2001

John Wells v. City Court of Logan City, County of Cache, State of Utah : Brief of Appellant

Utah Supreme Court

Irving H Biele; Biele, Haslam and Hatch; Charles P Olson; Olson, Hoggan and Sorenson; Attorneys for Appellant.
B.H. Harris; Preston, Harris, Harris and Preston; Attorney for Respondent.

STATE OF UTAH

JOHN WELLS,
Plaintiff and Appellant,

vs.

CITY COURT OF LOGAN CITY, COUNTY OF CACHE, STATE OF UTAH,
Defendant and Respondent.

Case No. 13824

APPELLANT'S BRIEF

Appeal from a judgment of the First District Court of Cache County, Honorable VeNoy Christoffersen, Judge

Charles P. Olson
OLSON, HOGGAN & SORENSON
56 West Center
Logan, Utah 84321

Irving H. Biele
BIELE, HASLAM & HATCH
80 West Broadway, Suite #300
Salt Lake City, Utah 84101

Attorneys for Appellant

B. H. Harris
PRESTON, HARRIS, HARRIS & PRESTON
31 Federal Avenue
Logan, Utah 84321

Attorney for Respondent

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IN THE

SUPREME COURT

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STATEMENT OF KIND OF CASE

This is a civil action brought by Plaintiff, who is the Defendant in a Logan City Court criminal case, for an extraordinary writ (prohibition) under Rule 65 B(b)(4), U. R. C. P., commanding Defendant (City Court) to desist and refrain from any further proceedings in the case of the State of Utah vs. John G. Wells.

DISPOSITION IN LOWER COURT

The Court denied Plaintiff's Petition for a Writ of Prohibition and held that the Wellsville town Justice

Court had no jurisdiction over the misdemeanor and that the Defendant (Logan City Court) had exclusive jurisdiction over all matters occurring in Logan City and all unincorporated areas of Cache County.

RELIEF SOUGHT ON APPEAL

Plaintiff and Appellant seeks reversal of the Court's Order Denying Plaintiff's Request for Writ of Prohibition and seeks an Order of the Supreme Court making the Writ of Prohibition absolute.

STATEMENT OF FACTS

Plaintiff and Appellant, John G. Wells, is the Defendant in a criminal case, pending in Logan City Court, entitled State of Utah vs. John G. Wells.

On the 16th day of March, 1974, the Plaintiff and Appellant was arrested by an officer of the Utah Highway Patrol, at the intersection of State Road 85 and State Road 23 approximately 1 mile from Wellsville, Cache County, Utah. The point of arrest was approximately 5 miles from Both Hyrum, Cache County, Utah and Mendon, Cache County, Utah. The point of arrest was nine miles from Logan, Cache County Utah. The Plaintiff and Appellant was charged under a Complaint and Notice to Appear, No. K018630, with the crime of driving under the influence of intoxicants.

There is a Justice of the Peace Court at Wellsville, Cache County, Utah, occupied by Merrill L. Green, who resides and has his office in said town and is admittedly

the nearest and most accessible court (R. City Court 15). There is a Justice of the Peace Court in Hyrum, Cache County, Utah, occupied by LeGrand Christensen, who maintains his home and office in said town. There is a Justice of the Peace Court in Mendon, Cache County, Utah, occupied by Charles R. Zarker, who maintains his home and office in said town. There is a City Court in Logan, Cache County, Utah (Defendant and Respondent in this appeal) (R. City Court 15).

The officer did not take the Plaintiff and Appellant before any of said Justices of the Peace, nor to said Defendant City Court, nor before any justice of the peace or magistrate, but took the Plaintiff and Appellant to the Cache County Jail at Logan, Utah, where he was booked, posted bail and ultimately released (R. City Court 9).

Although said ticket complaint contained on it a promise to appear, with a line for the signature of the accused person, the Plaintiff and Appellant did not sign said ticket complaint, but was notified to appear before the said Defendant City Court of Logan, Utah, on the 26th day of March, 1974 (Exhibit 1 City Court).

Section 41-6-166, 7 of the Utah Code Annotated and the Supreme Court rule adopted on January 7th, 1959 provides for the commencement of actions involving an arrest without a warrant upon a charge of driving while under the influence of intoxicating liquor, by the filing of

a ticket complaint in lieu of a formal complaint under oath required by Section 77-57-2, Utah Code Annotated. The highway patrol officer attempted to follow said provisions in the commencement of this action against the Plaintiff and Appellant.

Section 41-6-166, provides as follows:

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

1. . . . . .

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

3. . . . . .

Section 41-6-167, provides as follows:

"NOTICE TO APPEAR IN COURT — CONTENTS — PROMISES TO COMPLY — SIGNING — RELEASE FROM CUSTODY — OFFICIAL MISCONDUCT.

(a) Upon any violation of this act punishable as a misdemeanor, whenever a person is *immediately taken before a magistrate* as hereinbefore provided, the police officer shall prepare in triplicate or more copies of a written notice to

appeal in court containing the name and address of such person, the number, if any, of his operator's or chauffeur's license, the registration number of his vehicle, the offense charged, and the time and place when and where such person shall appear in court.

(b) The time specified in such notice to appear must be made *before a magistrate* within the county in which the offense charged is alleged to have been committed *and who has jurisdiction of such offense.* (Emphasis supplied.)

(d) The arrested person, in order to secure release as provided in this section, must give his written promise satisfactory to the arresting officer so as to appear in court by signing at least one copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of such notice to the person promising to appear. Thereupon, said officer shall forthwith release the person arrested from custody. (Emphasis added.)

(e) Any officer violating any of the provisions of this section shall be guilty of misconduct in office and shall be subject to removal from of fice."

The Supreme Court Rule provides as follows:

"Whenever a written notice to appear has been prepared by a police officer under the provisions of Section 41-6-167, Utah Code Annotated, 1953, and when such notice has been delivered to the person charged, and filed with the court, or whenever notice of illegal parking has been given, an exact and legible duplicate copy of such no-

> tice, when filed with the court, shall, in lieu of a verified complaint, and notwithstanding the provisions of Section 77-57-2, Code of Criminal Procedure, constitute a complaint to which the defendant may plead 'guilty'.
>
> If, however, the defendant shall violate his promise to appear in court, or shall not deposit lawful bail, or shall plead other than 'guilty' of the offense charged, a complaint shall be filed which shall be deemed to be an original complaint, and thereafter proceedings shall be had as provided by law; provided, that a defendant may, by an agreement in writing, subscribed by him and filed with the court, waive the filing of a verified complaint, and elect that the prosecution may proceed upon the written notice to appear."

Based upon an alleged wilful noncompliance with the provisions aforesaid on the part of the arresting officer, in fact a complete and total disregard of the law, Plaintiff and Appellant entered a special appearance and moved the Court to dismiss the purported Complaint and Notice to Appear in that said purported ticket complaint and the procedure followed by the officer failed to comply with the provisions of the law, in that the Defendant in said case (The Plaintiff and Appellant here) had not been immediately taken before a magistrate as required by the statutory mandate of Section 41-6-166 set forth above, nor had he executed a written promise to appear (R. City Court 7).

The argument on said motion came up for hearing on the 19th day of April, 1974, but in the interim period

a formal complaint was issued out of the Logan City Court dated the 8th day of April, 1974, signed by the said arresting officer, which Complaint, together with a criminal summons bearing the date of the 18th day of April, 1974, was served upon the Plaintiff and Appellant's 15 year old son at Plaintiff's home in Salt Lake City, Utah, which said Complaint and Summons was on the next day served on the Plaintiff personally at his place of business in Salt Lake City, Utah (R. City Court 3, 5, 6).

At the hearing on said motion to dismiss on the 19th day of April, 1974, the City Court refused to grant Plaintiff and Appellant's motion. However, the Court recognized that the initial Complaint and Notice to Appear was defective and on May 3, 1974, entered its order determining that the initial Complaint or ticket issued by the highway patrolman was not a valid promise to appear (R. City Court 11).

On the 22nd day of April, 1974, the Plaintiff and Appellant entered a further special appearance for the purpose of moving to dismiss all of the purported complaints pending before the City Court on the grounds that the City Court did not have jurisdiction over the offense charged, or that if the Court did have jurisdiction over the offense charged, it should refuse to exercise such jurisdiction in this case (R. City Court 12).

The Second Motion to Dismiss came on before the

Court on the 3rd day of May, 1974, and Plaintiff and Appellant's Motion was denied.

Thereupon Plaintiff and Appellant filed this action in First District Court seeking an extraordinary writ (prohibition) to prevent the Logan City Court from exercising jurisdiction over the criminal case.

ARGUMENT

POINT I.

THE LOWER COURT ERRED IN FAILING TO GIVE ANY FORCE OR EFFECT WHATSOEVER TO THE MANDATORY REQUIREMENTS OF SECTION 41-6-166 AND IN FAILING TO HOLD THAT THE NEAREST MOST ACCESSIBLE MAGISTRATE AND THE COURT HAVING JURISDICTION OF THE PERSON AND OFFENSE HEREIN WAS THE WELLSVILLE TOWN JUSTICE COURT.

Plaintiff and Appellant contend that under the procedure followed by the arresting officer, to-wit: a non-warrant arrest for driving while under the influence of intoxicating liquor, followed by a Ticket and Notice to Appear, authorized solely under Section 41-6-166 and 167 and the Supreme Court Rule promulgated under these rules, it was mandatory that the arresting officer take him immediately before the nearest and most ac-

cessible magistrate, in this case, the Wellsville Town Justice of the Peace, and that the arresting officer by disobeying the law, cannot remove jurisdiction from said justice court and confer it upon the Logan City Court.

Section 41-6-166 states that whenever a person is arrested upon a charge of driving while intoxicated "the arrested person *shall be immediately* taken before a *magistrate*" . . . "who has jurisdiction of such offense and is *nearest* or *most accessible*" to the place of arrest.

77-10-4 defines a magistrate as an officer having power to issue a warrant of arrest.

77-10-5 (4) specifies that justices of the peace are magistrates.

As the record shows, the non-warrant arrest was made about 1 mile from the Wellsville Justice of the Peace. There was no nearer justice. Thus, the Wellsville Justice of the Peace was the nearest or most accessible magistrate.

78-5-5 gives town justices jurisdiction over the offense charged.

This section gives town justices the same powers and jurisdictions as other justices of the peace in all actions, civil and criminal. In town ordinance violations, they have exclusive jurisdiction.

78-5-4 defines the criminal jurisdiction of Justices' Courts to include all misdemeanors punishable by a fine

less than $300.00 or by imprisonment not exceeding 6 months, or both. (The foregoing statutes are treated in greater detail under Point II.)

It therefore appears clear that town justices qualify as magistrates having juisdiction of the offense under Section 41-6-166 and that defendant should have been taken immediately before the Wellsville Justice. The Mendon Justice and Hyrum Justice would have qualified ahead of the Logan City Court. Moreover, under Utah criminal procedure if the offense is triable by the magistrate he has full jurisdiction over the *offense* and the *Defendant* to try and determine such offense (77-13-17).

MEANING OF "SHALL IMMEDIATELY

The term "shall immediately" and "shall" have experienced some judicial consideration. *Herr* vs. *Salt Lake County*, (Utah August 14, 1974), 525 P. (2d) 728; *State of New Mexico* vs. *Slicker*, (N. Mex., 1968), 448 P. (2d) 478; *Fowler* vs. *State*, (Florida), 255 So. (2d) 513.

Herr vs. *Salt Lake County*, involves an extremely recent consideration by this Court fo the word "shall".

At page 729 of 525 P. (2d), this Court said:

> "The meaning of the word shall is ordinarily that of command. It is defined in the American Heritage Dictionary as follows: 2. . . . d. Compulsion, with the force of must, in statutes,

deeds, and other legal documents. The United States Supreme Court distinguished between the words may and shall in the case of *Anderson* v *Yungdau,* (1946) 329 U. S. 482, 67 S. Ct. 428, 91 L. Ed. 436 as follows.

> The word shall is ordinarily language of command. *Escoe* vs. *Zerbst,* 295 U. S. 490, 493, 55 S. Ct. 818, 819, 79 L. Ed. 1566. And when the same Rule uses both may and shall, the normal inference is that each is used in its usual sense — the one act being permissive, the other mandatory."

Fowler involved a code provision in the Florida Statute that under certain circumstances "the court *shall immediately* fix a time for hearing . . ." (Emphasis added.)

The Appellate Court said:

> "The mandatory verb 'shall' makes it obligatory on the Court to fix a time for hearing if there are reasonable grounds to believe that the defendant is insane. Moreover, the mandatory 'shall' is followed by the word 'immediately' which lends urgency and significance to the duty of the judge to conduct the required hearing. The framers of the rule obviously did not regard lightly the necessity for a hearing."

The *Slicker* case involved the words, "shall immediately" in a warrant arrest, and the statute provided that the arresting officer "shall immediately" take the Defendant before the Court or officer who issued the warrant.

The Court said:

> "As used in this statute, 'immediately' means with reasonable promptness and dispatch."

If this is so on an arrest made *after* the issuance of a warrant, certainly a person arrested *without* a warrant is entitled to be taken before a magistrate with something *more* than reasonable promptness and dispatch, and with some urgency. (Emphasis added.)

The reason for immediate action in a case of our type, (a charge of driving while intoxicated), seems apparent.

A comparison of the two Utah statutes emphasizes the difference. In the ordinary non-warrant arrest, the legislature says the Defendant shall be taken before the magistrate "without unnecessary delay" (77-13-17). Take a burglary charge, for instance, where the Defendant is arrested without a warrant and the evidence consists of a pry-bar, lock picks, mask, etc. A delay in going before a magistrate, while prejudicial to some extent, involves evidence of a permanent type, and is not as serious as a situation where timely scrutiny of the evidence is essential, such as a charge of intoxication. A person accused of being intoxicated is entitled, according to the legislature, to be immediately taken before a magistrate to determine if the officer is making a valid accusation. Intoxication, as a matter of fact, is generally temporary in nature, based on opinions, and under the law, the officer does not have the right to be the sole judge of the fact.

To permit the officer to completely circumvent the plain language of the statute is to permit him to act as the committing magistrate and also determine what court will have jurisdiction of the person of the party arrested.

Plaintiff and Appellant's contention is that the legislature determines this, not the police officer.

To permit the City Court in this case to take jurisdiction over the Plaintiff and Appellant under the facts of this case, and the law, is to allow the arresting officer to completely ignore the legislative declaration and to usurp judicial and legislative authority.

POINT II.

THE LOWER COURT ERRED IN HOLDING THAT THE GEOGRAPHICAL JURISDICTION OF TOWN JUSTICES IS CONFINED TO THE GEOGRAPHICAL BOUNDARY LIMITS OF THE TOWN, AND THAT THE CITY COURT OF LOGAN CITY IS THE EX-OFFICIO JUSTICE OF THE PEACE FOR THE COUNTY.

The trial court ruled that in criminal non warrant arrests the jurisdiction of the Wellsville Town Justice did not extend beyond the Wellsville town limits, but, that the jurisdiction of the City Court of Logan extended to the limits of Cache County.

The Trial Court said, in its Memorandum Decision, dated July 1, 1974:

> "Under 78-4-16.5 in any event the Complaint may be commenced *or the arrested person taken* to the nearest city court judge, which is in this case the Logan City Court, for any offense that is a misdemeanor that occurs in Cache County under state law and need not be taken to the nearest justice of the peace under the authority of that newly enacted statute." (Emphasis added.)

Thus, the District Court ruled that since the alleged misdemeanor offense did not occur within the boundaries of any town, the "nearest or most accessible" magistrate (Wellsville Magistrate one (1) mile distant), did not have jurisdiction, and that the Logan City Court nine (9) miles from the scene, was the precinct justice of the peace and had jurisdiction over the person and offense even though predicated upon a non-warrant arrest and ticket complaint.

In analyzing the statutes governing jurisdiction of justice courts and city courts, it appears that they are identical.

Thus, if the criminal jurisdiction of a town justice is limited to geographical boundaries of the town, the criminal jurisdiction of the City Court is likewise limited to the geographical boundaries of the City.

The Court relied upon three statutory provisions in determining that

(1) The jurisdiction of justice courts was limited to geographical boundaries; and that

(2) The Logan City Court is the county precinct justice.

These statutes are:

78-5-1:

> "Every justice of the peace shall reside in and shall hold a justice's court in the precinct, city, or town for which he is elected or appointed, provided that where two or more precincts are embraced within the limits of any incorporated city or town the justices of the peace of such precinct may hold court at any place within such city or town. If after reasonable search the county commissioners are unable to find a prospective justice of the peace residing within a precinct needing a justice of the peace, they may select a person residing within an adjoining precinct of the county or within the city limits."

77-57-2:

> "Other than as provided by Section 77-13-17, proceedings and actions before a justice's court for a misdemeanor offense must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person and property as to enable the defendant to understand distinctly the character of the offense complained of and to answer the complaint. 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."

78-4-16.5:

> "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."

First, in making a comparison and analysis of the foregoing provisions with city court provisions, 78-5-1 above referring to justice courts has its counterpart in 78-4-10 as to City Courts:

78-4-10:

> "Every judge of a city court shall reside in and hold court in the city for which he is elected, * * *."

As to Section 77-57-2, obviously by its terms, it is applicable only to matters commenced by a formal complainti "under oath" and does not cover either the non-warrant arrest under 77-13-17, or a non-warrant arrest followed by a ticket complaint *not* "under oath" under 41-6-166 and 41-6-167.

As to 78-4-16.5, by its own terms, it is limited to Section 77-57-2 (formal complaint) proceedings and 77-13-17 (non-warrant arrests under the criminal code) proceedings, and does *not* apply to non-warrant arrests and ticket complaints under Section 41-6-166, 41-6-167 and the Supreme Court rule on ticket complaint proceedings.

Section 78-4-16.5 allows an arresting officer to substitute the nearest city court for the nearest magistrate in designated situations, but *not* including non-warrant arrests under the Motor Vehicle Code for driving under the influence of intoxicants.

The Court's ruling raises an interesting anomaly. In the event the town justice has no criminal jurisdiction outside the town, then the City Court of Logan has no criminal jurisdiction outside Logan City (the exception being those situations covered by 78-4-16.5), leaving only the District Court to handle misdemeanor cases arising in the County

The court cites 78-5-1 as restricting the town justice's jurisdiction to the confines of the town itself.

But, Section 78-4-10 carries with it an identical provision applicable to City Courts.

Thus, if the language "shall reside in and shall hold . . . court in the precinct, city or town for which he is elected or appointed" contained in 78-5-1 is to be construed to limit the town justice's jurisdiction to the geographical area of his situs, the very same language in 78-4-10 referring to city courts would limit the jurisdiction of the city court to the geographical area of the city.

Plaintiff and Appellant emphasizes that Section 77-57-2 applies only to "formal" ("under oath") complaints and does not restrict the jurisdictional limits of justice courts. Section 78-4-16.5 is applicable only to the situations therein described and does not expand the City

Court jurisdiction in non-warrant traffic code arrests with ticket complaints.

Switching to the positive approach, i.e., reasons in support of Plaintiff's and Appellant's position that the town justices have county wide jurisdiction over misdemeanor offenses against the laws of the state, reference is made to the following statutes:

78-5-5, U. C. A., 1953

78-5-4, U. C. A., 1953

78-5-5 gives town justices "the same powers and jurisdictions as other justices of the peace in all other actions, civil and criminal" (the first part gives them exclusive jurisdiction over town ordinances).

78-5-4 defines the criminal jurisdiction of other justices. It provides:

> "Justices' Courts have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:
>
> . . .
>
> (3) . . . all misdemeanors punishable by a fine less than $300.00 or by imprisonment in the county jail or municipal prison not exceeding six months, or by both such fine and imprisonment."

The legislative history of justice court jurisdiction is spelled out by this Court in *Dillard* vs. *District Court of Salt Lake County,* (1926), 69 U. 10, 251 Pac. 1070.

The legislative history shows that prior to 1925 the Justices Courts were prescribed by Comp. Laws Utah 1917, Sec. 1784, which was identical to what is now 78-5-4, and was county wide. The opinion may be concisely stated as follows:

> In 1925, the Legislature by chapter 62, Laws of Utah 1952, passed on act entitled "An Act to Amend Section 1784 . . ." relating to the criminal jurisdiction of justices' courts, wherein the jurisdiction was limited to the geographical limits of the precinct.
>
> Then, in 1951, the Legislature reverted back to the pre 1925 law by enacting Section 78-5-4, which is identical to the former Section 1784 giving county wide jurisdiction. In other words, the legislature restored the law as it existed prior to 1925.

Since Section 78-5-5 gives town justices the same powers and jurisdictions as precinct justices, it seems abundantly clear that the Wellsville Town Justice has exclusive jurisdiction over this matter, as the nearest, most accessible justice, and is the court before whom the Plaintiff and Appellant should have been immediately taken following his arrest.

The Court has recognized that the jurisdiction of justices of the peace in criminal cases involving state laws extends to the entire county.

Although the case of *State* vs. *Town of Garland,* 35 U. 426, 100 Pac. 934, involved a town ordinance this court said relative to jurisdiction and state laws:

> "It is urged by Plaintiff's counsel, that, under the general statutes of the state, the jurisdiction of justices of the peace in criminal cases extends to the entire county. This no doubt is true insofar as offenses against the laws of the state are concerned, of which justices are given jurisdiction."

The Court went on to deal with jurisdiction over violation of town ordinances, which matters are given special treatment by the statutes.

From the very beginning, Plaintiff and Appellant has objected to his case being processed in Logan City Court. Under the rational of *State* vs. *Johnson*, (1941), 100 U. 316, 114 P. (2d) 1034, at 1042, Plaintiff and Appellant has the right to have his case proceed in the proper forum as indicated in the *Johnson* case where the Court states:

> "It is a right personal to the Defendant to have his cause tried in the Court of proper venue, . . ."

The legislature, if it intended to restrict geographical jurisdiction, would have done so under the jurisdictional statute, 78-5-5, as it did in 1925, and not be defining where a formal Complaint should be filed, which does not in any way involve the proceedings before us.

To follow the ruling of the lower court would be to emasculate the jurisdiction of town justice courts, contrary to the intention of the legislature.

CONCLUSION

There must be a reason why the legislature required the officer to take the accused citizen "immediately" to the "nearest or most accessible" magistrate.

Notwithstanding, the clear mandatory terms of the statute, the officer and the lower courts ignored the legislative direction and substituted their own procedures.

A citizen is entitled to rely on the officer and on the Courts, following the clearly-defined legislative directions. Indeed ,in criminal matters where the officer and the Court may deprive the citizen of his freedom and property, strict compliance with statutory mandates should be required.

The statute selects "driving under the influence of intoxicating liquor" and "hit and run" as special crimes and prescribes a "special procedure" in these cases. The legislature demands special treatment and immediate confrontation. The officer failed to follow the legislative mandate, and the Court, even after the matter had been brought to its attention, failed to comply with the clear legal requirements.

The only Court having proper jurisdiction under the statute is the Wellsville Justice Court, and, therefore, all proceedings in the Logan City Court are a nullity.

The statute requires that the citizen be "immediately taken before a magistrate", and in this case the citizen was not taken to a magistrate.

In view of the complete failure of compliance with both the statutory mandate requiring the citizen to be taken to the nearest magistrate, and the mandate that the confrontation be immediate, the Supreme Court should make the Writ of Prohibition peremptory and permanent.

Respectfully submitted,

CHARLES P. OLSON
IRVING H. BIELE
Attorneys for Appellant