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

Utah Supreme Court

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B. M. Harris; Attorney for Defendant and Appellant;

Hillyard, Gunnell & Low; Attorneys for Plaintiff and Respondent;

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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.

Civil No. 15298

APPELLANT'S BRIEF

* * * *

STATEMENT OF KIND OF CASE

This is a civil action brought by the Plaintiff for an extraordinary writ under Rule 65 B of the U.R.C. P., seeking an Order of the District Court restraining the City Court from further proceedings in the case of State of Utah vs. Michael J. Hillyard, which is a criminal action instituted by the State of Utah against the Defendant charging the offense of driving while under the influence.

DISPOSITION IN LOWER COURT

The District Court for Cache County granted the prohibition for the reasons hereinafter set forth in the brief. The State of Utah appeals from said Order granting the Writ of Prohibition.

RELIEF SOUGHT ON APPEAL

The State of Utah, the Defendant in this action, seeks a reversal of the Order of the District Court granting the Writ of Prohibition in favor of Plaintiff and seeks an Order of the Supreme Court to making the denial of the Writ of Prohibition absolute.

STATEMENT OF FACTS

The Plaintiff herein, Michael J. Hillyard, on the 28th day of June, 1976, was arrested by a Cache County Sheriff's Deputy one mile south of Smithfield, Utah for the offense of driving while under the influence of alcohol.

Following the arrest, Michael J. Hillyard was taken to the Cache County Sheriff's Office for the purpose of submitting to a breathalyzer test. The test showed the Defendant's blood alcohol content to be .17%.

After the breathalyzer test, the arresting officer placed a phone call to the Magistrate in Hyde Park, Utah. Hyde Park lies about 1 mile South of Smithfield, Utah. The Hyde Park Magistrate was the closest and most accessible Magistrate to the point where the Defendant was initially stopped. The officer explained the Defendant's arrest to the Magistrate. The Magistrate then fixed bail for the Defendant.

The Defendant was released from custody on bail several hours after his arrest.

The Cache County Attorney's Office then filed a complaint

with the Logan City Court requiring the Defendant to appear there for the purpose of arraignment. The matter was ultimately set for trial and parties appeared at the time of trial, however, the issue of the procedures used in this case came to the attention of the Court and the case was continued by the trial Court for the purpose of allowing the Defendant to seek a Writ of Prohibition to determine the correctness of the procedures used by the arresting officer.

ARGUMENT

POINT I.

THE TRIAL COURT ERRED IN HOLDING THAT VENUE OF A CRIMINAL CASE IS LAID BY THE COMPLIANCE SECTION 41-1-166 U.C.A., 1953.

Section 41-6-166 U.C.A., as amended in 1975, states that when a person is arrested upon a charge of driving while under the influence of intoxicating liquor such person shall be taken to the nearest or most accessible magistrate who has jurisdiction of the offense and lies within the county of which the offense is committed.

The purpose of this Statute is expressed in 41-6-166 which states that the person shall be taken before the magistrate for the purpose of setting bail.

Plaintiff's position is, and the trial Court held that once venue is laid with the Justice Court by compliance with 41-6-166, the Complaint cannot be filed in another Court. If this were so, the Legislature would not have inserted

Section C of 41-6-167 which states that "the written notice to appear must be made before a Magistrate within the county of which the offense charged is alleged to have been committed and who has jurisdiction of the offense." The State of Utah, in filing the charge against the Defendant in this case, filed it in the Logan City Court which has a Magistrate within the county who had jurisdiction over the offense.

Article 1 Section 12 of the Constitution provides that the Defendant shall have the right to have a speedy public trial by an impartial jury of the county or district of which the offense is alleged to have been committed.

Article 8 Section 5 of the Utah Constitution states that all civil and criminal business arising in any county must be tried in such unless a change of venue be taken.

Therefore, the Constitution does not prohibit the State of Utah filing a criminal action in a Court possessing county wide jurisdiction different from that in which bail was set. 41-6-166 states that the appearance is not for the purpose of fixing trial, but for the purpose of setting bond and therefore the fixing of bond does not exclusively attach venue for the trial of the case.

Section 77-13-17 Utah Code Annotated is a Section taken from the Code of Criminal Procedure related to the charging of all offenses and that Section states that when an arrest

is made without a Warrant, a person must, without unnecessary delay, be taken to the magistrate in the precinct of the County or City in which the offense occurs and the Complaint stating the charge made against them must be made before such magistrate. The Legislative intent is clear in this case.

This provision of the Criminal Code relates to the procedure used in the commencing of a criminal action where an Arrest Warrant was not issued prior to the time of the arrest. A comparison of Section 77-13-17 with 41-6-166 shows that Section 41-6-166 is drawn for the purpose of setting bond and not for the purpose of conferring jurisdiction upon the Court for the trial of the matter. Section 77-13-17 also states that the magistrate before whom such charges are made, if the offense is triable by him, shall have full jurisdiction over the offense and the Defendant to try and determine such offense. The key word is the word "charge" because this connotes that there has been a Complaint filed. Section 41-6-166 omits language which would make it mandatory to file the charges against the Defendant in the same court which the bond was fixed.

The landmark case in this area is a case of Wells vs. City Court of Logan City, 535 P 2d. 683, Utah. Since the decision in that case, the Legislature has amended 41-6-166:

inserting words indicating that the appearance is for the purpose of fixing bond.

The amendment to the Statute indicates that the Legislature intended to have the appearance for the purpose of fixing bond, which act does not confer exclusive jurisdiction over the case, nor confers upon that magistrate venue inasmuch as the action itself has not been commenced as the Complaint has not been filed. (See Section 77-11-1 U.C.A., Section 77-11-6 to 8 U.C.A and Section 76-1-202 U.C.A) Section 78-4-16.5 provides that whenever a Complaint may be commenced before a magistrate under Section 77-57-2 wherein an arrested person is to be taken before a magistrate or under 77-13-17, the Complaint may be commenced or the arrested person may be taken before the nearest City Court Judge in counties where City Court's have been established. Such is the case with Logan City, and that Statutes give the officer the right to file a Complaint in the nearest City Court having jurisdiction of the offense. Logan City Court is the only City Court in the County. The other magistrates were mere Town Justices. Wells vs. Logan City Court, infra, dissenting opinion.

POINT TWO.

TOWN JUSTICES LACK JURISDICTION OVER OFFENSES COMMITTED OUTSIDE OF THE CORPORATE LIMITS OF THEIR MUNICIPALITY.

Cache County has only one precinct, and that is the entire county and the precinct Justice Court is the Logan

City Court. Various towns have justice Courts but they are established by the town itself and have no jurisdiction outside of the corporate limits of the town. Section 78-5-5 sets forth the jurisdiction of City and Town Justices as it relates to the nature of the offense. However, it does not define the geographical limits of jurisdiction of the Courts. This Court in Latham vs. Riger 54 Ut. 491, 182 Pac. 187, recognized the difference between Precinct Justices and the Town Justices in the geographical jurisdiction. In Dillard vs. District Court of Salt Lake County 69 Utah 10, 251 Pac. 1070 where this Court cited Section 1784 which was later amended to Section 78-5-4 U.C.A. 1953, and stated as follows:

"After the enactment of the foregoing Section 1784, the Legislature created City Courts in certain cities of the State, invested them with the largest civil jurisdiction of justices Court's and then with respect to their criminal jurisdiction provided that a City Court shall have exclusive original jurisdiction of all cases arising under or by reason of a violation of any of the ordinances of the City, which such Court is held and shall have the same powers and jurisdiction in all other criminal actions as are or may be prescribed for justices of the peace.

It said of Justices' Courts that their territorial jurisdiction was limited to their City or precinct. Section 1784 Compiled Laws was then amended to 78-5-4 UCA, enlarging territorial jurisdiction of a precinct justice to the entire County. The Town Justice was then granted "the same powers and jurisdictions as other justices of the peace." The Legislature

in 1971 amended the territorial jurisdiction of Justice Courts by the enactment of 77-57-2 U.C.A. by saying 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. This rational is further reinforced by Section 78-5-1 which states that every justice of the peace shall reside in and shall hold Court in the precinct town or city in which he is elected or appointed.

Section 41-6-166 states that whenever a person is arrested for a violation of the motor vehicle act, the arrested person shall be taken immediately before a Magistrate of the County who has jurisdiction of the offense.

It is the State's position that a Town Justice does not have jurisdiction of an offense occurring outside of his municipal corporate limits regardless of whether or not he is the nearest or most accessable Magistrate.

The City Court of Logan receives it's county wide jurisdiction by reason of Section 78-4-16.5 State ex. rel Town of Garland, vs. Maughan 55 Utah 426, 100 Pac. 934 where the Court stated:

"A judge cannot hold a Court outside of the territory for which he was elected."

It is the states position that this case stands for the proposition that City Justices have jurisdiction over actions arising within their City or Town, whether it be a

violation of the City Ordinance or a violation of the State Statute. Section 78-5-4 U.C.A. discusses Criminal Jurisdiction of Precinct Justices and 78-5-5 U.C.A. discusses the criminal jurisdiction of City and Town Justices. If the territorial jurisdiction of each of these Justices were the same, there would be no need for the defining of criminal jurisdictions of Precinct Justices and City Justices in different Sections of the Statute.

Section 77-57-2, Utah Code Annotated, as amended in 1951, states the procedure for filing a Complaint. The legislature in 1971 amended this Section adding to that the following language:

" 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."

In the case at bar, Logan City Court was the Court for the precinct in which the the offense was committed.

CONCLUSION

The Statutes of the State of Utah do not lend themselves to a clear and precise interpretation and therefore, it is the request of the Defendant that adequate guidelines be given by this Court so that the ordinary citizen may know of his rights and the law enforcement officers may know their responsibilities and limitations.

Jurisdiction is a two fold word encompassing both jurisdiction over the subject matter and territorial jurisdiction.

Just as this Court has no jurisdiction over a criminal act occurring outside of the State of Utah, because Utah is the territorial jurisdiction of this Court, the Hyde Park Court can have no jurisdiction outside it's territory, meaning the corporate limits of Hyde Park. The issue is not one of venue, but one of territorial jurisdiction. Venue, on the other hand, is the selection of a proper place for a trial if several Courts have concurrant jurisdiction over the offense.

It is the Defendant's position in this case that Cache County, being a single precinct, the City Court of Logan City has County wide jurisdiction over offenses committed in the County. The several Justice Courts created for each Town have jurisdiction over violations of ordinances for that particular town and have jurisdiction to hear State offenses committed in their respective geographical limits and that the legislature has recently reiterated this fact by the amendment of Section 77-57-2 where it says the Complaint shall be commenced before the magistrate within the precinct of the County or City in which the offense is alleged to have been committed. To comply with this Section, a Complaint was filed in the precinct in which the offense was alleged to have been committed.

RESPECTFULLY SUBMITTED this 19th day of September, 1977.

CITY COURT OF LOGAN CITY
Defendant,

B. H. HARRIS
Cache County Attorney

By: GEORGE W. PRESTON
Deputy Cache County Attorney
31 Federal Avenue
Logan, Utah 84321

Attorneys for Defendant and
Appellant.

JUN 1 1978

15298
Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

MICHAEL J. HILLYARD,)
Plaintiff and Respondent,) RESPONSE TO APPELLANT'S
vs.) PETITION FOR REHEARING
CITY COURT OF LOGAN CITY,)
COUNTY OF CACHE, STATE OF)
UTAH,) Case No. ~~15964~~
Defendant and Appellant.) 15298

COMES NOW, Michael J. Hillyard, by and through his attorney Gordon J. Low and hereby responds to Appellant's Petition for Rehearing. Respondent prays the Court deny the Petition on the following grounds:

1. Appellant cites the "newly enacted but not yet effective circuit court act" as something of probative value to this Court. As Appellant correctly notes, the circuit court act is not effective in this case and, therefore, is entirely irrelevant to this particular determination.

2. Under present and then-existing law, the defendant's rights concerning law-trained judges are circumscribed by the availability of accessible magistratie. As this Court pointed out in its opinion, Sec. 41-6-166 U.C.A., 1953 mandates that the "arrested person must be taken to the nearest and most accessible magistrate with reference to the place where the arrest was made." Simply stated, by law, an arrested person shall be taken before the nearest magistrate who shall try the case if the offense is triable by him. See also Sec. 77-13-77 U.C.A., 1953.

3. The Court did not fail to consider the provisions of Sec. 41-6-166, which provides that the purpose for the appearance before a magistrate is for the purpose of setting bail. The nearest accessible magistrate was contacted in this case and bail was set. However, the complaint should necessarily have been filed in the Hyde park County not in Logan City:

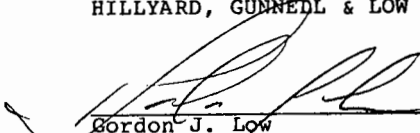
... and a complaint, stating the charge against the person must be made before such magistrate. ... The magistrate before whom such charge is made ... shall have full jurisdiction over the offense ... Sec. 77-13-17, U.C.A., 1953.

Appellant fails to properly construe Sec. 41-6-166 with 77-13-17 in the correct order. The addition of the language "for the purpose of setting bond" does not exclude the other purpose of Sec. 41-6-166 to ensure the person receives a speedy public trial. Art. I, Sec. 12, Utah Constitution. The additional language serves only to illuminate another purpose for taking an arrested person to the nearest accessible magistrate. Clearly this Court was correct in affirming the Order of the District Court in granting the writ of Prohibition.

Wherefore, Plaintiff and Respondent prays the Court to deny Appellant's Petition for Rehearing in the above-entitled case.

DATED this 25th day of May, 1978.

HILLYARD, GUNNEDL & LOW


Gordon J. Low

Attorney for Plaintiff and Respondent

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Response to Appellant's Petition for Rehearing was mailed to B. H. Harris, attorney for Defendant and Appellant, at 31 Federal Avenue, Logan, Utah 84321, this 26th day of May, 1978.

