

1989

West Valley City v. Tyler Olsen : Brief of Appellant

Utah Court of Appeals

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Paula J. Houston; West Valley City Prosecutor; Attorney for Respondent.

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BRIEF

On The Utah Court of Appeals

890113
West Valley City

Plaintiff

vs

Lyke Olsen

Defendant

Appellant

case No. 890113-CA

Appellants Brief

This case is an appeal from a conviction of a charge that was never charged against the Appellant Lyke Olsen.

#1- This case was never tried on charges listed on Citation number 94701 signed by R. Jarvis. The charge on the citation listed 41-2-2 (No Drivers licence). There is no such number found in the Utah Motor Vehicles code for 1988-1989 or in West Valley City ordinances.

In Exhibit No 1 of appellant the West Valley City Prosecutor listed count #1 as 41-2-125 Failure to Possess Drivers License on information. The Appellant Lyke Olsen made a copy of West Valley City's 41-2-125 ordinance and it has nothing to do with the charges before the court or the defendant, it has Expiration dates of licenses - Renewal - Extension without Examination - Licensees in armed forces - Fees required. This was passed 11/2/87 and there

is no excuse why the officer and/or the City Prosecutor never put down 41-2-124 which is the license to be carried when driving, and supplied the jury with the right charge and the right law that the appellant was charged with.

The laws are not a game of horse shoes, just abouts don't count.

2- The information that was given to the Defendant (Appellant) was not signed by the officer that issued the citation and it was not notarized which makes it null and void as an information as demanded by the Defendant (Appellant).

This was demanded 11/12/1988 by a written motion to the West Valley City Court and the West Valley City's prosecutors clerk. Court Clerk Vicki - Prosecutors clerk Thelma. signed for by each.

3- The Defendant (Appellant) demanded his rights at the Common law and his rights to Administrative law on 11/17/1988 because he is not under the class as privileged driver. The Defendant (Appellant) demanded his right for Quo Warranto (By what authority or jurisdiction).

In Jack Cole Co. vs MacFarland 337 S.W. 2d, page 456 in conformance with Jones vs State 50 Tenn 287, 307 it states

"Privileges are special rights belonging to the individual or class, and not to the mass; properly, an exemption from some general burden, obligation or duty; a right peculiar to some individual or body."

Since the right to travel on the highways or roads is an incident of national citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. *Edwards vs California* 314 U.S. 160 at 178.

West Valley City has therefore converted a right into a crime and is therefore unconstitutional.

"The claim and exercise of a constitutional right cannot be converted into a crime" *Miller vs U.S.* 230 F. 486, 489.

Under heightened scrutiny, this code becomes unconstitutional as a violation of due process.

The Defendant (Appellant) proffers the court the statutory proof that the means do not support the end.

Operator licensing regulations do not promote highway safety at the renewal
§
" 2

phase. A valid exercise of police power exists in licensing statutes because, and only because, the primary purpose of licensing is to exclude from highways those operating motor vehicles who have not established their compliance with minimal standards of competence in skill, *State vs. Campbell*, RI 187 AT. 2^d 543, 6 ALR 3rd 499 (1963). If there is no competency examination upon renewal, and the fee obtained goes into the General Fund is, clearly general taxes for administrative and general purposes, then there is no rational relation. This is not a matter of privilege being taken away for the protection of the public, it is the revocation of a right protected by the U.S. Federal Constitution. This is failure to allow continuation of a right because an individual fails to pay a tax.

In the case of *Crandall vs Nevada* 73 U.S. 35. The U.S. Supreme Court held

"that a citizen could not be taxed even \$1.00 in his right to travel. The court held that if the state could tax a citizen \$1.00 it could tax them a thousand dollars, and thereby use the power to tax as a means of destroying a right."

Even assuming that a coercive tax can be maintained in this fashion, that tax must be related to, and promote (under heightened scrutiny), the safety of the highways. The city code criminalizing operation of a vehicle without a renewed license does not promote that end, and must be declared unconstitutional.

The Defendant (Appellant) therefore demands a reversal and/or Dismissal in this case.

The Defendant (Appellant) put a disclaimer in on his driving privileges in March 1984 and reclaimed his traveling rights as a matter of his religious beliefs and his rights to moral conscience according to the Utah Constitution Article 1 Section 1 (Inherent and inalienable rights

"All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances;

And again this is stated in Article 1

Section 4

(Religious liberty)

"The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

In my religious doctrines or scriptures called the Doctrine and covenants section 98 verse 4 it states:

4- "And now, verily I say unto you concerning the laws of the land, it is my will that my people should observe to do all things whatsoever I command them.

5- And that law of the land which is constitutional, supporting that principle of freedom in maintaining rights and privileges, belongs to all mankind, and is justifiable before me.

6- Therefore I, the Lord, justify you and your brethren of my church, in befriending that law which is the constitutional law of the land;

7- And as pertaining to law of man, whatsoever is more or less than this, cometh of evil.

In the Doctrine and Covenants commentary by Hyrum M. Smith and

Jaane M. Sjodahl which is published
for the members of the church. For
verse 4 it states:

"(My people should observe to do all
things whatsoever I command them)
That is the great, fundamental
principle in the Kingdom of God,
God's law comes first, and if man,
either through an autocratic
ruler or through a representative
assembly, should make laws
contrary to the law of God, it
would be the duty of men to
keep the divine law, and let
the consequence follow.

5 (Law which is constitutional)
The first duty of loyal citizens is
to keep the commandments of God.
Their next is to keep every law of
the land which is constitutional.
In the United States, every State
makes its own laws, and Congress
legislates for all. It is the duty
of the Saints to keep the laws
which are Constitutional; that is,
which do not conflict with the
constitution. If there is any
doubt as to the constitutionality
of a law, the Supreme Court
will pass upon it, if appealed to
for a decision, and when the

Supreme Court has spoken, the doubt is removed, and the controversy is ended.

7- (Whatever is more or less evil) Laws in conflict with the Constitution are not for the benefit of the people, and are, therefore, evil.

Powers not delegated to the States, or reserved from the States, are Constitutional. The Constitution acknowledges that the people have all power not reserved to itself ... The Constitution is not a law to us, but it makes provision for us whereby we can make laws. No legislature can enact a law to prohibit our inherent or inalienable rights. The Constitution provides to regulate bodies of men and not individuals.

This embodies a general principle, by which laws can be tested as to their constitutionality.

8- (I, the Lord God, make you free) The constitution is the instrument through which God has secured and guaranteed the freedom of those of His children who are living under its provisions.

In the Doctrine and Covenants Section

101 verse 77 it says:

77- "According to the laws and constitution of the people which I have suffered to be established, and should be maintained for the rights and protection of all flesh, according to just and holy principles;

78- That every man may act in doctrine and principle pertaining to futurity, according to the moral agency which I have given ~~unto~~ him, that every man may be accountable for his own sins in the day of judgment.

79- Therefore, it is not right that any man should be in bondage one to another.

80- And for this purpose have I established the Constitution of this land, by the hands of wise men whom I raised up unto this very purpose, and redeemed the land by the shedding of blood.

In the commentary before mentioned for 76-80 it gives instructions to the saints:

"The scattered saints are commanded to 'importune for

redress' as guaranteed by the Constitution and Constitutional laws. The Lord suffered, that is, permitted, the establishment of Constitutional government in the United States for the protection of everybody in the enjoyment of religious liberty. In the United States no man should be in bondage to another in matters over which conscience is the sole judge, although most men like to force others to think and to act as they do. The Lord raised up wise men and inspired them to frame the constitution for the very purpose of setting men at liberty, and the land was, furthermore, redeemed, to be a refuge for all oppressed, and the home of the free.

It is strange that many men should have such a strong desire to force others to adopt their views and practices. It is strange to contemplate that prisons, torture, and death have been employed in the service of compulsory religion. No doubt, most of those who have resorted

to such means have done so believing that they were trying to benefit their fellow men by compelling them to believe and to do right. They did not call themselves persecutors. Nor do their modern successors regard themselves as persecutors, if they slander the members of unpopular churches, boycott them socially, and otherwise, and do everything in their power to prevent people from becoming interested in them. But, no matter how they regard themselves, they are persecutors, and as such they are in the service of Satan, who is the originator of the compulsory plan of salvation, and who has tried to enforce it among men from the beginning. God's kingdom is founded on perfect liberty.

And in Section 88 verse 86 it states:

"Abide ye in the liberty ... wherewith ye are made free; entangle not yourselves in sin, but let your hands be clean until the Lord comes."

I personally know that I cannot sign any contract that might

take away my rights to the constitution or its principles.

I will never sign an insurance policy which a drivers privileges is part of, I will retain my rights and live my conscience even if it comes to signing my own Declaration of Independence and going accordingly.

The Defendant (Appellate) was convicted of driving without a valid drivers license as a result of its expiration. There is no such code in the State of Utah that requires a drivers license, 41-2-117 UCA mentioned on page 22-34 Exhibit #1 of appellate does not have the word driver in it. 41-2-117 - Examination of applicant's physical and mental fitness to operate motor vehicle. The first sentence states: The division shall examine every applicant for a license including a test of etc. Chapter 2 is for Operator's license not a drivers license.

Defendants prayer for relief is as follows:

- 1- That the City code used be declared unconstitutional.
- 2- That the truck that was stolen and impounded by West Valley City be returned and compensated.

- 3- according to the courts direction.
That the State of Utah issue a
travers right for those not under
the code of Utah.

Respectfully Submitted
Gyle Olsen
Pro Se.
In Propria Persona
Appellant
Defendant

P O Box 193
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In Conclusion to this case.

The Defendant (Appellant) has served
4 years in the U S Navy of which I took
an oath to defend the Nation and the
constitution, when I was discharged
I never said I would stop defending
same.

When I went through the Holy
House of the Lord (The Temple), I again
raised my arm to the square and took
an oath and made a covenant with
my God to uphold the principals of

this nations constitution of which I do regardless of those trying to force their religion upon me. (Codes)

In the Ethic Code found under intent it states that all crimes shall have to show intent of the accused, there was never any intent of the Defendant in this case.

In 1988 President Ezra Taft Benson a prophet of God stressed that all Latterday Saints should live the constitution according to the Founding Fathers of which I do and will continue in this effort until I pass through this mortal state that I am in now.

All executive and judicial officers, both of the United States and of the several States, shall be bound by oath or Affirmation, to support the Federal Constitution and the Constitutions of the States they serve in and the Federal Constitution shall be the supreme law of the land.

All cases referred to in this brief is the voice of the Supreme Court of which there is no appeal. The facts are that we do have rights and we don't need to pay for them or be licensed to use them.

Thank You
Ezra Olsen