

1977

State of Utah In The Interest of J.G.F., A Person Under Eighteen Years of Age : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
In the Interest of:

J. C. P.,

No. 15130

a person under eighteen
years of age.

BRIEF OF APPELLANT

Appeal from the Judgment
of the First District Juvenile Court
The Honorable Roland Anderson, Judge

ATTORNEY GENERAL
STATE OF UTAH
Franklyn B. Matheson,
Attorney for Plaintiff

PATTERSON, PHILLIPS,
GRIDLEY, & ECHARD
Robert V. Phillips,
427 - 27 Street
Ogden, UT 84401

Attorney for Defendant

FILED

AUG 8 - 1977

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BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is an action in the juvenile court alleging the minor to be under the jurisdiction of the court because said minor obstructed justice by preventing or delaying a police officer from the apprehension of another for the commission of a crime.

DISPOSITION IN LOWER COURT

The case was tried to the court. Defendant appeals from a Finding and Decree finding the allegations in the petition to be true.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the verdict.

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The case was tried to the court. Defendant appeals from a Finding and Decree finding the allegations in the petition to be true.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the verdict.

STATEMENT OF FACTS

Officer Willis Pidcock, a patrolman for Ogden City on December 31, 1976, was in uniform and on duty. (Record transcript 1) At 12:30 he observed Ogden City Officer Bowcutt discussing an impound with Scott Payne. (Record 2) Officer Bowcutt reached out for the man and called to Officer Pidcock, who saw a scuffle going on. (Record 3)

Officer Pidcock ran up to Officer Bowcutt, was struck three times, and was attempting to neutralize Scott Payne when John Payne (the minor herein charged) grabbed the arm of Officer Pidcock causing him to release the grasp on Scott Payne's arm.

Officer Pidcock did not hear anyone placed under arrest. (Record 5) Neither did he know if Officer Bowcutt was fighting, threatening, or what he was doing. (Record 6) Officer Pidcock did not know if the officer was in a personal fight or if he was in the performance of his duty.

Officer Bowcutt did not testify.
(Record 6)

Q: Did you see Officer Bowcutt put the man he was involved with in a choke hold?

A: No, I couldn't see after he reached his hands because Officer Bowcutt was standing between myself and the suspect.

Q: And you don't know what participated that?

A: No, I couldn't hear their conversation.

Q: You don't know if Officer Bowcutt was fighting, threatening, or what he was doing?

A: The only thing I observed that he was trying to take control of the suspect.

Q: OK, but you don't know if that was by reason of a personal fight or in the performance of his duty or anything?

A: No, I don't know why the initial...

Q: At the time you left before, everything was peaceful?

A: There were some words exchanged, but no violence.

Q: There was a discussion about impounding the car, wasn't there?

A: Yes.

Q: And what ultimately resulted from that, you don't know?

A: No.

ARGUMENT

POINT ONE. THE FINDING OF FACT OF THE JUVENILE JUDGE IS CONTRARY TO THE WEIGHT OF THE EVIDENCE.

POINT TWO. IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL JUDGE TO TAKE JURISDICTION OVER THE SUBJECT MINOR.

The minor was alleged to be under the provisions of

UCA, 1953, 55-10-77 (1).

" Jurisdiction of juvenile court...Except as otherwise provided by law, the court shall have exclusive original jurisdiction in proceedings:

(1) Concerning any child who has violated any federal, state, or local law or municipal ordinance, or any person under twenty-one years of age who has violated such law or ordinance before becoming eighteen years of age, regardless of where the violation occurred."

The court found as fact:

"That the crime that was being committed was the assault on Officer Bowcutt by Scott Payne."

From those facts the minor, John C. Payne, was alleged to be under the jurisdiction of the juvenile court, UCA 1955-10-77 (1). The petition alleges:

"On or about the 31st day of December, 1976, John Payne did obstruct justice in that he did, with the intent to hinder, prevent, or delay the apprehension of another for the commission of a crime, obstruct by force or intimidation a police officer from performing an act which might aid in the apprehension of such person." (Emphasis supplied)

The standard of judicial review in juvenile court proceedings is set forth statutorily and judicially as:

The hearing was a civil proceeding, UCA 1953, 55-10-

State in the Interest of K--B--, 326 P.2d 395, 7 Utah 398, 1958, at page 397, the court says:

In approaching appellant's contention that the evidence does not justify the order made, it is well to have in mind the basic rules applicable to this review. The statute provides that appeals from the juvenile court shall be, "in the same manner * * * as * * * appeals from judgments * * * of the district court * * ." Hearings in the juvenile court involving questions as to the custody of children are equitable. Due to the extreme concern of courts for the welfare of children, proceedings in their interest are sometimes stated to be equitable in the highest degree, because most careful consideration will be given such matters. In equity proceedings we are charged with responsibility of reviewing the evidence; and it is the established rule that we will not disturb the findings and determination made unless they are clearly

against the weight of the evidence, or the court has abused its discretion."

State of Utah, in the Interest of Manuel Salas,
a person under 18 years of age. Utah 520, P.2d
874, 1974, at page 876, the court says:

"It is within the discretion of the
juvenile court to determine the factual matters
and the weight to be accorded to them in making
its decision..."

Pauly v. McCarthy, 109 Utah 431, 184 P.2d 123,
1947, at page 125, the court says:

"Whether a new trial should or should not
be granted on this ground, of necessity, must largely
rest within the sound discretion of the trial court.

Still that court, in such particular, is not
supreme or beyond reach. Its action may nevertheless
be inquired into and reviewed on an alleged abuse of
discretion, or a capricious or arbitrary exercise of
power in such respect. Such a review is not review
of a question of fact, but of law * * * our power to
correct a plain abuse of discretion or undo a mere
capricious or arbitrary exercise of power cannot
be doubted."

There was no evidence adduced at the hearing that:

1. The officer was in the lawful performance of
his duties.
2. The officer was apprehending another for the
commission of a crime.
3. Any crime had been committed.
4. Officer Bowcutt was acting lawfully.

May a juvenile judge acting on a civil basis with equity
powers enter a finding of fact that Scott Payne (the minor's
brother) was assaulting Officer Pidcock.

It takes only a brief analysis to conjecture on the innumerable circumstances, legal and illegal, which could cause the two people to be fighting. The two people who were fighting are not charged here. Either of the parties could be acting legally or illegally, right or wrong. The problem is obvious, neither of the two people fighting, Scott Payne or Officer Bowcutt, were called upon to advise the court what was happening between them. Neither testified.

Without that information the case of the state had to be defective. Only conjecture and guess could have guided the judge.

In spite of the latitude of the equitable power of the court in a civil setting there, nevertheless, must be evidence to sustain the finding. There is none.

The court found as fact: (Record 10, #2)

"The allegation(s) contained in the petition are found to be as follows: True. The court finds that the crime that was being committed was the assault on Officer Bowcutt by Scott Payne. The court finds that Officer Pidcock did have the right to intervene and that John obstructed justice by interfering with him."

The court's finding of fact amounts to an abuse of discretion. The finding was clearly against the weight of the evidence. There was not sufficient evidence for the court to determine if an assault was or was not occurring.

p.2d 800, 1975, at page 801, the court says:

"....That part of the statute "regardless of whether there is a legal basis for the arrest" may be subject to various meanings and interpretations. If the intention of the legislature was to penalize a law-abiding citizen by incarceration because he did not willingly submit to an unlawful arrest, a statute authorizing the same is in violation of both the Utah and United States Constitutions as above referred to in that it permits and authorizes an arrest without probable cause and without lawful basis for the arrest..."

At page 803, Chief Justice Henriod in his concurring opinion states:

"....I suggest the subject statute both permits and encourages an unreasonable--and I think unconstitutional--arrest when it says it is unlawful to interfere with a "law enforcement official," who tries to make an arrest "whether there is a legal basis for the arrest" or not. In other words, a peaceful citizen is forced by legislation to become his own jail bait if he "interferes" with a law enforcement official making an arrest, no matter how outrageous, vicious, or stupid it may be,--and if such citizen uses means that the statute seems by implication or legerdemain, to be an arbitrary exercise of poor judgment, but in doing so interferes with an officer,--it costs him six months deprivation of his liberty.

Consider also, the case where an over-zealous, eager officer obviously is using excessive force to subdue a teenager to the point where bystanders honestly believe he is about to kill him,..."

CONCLUSION

In conclusion, this court in State of Utah v. Bradshaw declared as unconstitutional Section 76-8-305 of UCA 1953,

on the grounds that the statute was vague and contrary to constitutional rights.

In that case there was an attempt to create a criminal prohibition against interfering with a law enforcement officer "whether there is a legal basis for arrest," or not. The court in the majority opinion and concurring opinion pointed out the hazards and defects in that statute. The very hazards suggested in those opinions were manifest in this case. The judge in this case tried to accomplish through a finding of fact without basis what the supreme court refused to allow legislature to do via statute.

The court disregarded any basis or evidence of a lawful arrest and convicted the minor on the blind conclusion that the officer was right and acting lawfully. None of that finding by the trial judge was supported by the evidence.

It is suggested that the case should be reversed.

Respectfully Submitted,

BY: 

Robert V. Phillips
PATTERSON, PHILLIPS,
GRIDLEY, & ECHARD