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Michael J. Hillyard v. City Court of Logan City : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

MICHAEL J. HILLYARD,

Plaintiff and Respondent,

vs.

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

Defendant and Appellant.

BRIEF OF RESPONDENTS

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OF THE STATE OF UTAH

MICHAEL J. HILLYARD,

Plaintiff and Respondent,

vs.

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

Defendant and Appellant.

Case No. 15964

BRIEF OF RESPONDENTS

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Plaintiff and Respondent,

vs.

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COUNTY OF CACHE, STATE OF
UTAH,

Defendant and Appellant.

Case No. 15964

BRIEF OF RESPONDENTS

STATEMENT OF THE NATURE OF THE CASE

Plaintiff brings this civil action for an extraordinary writ under Rule 65 B of the U. R. C. P., seeking an order of the District Court restraining Logan City Court from further proceedings in the case of State v. Michael J. Hillyard, a criminal action instituted by the State charging Defendant with driving while under the influence.

DISPOSITION IN THE LOWER COURT

The District Court granted the Writ of Prohibition, thereby restraining Logan City Court from further proceedings.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent prays the Court to affirm the granting of the Writ of Prohibition by the District Court of Cache County.

STATEMENT OF FACTS

The facts are substantially uncontested. On July 28, 1976, Respondent was arrested by an officer of the Cache County Sheriff's Office on the U. S. Highway 91 in the limits of Hyde Park, County of Cache, State of Utah. The arresting officer took Respondent to Cache County Jail in Logan City where he was subsequently released. While at the jail, the Deputy Sheriff contacted the Justice of the Peace of Hyde Park for the purpose of having bail set. Bail was set at \$250.00.

Thereafter, a complaint was filed on July 29, 1976 in the City Court of Logan City and Trial was had on August 16, 1976. At Trial counsel for Plaintiff-Respondent moved the Court for a dismissal on the grounds that Section 41-44-166 U. C. A., 1953, as amended, provides that a person when arrested on the above stated charge, is to be taken immediately before the nearest magistrate.

The case was continued by the Trial Court for the purpose of allowing the Plaintiff-Respondent to seek a Writ of Prohibition. The Writ was granted on May 11, 1977. Defendant-Appellant filed a Notice of Appeal on June 22, 1977 and Plaintiff-Respondent now responds.

ARGUMENT

POINT I

THE COURT CORRECTLY HELD THAT THE VENUE OF A CRIMINAL CASE IS LAID BY COMPLIANCE WITH SECTION 41-1-166, U. C. A., 1953.

Section 41-1-166 U. C. A., 1953, as amended, states in pertinent part:

- (1) Whenever any person is arrested for any violation of this act punishable as a misdemeanor, the arrested person, for the purpose of setting bond, shall in the following cases, be taken without necessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense and is nearest or most accessible with reference to the place where said arrest is made, in any of the following cases. . .
- (b) When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs . . .

The statute requires three circumstances to be existing before compliance will be recognized: the arrested person must be taken before a magistrate 1) who is within the county, 2) who has jurisdiction and 3) who is the nearest and most accessible to the scene of the alleged offense. Where these obligatory elements alone are satisfied, as they were in this case, venue is established. However, in addition, this particular statute, Section 41-6-166, U. C. A., 1953, appears in Chapter 6, Traffic Rules and Regulations, which deals not only with traffic signals and violations of prescribed conduct, but also with the establishment of venue as set forth in both Section 41-6-166, and Section 41-6-167, U. C. A., 1953. The latter section mandates that the officer prepare in triplicate a written notice to appear and which notice contains both the offense charged and the time and place where such person should appear in court. Thus, under Sections 41-6-166 and 167, venue is determined at the initial appearance before a magistrate, not at a later date. Of course, objections may be raised as provided by Article

VIII, Section 5 of the Utah Constitution. This Respondent di

This Court has previously held that where a statute has laid venue of a misdemeanor case in a city or justice co the parties have a right to proceedings in the proper Johnson v. State, 114 P.2d 1034, (Utah). In the instant case venue was set by Respondents being taken to the nearest accessible magistrate in compliance with Section 41-6-166, U. C. A.

This chapter's requirements are consonant with the general law of criminal procedure as set forth in Section 77-13-17 U. C. A., 1953, as amended, which provides that the arrested person "must without unnecessary delay, be taken to the magistrate in the precinct of the county or city in which the offense occurred, and a complaint, stating the charge against the person must be made before such magistrate." Further, the magistrate "before whom such charge is made, if the offense is triable by him, shall have full jurisdiction over the offense and the defendant to try and determine such offense." In its analysis the State would have this Court recognize a dissonance which simply does not exist. Any comparison of the procedure outlined in Section 77-13-17 and Section 41-6 U. C. A., 1953, must include both Sections 41-6-166 and 41-6-167, U. C. A., 1953 because the latter does require that a complaint or charge be made at the first appearance before the magistrate, despite the new statutory language that bail must also be set at that time.

Thus, it is clear that having complied with all provisions of Section 41-6-166, the State must abide by the venue it established and, further, "it is the state's duty to prove beyond a reasonable doubt that it followed statutory interdictions, not the defendant's duty to expend time, money or irritation to prove that the state, of all monsters, did not conceive, nurture, and feed its own offspring," Wells v. City Court of Logan City, 535, P.2d 683, 684 (Utah, 1975). Venue was laid in the initial appearance with the magistrate.

POINT II

THE TOWN JUSTICE EXERCISES JURISDICTION
OVER MISDEMEANOR OFFENSES AGAINST THE
STATE COMMITTED WITHIN THEIR RESPECTIVE
COUNTIES.

The State contends that despite the venue question, the town magistrate lacks jurisdiction of the offense described in Section 41-6-44, if it is committed outside the corporate limits of the said municipality. To the contrary, Section 77-57-1, U. C. A., provides the following:

In criminal cases the jurisdiction of
of justice of the peace extends to the
limits of their respective counties.

Further authority for the justice's county-wide jurisdiction is set forth in Section 78-5-5, U. C. A. which states that while the town justice shall have exclusive jurisdiction of offenses against its municipal ordinances, the court "shall have the same powers and jurisdictions as other justices of the peace in all other actions, civil and criminal."

See also State v. Maughan, 35 U. 426, 100 P.934, 936, (1909), wherein this court acknowledged that the jurisdiction of justice of the peace in criminal cases extends to the entire county.

Thus, the requirements of Section 41-6-166 that a magistrate has jurisdiction of misdemeanors is foreclosed. It makes no difference in the case at bar that Logan City Court also exercises jurisdiction by virtue of Section 78-4-16.5 because the judge of the City Court shall exercise the jurisdiction of a magistrate. Section 78-4-16 U. C. A., 1953.

CONCLUSION


Venue refers to the particular place in which a court with jurisdiction may hear and determine a case. Venue is laid for purposes of offenses under Section 41-6-66, when the obligatory elements of Section 41-6-166 and Section 41-6-167 are satisfied because those statutes prescribe the procedure for commencing the action. The action begins with the nearest accessible magistrate. It does not matter that the Logan City Judge is also a magistrate within the precinct of the county or city in which the offense is alleged to have been committed and who shares equal jurisdiction to determine the case at bar. The question of venue is set forth by Section 41-6-166 and 167 and may only be changed by filing a stipulation or affidavit in support of a change of venue. This objection was made by Respondent and the Writ of Prohibition was properly granted.

Secondly, the Hyde Park magistrate does have jurisdiction over offenses against the state which extends through the County.

of Cache. To contend otherwise is directly in contradiction to legislative pronouncement in Section 77-57-1 and Section 78-55, U. C. A., 1953.

For the reasons stated above, Respondent prays the Court affirm the Writ of Prohibition granted by the First District Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gordon J. Low', is written over a horizontal line.

Gordon J. Low
Attorney for Plaintiff and
Respondent