2001

State of Utah, in the interest of Virginia Joanie Goodman : Petition for Rehearing

Utah Supreme Court

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

STATE OF UTAH, in the interest of Virginia Joanie Goodman, a person under eighteen years of age.

Case No. 13822

PETITION FOR REHEARING AND BRIEF

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PETITION FOR REHEARING AND BRIEF

The plaintiff-respondent petitions this Honorable Court for rehearing in the above entitled case pursuant to Rule 76(e) of the Utah Rules of Civil Procedure for the following reasons:

1. In its opinion the Court did not consider the 1969 amendment to Utah Code Ann. § 32-5-15 (1953), which was in effect at the time of appellant's arrest.

2. In its opinion the Court did not consider the material point that an arrest was being effected when appellant interfered with the police officer.

3. Under an interpretation of Utah Code Ann. § 41-6-166 (1953), every time a traffic citation is issued,

the driver is under arrest in the technical sense and any interference is in violation of Utah Code Ann. § 76-8-305 (Supp. 1973).

Respectfully submitted,

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BRIEF IN SUPPORT OF PETITION FOR REHEARING

POINT I.

THE PETITION IS PROPERLY BEFORE THE COURT UNDER THE FACTS OF THIS CASE.

This petition is not filed for purposes of rearguing matters originally presented. It is intended to bring to the Court's attention an error in its conclusions and a failure to duly consider a material point in the case. This is within the scope of criteria established by this Court for the granting of rehearings in *Venard* v. *Old Hickory*, 4 Utah 67, 7 Pac. 408 (1885).

POINT II.

IN ITS OPINION THE COURT DID NOT CONSIDER THE 1969 AMENDMENT TO UTAH CODE ANN. § 32-5-15, WHICH WAS IN EFFECT AT THE TIME OF APPELLANT'S ARREST.

In its opinion in *State of Utah, in the interest of Virginia Joanie Goodman*, No. 13822, dated February 4, 1975, the Court stated:

> "Section 32-7-15, U. C. A. 1953, is one of the statutes alleged to have been violated by Joanie. That statute is in the following language:

> Alcoholic beverages shall not be given, sold or otherwise supplied to any person under the age of twenty-one years, but this shall not apply to the supplying of liquor to such person for medicinal purposes only by the parent or guardian of such person or to the administering of liquor to such person by a physician in accordance with the provisions of this act.
>
> Evidence of intoxication does not show nor intend to show a violation of the statute above set forth. It is quite evident from a reading of the statute that it deals with an entirely different subject matter. The court nevertheless found Joanie guilty of violating that provision. The court was in error in that finding."

The history of the above quoted version of Section 32-7-15 shows that it was enacted by the Legislature of the State of Utah in Chapter 43, § 128, Laws of Utah 1935, passed March 14, 1935, and in effect March 25, 1935. The section was amended by Chapter 63, § 1, Laws of Utah 1967, and amended by Chapter 83, § 25, Laws of Utah 1969. The 1969 amendment was passed February 28, 1969, and went in effect May 13, 1969.

The 1969 amended version of Section 32-7-15 was in effect when appellant was arrested on November 29, 1973, for the illegal use of an alcoholic beverage. This version of Section 32-7-15 is found in the 1973 Pocket Supplement, Volume 9, Utah Code Annotated and states:

> "No person shall sell or supply alcoholic beverages to any minor, nor shall any minor purchase, consume or possess any alcoholic bev-

> erage, but this shall not apply to the supplying of liquor to such person for medicinal purposes only by the parent or guardian of such person or to the administering of liquor to such person by a physician in accordance with the provisions of this act."

Evidence of intoxication would show a violation of the 1969 amended version of Section 32-7-15, since the statute prohibited any minor from consuming alcoholic beverages.

POINT III.

IN ITS OPINION THE COURT DID NOT CONSIDER THE MATERIAL POINT THAT AN ARREST WAS BEING EFFECTED WHEN APPELLANT INTERFERED WITH THE POLICE OFFICER.

In its opinion, dated February 4, 1975, the Court said:

> "Even though Joanie interrupted the officer in his preparation of a citation by entering into a conversation with him and by calling him inappropriate names, this is insufficient to show that Joanie intentionally interfered with the officer. The record does not clearly show that the officer was engaged in making an arrest at the time. . . ."

The record clearly shows in several places that the driver of the vehicle, Linda Lehi, was being arrested when

the appellant interfered with the police officer. The following dialogue took place at the trial between the arresting officer and the county attorney, Mr. Redd (T. 9):

> "Q. And you say you did place her under arrest for interfering with an officer, and what did you do with her?
>
> A. She stated that she would not get in the car, and at this point Ernest Casey stepped between us and put his fists up towards me and that's when I forcefully arrested him and put him in the car.
>
> Q. Now at this point were you seeking to arrest or take into detention Linda Lehi, for her offense?
>
> A. Yes, due to her driving pattern that I had observed, also the odor of an alcoholic beverage from her as she sat in the car. I then placed her under arrest for driving under the influence of alcohol."

When defense counsel, Mr. Swenson, was cross-examining Officer Palmer, the following dialogue occurred (T. 15):

> "Q. O. K. While Joanie and the other person were across the highway from your car, did you not, in fact, inform Linda Lehi that she was under arrest?
>
> A. Either before they left to go over there or while they were over there, yes."

Additional evidence that an arrest was being effected

is found in the re-direct examination of Officer Palmer by the county attorney (T. 21):

> "Q. Now, from the time that you had Linda Lehi in your car, until you arrested Joanie Goodman, were you in the process of arresting Linda Lehi or processing her arrest?
>
> A. Yes, I was."

POINT IV.

UNDER AN INTERPRETATION OF UTAH CODE ANN. § 41-6-166 (1953), EVERY TIME A TRAFFICE CITATION IS ISSUED, THE DRIVER IS UNDER ARREST IN THE TECHNICAL SENSE, AND ANY INTERFERENCE IS IN VIOLATION OF UTAH CODE ANN. § 76-8-305 (SUPP. 1973).

An arrest is defined in Utah Code Ann. § 77-13-1 (1953), as "the taking of a person into custody in a case and in the manner authorized by law." Utah Code Ann. § 77-13-2 (1953), defines how an arrest is made as follows:

> "An arrest is made by an actual restraint of the person of the defendant or by his admission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention."

The California arrest statute contains almost identical language and based on this, the California Supreme

Court has held that every time a traffic sitation is issued, the driver is under arrest in the technical sense. In *People* v. *Superior Court of Los Angeles County,* 101 Cal. Rptr. 837, 496 P. 2d 1205 (1972), the Court said:

> "The detention which results (during the citation process) is ordinarily brief, and the conditions of restraint are minimal. Nevertheless the violator is, during the period immediately preceding his execution of the promise to appear under arrest. Some courts have been reluctant to use the term arrest to describe the status of the traffic violator on the public street waiting for the officer to write out the citation. The Vecile Code, however, refers to the person awaiting citation as the '*arrested person.*' Viewing the situation functionally, the violator is being detained against his will by a police officer, for the purpose of obtaining his appearance in connection with a forthcoming prosecution. The violator is not free to depart until he has satisfactorily identified himself and has signed the written promise to appear." 496 P. 2d at 1215. (Emphasis added.)

Although no case law in Utah could be located on this specific point, it appears that the Utah Legislature intended the same results as pronounced by the California Supreme Court. Utah Code Ann. § 41-6-166 (1953), governs when a violator of the Motor Vehicles Act must be brought before a magistrate and it refers to the violator as the *arrested person,* as does the California Vehicle Code. Section 41-6-166 states:

"Whenever any person is arrested for any violation of this act punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county in which the offence charged is alleged to have been committed, and who has jurisdiction of such offense and is nearest of most accessible with reference to the place where said arrest is made, in any of the following cases:

(1) When a person arrested demands an immediate apperance before a magistrate.

(2) When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs.

(3) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injuries, or damage to property.

(4) In any other event when the person arrested refuses to give his written promise to appear in court as hereinafter provided, or when in the discretion of the arresting officer, a written promise to appear is insufficient."

The statute indicates that a person who violates the Motor Vehicle Code shall be arrested, but need not be detained in most cases if he gives his written promise to appear in court. For other jurisdictions that have adopted this definition of arrest see *State* v. *Vaughn*, 12 Ariz. App. 442, 471 P. 2d 744 (1970); *Williams* v. *State*, Ind. App., 299 N. E. 2d 882 (1973); *People* v. *Ricketson*, 129 Ill. App. 2d 365, 264 N. E. 2d 220 (1970).

Appellant was arrested for violating Utah Code Ann. § 76-8-305 (Supp. 1973), which provides as follows:

> "A person is guilty of a class B misdemeanor when he intentionally interferes with a person recognized to be a law enforcement officer seeking to effect an arrest or detention of himself or another regardless of whether there is a legal basis for the arrest."

The record clearly shows that the appellant interfered with the officer when he was attempting to issue the citation to Linda Lehi for no driver's license (T. 5, 6) and after he decided to place Linda under arrest for driving under the influence of alcohol (T. 9). Therefore, from the time that Officer Palmer stopped the vehicle and determined that the driver was in violation of the Motor Vehicles Act, an arrest was technically being effected and when the officer determined that the driver was under the influence of alcohol he then placed her *under* arrest, in the traditional sense of the term. Any interference by the appellant from the point the officer decided to issue a citation is a violation of Section 76-8-305.

CONCLUSION

The 1969 amended version of Utah Code Ann. § 32-7-15 which forbids minors to consume alcoholic beverages was in effect when appellant was arrested and the evidence from the record clearly indicates that appellant violated that statute. There is also testimony from the

record that an arrest was being effected when appellant interfered with the arresting police officer. In addition, appellant violated Section 76-8-305, *supra*, based on the fact that she interfered with the issuance of a traffic citation which may be considered an arrest under an interpretation of Utah Code Ann. § 41-6-166 (1953).

Respectfully submitted,

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