2001

State of Utah, in the interest of Virginia Joanie Goodman : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE FIFTH JUDICIAL DISTRICT JUVENILE COURT FOR SAN JUAN COUNTY, HONORABLE PAUL C. KELLER, JUDGE, PRESIDING.

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

Case No. 13822

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Virginia Joanie Goodman, appeals from a decision against her in the Fifth Judicial District Juvenile Court, convicting her of interfering with an officer and the illegal use of an alcoholic beverage.

DISPOSITION IN THE LOWER COURT

The appellant was convicted of interfering with an officer and the illegal use of an alcoholic beverage before the Honorable Paul C. Keller, in the Fifth Judicial District Juvenile Court, on April 25, 1974. Appellant was ordered to attend the alcohol education course of the Utah Division of Family Services at Blanding, Utah.

RELIEF SOUGHT ON APPEAL

The respondent respectfully submits the decisions and rulings of the Court below should be sustained.

STATEMENT OF FACTS

On November 29, 1973, Officer Kenneth Vee Palmer, a San Juan County, Utah, deputy sheriff, was driving his patrol car north from Bluff, Utah, when he observed a vehicle driven by a person whom he knew did not have a driver's license (T. 4-5). Officer Palmer stopped the vehicle, and requested that the driver, Linda Lehi, get into his patrol car so that he could issue her a citation for driving without a valid driver's license (T. 5). When the officer and Ms. Lehi were in the car, Officer Palmer began issuing a citation (T. 5).

Officer Palmer testified that the appellant, who had been in Ms. Lehi's vehicle along with several others, came up to the officer's window, and requested that he drive her back to Bluff (T. 5). The officer further testified that he told the appellant that he was busy and couldn't give her a ride to Bluff, but on her continual requests he told her he would consider it after he had finished the citation (T. 5). Appellant responded with threatening remarks, telling the officer that he couldn't take possesison of the car and couldn't have it towed to Bluff (T. 6). Officer Palmer then advised the appellant that she was interfering wtih his work and made it clear to her that he would have to arrest her if she didn't leave (T. 6). The officer requested that appellant leave

the area and start walking toward Bluff (T. 6). Appellant walked across the highway to a little draw where she stopped (T. 6-7).

After appellant left, Officer Palmer testified that he then placed Ms. Lehi under arrest for driving under the influence of intoxicating alcohol (T. 15-16). Appellant then returned to the patrol car and again asked the officer to take her to Bluff (T. 16). Officer Palmer once again ordered appellant to leave immediately or he was going to arrest her for interfering (T. 7). In response, appellant said to the officer, "You fuckin' puke." (T. 8). Officer Palmer then placed the appellant under arrest for interfering with an officer and the unlawful consumption of an alcoholic beverage by a minor (T. 8, 18).

Officer Palmer testified that appellant's actions were definitely that of intoxication in that she was very loud and talkative, she had an unsteady walk, and the smell of alcohol was on her breath (T. 8, 9, 11). Officer Palmer also testified that he didn't arrest the appellant immediately for intoxication because he felt the issuing of the citation to Ms. Lehi was more important and he requested appellant to leave the area to prevent having to arrest her and thereby giving her a break (T. 11). However, Officer Palmer felt compelled to arrest the appellant after she uttered her profane remark because she was interfering with his work as an officer and causing him an unusual amount of time to arrest Ms. Lehi (T. 9, 10). Officer Palmer also testified that the appel-

lant was agitating Ernest Casey, who was also arrested, and he felt a threat of violence from the other people that had been in Ms. Lehi's car (T. 13, 20).

ARGUMENT

POINT I

THE STATUTE UNDER WHICH APPELLANT WAS CONVICTED OF INTERFERING WITH AN ARREST OR DETENTION IS NOT OVERBROAD AND DOES NOT INFRINGE UPON APPELLANT'S RIGHT OF FREE SPEECH.

Appellant was convicted of interfering with an arrest or detention under Section 76-8-305, Utah Code Ann. (Supp. 1973), which provides:

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

Appellant was arrested under the above section of the criminal code because her actions and words were interefering with the lawful work of a police officer by causing him an unusual amount of time to effect an arrest (T. 9, 10). Appellant contends that this section is overbroad in that it curtails the First Amendment right of freedom of speech. Appellant's brief at 7.

The United States Supreme Court has traditionally held that it "is not an abridgment of freedom of speech to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language either spoken, written or printed." *Cox v. Louisiana,* 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed. 2d 471 (1965). The Supreme Court also held in *United States v. O'Brien,* 391 U.S. 378, 88 S.Ct. 1663, 20 L.Ed. 2d 672 (1968), that when speech and nonspeech elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.

The type of governmental interest necessary to curtail the freedom of speech of those persons involved in a contact with the police was laid down by the Supreme Court in *Colten v. Kentucky,* 407 U.S. 104, 92 S.Ct. 1953, 32 L.Ed. 2d 584 (1972). In *Colten,* a police officer stopped a vehicle for an expired license plate. The defendant, who was riding in another car and a friend of the driver of the stopped vehicle, approached the police officer and made an effort to enter the conversation. The defendant and several others were told the affair was none of their business and were asked repeatedly to leave the area. In response to one of these requests, the defendant replied that he wished to make a transportation arrangement for the driver of the stopped vehicle. The police asked the defendant three more times to leave the area and when he refused to do

so he was arrested for violating Kentucky's disorderly conduct statute.

In rejecting the defendant's contention that he was engaged in activity protected by the First Amendment, the Court stated:

> "[C]olten's conduct in refusing to move on atfer being directed to do so was not, without more, protected by the First Amendment. Nor can we believe that Colten, although he was not trespassing or disobeying any traffic regulation himself, could not be required to move on. He had no constitutional right to observe the issuance of a traffic ticket or to engage the issuing officer in conversation at that itme." 407 U.S. at 109

Then the Court established the governmental interest involved:

> "The State has a legitimate interest in enforcing its traffic laws and its officers were entitled to enforce them free from possible interference or interruption from bystanders, even those claiming a third-party interest in the transaction." 407 U.S. at 109.

In the present case a single police officer was confronted with several people on a rural road. The officer testified that the appellant was agitating an adult male and the officer also felt a threat of violence from the other people that had been in the stopped vehicle (T. 13, 20). Under these circumstances the order to disperse

given to the appellant was suited to the occision and satisfied an important governmental interest in protecting a police officer from possible interference or interruption.

Utah Code Ann. § 76-8-305 (1953) can easily be distinguished from the ordinance found unconstitutional in *Lewis v. New Orleans,* .....U.S....., 39 L.Ed. 2d 214 (1974). See appellant's brief at 9. The Court objected to the ordinance because it punished only spoken words. The Court then proceeded to state that the ordinance would withstand an attack upon its facial constitutionality only if it is not susceptible of application to speech, although regular or offensive, that is protected by the First and Fourteenth Amendment. 39 L.Ed. at 219.

As reasonably construed, Section 76-8-305, is not overbroad in that it does not prohibit the lawful exercise of any constitutional right. The plain meaning of the statute, in requiring that the proscribed conduct be done "intentionally" is that the specified intent must be the predominant intent. Predominance can be determined either (1) from the fact that no bona fide intent to exercise a constitutional right appears to have existed or (2) from the fact that the interest to be advanced by the particular exercise of a constitutional right is insignificant in comparison with the inconvenience, annoyance or alarm caused by the exercise.

In the instant case the evidence warrants the conclusion that the appellant was not undertaking to exer-

cise any constitutionally protected freedom. She was not exercising the right of freedom of speech because that right is concerned with expression of thought or dissemination of idea. See *Smith v. California,* 361 U.S. 147, 80 S.Ct. 215, 4 L.Ed. 2d 205 (1959). Appellant was not seeking to express a thought to any listener or to disseminate any idea. She simply was trying to irritate the police officer by her presence and by efforts at interruption. Her speech and conduct had no purpose other than to cause inconvenience and annoyance.

Individuals cannot be convicted under Section 76-8-305 merely for expressing unpopular or annoying ideas. The statute comes into operation only when the individual's interest in expression, judged in the light of all relevant factors, is miniscule compared to a particular public interest in preventing that expression or conduct at that time and place. The statute as applied here did not chill or stifle the exercise of any constitutional right.

Appellant's conviction is therefore proper and must be affirmed.

POINT II

THE STATUTE UNDER WHICH APPELLANT WAS CONVICTED FOR INTERFERING WITH AN ARREST OR DETENTION DOES APPLY TO APPELLANT'S CONDUCT.

Appellant contends that Utah Code Ann. § 76-8-

305 (Supp. 1973), under which she was arrested for interfering with an arrest or detention, limits its application to force or conceivably threats of force, which in fact constitute actual intereference, and does not apply to other forms of speech. See Appellant's brief at 14.

In the General Provisions of the Utah Criminal Code, Section 76-1-106 states in part:

> "All provisions of this code and offenses defined by the laws of this state shall be construed according to the fair import of their terms to promote justice and to effect the objects of the law and general purposes of section 76-1-104, Utah Code Ann. (1953)."

When dealing with the interpretation of the words in a statute, the Utah Supreme Court in *Grant v. Utah State Land Board,* 26 Utah 2d 100, 485 P. 2d 1035 (1971), stated:

> "Foundational rules require that we assume that each term of a statute was used advisedly; and that each should be given an interpretation and application in accord with their usually accepted meaning, unless the context otherwise requires." 485 P. 2d at 1036

Webster's New International Dictionary, 2d Edition (1934), defines interference as, "to enter into, or take a part in, the concerns of others; to intermeddle; interpose; intervene." The definiation given by the American Heritage Dictionary of the English Lan-

guage (1973) of interference is, "to be a hindrance or obstacle; impede."

To contend that the word interference as used in Section 76-8-305 is limited to force or threats of force would apply it to a strict construction in violation of Section 76-1-106, Utah Code Ann. (Supp. 1973), and do an injustice to the "usually accepted meaning test" as laid down by this Court in *Grant.*

The Utah Supreme Court gave an interpretation of the meaning of "interference" in construing a former interference statute, Utah Code Ann. § 76-28-54 (1953) in *State v. Sandman,* 4 Utah 2d 69, 286 P. 2d 1060 (1955):

> "Such interference or resistance need not be in the form of physical force or violence, but it is sufficient that there be some direct action amounting to affirmative interference." 286 P. 2d at 1062.

In the present case, the appellant attempted to engage the officer in a conversation and was informed that she was interfering and was requested to leave the area (T. 6). Appellant left the area, but in a short time returned and again attempted to engage the officer in conversation (T. 16). In response to another request to leave the area the appellant responded with profanity (T. 8). The arresting officer testified that the appellant was interfering with his work and causing him an unusual amount of time to effect an arrest (T. 9, 10).

All these acts, coupled together, definitely amount to an affirmative interference punishable by Section 76-8-305, Utah Code Ann.

In *State v. Taylor,* 38 N.J.Super. 6, 118 A.2d 36 (1955), the Appellant Division of the Superior Court of New Jersey held that interference with police in the lawful discharge of their duties occurs if the conduct of the person charged was calculated in any appreciable degree to hamper or impede police in performance of their duties as they saw them. In *State v. Harris,* 4 Conn. Cir. 534, 236 A.2d 479 (1967), the Appellate Division of the Circuit Court of Connecticut held that when the defendant approached police while they were arresting an intoxicated man and made the task of the officer's more difficult by talking and arguing with the police was guilty of interfering with police.

Therefore, Section 76-8-305, Utah Code Ann. (Supp. 1973) was properly applied in the present case and appellant's conviction should be affirmed.

POINT III

THE FINDINGS AND CONCLUSIONS OF THE LOWER COURT ARE SUFFICIENT TO SUPPORT APPELLANT'S CONVICTION.

Utah Code Ann. § 55-10-100 (1953), states in part:

> "When a child is found to come within the provisions of Section 55-10-77, the court shall

so adjudicate and make a finding of the facts upon which it bases its jurisdiction over the child."

Utah Code Ann. § 55-10-77 (1953), states in part:

"Except as otherwise provided by law, the court shall have exclusive original jurisdiction in proceedings:

(1) Concerning any child who has violated any federal, state, or local law or municipal ordinance. . . ."

The court below heard uncontradicted testimony from a police officer that the appellant had interferred with his work as an officer by causing him an unusual amount of time to effect an arrest (T. 9, 10). The court then specifically found that Utah Code Ann. § 76-8-305 (1953), covered the particular situation in which the appellant was involved and therefore the allegations of the petition charging the appellant with interfering with an officer were true (T. 30).

The court had also heard uncontradicted evidence from the officer that the appellant had consumed alcoholic beverages (T. 8, 9, 11). The court again made the specific finding that the officer was competent to render an opinion in this area and the court was convinced beyond a reasonable doubt that the appellant had been consuming an alcoholic beverage in violation of Utah Code Ann. § 32-7-15.

Since the court found that appellant had violated

two sections of the Utah Criminal Code it had jurisdiction over the appellant per section 55-10-77.

CONCLUSION

The statute under which appellant was arrested for interfering with an officer is constitutionally permissible and appellant's conduct clearly falls within the boundaries of the statute. In addition ,the lower court's findings and conclusions are sufficient to support appellant's conviction. For these reasons, respondent respectfully submits that the conviction of Virginia Joanie Goodman should be affirmed.

Respectfully submitted,

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