2001

Jerald Wixon Greaves v. State of Utah : Brief of Respondent

Utah Supreme Court

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In the Supreme Court of the State of Utah

JERALD WIXOM GREAVES,
Plaintiff-Respondent,

vs.

STATE OF UTAH,
Defendant-Appellant.

Case No. 13631

BRIEF OF RESPONDENT

APPEAL FROM THE MEMORANDUM DECISION IN THE FIRST JUDICIAL DISTRICT COURT, IN AND FOR CACHE COUNTY, STATE OF UTAH, THE HONORABLE VENOY CHRISTOFFERSON, JUDGE, PRESIDING.

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TABLE OF CONTENTS

CASES CITED

STATUTES CITED

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STATEMENT OF THE NATURE OF THE CASE

This case was brought upon an action for declatory judgement pursuant to Utah Code Annotated §78-33-1, 2 (1953), and filed against the State of Utah as Defendant alleging that Utah Code Annotated §41-6-44.2 (Supp. 1973) and Utah Code Annotated §41-2-18 (Supp. 1973) as it pertains to Utah Code Annotated §41-6-44.2 are unconstitutional.

DISPOSITION IN THE LOWER COURT

In the District Court of the First Judicial District in and for the County of Cache, State of Utah, on February 26, 1974, Judge VeNoy Christoffersen

declared Utah Code Annotated, §41-6-44.2 (Supp. 1973) unconstitutional.

No ruling was issued regarding the constitutionality of Utah Code Annotated §41-2-17 (Supp. 1973).

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the ruling of the Lower Court.

STATEMENT OF FACTS

The Respondent adopts the Appellant's statement of the facts in its entirity.

ARGUMENT

POINT I

THE LOWER COURT DID NOT SPECIFICALLY GROUND ITS DECISION UPON A LACK OF *MENS REA* OR CRIMINAL INTENT.

The clerks and attorneys for the Appellant have done an admirable job in research of the law, both case and statutory, and of secondary authority in defending and supporting Points I and II of their Argument. Despite Appellant's over emphasis of phrases such as "public welfare offenses," and the rationalization that

such obviates and over rides the basic requirement of criminal element of intent, since any crime from murder to parking meter violations could reasonably be construed as public welfare offenses, the Lower Court simply did not specifically base its decision upon the statute's lack of *mens rea* element.

For the Appellant to speculate as to the most "likely" interpretation of the Lower Court's decision and then argue their supposition is simply adding support to speculation and scatter-gunning in hopes of covering all possible targets.

There is no question that times have changed, industrialization and automated mobility have spawned "undreamed of" changes in the law, including criminal law. One such change is in the area of "public welfare offenses." The Appellant would have the Court believe that such will result in greater good for a greater number. This utilitarian approach could, if taken to its logical end result in complete deprivation of any rights and dignity held by the individual, whether enumerated in the Constitution or not.

It is the position of the Respondent that the Lower Court did not specifically ground its decision upon the lack of *mens rea* or criminal intent in the statute in question, and will not respond to Appellants argument there of directly except to point out that the law as to whether criminal offenses require *mens rea* or the element of criminal intent is neither settled nor static and that the United State Supreme Court has

been inconsistent in its declarations concerning the same. See *Shelvin-Carpenter Co. vs. Minnesota,* 218 U.S. 57 (1910); *United States vs. Balint* 258 U.S. 250 (1922); *United States vs. Dotterweich* 320 U.S. 277 (1943); *Morisette vs. United States* 342 U.S. 246 (1952); *Lambort vs. California* 355 U.S. 225 (1957); *Smith vs. California* 361 U.S. 147 (1959); *Robinson vs. California* 370 U.S. 660 (1962); *Powell vs. Texas* 289 U.S. 514 (1968); *Papachistor vs. City of Jacksonville* 92 S. Ct. 839 (1972).

Although the lack of intent was not the anchor of the Lower Courts decision, and the law is anything but settled in the area, if Appellant's Point II is correct, then its argument in Point I is moot.

The Appellant's argument in Point II appears essentially to state that Utah Code Annotated §41-6-44.2 (Supp. 1973) is not a strict liability crime by definition, and therefore falls into a category of offenses, the *mens rea* of which are supplied by Utah Code Annotated §76-2-101 et. seq.

Appellant concludes his argument in Point II with the statement that "Thus, the Lower Court judge's declaration that the statute is unconstitutional for lack of an intent element is untenable." That conclusion is untenable simply because the Lower Court did not specifically declare the statute unconstitutional for lack of an intent element. The Appellant admittedly only conjectures that such was the Lower Court's basis for its decision.

POINT II

Point III of Appellant's argument is not unlike its Points I and II in not being based upon the Lower Court's decision. The Lower Court discussed in the opinion that the statute must provide a relationship between the persons blood alcohol content of .10 percent and some act of the person charged.

The Appellant supposes, again not unlike its suppositions of its first two points, that the Lower Court is discussing *actus reas* and then points out that the *actus reas* is the state of being in physical control of a vehicle. The Lower Court's decision speaks for itself in stating that the relationship it requires is one concerning the taking or consumption of intoxicating liquor and the alcohol content of the person's blood.

Again, as in the Appellant's Points I and II, Appellant erroneously concludes that the Lower Court pivoted its decision of something other than what was stated by the Court.

POINT III
SECTION 41-6-44.2, *SUPRA* IS VOID AND UNCONSTITUTIONAL.

Although on its face, as the Appellant aptly points out, section 41-6-44.2 *supra* is not vague and is worded in clear, unambiguous language but when enforced through Utah Code Annotated, 41-2-18-(a)(3)(1953) it works to deny the person charged the right to operate

a motor vehicle without regard as to his ability to operate the vehicle.

Therein lies that statute's vagueness in not specifying the basis upon which the denial is made.

Once the person charged obtains a right to drive through acquiring a driver's license; the procedure by which it may be revoked or suspended requires a fair hearing. *Bell vs. Burton* 40 L U.S. 535 (1971) and unless that hearing is regarding his a bility to operate a motor vehicle, it does not afford him due process as to that right.

The only thing a hearing on Section 41-6-44.2 (1953) determines is whether in fact the person's blood-alcohol reading was over the .10 percent level. The Supreme Court in *Vlandis vs. Kline* 37 L. ed. 2nd; 6341 Law Week 4796 (1973) and cases cited therein stated that absolute presumptions are highly disfavored. The reason is obvious, because they deny the person charged any defense, whether valid or not.

The statute in question further violates the Respondent's right to due process by establishing a standard which is impossible for Respondent to ascertain in advance and makes a violation thereof a crime with serious, criminal or economic sanctions. The argument that difficulty in proving drunk driving cases justifies this type of statute points out the problem that the Respondent also does not know when the violation has occurred until after the tests have been given (see *Bell, supra*, a policy of law vs.

substance of due process). All blood-alcohol tests given in our area are sophisticated and require skilled and trained administrators. It is not like a speedometer which is readily visible. This, coupled with the problem that alcohol effects different people in different ways under different circumstances, means a person may be at a statutory level without any knowledge or warning thereof and in fact, still be perfectly confident to operate a vehicle. Further problems come from the fact that alcohol content of each drinker is not the same; levels and quantities to reach a blood-alcohol level with each person differs, and permissible blood-alcohol level vary in each state.

The statute in question denies the Respondent herein equal protection under the law in that it establishes an arbitrary class in criminal conduct, the inclusion therewith denies the Respondent a basic right to travel. Our courts have sustained classifications when reasonable. The Supreme Court has made justification more stringent where the inclusions within the class denies a basic right. The Supreme Court has held the right to travel is such a basic right and therefore the burden becomes extremely heavy on the state that shows justification for denial. It is submitted that an absolute and automatic inclusion of everyone into a class as criminals and whose driving privileges are revoked for one year because of blood-alcohol content as .10 percent is not only arbitrary inclusion, but violates the basic right of travel in that

conviction deprives the member of the class to operate the motor vehicle for one year, not for just 30 or 90 days as in many states. A revocation of Respondent's drivers license upon the arbitrary, unconstitutional law as this deprives him his right to travel outside the State of Utah, although he may have obtained a conditional license in order to travel to and from work, such a license is not recognized in sister states of Idaho and Wyoming.

Respondent is aware that the statues involved are intended to protect the public from consequences of drunken automobile drivers on public highways. Such protection can and must be provided without deprevation of constitutional rights. Appellant seems preoccupied by the fact that personal hardship has no bearing upon the issue as to a persons right to drive an automobile. Such may be the case, but it is not Respondent's contention that personal hardship is the reason for unconstitutionality of the above cited statutes. The above cited statutes are unconstitutional because they deny the Respondent his constitutional right to equal protection, due process of a law and his right to travel without a due process hearing thereon.

POINT IV

THE LEGISLATURE HAS THE POWER TO REGULATE AND PUNISH CRIMINAL CONDUCT.

Respondent has no argument that the Legislature has the power to regulate use of the highways and

make unlawful the act of operating a motor vehicle by a person under the influence of intoxicating liquor.

Nor does Respondent contend that intoxicated drivers are a danger to the public and that the Legislature passed Section 41-6-44.2 *supra* in an attempt to reduce alcohol related highway accidents.

It is not contended here that a blood-alcohol test is not an accurate method of determining alcohol content in the blood.

The Appellant goes to great lengths in Point V of its argument to point out that .10 percent blood-alcohol content can be dangerously intoxicating, and even that Europeans feel that the United States is "ludicrously liberal" in its standards.

With the information and arguments for the .10 percent standard and against intoxicated drivers, the Respondent takes no exception. But the issue is whether the statute passed by the Legislature, admittedly based upon reason is constitutional.

It is the Respondent's position that had the statute included the basis upon which the Legislature passed it as used in connection with Section 41-2-18 (a) (3) (1953) *supra*, or provided the Respondent with the opportunity of a hearing as to his ability to drive before his license is automatically revoked, the statute could stand. Without the above, all the rationalizations and supporting evidence the Legislature may have considered cannot justify the denial of Respondent his constitutional rights without a due process hearing.

POINT V

THE LOWER COURT DID NOT VIOLATE THE UTAH RULES OF CIVIL PROCEDURE NOR DID THE LOWER COURT ABUSE HIS DESCRETION.

The Apellant contends in Point VI of its argument that the Lower Court violated the rules of Civil Procedure by operating what appears to be, though not specifically designated as, a summary judgement for the Respondent.

It is admitted by the Respondent that the Lower Court's procedure in this case is out of the ordinary and perhaps not what was expected.

However, Appellant admits that its Rule 12 (b) (6) motion to dismiss could have been construed by the Lower Court under the rules (Rule 56, Utah Rules of Civil Procedure) as a motion for summary judgment. Had the Lower Court granted Appellant's motion as a motion for summary judgment based upon its motion and accompanying memorandum to dismiss, Appellant would have thought that fair, even though Respondent would have responded to the motion only as one to dismiss and not as one for summary judgment. The Lower Court's action is not out of the purview of the authority under rule 12 (b) (6) *supra* since the position of the parties were expressed through their motion and memoranda. It would have been only a formality for the Respondent to have labeled its response to

Appellant's motion a motion for summary judgment. Since Respondent was required to respond sufficiently to defend, had Appellant's motion been considered by the Lower Court as a motion for summary judgment, it puts no hardship upon the Appellant to prepare its motion and argument with that possibility also in mind.

Appellant contends that the Lower Court denied the Appellant the opportunity of fully presenting its case and therefore violated Rule 8, Utah Rules of Civil Procedure in that the pleadings were not construed to do substantial justice.

Respondent submits that the Appellant could have presented its argument more fully in its motion to dismiss had it wished to do so, and that the Appellant itself, and not the Lower Court must accept the responsibility for not having done so. Furthermore, had Appellant's motion been granted as a summary judgement, it is doubtful it would be argued that substantial justice was not done under Rule 8 *supra.*

Appellant argues that Rule 13 (A) of the First District Court unfairly denies the Appellant a full hearing on the matter.

The obvious problem with that argument is that the Appellant was not harmed thereby because it never requested an oral hearing and was therefore never denied one. Appellant admits that it did not read the Lower Court's local rules and now submits that even had it read them, it would have had to read

more than the heading only. Certainly reading the local rules cannot be too onerous a task for an office having the facilities and personnel of the Appellant.

The Appellant has no standing to argue the fairness or unfairness of the Lower Court's rules since it did not bother to read them, nor was it denied a hearing because of them as a hearing was never requested by the Appellant.

CONCLUSION

The Lower Court's finding that Section 41-6-44.2 *supra* is unconstitutional should be affirmed.

Respectfully submitted,

GORDON J. LOW

Attorney for Respondent

I hereby certify that I mailed two copies of the foregoing Brief of Respondent, prepaid, to the Attorney General's Office, at the State Capitol Building, Salt Lake City, Utah, this 20th day of June, 1974.

HILLYARD & GUNNELL

Signed Tauna L. Sorenson
Tauna L. Sorenson
Secretary

MEMO LETTER