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UTAH SUPREME COURT

BRIEF

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In the Supreme Court of the State of Utah

04 FEB 1976
M YOUNG UNIVERSITY
Clark Law School

STATE OF UTAH,
Plaintiff-Respondent.
vs.
RICHARD ALLEN BRADSHAW,
Defendant-Appellant.

Case No. 14060

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF THE FIFTH JUDICIAL DISTRICT COURT FOR BEAVER COUNTY, UTAH HONORABLE J. HARLAN BURNS, JUDGE

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In the Supreme Court of the State of Utah

STATE OF UTAH,
Plaintiff-Respondent,
vs.
RICHARD ALLEN BRADSHAW,
Defendant-Appellant.

Case No. 14060

BRIEF OF APPELLANT

NATURE OF THE CASE

The defendant, Richard Allen Bradshaw, was charged with interfering with a police officer. Said defendant pled not guilty.

DISPOSITION IN THE LOWER COURT

This action was appealed from the Justice of the Peace Court, Milford Precinct, from a Judgment of the Justice of the Peace, E. L. Smith, finding the defendant guilty and said action was tried in Beaver County before

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the Honorable J. Harlan Burns and the jury returned a verdict of guilty.

The defendant, Richard Allen Bradshaw, was sentenced to six months in the Beaver County Jail and is presently incarcerated.

RELIEF SOUGHT ON APPEAL

The defendant, Richard Allen Bradshaw, seeks a vacation of the jury verdict and a judgment of not guilty notwithstanding the verdict of the jury or in the alternative, a new trial, and an immediate order of release from the Beaver County Jail.

STATEMENT OF FACTS

Richard Allen Bradshaw was charged in the Complaint with the following:

> Interference with arrest by law enforcement official in that the said Richard Allen Bradshaw intentionally interfered with the said Dennis B. Cox in Milford City, Utah, while the said Dennis B. Cox then being and acting as a law enforcement official for Milford City was attempting to affect an arrest of the said Richard Allen Bradshaw.

In the instant case the jury was presented with one witness, a police officer for the City of Milford, named Dennis B. Cox. Officer Cox testified that he was a police officer for the city of Milford and had been for the two years last past and that he knew Richard Allen Bradshaw

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and knew the address of Richard Allen Bradshaw at the time of the arrest *(TR 5,6),* Officer stated at trial that he had a casual relationship with Mr. Bradshaw prior to the 15th day of March, 1974, which was the time of the arrest *(TR 6).*

On the 15th day of March, 1974, Officer Cox testified that he was dressed in uniform and saw Richard Allen Bradshaw driving a car down Main Street, whereupon the officer turned on his red light and followed Richard Allen Bradshaw to a Conoco Station in Milford, Utah *(TR 6, 7).*

The officer then testified on Page 7 of the Transcript:

> Q Well, after you followed him into the station, then what happened?
>
> A I pulled up behind him. He left his vehicle and started to put gas in it with the gas pump. At that time I advised him that I had to write him a citation for driving under suspension and he finished his purchase of gas, went in and paid for it and got in his vehicle and left while I was writing the citation.

The officer also testified that he pulled up behind Mr. Bradshaw and got out of his patrol car and that halfway between his patrol car and the Bradshaw car the officer advised Mr. Bradshaw that he would be written a ticket for driving under suspension *(TR 7).* The officer also testified that he did not ask Mr. Bradshaw for his drivers license nor did he ask Mr. Bradshaw to stay at the service station and that the above set forth conversation was the only conversation between Mr. Bradshaw and the officer prior to the time Mr. Bradshaw left the service station *(TR 12).*

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Officer Cox also testified that at the time of the arrest Richard Allen Bradshaw had a valid drivers license and that he was not under suspension, nor had his license been revoked *(TR 13, 14)*.

The officer testified further that when Mr. Bradshaw left the Conoco Service Station that he was followed to the Milford Hotel where he was placed under arrest for interfering with an officer, apparently because he refused to stay at the service station while the officer was writing a citation.

The officer also testified that he cocked his pistol at that time and pointed the gun at Mr. Bradshaw because he was accused of driving on a suspended drivers license which he later found out was not suspended *(TR 15)*.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN FAILING TO TAKE THIS CASE FROM THE JURY AND FIND THE DEFENDANT "NOT GUILTY" OF THE CHARGE BECAUSE THE STATE DID NOT CARRY ITS BURDEN OF SHOWING PROBABLE CAUSE FOR THE ARREST.

In the State of Utah peace officers are governed by Section 77-13-3, *Utah Code Ann.* (1953, as amended), which provides as follows:

> 77-13-3. By peace officers. — A peace officer may make an arrest in obedience to a warrant delivered to him; or may, without a warrant, arrest a person:

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(1) For a public offense committed in his presence.

(2) When the person arrested has committed a felony, although not in his presence.

(3) When he has reasonable cause for believing the person to have committed a public offense, although not in his presence, and there is reasonable cause for believing that such person before a warrant can be obtained and served may:

(a) Flee the jurisdiction or conceal himself to avoid arrest, or

(b) Destroy or conceal evidence of the commission of the offense, or

(c) Injure another person or damage property belonging to another person.

(4) When a felony has in fact been committed, and he has reasonable cause for believing the person to have committed it.

(5) On a charge, made upon reasonable cause, of the commission of a felony by the person arrested.

(6) At night, when there is reasonable cause to believe that he has committed a felony.

In the instant case, a public offense was not committed in the presence of Officer Cox and therefore, Officer Cox did not have reason, justification, or probable cause for the attempted arrest.

The arrest in the instant case does not fall under any of the exceptions set forth above. Number 3 might seem applicable at first glance, but under that exception, Officer Cox would not have to get a warrant if he had reason to believe that the defendant would flee or conceal himself to avoid arrest or destroy evidence or injure another person. The evidence indicates that Officer Cox knew the defendant in a casual manner, knew where he lived and this exception would not apply.

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There was no justification for the arrest and the arrest was invalid, therefore, there can be no justification for charging the defendant with interference as set forth by the new Criminal Code.

The officer in the instant case did not have sufficient probable cause to arrest or to detain this defendant. The only testimony concerning probable cause was illicited on cross-examination where the officer testified that he had reason to know the license of Mr. Bradshaw had been suspended, however, upon stopping the defendant, the officer did not ask to see the drivers license nor did he know whether Mr. Bradshaw had the license on his person, and there is no proof, even under the preponderence of the evidence, that Mr. Bradshaw did not have his license at the time the officer told him he was going to write him a citation. The proof is to the contrary, as the officer admitted; that Mr. Bradshaw's license was valid and was not suspended at the time of the arrest. Because there is no probable cause for the officer to determine that a public offense was committed in his presence, it is impossible for the defendant to be charged with interfering.

In the case of *State of Utah v. Lopez,* 22 Ut.2d 257, 451 P.2d 772 (1969), the Utah Supreme Court stated that an officer must have probable cause before making an arrest and probable cause is not satisfied merely by showing that the officer acted in good faith, but the requirement of probable cause does not mean that the officer has to be sure he has enough evidence to establish guilt. In the instant case there is no evidence of probable cause.

The California Supreme Court, in 1947, dealt with a

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problem similar to the problem we have here, only it concerned the common law defense of resisting an unlawful arrest. That case is *People v. Perry,* 180 P.2d 465 (1947), and the Supreme Court of the State of California held that an officer may make an arrest for a misdeameanor without a warrant only if the offense is committed or attempted in the officer's presence and that an arrest must be lawful or the person being arrested may use reasonable force in order to resist.

Sometime later the legislature of the State of California passed a statute which is similar to the Utah Statute involved here and that statute was reviewed in the case of *People v. Albert Allen Curtis,* 74 Cal. Rptr. 173, 450 P.2d 33 (1969). The facts in that case related to the legality of the arrest whether or not there was probable cause, and the Court found that an officer is under no duty to make an unlawful arrest and that the officer did not have probable cause. The Court then spoke to the statute dealing with the right to resist and stated words to the effect that a statute providing that if the person has knowledge, or by exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer and provides that it is his duty to refrain from using force or any weapon to resist such arrest, is a statute meant at most to eliminate common law defense of resisting unlawful arrest and not to make such resistance a new substantive crime.

The Court went on to state that the defendant in that case, who resisted the unlawful arrest, could only be convicted of assault or battery or whatever crime that he actually participated in by resisting and could not be

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convicted of something caused by the statute concerning resistance of arrest.

It is the contention of the defendant that the statute under which he was charged does not say that there does not have to be probable cause for the arrest, but only says that there does not have to be a legal basis for the arrest.

The Supreme Court of New Mexico in the case of *City of Alburquerque v. Leatherman,* 74 N.M. 780, 399 P.2d 108 (1965), stated that an arrest not justified by probable cause could be resisted with reasonable force.

The Supreme Court of the State of Utah dealt with obstruction of justice in the case of *State v. Hurley,* 28 U.2d 248, 501 P.2d 111 (1972), in which case the defendant appealed a conviction stating that the officer was not discharging any duty of his office so as to invoke the statute concerning obstruction of justice. The Supreme Court of the State of Utah found that the officer had no interest in patrolling the area that he was patrolling and therefore, the officer was not discharging a duty of his office and did not invoke the statute. The same thing is argued by the defendant in the instant case because the officer was not performing or discharging any duty of his office by giving someone a citation for driving under a suspended drivers license when that defendant had a valid drivers license. Therefore, the statute we are dealing with should not be invoked to allow a new crime of resisting arrest.

The Supreme Court of California in the *Curtis case, supra,* seems to be saying that if an officer makes a mistake and does not properly discharge his duty, then that

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officer cannot make up for that mistake by arresting a defendant unlawfully held for obstructing justice or interfering when that defendant does not submit peaceably to the officer's demand.

The last case in the State of Utah which this writer can find concerning obstruction of justice is *State v. Ludlow,* 28 U.2d 434, 503 P..2d 1210 (1972). In the *Ludlow* case, the officer charged the defendant with obstruction of justice because the defendant refused to bring a female employee out of a certain factory so that she could be served by the deputy sheriff in a small claims court action. Because of such refusal, the defendant was arrested for obstructing an officer in the performance of his duty and the District Court quashed the Information and the State appealed. The judgment of the District Court was affirmed.

In the instant case, the resistance, if it may be called that, of this defendant, is certainly not more than set forth under the facts of the *Ludlow* case. The deputy in that case may not have been acting legally in requiring the defendant to produce an employee and the officer in the instant case was not acting legally in arresting the defendant for something he had not done.

In the *Ludlow* case, the defendant simply refused to conform to the demands of the officer and in the instant case, the defendant simply refused to conform to the demands of the officer. Both cases are similar in many respects, but the instant case is even stronger when dealing with the fact that the officer did not have probable cause to make an arrest or perform any other type of police function.

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POINT II

THE TRIAL COURT ERRED IN FAILING TO FIND THAT DEFENDANT'S RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE WAS VIOLATED.

The Utah Statute pursuant to which this defendant was arrested states as follows:

> Section 76-8-305. Interfering with arrest or detention.
>
> A person is guilty of a Class B misdemeanor when he intentionally interfers with a person recognized to be a law enforcement official seeking to affect an arrest or detention of himself or another regardless of whether there is a legal basis for the arrest.

It is defendant's contention that this statute was written in violation of Article 1, Section 14, of the *Utah Constitution* which states:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched and the person or thing to be seized.

Defendant also contends that the Utah Statute violates the Fourth Amendment of the Constitution of the United States of America.

The contention of the defendant is supported by *Terry v. Ohio,* 392 U.S. 1 (1968) which states that there is a seizure whenever a police officer accosts an individual and restrains his freedom to walk away. That case also states

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that the Constitution does not forbid all searches and seizures but only unreasonable searches and seizures.

Defendant contends that he has a constitutional right against any unreasonable seizure. This right of defendant is inconsistent with the statuteinacted by the Utah State Legislature concerning interference with an officer, because the officer may make an arrest or a seizure under that statute whether or not he has legal basis. The Utah Statute is inconsistent with and violative of the Constitution of the State of Utah and the United States of America.

CONCLUSION

The statute relied on by the State in this case may very well violate the Constitution of the State of Utah and of the United States of America, and more than that, the State has not shown probable cause for the detention of this defendant.

Defendant was advised that he was to receive a citation for a suspended drivers license. Defendant left the area and was therefore charged with interfering with an officer. The State admits that the defendant had a valid drivers license at the time he was stopped by the officer.

Defendant requests this Court to vacate the jury verdict and to find defendant not guilty as a matter of law.

Respectfully submitted,

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