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Michael J. Hillyard v. City Court of Logan City : Amicus Curiae Brief

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.	Case No. [illegible]

AMICUS CURIAE BRIEF OF STATEWIDE [illegible]
PROSECUTORS OF UTAH ON REHEARING [illegible]
OF DEFENDANT/APPELLANT'S PETITION FOR [illegible]

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* * * *

STATEMENT OF THE NATURE OF THE CASE

This is a civil action brought by the Plaintiff seeking a Writ of Prohibition. The District Court in Cache County, State of Utah, granted the Writ of Prohibition and the Supreme Court of the State of Utah on the 18th day of April, 1978 upheld the Judgment of the District Court.

The amicus curiae brief herein respectfully submitted seeks the relief of reversal of the Court's prior decision.

STATEMENT OF FACTS

As to the purpose of this brief, the statement of facts contained in the briefs of the Appellant are relied upon.

For the information of the Court, the Statewide Association of Prosecutors filing this amicus curiae brief is a non-profit corporation organized under the laws of the State of Utah comprised of all prosecutors throughout the State.

The Prosecutors' Advisory Board comprised of five county attorneys, the Attorney General, and a representative from the city attorneys' offices have unanimously concurred in the filing of this brief.

ARGUMENT

POINT I.

THE DECISION OF HILLYARD FAILS TO GIVE EFFECT TO THE EXPRESS MEANING OF THE APPLICABLE STATUTES.

A. The Legislature has consistently attempted to provide the option that misdemeanors may be filed in the City Court. An historical review of the Sections related to the subject follows.

Section 77-13-17, U.C.A., as amended, states:

> "When an arrest is made without a warrant by a peace officer or private person, the person arrested 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. In the event the

> magistrate of the precinct is not available, the arrested person shall be taken before the nearest available magistrate to the scene of the alleged offense. A conductor or other person who makes an arrest as provided in Section 77-13-5 shall without unnecessary delay take the person so arrested before any accessible magistrate or deliver him to a peace officer; and a complaint stating the charge against the person must be made. The magistrate before whom such a charge is made, if the offense is tryable by him, shall have full jurisdiction over the offense and the defendant to try and determine such offense. If he has not jurisdiction to try the defendant for the offense charged, he must proceed as provided in Chapter 15 of this Title. Any officer or person violating any of the provisions of this Section shall be guilty of a misdemeanor."

It's evident this statute requires the defendant to be taken to the precinct in the county or city where the offense occurred. It also provides that where the magistrate in the precinct is not available, the defendant can be taken to the nearest available magistrate. The purpose of this statute is to prevent judge shopping by peace officers. It is obvious that officers may "shop" for the "most available" Justice of the Peace when such Justices maintain irregular hours.

The Legislature, realizing that problems could arise for the prosecution and for defendants facing non law-trained Justices when such defendants were taken only before the local magistrate, provided in Section 78-4-16.5, U.C.A., as enacted in 1971, the option to have the criminal proceeding commence before a city court. The

Statute reads as follows:

> "Whenever a complaint may be commenced before a magistrate under Section 77-57-2, or an arrested person is to be taken before a magistrate under Section 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 courts have been established."

The option of going before the city court was effectively curtailed in the case of Wells vs. City Court of Logan City, 535 P.2d 683 (Utah 1975), where the Court said that the provisions of Section 41-6-166, U.C.A., as amended in 1953, required that a defendant be taken to the nearest magistrate and that that magistrate had exclusive jurisdiction. Section 41-6-166 prior to 1975 did not identify the purpose for which the person was taken before the magistrate implying that the magistrate was granted full jurisdiction over the case and was the party before whom the case should be tried. Following the Wells decision, the Utah Legislature amended Section 41-6-166 clearly making known their intention to only require the appearance to be "...for the purpose of setting bond".

The effect of this change restored the option of Section 78-4-16.5, U.C.A., allowing proceedings to be begun either in the magistrate's court or in the city court as determined by the arresting officer or the prosecutor.

Unfortunately, in the recent Hillyard decision, the Court failed to follow the expressed meaning of Section 41-6-166, U.C.A., as amended, and instead chose to follow

the Wells decision under the former Section 41-6-166, U.C.A., statute.

B. The majority of the Court held in Hillyard that Section 41-6-166, U.C.A., was the controlling statute because it was later and more specific as compared to Section 78-4-16.5, U.C.A., (1971), and Section 77-13-17, U.C.A., (1971), which are more general statutes. However, the reason Section 41-6-166, U.C.A., is later is only because it was amended in 1975 to add in the words "...for the purpose of setting bond".

The amendment was clearly an intention by the Legislature to clarify its belief that matters needed only be taken before the magistrate for the purpose of setting bond, but there was an option later for trial before the city courts.

The Hillyard decision throws out the option of Section 78-4-16.5, U.C.A. allowing the matter to be taken before the city courts which was the express intent of the Legislature when it amended Section 41-6-166, U.C.A., for the purpose of allowing that option following the Wells decision.

C. Section 41-6-166, U.C.A., is located in the traffic rules and regulations provisions of the Code and provides for an appearance before a magistrate for the purpose of taking bond (emphasis added). This is to insure procedural due process is provided the individual and he is taken immediately, if he desires, before an appropriate

magistrate.

The requirement in the statute to appear does not include the requirement to file a formal complaint or the commencement of the proceedings or the anticipation of conferring exclusive jurisdiction on the magistrate to try the case.

Exclusive jurisdiction begins at the time the complaint is filed before the appropriate court.

The clear Legislative intent throughout these series of statutes has been to provide the opportunity for defendants to be tried before a law-trained judge with the highest level of skill and experience. To attach exclusive jurisdiction to the magistrate upon the initial appearance of the defendant simply frustrates this Legislative intent.

POINT II.

THE HILLYARD DECISION FRUSTRATES THE PURPOSE OF THE CIRCUIT COURT ACT.

The problems spoken of above are further compounded when the new Circuit Court Act having taken effect July 1, 1978 is considered. The Circuit Court Act gives jurisdiction to each circuit over all misdemeanors except that complaints dealing with Title 41 (Traffic Violations) excluding drunk driving and reckless driving charges are retained to be filed before the municipal justice of the peace where the offense occurred. The Act also allows the option to commence a complaint before any Circuit Court Judge in the county in which the offense occurred.

The provision Section 78-4-5, U.C.A., as amended, dealing with the Circuit Courts incorporates the language of Section 78-4-16.5, U.C.A., with the exception of changing the language to allow the matter to be brought before the Circuit Court rather than the City Judge. The critical language is in paragraph one thereof which states,

> "Whenever a complaint may be commenced before a magistrate under Section 77-57-2 where an arrested person is to be taken before a magistrate under Section 77-13-17, the complaint may be commenced or the arrested person may be taken before any circuit court judge in the county or the justice of the peace in the county in whose precinct the events occurred..." (emphasis added)

This, of course, is obviously similar to the language used under the prior Section 78-4-16.5, U.C.A., which was the law prior to July 1, 1978.

The Hillyard case will affect the application of the new Circuit Court Act just as it would affect the city courts by defeating the possibility of bringing the defendant before the circuit court if the offense occurred in a precinct where a justice presided.

The problem can be resolved if the court in reconsidering the Hillyard decision will consider the language in Section 41-6-166, U.C.A., providing that the defendant appear before the nearest magistrate "for the purpose of setting bond" only and then allow the trial to commenced before the circuit court.

Section 78-4-2, U.C.A., 1953, as amended in 1977, dealing with the circuit courts states that the act should be liberally construed to accomplish the purpose of providing full-time professional judicial service to every county.

The Court's reversal of the Hillyard decision would accomplish this obviously recent Legislative desire.

POINT III.

THE INTEREST OF PROSECUTORS OF UTAH AND ALL CONCERNED PARTIES WOULD BE BETTER SERVED BY INTERPRETING THE CURRENT LEGISLATION ALLOWING THESE MATTERS TO BE TRIED BEFORE THE CIRCUIT COURT.

Under Section 78-5-4, U.C.A. 1953, as amended 1957, any person charged with an offense that carries a possible jail sentence has a right to request that the proceeding be handled by a judge who is a member of the Utah State Bar. Witness the language:

> "Notwithstanding any provision of this Code relating to jurisdiction or venue of justice courts, in any matter in which the judge has the option of imposing a jail sentence, the defendant may demand and shall be accorded the right to have his case tried before a judge who is a member of the Utah State Bar".

Combining this statute with the Hillyard decision illustrates the problem. For example, the prosecutor will be forced to file the case before the magistrate where the initial appearance was had for the purpose of setting bond. Then the defendant can made a demand for a law-trained judge thus increasing the time and expenses of the proceedings. The prosecutor runs the additional risk that he may have multiple

trials throughout the county in various locals and often distant precincts.

On the other hand, under the interpretation of the statutes as advanced by this brief, the prosecutor would initially file before the law-trained judge the action. This would increase the effectiveness of the system and its efficiency. After June 1978 if the Hillyard decision were reversed, drunk driving cases would be filed in the Circuit Courts providing the use of full-time, law-trained judges and increasing the professional level of the Utah Judicial System. This advantage is lost if prosecutions are not allowed to be initiated in the Circuit Court after the defendant is taken before the magistrate court for the purpose of setting bond.

It becomes obvious immediately the difficulties prosecutors face when these matters may be filed before multiple courts where justices of the peace preside. The problem is more complex for the rural counties than for the urban counties; and traditionally, rural prosecutors are paid less than urban prosecutors and face the tremendous strain of a greatly-increased workload.

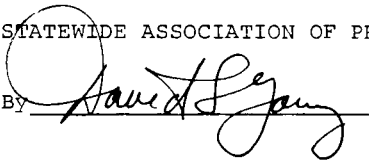
Also, strictly reading the language of the Hillyard decision, if jurisdiction exclusively attaches in the magistrate court, how can the defendant qualify for a law-trained judge? The matter cannot be transferred if the exclusive jurisdiction exists.

CONCLUSION

In conclusion, the Statewide Association of Prosecutors respectfully submits that the proper application of the broad legal principles applied herein would require the reversal of the Hillyard decision and allow the influence of the Circuit Court Act to consider these difficult motor vehicle violations for trial.

RESPECTFULLY SUBMITTED this 31st day of July, 1978.

STATEWIDE ASSOCIATION OF PROSECUTORS

BY 

MAILING CERTIFICATE

I hereby certify that I mailed a conforming copy of the foregoing Brief, postage prepaid, to the following:

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this 1st day of August, 1978.