judge

HOMER HOLMGREN
City Attorney
PAUL G. GRANT
Assistant City Attorney
Attorneys for Defendants and
Respondents

RONALD N. BOYCE
Salt Lake County Bar
Legal Services, Inc.
481 South 3rd East
Salt Lake City, Utah
Attorney for Appellant and
Plaintiff

FILED

APR 1 - 1968

Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE	1
STATEMENT OF FACTS	2
ARGUMENT:	
POINT I: THE JUVENILE COURT IS A SPECIAL COURT AND ITS JURISDIC- TION MUST BE STRICTLY CONSTRUED.	2
POINT II. THE CITY COURT HAS CON- CURRENT JURISDICTION OVER TRAF- FIC OFFENDERS WHO ARE UNDER THE AGE OF 18.	3
POINT III: THE EXPRESSED INTEN- TION OF THE LEGISLATURE IN EN- ACTING THE 1965 JUVENILE ACT WAS TO PROVIDE PROTECTION AND ASSIST- ANCE FOR THE NEGLECTED AND ANTI- SOCIAL JUVENILE NOT THE TRAFFIC OFFENDER	8
CONCLUSION	11

AUTHORITIES CITED

20 Am. Jur.2d, Courts, Section 29	2
---	---

CASES CITED

Anderson vs. Anderson, 18 U.2d 89, 416 P.2d 308,
 1966 3, 8
 Gord vs. Salt Lake City, U.2d...., 434 P.2d 449,
 1967 7

STATUTES CITED

Section 55-10-105, Utah Code Annotated 3, 4
 Section 55-10-105 (2), Utah Code Annotated 4
 Section 55-10-105 (5), Utah Code Annotated 4
 Section 55-10-96, Utah Code Annotated 3
 Section 55-10-83 (3), Utah Code Annotated 3
 Section 55-10-63, Utah Code Annotated 8

IN THE SUPREME COURT OF THE STATE OF UTAH

RANDY DIMMITT,

Plaintiff and Appellant,

vs.

MAURICE C. JONES and J. PAT-
TON NEELEY, Judges of the City
Court of Salt Lake City; and the
CITY COURT OF SALT LAKE
CITY, *Defendants and Respondents.*

Case No.
11137

RESPONDENTS' BRIEF

STATEMENT OF THE NATURE OF THE CASE

The appellant filed a petition for Writ of Prohibition against the above named judges and City Court of Salt Lake City to enjoin that court from hearing a case involving traffic violations charged against the appellant juvenile. The appellant contends that the

juvenile courts of this state have exclusive jurisdiction over him by virtue of the Juvenile Act of 1965. After hearing arguments of both sides, the Honorable Bryant H. Croft, Judge in the Third Judicial District Court in and for Salt Lake County, held that defendant court had concurrent jurisdiction over juveniles who were charged with traffic violations and dismissed appellant's request for Writ of Prohibition.

STATEMENT OF FACTS

Respondent is substantially in agreement with the statement of facts as listed in appellant's brief.

ARGUMENT

POINT I

THE JUVENILE COURT IS A SPECIAL COURT AND ITS JURISDICTION MUST BE STRICTLY CONSTRUED.

As stated in 20 Am. Jur. 2d Courts, Section 29, juvenile courts are special courts. The jurisdiction of special courts must be expressly stated in the legislative enactment inasmuch as they carve out their jurisdiction from courts of general jurisdiction. Therefore, in the case presently before the court, if there is any doubt as to the power of the juvenile court over the persons offenses, this doubt must be resolved in favor of a find-

ing of concurring jurisdiction by courts of general jurisdiction. *Anderson vs. Anderson*, 18 Utah 2d 89, 416 P2d. 308 (1966).

POINT II

THE CITY COURT HAS CONCURRENT JURISDICTION OVER TRAFFIC OFFENDERS WHO ARE UNDER THE AGE OF 18.

The Juvenile Court Law of 1965 gave jurisdiction to the juvenile court over minors under the age of 18 who violated local or city ordinances. The respondents, in these proceedings, contend that the city courts have concurrent jurisdiction with the juvenile courts over traffic offenders who are under the age of 18. A close reading of the Juvenile Court Law presently in effect in this state will readily impress the reader that traffic offenders are treated completely different from those involved in any other violation. The traffic offender is, in fact, convicted of a crime by the juvenile court, while other violations are treated as civil matters and the court invokes equity in handling those matters, (section 55-10-105) U.C.A. 1953 It is clear that the procedures covering traffic cases in the Juvenile Code are entirely different from all other alleged violations, (section 55-10-96). A traffic violation is the only alleged offense to which a petition need not be filed to commence the action (section 55-10-83(3)). The records of a traffic violation are the only records that may be used in any other

court as evidence against the juvenile in his later life, (section 55-10-105 (2)), and the same records may be filed with the State Department of Public Safety and used by them as a basis for the suspension of a driver's license, (section 55-10-105 (5)). The reasonable conclusion from these numerous exceptions covering traffic violations is that the Legislature intended the city court to have concurrent jurisdiction in prosecution of minors under its traffic code. It is apparent from section 55-10-105, U.C.A. as amended, that the Legislature did not, in fact, intend that the juvenile court should have exclusive jurisdiction over traffic offenders under the age of 18. We quote said section:

“55-10-105. Children's cases deemed civil proceedings—Adjudication of jurisdiction by juvenile court not conviction of crime, exception—Record and evidence inadmissible in other proceedings, exception—Child not to be charged with crime, exception—Traffic violation cases, abstracts to department of public safety.—(1) Proceedings in children's cases shall be regarded as civil proceedings, with the court exercising equitable powers.

“(2) An adjudication by a juvenile court that a child is within its jurisdiction under section 55-10-77 shall not be deemed a conviction of a crime, except in cases involving traffic violations; no such adjudication shall operate to impose any civil disabilities upon the child nor to disqualify the child for any civil service or military service or appointment.

“(3) Neither the record in the juvenile court nor any evidence given in the juvenile court shall

be admissible as evidence against the child in any other court, with the exception of cases involving traffic violations.

“(4) No child shall be charged with crime nor be convicted in any court except as provided in section 55-10-86 and in cases involving traffic violations. When a petition has been filed in the juvenile court, the child shall not thereafter be subjected to criminal prosecution based on the same facts except as provided in section 55-10-86.

“(5) Abstracts of court records for adjudications of traffic violations shall be submitted to the department of public safety as provided in sections 41-2-17, Utah Code Annotated 1953, as amended by chapter 84, Laws of Utah 1961.”

Subsection 1 of the above requires that all proceedings will be civil proceedings with the court exercising equitable powers. Subsection 2 provides that an adjudication by the juvenile court is not a crime, except in cases involving traffic violations. Subsection 3 excepts traffic violations from the effect of its provisions. Subsection 4 certainly establishes by express language that no child may be charged with or convicted of a crime in any other court except in two areas: (1) where the juvenile is charged with the commission of a felony and the juvenile court certifies that child to the district court to be treated as an adult and tried under the Code of Criminal Procedures; and (2) in cases involving traffic violations.

The first sentence of subsection 4 reads “no child shall be charged with crime nor be convicted *in any court* except as provided in section 55-10-86 and in

cases involving traffic violations." If the Legislature intended the act to read as appellant contends, the above phrase *in any court* would have been eliminated. By the use of the phrase *in any court* the Legislature intended that other courts have concurrent power to try juvenile traffic violators.

The second sentence of subsection 4 sets up the ground rules as between courts of general jurisdiction and the juvenile court involving traffic violations as to which court shall handle the matter if filed in both. It could not apply to alleged violations of felonies by juveniles as the procedures covering those matters are dictated by section 86. When the petition or matter has been filed in the juvenile court, then that court processes the matter to its conclusion and the defendant is not burdened with also having to appear before another court in the case. Inasmuch as all other violations of local ordinances or state laws committed by a minor must be filed in the juvenile court, the legislative command as found in subsection 4 is without meaning unless respondent's contention of concurrent jurisdiction is accepted as to traffic violations.

This court has on many occasions adhered to the general rule of statutory construction that a legislative enactment be literally construed. We quote from one of the most recent:

"The enactment of the statute prescribing this procedure is the legislative prerogative. It carries with it the presumptions that it is valid and that the words and phrases were chosen ad-

visely to express the legislative intent. *The statute should not be stricken down nor applied other than in accordance with its literal wording unless it is so unclear or confused as to be wholly beyond reason, or inoperable, or it contravenes some basic constitutional right.*" (emphasis added) *Gord vs. Salt Lake City*, Utah.2d, 434 P.2d 449, (1967.)

To accept plaintiff's position would be to totally ignore the above rule as it applies to subsection 4. The phrase "in any court" and the instructions in the second sentence when literally construed and applied can lead to no other conclusion and procedure than that advocated by respondents, that other courts have concurrent jurisdiction over minors charged with traffic violations.

It has been argued by appellants that section 55-10-79 requires a judge of all other courts to refer all defendants under the age of 18 to the juvenile court. One must realize that this requirement is dependent upon the juvenile court having exclusive jurisdiction over the alleged offense. In the case before us, an exception to that exclusive jurisdiction has been carved out by section 55-10-105, subsection 4.

It is not the position of respondents in this case that city courts have jurisdiction over juveniles charged with a misdemeanor in matters other than those involving traffic violations. The specific argument being that the Legislature exempted this one area from the exclusive jurisdiction of the juvenile court.

POINT III

THE EXPRESSED INTENTION OF THE LEGISLATURE IN ENACTING THE 1963 JUVENILE ACT WAS TO PROVIDE PROTECTION AND ASSISTANCE FOR THE NEGLECTED AND ANTI-SOCIAL JUVENILE NOT THE TRAFFIC OFFENDER.

Quoting from section 55-10-63, "it is the purpose of this act to secure for each child coming before the juvenile court . . . guidance and discipline required to assist him to develop into a responsible citizen, to improve the condition and home environment responsible for his delinquency; and, at the same time to protect the community and those individual citizens from juvenile violence and juvenile law breaking." The normal traffic offender, be he an adult or minor, is not normally rebelling against society and exhibiting violence and intentional law breaking. These violations generally result from negligence in the operation of the vehicle. This, respondents are sure, was realized by the State Legislature and is the purpose behind the numerous exceptions written into the law concerning traffic violations. This court in considering the jurisdiction and purpose of the juvenile court found as follows:

"Section 77 deals with the authority of the juvenile court to act in proceedings concerning children who are neglected, dependent, or who for reasons pertaining to anti-social behavior or family status require investigation and adjudication." *Anderson vs. Anderson*, 18 Utah 2d 89, 416 P.2d 308.

Respondents admit that there are certain drivers who are grossly irresponsible toward society and in the case of minor drivers so situated, it is entirely proper that they be treated in a different manner than the regular responsible operator of a motor vehicle. This is one of the reasons that the Legislature included traffic violations within the Juvenile Court Code. It is completely within the common understanding of traffic court judges, town magistrates, and justices of the peace that should these special violators come before the court, they may be referred to the juvenile court for assistance and rehabilitation.

The privilege to drive is granted by the State to members of society who have reached a certain level of ability to operate a motor vehicle. There is no right to this license for this privilege must be earned by proof of performance and will be continued in effect only so long as the licensed operator stays within the framework of the rules and regulations pertaining to the operation of a motor vehicle. The minor under the age of 18 is no differently situated when operating a motor vehicle than is an adult, be he 21 or 91, and justice would demand that he be treated in exactly the same manner as his elder counterpart. As indicated in *Anderson vs. Anderson*, supra, the purpose of the juvenile act is to assist those minors who are neglected or who show anti-social behavior. To consider exceeding the speed limit by five miles an hour or committing some other common violation to be exhibiting anti-social behavior is absurd.

It is recognized by respondents that a continual showing by a minor of disregard for traffic laws would indicate that that minor was neglected or showing anti-social behavior and, therefore, would need additional help and counseling. The same principle is realized by the traffic courts of this state in cases concerning adults where constant violators are required to attend special classes which attempt to teach them the responsibility required of the driver and the proper operation of a motor vehicle.

It is for the above reasons that the Legislature established concurrent jurisdiction in the city courts and the juvenile courts for the handling of traffic violators under the age of 18. The respondent court, and its associated traffic violation bureau, by computer, keep records of all traffic violations. The driver license division of the State of Utah maintains a file on each driver licensed by the State and a record of all traffic violations for quick reference. In the respondent city court, a violator who is cited for the second time within a year may not simply post bond and forfeit the bail. These persons whether they be young or old must appear before the judge for plea, trial and sentencing. Under these circumstances, the violator normally must pay a higher fine and attend eight hours of instruction in the traffic school taught on the campus of the University of Utah. It is, therefore, only reasonable that in the case of the juvenile drivers who receive a second ticket within a prescribed period of time that they be referred to the juvenile court for proper counseling.

and assistance. This procedure would greatly help the juvenile court in carrying out its duty of rehabilitating delinquent minors. Instead of receiving a great mass of violators for automatic processing, the court would only receive those who were irresponsible or showing anti-social behavior thus allowing the personnel of the court to spend considerable time and effort in helping these individuals.

CONCLUSION

The Legislature intended that traffic violations committed by persons under 18 be handled by the juvenile court and by other courts of competent jurisdiction. The distinction is made between such offense and all other alleged violations because the Legislature "otherwise provided by law."

Traffic violations are the only offenses which upon adjudication shall be deemed the conviction of a crime (Sec. 55-10-105(2)) by a minor. No other violation in the juvenile court retains that stigma.

The trial court was well advised when he made the following ruling in his memorandum decision:

"Section 105(4) is, in my opinion, another statement relating to exclusive jurisdiction of the juvenile court. It is a specific statement that no child shall be either charged with, or convicted of, crime in any court except in (1) felony cases certified under Section 86 and (2) cases involving traffic violatoins. Had the legislature intended that traffic violations must be handled exclu-

sively by the juvenile court ,this second exception would never have been included in 105(4). In my opinion, including this exception in 105 is a clear demonstration that the legislature intended that cases involving traffic violations by persons under 18 could be brought, and convictions obtained in courts other than the juvenile court."

After a close reading of the entire Juvenile Court Act of 1965, one will readily conclude that traffic offenders are to be treated in a class by themselves. The Legislature did not intend "exclusive jurisdiction" in these cases.

Because the juvenile court is a special court, its jurisdiction must be very strictly construed. If there be any doubt, then that doubt must be resolved against "exclusive jurisdiction."

The decision of the trial court was made after careful consideration and is correct. That decision should be upheld by this court.

Respectfully submitted,

HOMER HOLMGREN

City Attorney

PAUL G. GRANT

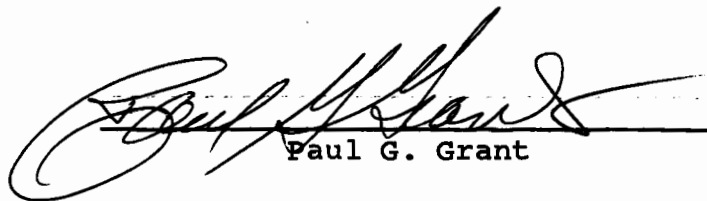
Assistant City Attorney

414 City & County Building

Salt Lake City, Utah

**ATTORNEYS FOR DEFENDANTS
& RESPONDENTS**

Delivered five (5) copies of respondent's brief to Ronald N. Boyce, Attorney for appellant, at the offices of Salt Lake County Bar Legal Services, Inc., 431 South 3rd East, Salt Lake City, Utah, this 29th day of March, 1968.



Paul G. Grant