1979

City of Payson v. Richard C. Provstgaard : Respondent's Brief

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

CITY OF PAYSON,

Plaintiff and Respondent,

vs.

RICHARD C. PROVSTGAARD,

Defendant and Appellant.

Case No. 16409

RESPONDENT'S BRIEF

Appeal from Judgment of the Fourth District Court
Utah County, State of Utah
The Honorable J. Robert Bullock, Judge

Dave McMullin
City Office
P.O. Box 179
Payson, Utah
Attorney for
and Respondent

George E. Mangan
P.O. Box 246
Roosevelt, Utah 84066
Attorney for Defendant
and Appellant

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Dave McMullin
City Office Bldg.
P.O. Box 176
Payson, Utah 84651
Attorney for plaintiff
and Respondent

George E. Mangan
P.O. Box 246
Roosevelt, Utah 84066
Attorney for Defendant
and Appellant

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CASES SITED

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RESPONDENT's BRIEF

STATEMENT OF KIND OF CASE

The defendant was charged by the City of Payson for driving under the influence of an intoxicating liquor.

DISPOSITION IN LOWER COURT

The matter was tried to a law trained judge in the Justice of the Peace Court. From a judgment of guilty, the defendant obtained a trial de nova to the District Court. The District Court, in a trial by jury, found the defendant guilty of driving under the influence of intoxicating liquor.

RELIEF SOUGHT ON AN APPEAL

Plaintiff seeks for reversal of the conviction by reason of the fact that the trial court gave the jury erroneous

instructions, and that as a matter of law there was insuffi
evidence of the defendant's being under the influence of a
intoxicating liquor to submit that question to the jury.

STATEMENT OF FACTS

The parties have stipulated to the following facts:

"On or about the 15th day of September, 1978, the defendant was stopped in Payson City for a speeding violati but was subsequently charged with driving under the influen of an intoxicating liquor. The defendant admits that prior to the time of his being stopped that he had consumed approx mately a six-pack of Utah 'light beer', which by weight con of 3.2% or less of alcohol, as the same is defined by statut Defendant submitted to a breath test which indicated that he had a .10 'blood alcohol' content.

"A narrow and singular issue is to be presented to the Court on appeal, namely, is the consumption of light beer, as defined by the statutes of this state, to be consid an 'intoxicating liquor' for the purposes of Title 41-6-44(a

At the conclusion of the city's case, defendant moved for a dismissal of the charge on the grounds that the city had not proven that defendant was under the influence of an intoxicating liquor, but the court denied the same.

ARGUMENT

POINT I

THE LOWER COURT DID NOT ERROR IN DENYING DEFENDANT MOTION FOR A DIRECTED VERDICT.

The defendant herein is charged with violating 41-6-44 Utah Code Annotated, 1953, which is driving a motor vehicle while under the influence of intoxicating liquor. The Complaint as shown was amended by interlineation in the first trial to show that the defendant was charged with 44-6-44 rather than 44-6-44 (a). The (a) was scratched out by the Judge Pro-Tem Paul Merrill upon plaintiff's motion.

The Utah State Liquor Control act 33-1-3 Utah Code Annotated 1953 states "DEFINITIONS AS USED IN THIS ACT" which is relied upon by the defendant in this appeal is only for the purpose of regulating and controlling the sale and consumption of alcoholic beverages and does not apply to the Motor Vehicle Act title 41-6-44, Utah Code Annotated 1953. The use of the words "as used in this act" shows intent to limit the definition to the liquor control act only. It is reasonable and logical to assume that the legislature knew that one can become intoxicated on light beer and as such limited the definition of light beer to apply only to the Liquor Control Act.

Grant vs. Utah State Land Board 485 P2nd 1035, states as follows:

> "Where there is ambiguity or uncertainty in portion of statute, it is proper to look to entire act in order to discern its meaning and intent; and if it is reasonably susceptible of different interpretations, one should be chosen which best harmonizes with its general purpose."

The general purpose of the Liquor Control Act was to control the sale and consumption of alcohol beverages and not to make its definition of light beer binding on the Motor Vehicle Act. To construe the liquor control act otherwise would not be in harmony with the general purpose of the act as setforth therein with other statutes.

The lower Courts took judicial notice that light or 3.2 beer was such a nature that it was an intoxicating liquor. Rule 9(d) of the Rules of Evidence as adopted by the Court states as follows:

> "such facts as are so generally known or of such common notoriety within the territorial jurisdiction of the Court that they cannot reasonably be the subject of dispute."

Light beer or 3.2 beer falls within this rule.

The jury found the defendant guility of the charge based upon a full trial taking into consideration the testimony of the witness as to his actions and upon the breath test result .10 which is 0.02 points above the presumtion.

CONCLUSION

The lower Court ruling and the jury verdict should be upheld.

Dated this 27th day of November, 1979.

Dave McMullin,
Attorney for Plaintiff and
Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Respondent's Brief, postage prepaid, to George E. Mangan attorney for appellant, P.O. Box 246 Roosevelt, Utah, 84066, this 27th day of November, 1979.