

1977

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

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. Franklyn B. Matheson; Attorney for Plaintiff Robert V. Phillips; Attorney for Defendant

Recommended Citation

Brief of Respondent, *Utah In Re J.G.F.*, No. 15130 (Utah Supreme Court, 1977).
https://digitalcommons.law.byu.edu/uofu_sc2/594

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

STATE OF UTAH,
in the interest of:

J. C. P.

a person under eighteen
years of age.

BRIEF OF DEFENSE

An appeal from a judgment of the
First District Court, in the case of
able Roland Anderson, et al.,

PATTERSON, PHILLIPS,
GRIDLEY & ECHARD
Robert V. Phillips
427 - 27th Street
Odgen, Utah 84401

Attorney for Defendant

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, in the interest)	
of:)	
)	
J. C. P.,)	Case No. 15130
)	
a person under eighteen)	
years of age.)	
)	

BRIEF OF RESPONDENT

STATE OF UTAH

Robert B. Hansen
ATTORNEY GENERAL

Franklyn B. Matheson
Assistant Attorney General

Attorneys for Respondent,
State of Utah
236 State Capitol
Salt Lake City, Utah 84114

PATTERSON, PHILLIPS,
GRIDLEY & ECHARD
Robert V. Phillips,
427-27 Street
Ogden, Utah 84401
Attorneys for Defendant-Appellant

TABLE OF CONTENTS

	Page
CASES CITED	ii
STATUTES CITED	ii
OTHER AUTHORITIES CITED	ii
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF THE FACTS	1
ARGUMENT	3
POINT I: THE EVIDENCE WAS SUFFICIENT TO SUPPORT A FINDING THAT THE JU- VENILE WAS GUILTY OF OBSTRUCT- ING JUSTICE	3
POINT II: THE JUVENILE COURT HAD APPROPRIATE JURISDICTION OVER THE RESPONDENT.	10
POINT III: THE FINDINGS OF THE JUVENILE COURT MUST BE GIVEN DEFERENCE UNLESS CLEARLY AGAINST THE WEIGHT OF THE EVIDENCE	11
CONCLUSION	12

CASES CITED

	<u>Page</u>
<u>State of Utah v. Richard Allen Bradshaw</u>	5, 9
541 P. 2d 200 (1975)	
<u>State v. Browers</u>	
356 Mo. 1195, 205 S. W. 2d 721	9
<u>State v. Hinsley</u>	
501 P. 2d 111	8
<u>State in the Interest of K--B--</u> ,	
326 P. 2d 395, 7 Utah 2d 398.	11
<u>State v. Sandman</u>	
286 P. 2d 1060	8

STATUTES CITED

Utah Code Annotated 1953, as amended	
§10-6-66	7
§76-8-305	5
§76-8-306	5, 6, 11
§78-3-16	10

OTHER AUTHORITIES CITED

5 Am Jur 2d 778	9
58 Am Jur 2d 868 §19	9

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, in the inter-)
est of:)

J. C. P.,)

a person under eighteen)
years of age.)

Case No. 15130

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This is a case in which the Juvenile Court found John Payne, a minor, guilty of obstructing a police officer in the performance of his duty.

DISPOSITION IN THE LOWER COURT

The Juvenile Court found the allegations contained in the petition to be true.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have this court affirm the verdict of the Juvenile Court.

STATEMENT OF THE FACTS

Respondent finds no specific error in the Statement of Facts set forth in appellant's brief. However, respondent feels that the emphasis placed by appellant on certain of the facts, and omissions therefrom, gives a distorted impres-

sion of the true circumstances, and for that reason was its own abbreviated statement of the facts as follows:

On New Year's Eve, December 31, 1976, Officer Willis Pidcock, a patrolman for Ogden City, was in uniform and on duty. (R. 2). He was sitting in his patrol car and observed Officer Bowcutt, likewise an Ogden policeman and likewise in uniform, attempting to impound another vehicle. (R. 2). Officer Bowcutt was discussing the impound with a Scott Payne. A scuffle ensued between Officer Bowcutt and said Scott Payne and Officer Bowcutt hollered to Officer Pidcock for assistance. (R. 2). As Officer Pidcock ran to help he observed that Officer Bowcutt had hold of the suspect around the shoulders and back, and the suspect was striking Officer Bowcutt in the side and the side of the head. As Officer Pidcock entered the fray he was likewise struck three times by the suspect. (R. 2). The two officers subdued the suspect and were moving with him toward the impound wrecker, when John Payne came up from the left side of Officer Pidcock, grabbed Officer Pidcock and caused him to release his grasp on the suspect's arm. (R. 3). Officer Pidcock then shifted his attention to John Payne, informed John that he was under arrest and wrestled him to the ground where he handcuffed the boy. (R. 4). During this time Officer Bowcutt had succeeded in handcuffing Scott Payne. Officer Bowcutt then took Scott Payne into custody and Officer Pidcock took John into his car.

made the required referral to the Ogden police department, and John was subsequently released to his mother. (R. 4).

On January 21, 1977, John Payne was charged in the Weber County Juvenile Court as follows:

"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." (Tr. 9)

A hearing was held in the Juvenile Court and on March 2, 1977, the Court issued its Findings of Fact and Decree as follows:

"The allegations 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." (Tr. 10)

The Court ordered the juvenile to pay a fine of \$25.00 or work for a subdivision of government for a total of 12-1/2 hours. (Tr. 10).

ARGUMENT

POINT I

THE EVIDENCE WAS SUFFICIENT TO SUPPORT A FINDING THAT THE JUVENILE WAS GUILTY OF OBSTRUCTING JUSTICE.

Appellant alleges that the following finding of fact by the Juvenile Court was contrary to the weight of the evidence:

"The court finds that the crime that was being committed was the assault of 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."
(R 10).

Appellant further alleges that "there was no evidence adduced at the hearing that: (1) . . . Officer [Bowcutt] was in the lawful performance of his duties; (2) . . . [he] was apprehending another for the commission of a crime; (3) any crime had been committed; (4) . . . [he] was acting lawfully." (Appellant's Brief p. 5)

Although appellant would make much out of the paucity of evidence regarding the actions taken by Officer Bowcutt at the fact that neither he (Bowcutt) nor Scott Payne testified at the hearing, the question whether "There was . . . sufficient evidence for the court to determine if an assault was or was not occurring" (Appellant's Brief, p. 6) against Officer Bowcutt by Scott Payne is largely irrelevant. Practically speaking, since Scott Payne was not the defendant below, the question is not whether Scott committed an assault upon Officer Bowcutt, but whether the evidence produced in the hearing was sufficient to support the Juvenile Court's finding that defendant, John Payne, obstructed justice by interfering with Officer Pidcock.

It seems obvious that appellant has made a fundamental error in analyzing the facts and the findings. The Court did not find that Scott Payne was assaulting Officer Pidcock as stated on page 5 of appellant's brief. Nor was the Juvenile Court's jurisdiction imposed because Scott Payne was assaulting Officer Bowcutt as suggested by appellant on page of his brief. The finding was that John Payne, the juvenile

was interfering with Officer Pidcock, and Juvenile Court jurisdiction over John Payne, a juvenile, was predicated on the juvenile's acts, not the acts of Scott Payne. John was on trial in the Juvenile Court for his acts in relation to Officer Pidcock. Scott was not on trial nor was his relationship with Officer Bowcutt necessarily pertinent, except that the scuffle which was taking place furnished justification for interference by Officer Pidcock.

Appellant cites the case of State of Utah v. Richard Allen Bradshaw, Utah 541 P. 2d 200 (1975) in support of his argument that the commission of a crime must first be established before one can be found guilty of unlawfully interfering with an arrest for said crime. (Appellant's brief, Pp.6-7). State v. Bradshaw held that the provisions of Section 76-8-305, "Interference in arrest by law enforcement official," were unconstitutional. The juvenile in our instant case was not charged under the provisions of Section 76-8-305. He was not charged with intentionally interfering with an arrest. Appellant seems to feel that whether or not a lawful arrest was taking place is dispositive of this case. (Appellant's Conclusion, Brief p. 8). Actually, this consideration is irrelevant. The juvenile was charged under the provisions of Section 76-8-306, obstructing justice, not Section 76-8-305. The elements of the "Obstructing" statute require that a person, with intent to prevent the apprehension of another for the commission of a crime, obstructs by force anyone from performing an act which might aid in the apprehension of such

person. In the instant case the Juvenile Court Judge found, with ample evidence, that Scott Payne was committing a crime against the person of Officer Bowcutt. He further found that defendant John Payne was obstructing Officer Pidcock in apprehending Scott. Certainly, all the elements of the obstructing charge have been met.

The offense of obstructing justice is set forth in Utah Code Annotated §76-8-306:

"A person is guilty of an offense if, with intent to hinder, prevent, or delay the discovery, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he:

- (a) Knowing an offense has been committed, conceals it from a magistrate; or
- (b) Harbors or conceals the offender; or
- (c) Provides the offender a weapon, transportation, disguise, or other means for avoiding discovery or apprehension; or
- (d) Warns such offender of impending discovery or apprehension; or
- (e) Conceals, destroys, or alters any physical evidence that might aid in the discovery, apprehension, or conviction of such person; or
- (f) Obstructs by force, intimidation, or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person.

(Emphasis added)

The facts of the instant case demonstrate that the defendant, John Payne, did intentionally obstruct Officer Pidcock by force from performing an act which might have aid in the apprehension of another for the commission of a crime. As testified to at the hearing, Officer Pidcock was on duty

and in uniform at the time of the incident. Since Officer Bowcutt was also in uniform and was attempting to perform a police function, i.e., impound a vehicle, it would seem that the court justifiably presumed that both officers were acting in performance of their duties. From his patrol car across the street, Officer Pidcock was able to observe Officer Bowcutt and Scott Payne. After the scuffle began, Officer Bowcutt called for assistance from Officer Pidcock. Under the circumstances, there can be little doubt that Officer Pidcock was justified in coming to the aid of his fellow officer.

The powers and duties of police officers are described in Utah Code Annotated, §10-6-66, as follows:

"10-6-66. Police officers--Powers and duties.--All police officers of any city shall possess the powers conferred upon constables by law. It shall be the duty of the police force in any city at all times to preserve the public peace, prevent crime, detect and arrest offenders, suppress riots, protect persons and property, remove nuisances existing in the public streets, roads and highways, enforce every law relating to the suppression of offenses, and perform all duties enjoined upon them by ordinance."

(Emphasis added.)

In executing the above powers and duties, police officers must necessarily assist one another. The hazardous nature of police work requires a high degree of teamwork and cooperation--indeed, the rendering of assistance to a fellow officer would appear to be mandatory. The mere possibility that Officer Bowcutt may in some way have acted improperly pursuant to an impoundment is immaterial absent some egregious and obvious

abuse on his part at the time of the incident. Police officers must act quickly and rarely have the luxury of meditation and certain knowledge. To require proof that a prior crime has been committed before an assisting officer can be considered to be acting within the scope of his duty would undermine trust between police officers and impede effective law enforcement. Again, the real question is whether defendant obstructed Officer Pidcock in the performance of his lawful duty.

In the case of State v. Hinsley, Utah, 501 P. 2d 111 (1972) this Court quoted with approval the test for an obstruction charge as set out in State v. Sandman, Utah, 286 P. 2d 1060 (1955). The test is that it must appear that (A) a duly constituted public officer, (B) engaged in the performance of his official duty, (C) was obstructed or resisted by defendant. In the instant case a duly constituted public officer (Officer Pidcock), engaged in the performance of his official duty (assisting a fellow officer in apprehending a suspect) was obstructed by the defendant (interference by John Payne). The offense has clearly been established and the uncontroverted evidence supports the finding of guilt based on this test. That defendant did obstruct Officer Pidcock while in the performance of his duty is clearly supported by Officer Pidcock's testimony: ". . . John came up from my left side and grabbed me, causing me to release my grasp on Scott's arm. * * * I turned around not knowing

whether he was going to strike a blow at me, or what was going to happen at that time." (R. 3). As stated in 58 Am Jur 2d 868, §19:

"Where a person by words or conduct interferes in behalf of another person who is in difficulty with an officer, the offense of obstructing an officer will be held committed where either actual force is used or a threat is made, coupled with the present ability and apparent intention to execute it." (Emphasis added).

There would appear to be no excuse for John's behavior. He knew he was interfering with a police officer in performance of his duty; and, it is highly unlikely that his interference was anything but intentional.

While true that "Any unlawful interference with the fundamental right of personal liberty may be resisted", 5 Am Jur 2d 778, it would appear that the right of a third person to intervene on behalf of another is quite restricted. In State v. Browers, 356 Mo. 1195, 205 S. W. 2d 721 (1947), for example, defendant attacked a marshal, after the marshal shot at defendant's brother, to prevent him from killing his brother. The court held that defendant had acted lawfully to prevent an illegal arrest and could use only such force as was reasonably necessary to repel an assault on his brother. Respondent does not dispute that some circumstances may justify third party interference. Justice Henriod stated in his concurring opinion to State v. Bradshaw, Utah 541 P. 2d 800 (1975):

"Consider also, the case where an over-anxious, eager officer obviously is using aggressive force to subdue a teenager to the point where bystanders honestly believe he is about to kill him, or where a drunken officer with a badge is arresting and beating a perfectly innocent citizen, or where a cop at a football stadium goes berserk and at the point of a gun attempts to arrest everyone in front of him, or a game warden, in a remote wilderness area, out of sheer suspicion manhandles a hunter minding his own business, or an off-duty law enforcement officer in civilian clothes, not "recognized" as a Bobbie, tries to arrest his neighbor on a trumped-up charge. . . . "

(Emphasis added).

But note that obstruction by third parties can be justified only when the person interfered with is overzealous, acting clearly illegally and/or with excessive use of force. The instant case contains no such extenuating circumstances. To hold obstruction justifiable in other than extreme cases could serve only to impede effective law enforcement and encourage unwarranted interference with police officers.

POINT II

THE JUVENILE COURT HAD APPROPRIATE JURISDICTION OVER THE RESPONDENT.

Appellant states that the lower court abused its discretion by taking jurisdiction over the subject minor; however, if John, a minor, did in fact violate §76-8-306, respondent fails to see any reason for improper jurisdiction under §78-3-16:

"Jurisdiction of juvenile court--Judge may sit as district court judge.--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 any such law or ordinance before becoming eighteen years of age, regardless of where the violation occurred." (Emphasis Added).

POINT III

THE FINDINGS OF THE JUVENILE COURT MUST
BE GIVEN DEFERENCE UNLESS CLEARLY AGAINST
THE WEIGHT OF THE EVIDENCE.

The appellant must clearly show that the lower court erred. In the case of State in the Interest of K--B--, 326 P. 2d 395, 7 Utah 2d 398 (1958), this Court reaffirmed the great deference which must be given to findings of the trial court. It stated:

"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 the most careful consideration will be given such matters. In equity proceedings we are charged with the 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."

(Emphasis Added)

Respondent respectfully submits that the evidence as argued under Point I was more than sufficient to support the verdict rendered in the trial Court. The only evidence was that submitted by the State, which certainly established that the juvenile had deliberately and unlawfully obstructed the administration of justice.

CONCLUSION

Because there were no extenuating circumstances which would justify defendant's interference with Officer Pidcock's performance of his duty, the Juvenile Court acted properly in finding defendant guilty of obstructing justice. Respondent thus seeks to have the action of the Juvenile Court affirmed.

Respectfully submitted,

Robert B. Hansen
ATTORNEY GENERAL

Franklyn B. Matheson
Assistant Attorney General

Attorneys for Respondent

CERTIFICATE OF MAILING

I certify that I mailed true and correct copies of the foregoing Brief, postage prepaid, this 21st day of October, 1977, to Robert V. Phillips, Attorney for Appellant, 467- 27th Street, Ogden, Utah, 84401.

Sandra Lundquist