

2000

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

Utah Supreme Court

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Charles P. Olson; Olson, Hoggan and Sorenson.

B. H. Harris; Cache County Attorney; George W. Preston; Deputy Cache County Attorney; Attorneys for Respondent; Irving H. Biele; Biele, Haslam and Hatch; Attorneys for Appellant.

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BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

IN THE SUPREME COURT
OF THE STATE OF UTAH

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

RESPONDENT'S BRIEF ON REHEARING

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

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Logan, Utah 84321

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Attorneys for Appellant

FILED

JUN 3 - 1975

IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN G. WELLS,

Plaintiff and Appellant.

vs.

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

Defendant and Respondent.

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PETITION FOR REHEARING

No. 13824

FILED

MAY 19 1975

Clerk, Supreme Court, Utah

Comes now Burton H. Harris, County Attorney of Cache County, Utah, and petitions the above entitled Court for a rehearing in the case of John G. Wells, Plaintiff and Appellant, vs. City Court of Logan City, County of Cache, State of Utah, Defendant and Respondent, filed May 1, 1975, No. 13824.

The Petition for Rehearing is based upon the following grounds:

1. The Supreme Court failed to consider the provisions of 41-6-167 U.C.A., relating to procedures and 41-6-169, relating to jurisdiction and other inexclusive requirements in its decision.
2. The Court failed to consider whether or not compliance with Section 416166 U.C.A. confers upon that magistrate exclusive jurisdiction for the trial of the matter.
3. The Court failed to define whether or not failure to comply with 416166 is jurisdictional and prevents further prosecution of the Defendant in contravention to Section 41-6-169..
4. That the Utah Association of City Judges did not have knowledge of the pendency of this appeal and now desire to file a Brief in this matter as to the

WHEREFORE, the Defendant and Respondent petitions the above
entitled Court for a hearing in this matter and for the extension
of time as set forth in the attached motion.

Dated this _____ day of May, 1975.

FILED IN COURT OF COMMON PLEAS, HAMILTON, ONTARIO, MAY 15, 1975

BY: _____

THE PETITION FOR WRIT OF HABEAS CORPUS IS BASED ON THE FOLLOWING FACTS:

1. THAT THE PETITIONER WAS DETAINED IN THE HAMILTON DETENTION CENTRE
ON MAY 14, 1975, WITHOUT ANY CHARGE OR ARREST WARRANT;
2. THAT THE PETITIONER WAS DETAINED IN THE HAMILTON DETENTION CENTRE
ON MAY 14, 1975, WITHOUT ANY CHARGE OR ARREST WARRANT;
3. THAT THE PETITIONER WAS DETAINED IN THE HAMILTON DETENTION CENTRE
ON MAY 14, 1975, WITHOUT ANY CHARGE OR ARREST WARRANT;
4. THAT THE PETITIONER WAS DETAINED IN THE HAMILTON DETENTION CENTRE
ON MAY 14, 1975, WITHOUT ANY CHARGE OR ARREST WARRANT;

WHEREFORE, the Defendant and Respondent

prays that the Court will grant the writ of habeas corpus
and release the petitioner from custody.

VERIFIED AND SWORN TO before me this _____ day of May, 1975,
at Hamilton, Ontario.

JUDGE

FILED

HAMILTON FOR WATKINS

IN THE SUPREME COURT OF THE STATE OF NEW YORK

-2-

B. H. HARRIS, COUNTY ATTORNEY

By _____

George W. Preston
Deputy Cache County Attorney
31 Federal Avenue
Logan, Utah 84321

I hereby certify that I mailed a copy of the foregoing Petition
for Rehearing to Charles P. Olson, Attorney at Law, 56 West Center,
Logan, Utah 84321, this _____ day of May, 1975.

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IN THE SUPREME COURT
OF THE STATE OF UTAH

JOHN WELLS,

Plaintiff and Appellant,

vs.

CITY COURT OF LOGAN CITY,
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Defendant and Respondent.

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Case No. 13824

RESPONDENT'S BRIEF ON REHEARING

STATEMENT OF FACTS

The statement of facts as initially set forth in the briefs of the parties are sufficient for the purpose of this rehearing.

ARGUMENT

POINT I

THIS COURT IN ITS DECISION DATED THE 1ST DAY OF MAY, 1975, DID NOT CONSIDER THE PROVISIONS OF 41-6-167 U.C.A., RELATING TO PROCEDURES AND 41-6-169 U.C.A., RELATING TO JURISDICTION AND OTHER NONEXCLUSIVE REQUIREMENTS.

Sections 41-6-167 of the U.C.A. is a statute that outlines the procedures to be used by an officer in the event of an arrest made without a warrant under any one of four conditions. The statute was enacted in 1941 by the legislature and it uses the word of

command "shall immediately be taken". Reading this statute alone there is no discretion with the officer as to what must be done in each of the four instances enumerated. The purpose of such statute is to insure that the arrested person is advised of a charge made against him so that he may prepare his defense, to protect him from being held without communications and to prevent secret and extended interrogation by the arresting officers. Prompt access to the magistrate as the practical result of affording the arrested person an early opportunity to secure his release pending ultimate disposition of the charge.

The Courts of this nation have recognized that some latitude must be allowed the officers in connection with the "shall immediately command" of the statute. Consideration must be had for other urgent commitments as well as necessary activities in connection with the case, such as booking the prisoner, routinely questioning and searching him, routine breathalyzer or blood tests. See *Williams vs. United States*, 273 Fed. 2d 781, 1959 California, holding that there was no unnecessary delay in arraigning a prisoner who was held at the place of arrest until the completion of search of the premises. See also *Mallory vs. United States*, 354 U.S. 449, 77 S. Ct. 1356, 1 L. Ed. 2d 1479; *People vs. Hamilton*, Michigan, 102 NW 2d 738. See also 5 Am. Jur. 2d Arrest, Section 77, 6 C.J.S. Arrest, Section 17(b), 79 ALR 13; *People vs. Serrano*, California, 11 P. 2d 81, 19 ALR 2d, 1331 and Supplementary Service.

A person suffering from the excess consumption of alcohol is not in a position at the time of his arrest to make an intelligent

decision as to legal matter confronting him. Therefore, a reasonable time should be given to dispel any disability so that orderly proceedings could be had.

See Anderson vs. Foster, Idaho, 252 P. 2d 199, Arneson vs. Thorstad, Iowa, 33 NW 607, McClanahan vs. State, Indiana, 112 NE 2d, 575; and United States vs. Burke, 215 F. Supp. 508, Massachusetts, 1963.

The officer's inability to gain access to a magistrate, as where the Courts are closed, may also delay the time of appearance of the individual although not extend said time beyond a reasonable time. See 6 C. J. Arrest 17(b) People vs. Jackson, Illinois, 178 NE 2d 299, McClanahan vs. State Supra, Rounds vs. Bucher, Montana 349, P. 2d 1026; and United States vs. Ladson, 294 F. 2d 535; State vs. Riner, Oregon, 485 P. 2d 1234; and State vs. Ramos, Arizona, 463 P. 2d 91; Arabia vs. State, Nevada 421 P. 2d 952.

Laws of Arrest by Edward C. Fisher, Pages 347 to 353 and Supplement.

The legislature also enacted 41-1-167, which was changed in 1949 to read that upon taking the person to the magistrate, the person shall be advised of the crime charged against him and a notice to appear in "court". The statute then continues to give guidelines to the office and the magistrate as to the proper procedure. At the time of the passage of these statutes the legislature also passed 41-6-169, which states that the provisions of the two statutes above referred to shall govern all police officers in

making an arrest without a warrant but that the procedure prescribed shall not be exclusive of any other method prescribed by law for the arrest and prosecution of a person an offense of like grade.

All three of these statutes must be construed together and given a reasonable meaning. This Court's holding and its decision construes the provisions of 41-6-166 U.C.A. but gives no guidelines as to how that section dovetails with Section 41-6-167 procedurally. Section 41-6-169 was not discussed in this Court's decision and it is felt that this Court should interpret this section in the light of its decision.

It is the Respondent's position that where a statute provides separate and distinct procedures for the handling of criminal complaints, that the State's Prosecutor has an election as to the remedy and that a defendant cannot complain because one remedy was used and not the other. Section 41-6-44.10 provides that a motorist give his implied consent to the taking of a chemical test. The defendant had to be transported to Logan for that test and the accuracy of the test is determined in part by the time lapse between the commission of the offense and the taking of the test. Therefore, the taking of the test was a lawful act within the reasonable time period allowed by law and at that time the Defendant could either:

1. Be taken before a magistrate as provided in 41-6-166.
2. Be arrested and taken before a magistrate as provided in Section 77-13-17 where a complaint must be made.

3. Be charged with an offense by a complaint and summons as provided in Section 77-12-21.

These three methods are each available to the office and are elective by the officer, as provided in Section 41-6-169.

POINT II

THE DECISION OF THIS COURT FAILED TO CONSIDER WHETHER OR NOT COMPLIANCE WITH SECTION 41-6-166, CONFERS UPON THAT MAGISTRATE EXCLUSIVE JURISDICTION FOR THE TRIAL OF THE MATTER.

Section 41-6-166 U.C.A. states that the person shall be immediately taken before a magistrate within the County.

Section 41-6-167 states that the reason for taking the person and the procedure to be followed. Neither section states that the magistrate referred to in the section has sole or exclusive jurisdiction to try the case upon the merits.

It is the State's contention that even though the Justice Court of Wellsville was nearest to the place of the offense that the Wellsville Court did not by virtue by of that fact alone have sole and exclusive jurisdiction to hear the matter on the merits. The City Court of Logan City is a Court with similar jurisdiction to hear cases of this nature and is situated within Cache County. Section 41-6-167 states that the written notice prepared by the officer shall contain "the time and place, when and where such person shall appear in Court." If it were assumed by the legislature that the person were to appear in the same Court, such additional

notice would not be necessary. Subsection C of that same statute would be totally unnecessary if the person were to appear in the same Court at the same place. The legislature has appeared to indicate by the language of the statutes that the Trial Court may not necessarily be the same Court or magistrate as referred to in 41-6-166 U.C.A.

This same impression is gained from reading of 77-57-2 U.C.A. where it states that the "complaint shall be commenced before a magistrate within the precinct of the county or city in which the offense is alleged to have been committed."

POINT III

THE DECISION OF THIS COURT FAILED TO DEFINE WHETHER OR NOT FAILURE TO COMPLY WITH SECTION 41-6-166 IS JURISDICTIONAL AND PREVENTS FURTHER PROSECUTION OF THE DEFENDANT.

This Court in its decision stated that it was the State's duty, once the question of 41-6-166 U.C.A. procedure was raised by the defendant, to prove beyond a reasonable doubt that it followed the statutory interdictions. This would seem to add an element to the offense of Driving Under the Influence. The Respondent seeks this Court's clarification as to whether or not such evidence is an element of the crime or whether or not it is a jurisdictional requirement subject to dismissal of the action upon failure of the State to show compliance with the section.

It is the Respondent's position that the requirement of Section 41-6-166 is not jurisdictional to the maintenance of this

action, by reason of Section 41-6-169 which provides for other means for filing a complaint and the fact that the legislature in enacting 41-6-166 and 41-6-167 did not state in the text of the sections that failure to comply with the sections barred the maintenance of the action by the State of Utah. Section 41-6-167 provides that the officer shall be guilty of misconduct in office and subject to removal for violating the provision of the section, but this provision must be looked at in the light of Section 41-6-169 which provides for alternative remedies. If the officer does, in fact, comply with an alternative remedy which is allowed by the rules of criminal procedure will this exonerate the officer from any misconduct that he might otherwise be guilty of? Respondent claims that such an alternative filing will, in fact, exonerate the officer.

The crux of Section 41-6-167 is that the person be advised of the charge against him, that he be given a time and place of appearance and that he must be given a chance to secure his release. The last aspect of the statute seems pertinent in this case as the plaintiff was not incarcerated and he was released on bail at the Cache County Sheriff's Office.

See *Dragna vs. White, California*, 289 P. 2d 428, where the Court held that an unreasonable delay in taking an arrested person before a magistrate does not vitiate an otherwise valid arrest and *State vs. Roy, Minnesota*, 122 NW 2d 615, where the Court held that an unreasonable delay does not affect the jurisdiction of the Court

to try the Defendant on the charge or result in the denial of a fair trial.

See State vs. Maldonado, Arizona 373 P. 2d 583, People vs. Lane, California, 366 P. 2d 57; Gottfried vs. People, Colorado, 408 P. 2d 431; McFarland vs. State, Kansas, 411 P. 2d 658; and Cooper vs. State, Kansas, 411 P. 2d 652. Courts of various states have held that the failure to comply with a statute such as the one in question here is not grounds for an acquittal of the defendant nor does it necessarily invalidate subsequent conviction where the defendant suffers no prejudice as a result of illegal detention or where he is deprived of the opportunity of being able to procure evidence in his defense. See State vs. Tillett, 233 SW 2d 690, Missouri; Henderson vs. Maxwell, Ohio, 198 NE 2d 456; Stroble vs. California 343 U.S. 181, 72 S. Ct. 599.

The United States Supreme Court has generally not allowed evidence taken by police officers during an unreasonable length of interrogation or incarceration. However, this question relates to admissibility of the evidence and not the ability of the defendant to terminate all proceedings against him by reason of this claim.

POINT IV

THAT THE ASSOCIATION OF CITY JUDGES DID NOT HAVE KNOWLEDGE OF THE PENDENCY OF THIS APPEAL AND NOW DESIRE TO FILE A BRIEF IN THIS MATTER AS AN AMICUS CURIAE INASMUCH AS THIS DECISION AFFECTS THESE MAGISTRATES ON A DAY-TO-DAY BASIS.

The decision in this case affects all law enforcement agencies and prosecutors. However, the real impact of the decision is upon the judicial system. It is assumed that if the Utah Association of City Judges has at this time sought permission from this Court to file a brief in this case.

CONCLUSION

It is the Respondent's position in this case that this Court erred in the holding announced. A decision of this Court one way or the other will require that this Court give guidance to those persons directly affected, whether they be citizens, justices of the peace, or law enforcement officers. Without the guidelines three groups of people are in limbo; the citizen as he does not know his rights, the police officer as he does not know his alternatives, and the Judges as they do not know how to equate between the rights of the citizens and the alternatives of the police officer.

It is, therefore, the request of the Respondent that this Court grant a rehearing that the parties may be heard in this matter.

Dated this _____ day of June, 1975.

Respectfully submitted,

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31 Federal Avenue
Logan, Utah 84321

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