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Mary M. Stroud v. Industrial Commission of Utah et al : Brief of Petitioner

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARY M. STROUD,

Petitioner,

— vs. —

INDUSTRIAL COMMISSION OF
THE STATE OF UTAH, and
SALT LAKE CITY CORPORATION, a municipal corporation,
Defendants.

Case No.
7687

Brief of Petitioner

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NATURE OF THE CASE

The petitioner is the widow of Thomas William Stroud, who was killed when his gun accidentally discharged. Mr. Stroud was employed by Salt Lake City Corporation as a police officer. The petitioner applied for compensation. After a contested hearing compensation was denied and the petitioner brings this review.

SPECIFICATION OF ERROR

Petitioner contends that the Industrial Commission erred:

1. In concluding that the accident which caused Mr. Stroud's death did not arise out of his employment.
2. In concluding that the accident did not occur in the course of the employment.

THE FACTS

The facts brought out at the contested hearing are not in dispute. It is admitted that Thomas Stroud was employed by Salt Lake City as a policeman (R. 6 and 7); that Salt Lake City was subject to the Workmen's Compensation Act (R. 6); that Thomas Stroud was killed by the discharge of his gun on January 5, 1951, at about 6:00 p.m. (R. 6, 7, 11). It was agreed that the only issue for determination was whether or not Stroud was killed by accident which (a) arose out of his employment, or (b) occurred in the course of his employment. (R. 7).

Stroud was subject to call 24 hours per day. He had an assigned shift which required him to work specific hours of each day and gave him one day off per week (R. 8, 10, 13, 6). The day of the accident was his usual day off (R. 13, 14, 33). He was a sergeant with the duty of supervising the work of several policemen (R. 14, 16, 17). On the previous day he had arranged with two officers to come to the police station at 6:00

p.m. the following day, at which time and place he was to check out for them a special police car. (R. 14, 15, 17, 18). The car in question was one without any equipment to identify it as a police car, and it had to be specially checked out (R. 36). Both of these officers testified that on Thursday Stroud requested them to meet him at the station at 6:00 p.m., Friday, so that he could get the car for them (R. 15, 17, 18, 28). Stroud also mentioned to Officer Brinton that he was going to arrange for the car (R. 36). There is no evidence to the contrary. On Friday, Officer Stroud arrived at the station just before 6:00 p.m. He was seen in street clothes at his desk a short time before the accident, which happened at about 6:00 p.m. (R. 29, 30).

The two officers who were to meet Officer Stroud at the station at 6:00 p.m. were sent to Fort Douglas on special business and, therefore, did not arrive until after the accident (R. 15, 16, 28). Officer Stroud did not in fact check the car out for them (R. 19, 36). Officer Stroud was killed when his gun fell while he was lifting some cases of Coca-Cola from a patrol car into his own private car. He intended to take the Coca-Cola to a police benefit party (R. 11, 12, 13). The gun with which he was killed was not the regular service revolver issued by Salt Lake City, but was an automatic pistol owned by him (R. 12, 14, 27). It was, however, the pistol which he customarily carried (R. 10, 31).

The evidence was undisputed that Salt Lake City police officers customarily carry a gun with them at all times, whether they are on or off duty (R. 9, 10, 20, 23,

25, 28). Such has been the custom for at least twenty years (R. 26). One of the witnesses testified that as a part of the indoctrination training for new policemen, he was told by the instructors that he was to carry his gun at all times (R. 22). Chief Crowther testified that he was told when he first became connected with the police department that he was expected to carry a gun (R. 25). There is no rule in the police manual requiring officers to carry guns.

Still the only conclusion which could possibly be drawn from the evidence is that it was a uniform custom of police officers working for Salt Lake City to carry guns while off duty (R. 9, 10, 20, 23, 25, 28).

ARGUMENT

1. THE WORKMEN'S COMPENSATION ACT SHOULD BE LIBERALLY CONSTRUED IN FAVOR OF COMPENSATION.

In compensation cases the Utah Supreme Court has uniformly held that all doubtful cases should be resolved in favor of awarding compensation. See *M. & K. Corporation v. Industrial Commission*, 112 Utah 488, 189 P. 2nd 132, *Chandler v. Industrial Commission*, 55 Utah 213, 184 P. 1020.

In the *M. & K. Corporation* case, the court said:

“We have also repeatedly held that this statute should be liberally construed and if there is any doubt respecting the right to compensation it should be resolved in favor of a recovery.”
(Citing many cases.)

2. UNDER UTAH STATUTES COMPENSATION SHOULD BE AWARDED IF EITHER (A) THE ACCIDENT ARISES OUT OF THE EMPLOYMENT, OR (B) IN THE COURSE OF THE EMPLOYMENT.

The Utah Supreme Court has held many times that because of a 1919 amendment to what is now Section 42-1-43, Utah Code Annotated, 1943, it is only necessary to show either one of two things: (a) That the accident arose out of the employment, or (b) That it occurred in the course of his employment. Prior to 1919 the Section used the word "and", but in 1919 the Legislature substituted the word "or" and since that date this court has consistently held that only one or the other need be shown. This is pointed out in numerous cases, one of the more recent being *M. & K. Corporation*, supra, 112 Utah 488, in which the court says:

"Since the 1919 amendment to that section (42-1-43) when the word 'or' which we have italicized above was substituted for the word 'and' it is not necessary for the accident to arise both out of and occur in the course of his employment, it is sufficient if the accident only arises in the course of his employment. Workmen's Compensation statutes both in this country and throughout the British Empire usually require, as did ours before the amendment, that the accident arise both out of and in the course of the employment, and this must be kept in mind in considering the decisions of other jurisdictions. We have often pointed out this distinction and indicated in many cases that the recovery was allowed on that account and that it probably would not have been allowed without the amendment."

There are numerous Utah cases to the same effect. See *Tavey v. Industrial Commission*, 106 Utah 489, 150 P. 2nd 379; *Park Utah Consolidated Mines Co. v. Industrial Commission*, 103 Utah 64, 133 P. 2nd 314; *Cudahy Packing Co. v. Industrial Commission*, 60 Utah 161, 207 P. 148, and other cases cited therein.

3. THE ACCIDENT INVOLVED HERE AROSE OUT OF THE EMPLOYMENT.

We believe that a reading of the decision of the Industrial Commission will demonstrate that the Industrial Commission concerned itself primarily, if not exclusively, with the question of whether or not Stroud was in the course of his employment when killed. It concluded that he was not, because it was his day off, and because the loading of soda water into his own car was not a part of his employer's business. For the purpose of our argument under this point, let it be conceded that Stroud was not in the course of his employment when killed. The Utah Statutes, nevertheless, under the cases cited in Point 2 hereof, allow recovery if the accident which resulted in Stroud's death "*arose out of his employment.*"

We submit that except for the fact that Stroud carried a gun, he would never have been killed. The cases cited hereinafter will demonstrate that it is not necessary for the employer to specifically require the employee to carry a gun. All that is required is that the carrying of a gun be reasonably related or incident to the employment. If it is, and death results from an acci-

dent with the gun, all of the cases hold that the accident “arises out of the employment.”

There are literally hundreds of cases defining the term “arising out of the employment”. This court has considered the phrase on numerous occasions. We will not lengthen this brief with detailed definitions of that term. The cases are uniform to the effect that the words “arising out of” are construed to refer to the *origin* or *cause* of the injury, and involve the idea that the accident is in some sense due to or caused by the employment, and the words “in the course of” refer to the time, place and circumstances under which it occurred. See *Utah Apex Mining Company v. Industrial Commission*, 67 Utah 537, 248 P. 493; *M. & K. Corporation v. Industrial Commission*, *supra*.

If the employment subjects the employee to risks which are different from or greater than those to which the public is subjected, and those dangers result in an accidental injury, then the accident arises out of the employment. For example, in the *Cudahy Packing Co. v. Industrial Commission* case, 60 Utah 161, 207 P. 148, the court held that an employee injured while going to work was injured by accident arising out of the employment, because in going to work he was required to go down a particular lane and cross a series of railroad tracks to reach his employer’s place of business. There was no other way that the employee could get to his work. By taking the only lane available to him, he was subjected to the dangers incident to crossing railroad tracks. This court held that because his employment

subjected him to that danger, his death, caused by collision with a train, arose out of his employment, even though he had not yet arrived at work, and even though it was before his working hours started.

In *Park Utah Consolidated Mines Co. v. Industrial Commission*, 103 Utah 64, 133 P. 2nd 314, the court permitted an employee who had left work and was on his way home to recover workmen's compensation because he was exposed to certain dangers in crossing the public highway to get to a parking lot. The court cited the *Cudahy Packing Company* case and emphasized the fact that it was his employment which subjected him to the particular risk. The court distinguished cases from other jurisdictions which require, contrary to the Utah law, that the accident also occur in the course of the employment. The court said that the fact that the danger was one to which the employee was subjected by reason of his employment, demonstrated that the accident arising out of said danger arose out of the employment.

Officer Stroud was exposed to the dangers of a gun accident by his employment. There certainly can be no doubt under the evidence that he carried the gun because of his employment as a police officer. (R. 9, 10, 20, 23, 25, 28). In fact, the carrying of the gun without a permit would have been illegal except for the fact that he was employed as a policeman. See Section 103-21-4, Utah Code Annotated, 1943. All of the officers carried guns on their days off and such practice was not only known by the police department, but was encouraged by it. (R.

9, 10, 20, 23, 25, 28) Under the cases which are cited hereafter, it is clear that this is sufficient to show that the accident arose out of his employment.

There have been numerous cases in which employees have been injured in gun accidents. The cases recognize that persons who handle firearms are subjected to the risk of being accidentally shot. If the possession of firearms is reasonably related to or incident to the employment, then any accident resulting from use or possession of said firearms is held to arise out of the employment. If, however, the presence of a gun has no relationship whatever to the employment, then even though the accident occurs while the employee is actually performing his master's services, (in course of employment) the accident does not "*arise out of the employment.*"

(a) *Cases in Which Courts Have Held that Gun Accidents Arise Out of the Employment.*

The only Utah case dealing directly with this point is *Beaver City v. Industrial Commission*, 67 Utah 8, 245 P. 378. Here the Beaver City Marshall, who was on call 24 hours per day dropped his gun in the mud while chasing cattle out of a city park. That evening he was cleaning the gun at his home and was hurt when it accidentally discharged. There was no evidence as to whose gun it was. The court said, however, that this made no difference. The court did not attempt to distinguish between "arising out of" or "in the course of" the employment, but said that because he was cleaning his gun he was in the course of his employment and was entitled to compensation. Because the Utah law permits recovery upon the showing of either one, the court

did not go further and consider whether or not the accident also arose out of the employment.

In the case of *Mayor v. Ward*, 114 S.W. 804, a policeman was subject to call 24 hours per day, but he worked a regular shift which ended at midnight. On the day in question he stopped work at midnight and thereafter left the station for his home. Several blocks from the police station he was struck by a car. He was wearing a gun at the time. He fell on his left side, and because of the fact that he was wearing the gun on that side, he received internal injuries. The court thought it clear that but for the gun he would not have received such injuries. Said the court:

“Moreover, we think the fair inference is that Ward’s injury to his left side, which appears to have done serious internal damage, was the direct result of his having his pistol in its scabbard in the position shown; that the violent fall of this heavy man on this object attached to his side was the cause of the injury. It thus appears that his carrying of this weapon, which his duty required, was the direct cause of his injury; that the instrumentality which proximately produced the injury was one which he was required to use to perform his duty. *If this gun had been exploded by his fall and wounded him fatally, could it be contended that his injury did not arise out of his employment?*”

In *Goins v. Shreveport Yellow Cabs*, (La.) 200 So. 481, the petitioner was a cab driver. Because of occasional robberies and current strike troubles, the employer supplied pistols to his employees. The court noted:

“The drivers were not compelled to carry revolvers, but the evidence leaves us satisfied

that they were encouraged to have these weapons for defense of themselves as well as the property of the defendant company.”

The employee was waiting in his cab for a call from passengers and while so waiting he and another employee began comparing guns. One of them accidentally discharged and injured the petitioner. The court held that the shooting arose out of the employment and analyzed numerous shooting cases. The court said:

“Ordinarily, plaintiff’s employment as a cab driver might not expose him to the danger of accidental shooting any more than had he not been so employed, but where the employer furnishes his employee with a revolver for the two-fold purpose of protecting him and the property of the employer from robberies, kidnappers and possible trouble from striking drivers, he is exposed to the danger of accidental shooting. Necessarily, the employee would be called upon to handle the pistol other than when actual danger was present. As the court said in the *Brown* case, we would be indulging in hair-splitting distinctions which would be without foundation in law or fact, should we hold under the facts of this case that the injury did not arise out of and in the course of plaintiff’s employment.”

In *Holland v. Continental Casualty Co.*, (La.) 155 So. 63, petitioner was a traveling salesman. He carried valuables and to protect them he carried a gun. The gun was his own gun. The employer knew that the petitioner customarily carried the gun. While stopped at a filling station the plaintiff picked up the gun and while in the act of removing a shell from it, accidentally shot himself in the foot. The employer contended that this did not arise out of the employment. The court held that it did and said:

“It cannot well be argued that in view of the character of the plaintiff’s duty, that of carrying in his car merchandise of considerable value and cash and checks collected from customers, he was not necessarily exposed to greater risks and damages from robbers and highwaymen, who, of late years ply their trade bodily than he would be had he not been so employed. This, as we understand the law is the true test.”

The court went on to note that because the carrying of the gun was not unreasonable and that he was injured by the gun “carried to prevent being robbed and perhaps injured, it seems clear to us that the case is compensable.”

Southern Cotton Oil Co. v. Bruce, (Ala.) 32 So. 2nd 666. The deceased was employed as a night watchman. He usually carried a .45 caliber gun of his own, but the company had furnished a .32 caliber pistol which was kept on the premises for use by him or by other employees for protecting the employer’s property. The watchman was friendly with a very young son of his supervisor. He took the boy to his office to get a holster from the .32 caliber gun so that the boy could use it for his toy gun. He took the .32 caliber gun from the holster and placed the boy’s toy gun in it. The boy picked up the .32 caliber gun and shot and killed the watchman. The court said that the question in shooting cases of this type is whether the accident “arose out of the employment.” After reviewing several cases the court said:

“In the instant case the employee’s death was caused by the accidental discharge of a pistol which he used with the knowledge and consent of the company officers in connection with the performance of his duties. When guns are handled, shooting accidents may be ex-

pected. Such an accident is unquestionably a hazard peculiar to the employment of a watchman or other person whose duties require the use of firearms. The duties of his employment subjected him to this hazard to which he would not have been exposed apart from his employment. It is such a hazard as can be said to be a natural consequence of the employment. A firearm is a dangerous instrumentality * * * It was by reason of his employment that the deceased was exposed to the danger incident to the handling and carrying of pistols, and the hazard of being shot by the accidental discharge of the pistols was unquestionably a natural incident to his work."

In *Comstock v. Bivens*, (Col.) 78 Col. 107, 239 P. 869, a mailman carrying mail for a company having a contract on a star route was injured in a gun accident. He carried the gun because of the fact that he had a route in sparsely populated areas. The court said that while he was not required by his employment to carry it, it was customary for mailmen in sparsely populated areas to carry a gun. He had gone home for the night and was killed in front of his home while removing the gun from the truck. The court held that the accident arose out of his employment.

McDaniel v. City of Benson, 167 Minn. 407, 209 N.W. 26. There the sole police officer of a city went to his home to get a revolver. He placed the same in a shoulder holster. He then stooped over for some purpose and the gun discharged when it fell to the floor. He died from the resulting injuries. The court held that the accident arose out of his employment.

Security State Bank of Sterling v. Propst, 99 Col. 67, 59 P. 2nd 798. The deceased was assistant cashier

of a bank. With the knowledge of the bank, he carried a gun. He often brought deposits to the bank from his home. The morning of the accident he was carrying a bank deposit but stopped to mail a letter. (Not in any way connected with the bank.) The gun was discharged while he was stopped and he died of the injuries thus sustained. The employer claimed that he was neither in the course of his employment, nor killed by accident arising out of the employment. The court held that the mailing of the letter was not a departure and then expressly held that since he was carrying a gun with the knowledge of his employer, even though no express permission or instruction had been given him, the carrying of the gun was connected with his employment and death from it arose out of his employment.

Gallaher v. U. S. Fidelity & Guaranty Co., (Texas) 77 S.W. 2d 312. An employee attended two oil wells and lived on the premises of his employer near one of them. He kept a gun for his own personal use and also to protect the employer's property. He was on call 24 hours per day. At the time of the accident the gun was in his car at the place where he lived. He was cleaning a tank for his employer. The needed rags were in his car. While getting them he caused the gun to discharge and was injured. The court discussed at length the meaning of the phrase "arising out of employment", and concluded that the gun was connected with or incidental to the employment, and that the accident for that reason arose out of the employment. Said the court:

"The words 'out of' point to the origin and cause of the accident or injury; the words 'in the course of' to the time, place and circumstances under which the accident or injury takes place. The character or quality of the accident as conveyed by the words 'out of' involves the idea that the accident is in some sense due to

the employment. It must result from a risk reasonably incident to the employment * * *.

“The rights of appellant depend upon the reasonableness under all the circumstances of his action in having the gun with him * * *.

“Gallaher was in the sense a watchman. * * * No orders had been issued preventing him from carrying firearms and the evidence indicates that the company rather expected him to arm himself, if necessary, to protect the property.”

The above cases cite many other similar cases. Where the nature of the employment is such that the employee might reasonably carry a gun, the courts are uniform in holding that an injury from the gun arises out of the employment. Since that is all that is necessary in Utah, the petitioner was entitled to an award. Certainly, it was not unreasonable for Stroud to carry a gun on his off-duty hours. There are at least four of the cases cited above which expressly hold that it is not necessary for the employer to order the employee to carry a gun. It is sufficient if the employer knows that the employee is carrying one and that the carrying of a gun might reasonably further the employer's interests. Here the employer both knew of the custom and encouraged it. (R. 9, 10, 20, 23, 25, 28)

We think in so far as the term “arise out of the employment” is concerned, that it is immaterial that the accident happened at the police station. Had Stroud been killed at home by a gun kept by him for use in the performance of his employment, the accident would have

arisen out of the employment. In proving that an accident arises in the course of the employment, the time, place and circumstances are important. But, an accident may arise out of the employment, even though the employee is not at work and is not performing his employer's work. There are numerous cases which have sustained the proposition that an employee assaulted after he has returned to his home at night from causes which had their origin in his employment is injured from causes arising out of his employment. See, for example, the cases collected by Howitz on Workmen's Compensation, commencing on page 507, as cited with approval by the Utah Supreme Court in the *M. & K. Corporation* case, *supra*.

(b) The Industrial Commission's Opinion

The Industrial Commission went astray because it focused its attention on the fact that Stroud was off duty at the moment of the injury. The opinion of the Industrial Commission emphasizes the fact that it was Stroud's day off and that at the time of the accident he was not performing an act connected with or incidental to his duty. The Commission goes on to say that it is generally agreed that if an employee on 24 hour call has been called by his employer and is killed going to or from work, his dependents are entitled to compensation. If applicant must found his case on a contention that the injury occurred in the course of his employment, all this would be of critical importance. But here the primary contention of the applicant is that Stroud's employment subjected him to dangers different from

and greater than those of the public in general. His employment required him to have firearms available. (R. 25) He was exposed both on and off duty to the risks of a gun accident. It was necessary for him to handle firearms on his off-duty hours. (R. 25) Whenever he went home he would be required to put his gun away and to get it again when he left for work. In view of the encouragement from Salt Lake City Police Department, it was not unreasonable for him to be carrying the gun, even though off duty. Certainly, the keeping of firearms was an incident of his employment and his death resulted from a firearm kept by him to perform the duties of his employment. This the Commission does not consider nor discuss. The accident was directly related to his employment and arose out of it.

*(c) It is Immaterial That the Gun Was Not Owned
By Salt Lake City.*

At the hearing the city brought out the fact that the gun which caused the death was not the gun regularly issued by Salt Lake City. (R. 12, 194) In *Beaver City v. Industrial Commission*, 67 Utah 8, 245 P. 378, the Utah Supreme Court expressly held that this was immaterial. Other states have held to the same effect. See for example, *Frank v. Point Marion Bridge Co.*, 128 Pa. Sup. 269, 193 Atl. 421. There an employee was killed by a borrowed .22 caliber rifle. The deceased had a company revolver, but was not using it. The court said that the fact that it was a borrowed gun, rather than the one the company had issued, was immaterial. See also *Comstock v. Bevins*, 78 Col. 107, 239 P. 869; *Security State*

Bank of Sterling v. Propst, 99 Col. 67, 59 P. 2nd 798, in both of which the employee was carrying his own gun rather than one issued or furnished by the employer.

(d) *It is Immaterial That the Employer Did Not Order Stroud to Carry the Gun.*

Many of the cases cited above expressly comment on the fact that the injured employee was not “required” to carry the gun. These cases state that the employee is allowed considerable latitude in selecting the means by which he performs his employer’s business. If the carrying of a gun might reasonably promote the employer’s business, that is sufficient. The following cases comment upon the fact that the employer did not require the carrying of a gun but merely acquiesced in it: *Goins v. Shreveport Yellow Cabs*, 200 So. 481; *Holland v. Continental Casualty Co.*, 155 So. 63; *Comstock v. Bevins*, 78 Col. 107, 239 P. 869; *Security State Bank of Sterling v. Propst*, 99 Colo. 67, 59 P. 2nd 798; *Gallagher v. U. S. Fidelity and Guaranty Co.*, 77 S.W. 2nd 312.

4. STROUD WAS IN THE COURSE OF HIS EMPLOYMENT.

In arguing this point, we again emphasize the fact that it is not necessary for the court to hold that Stroud was both in the course of his employment and killed by accident arising out of his employment. Either one will suffice. We submit that in this instance both are present. We feel that the Industrial Commission focused its attention in the course of his employment. Because it was his

tion solely upon the question of whether or not Stroud

day off and because at the moment of the injury he was not directly engaged in work which furthered the employer's interests, the Commission concluded that he was not in the course of his employment. We believe that this was an immaterial departure from the business which brought Stroud to the police station on the day of the accident, and that he was in the course of his employment. However, if the court should conclude that this is not so, we nevertheless urge that he was killed by accident arising out of his employment, which is all that we are required to show.

The evidence is uncontradicted that Stroud was a sergeant in charge of a group of police officers. He had made an appointment with two officers to meet him at the station at 6:00. (R. 15, 17, 18, 28) His intention was to be at the station himself to check out for them a special car. He was seen at his desk immediately before the accident. (R. 29, 30) The evidence is uncontradicted that he came to the station to check out this special car for the two officers who were to meet him at 6:00 there. (R. 15, 17, 18, 28) Certainly he was in his employer's business and at the station for that purpose. While waiting for these two officers to come in he went from the station to lift soda water bottles from an officer's car to his own car. (R. 11, 12, 13) Admittedly, this particular act was not in furtherance of the employer's business. (R. 11, 12, 13) He was, however, at the station to perform the employer's business and this is in our opinion the important factor. (R. 15, 17, 18, 28) While at the station to perform the employer's business, he certainly could

move about the station for personal matters without leaving the course of his employment. Had he completed the business of checking out the special car and then become engaged in arrangements for the policeman's party, we think he would have left the course of his employment. However, he had not completed the task which brought him to the station. (R. 15) He was waiting for the officers who were late coming in for the agreed appointment. (R. 15) It seems to us highly unreasonable to restrict his activity at the station to matters which furthered the employer's business, so that any departure like washing his hands, combing his hair, or engaging in social conversation carries him out of his employment. The Utah Court has never in the past adhered to such narrow rules insofar as departure from employment is concerned. We emphasize the fact that he was at the station to further the employer's business and had not completed his work in that regard. (R. 15, 17, 18, 28) We think that this placed him in the course of his employment and that the excursion to the patrol car to get the soda water was not a departure. The important cases on departure are *Twin Peaks Canning Company v. Industrial Commission*, 67 Utah 589, 196 P. 853; *Salt Lake City v. Industrial Commission*, 103 Utah 581, 137 P. 2nd 364; and *M. & K. Corporation v. Industrial Commission*, 112 Utah 488. See also *Smith v. University of Idaho*, 170 P. 2nd 404; *Dunphy v. Augustia College of Villanova*, 195 Atl. 782; *Sweat v. Allen*, 200 So. 348; *State Road Commission v. Industrial Commission*, 56 Utah 252.

SUMMARY

We base our case primarily on the contention that Stroud was killed by accident arising "out of" his employment. He was killed by a gun carried because he was employed as a policeman. He was encouraged by his employer to carry a gun even while off duty. Here he was going to the police station to check out a car—clearly an act for his employer's benefit, and while going to the station to do that work he did not act unreasonably in carrying his gun. The accident had its origin and cause in his employment and it, therefore, "arose out of" it, even if he had departed from his employment and hence was not "in the course of" his employment.

Respectfully submitted,

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