

1953

## State of Utah v. Moses H. Harris : Brief of Appellant

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,  
Plaintiff and  
Respondent.

vs.

MOSES H. HARRIS,  
Defendant and  
Appellant.

FILED  
AUG 31 1953

Supreme Court, Utah  
BRIEF OF APPELLANT  
Appeals No. 8065

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Appeal from the District Court of Cache County, Utah

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Honorable Lewis Jones, District Judge

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## STATEMENT OF FACTS

The information in substance alleged that the appellant was charged with the crime of driving a motor vehicle while under the influence of intoxicating liquor and that prior thereto, the appellant had entered a plea of guilty to the offense of driving a motor vehicle while being under the influence of intoxicating liquor in the cause of action entitled, "Logan City, plaintiff vs. Moses H. Harris." Actually the City Court case was against a Mose Harris (Tr. 88). The State attempted to prove this prior conviction by introducing into evidence (Tr. 87) and reading into the record (Tr. 88) a certified copy of the Minutes, entries and judgment of the City Court. The complaint filed in the prior case was not offered or received in evidence. The certified Minutes, entries and judgment of

the City Court shows that a Mose Harris was convicted in the Logan City Court of the crime of drunk driving. (Tr. 89).

On the question of the prior offense, the Court instructed the jury in part as follows:

“Gentlemen, what I started to say to you was on this question of whether the two offenses were similar but I now instruct you that the two offenses, the ones you previously convicted him of, and this one are similar. The first case was a State case, and this one is a City case, but in the eyes of the law, for the purpose of reaching the conclusion pro or con on the problem you now have, it doesn’t make any difference. So on the evidence now before you gentlemen, if you find that the defendant was charged with the offense of drunk driving before Judge Rich and that he thereafter entered a plea of guilty and a sentence was pronounced, then it becomes your duty to instruct your foreman to fill that one form of verdict out which finds that the defendant had been previously convicted of the offense. On the other hand, if you refuse to believe the evidence which the State has presented, and which a member of the jury now has in his hands, (referring to the certified copy of the proceedings of the City Court, Exhibit “C”), and you want to disregard that piece of evidence, of course, you can answer the other way. There being no evidence to the contrary, I don’t see what else you can do except sign the verdict. But that’s up to you. Now, would you like to argue the matter? I’ll let you do that.” (Tr. 95).

\* \* \*

The appellant’s counsel stated, “. . . they must find beyond a reasonable doubt (referring to to the jury) that he was convicted in the City Court of the crime of drunk driving.”

The Court said, "That's right, the same rules apply, gentlemen. You either accept that document you have, or you don't accept it. There can't be any half-way business about it. Now, do you want to retire upstairs, or are you ready to render your verdict? (Tr. 96).

A juror asked the Judge, "We can accept this as concrete evidence?" (holding up exhibit "C," which is a copy of the City Court proceedings.)

The Judge replied, "You can. If you accept that, it becomes your duty to answer the verdict a certain way. If not, you answer the other way. If you think Mr. Pedersen has perjured himself, answer it the other way. . . ." (Tr. 97).

The jury found the appellant guilty of the indictable misdemeanor of driving a motor vehicle while under the influence of intoxicating liquor.

### STATEMENT OF POINTS

The appellant asks a reversal of the conviction and judgment so rendered against him in this case for the following reasons, to-wit:

POINT NO. 1 That the evidence is insufficient to support the verdict that appellant had been convicted of the prior offense of drunk driving.

POINT NO. 2 That the Court erred in the admission of a certified copy of the Minutes, entries and judgment of an alleged prior conviction in Logan City Court.

POINT NO. 3 That the Court erred in giving its instructions on the issue of the appellant being convicted of a prior offense.

## ARGUMENT

To avoid redundancy or duplicity, points 1 and 2 will be considered together.

There are two reasons why the question of the prior conviction should not have been submitted to the jury.

(1) There is no evidence indentifying the appellant as the defendant convicted of the prior offense in City Court.

(2) There is no evidence that the City Court had jurisdiction of the offense of which the appellant allegedly was previously convicted.

It is self-evident that it is necessary for the State to prove that the present appellant is the same person who was convicted of the crime of "drunk driving" in the City Court of Logan. This former conviction must be proved the same way as any other material element. Not only must the state prove beyond a reasonable doubt a prior conviction, but must prove beyond a reasonable doubt that the appellant was the person who had been previously convicted. In other words, the state must prove beyond a reasonable doubt that the appellant in this action and the defendant in the prior action in the City Court were one and the same person. It is obvious from a reading of the record that the state failed to do this. It cannot be presumed that the appellant and the defendant in the City Court case were the same person.

The State attempted to prove the alleged prior conviction of the appellant by placing into evidence a certified copy of the Minutes, entries and judgment of the



Logan City Court. These proceedings showed that a Mose Harris had been convicted in the City Court of the crime of drunk driving. It would have been a simple matter, if such were the case, for the State to have someone present in court who could point to the appellant and testify that he was one and the same person who was named as defendant and who pleaded guilty of the offense tried in the City Court.

This the State did not do, nor was there ANY evidence that the two defendants, i.e., the defendant in the City Court case and the appellant in this case, were the same person. Therefore, for want of identity, the alleged prior conviction falls, and with it, of course, falls the jurisdiction of the District Court in the present case, since its jurisdiction depends on the prior conviction. 41-6-44 (d) Utah Code Annodated, 1953.

In the case of State vs. Bruno, 69 Utah 444, 256 Pac. 109 (1927), the defendant was charged with being a persistent violator of the liquor law. This case is directly in point and the above principles were set out in full by this Court.

“The general rule of law as applied to a situation such as is under consideration is thus stated in 16 C. J. 1342:”

‘In all criminal prosecutions, when the State desires to inflict a more severe penalty on the account of the defendant having been convicted previously, the burden is on the State to prove all facts necessary to bring the case within the statute authorizing such penalty to be imposed. Thus like any other material element,

the state must prove the prior conviction of the accused and must establish his identity as the person previously convicted.'

\* \* \*

"Under a statute like ours, however, it seems clear, upon both authority and principle, that when the State seeks to inflict a more severe penalty on account of the defendant's having previously been convicted of a similar crime, it is necessary to allege and to prove beyond a reasonable doubt that the accused has theretofore been so convicted, as in others, is the sole and exclusive judge of the fact."

\* \* \*

*and that the jury in this respect,*

If it were held that because a person has the same name as a person who had theretofore been convicted of a similar offense, it follows as a matter of law that such person is the same person as the one named in the prior proceeding, such holding would be contrary to our fundamental principles and proceedings in criminal actions. It would be a denial of the right of the trial and determination by a jury of one of the essential facts always necessary to be found in order to convict an accused of the graver offense."

Now we will consider reason No. 2. Before the alleged prior conviction by the City Court of Logan City can be used to enhance the penalty for the crime of which the appellant was found guilty, it is necessary for the State to prove that the Logan City Court had obtained jurisdiction of the offense of "drunk driving."

The City Court of Logan City is, of course, a court of limited or inferior jurisdiction, Section 78-4-16, Utah Code Annotated, 1953, and since the offense charged and upon

which a conviction was obtained was in violation of a City Ordinance, the offense must have been committed within the City limits of Logan City.

The place that the crime of drunk driving was allegedly committed was not shown by the certified copy of the proceeding in the Logan City Court (Tr. 89) or by any other evidence adduced at the trial. The complaint filed in the City Court which allegedly charged the appellant of the crime of drunk driving was not introduced in evidence.

On the question of the necessity of showing the jurisdiction of the Logan City Court the case of *State vs. Florence*, 79 Utah 200, 8 P. 2d. 261 (1932) appears to be on "all fours" with the case at bar. Part of this court's opinion is as follows:

"We now come to a more serious question, which also goes to the question of insufficiency of the evidence to support the verdict and the ruling in receiving in evidence the certified copy of the docket record of the prior conviction. To convict the defendant of the crime of persistent violator, the state, of course, was required to prove a prior conviction of the violation of the liquor laws of the State."

\* \* \*

"The rule is general and so well settled that no authorities need be cited in support thereof, that in courts of inferior or limited jurisdiction no presumption of jurisdiction is indulged, and that the record of such a court especially of such a criminal court must show such facts as confer jurisdiction. And that is the clear purport of the statute. (referring to Comp.

Law of Utah 1917, Section 8844, which is slightly amended and contained in 77-21-29, Utah Code Annotated 1953). To prove the prior conviction of the defendant the State put in evidence a certified copy of the docket record of the city court of Salt Lake County, in which court it was alleged and claimed the defendant, prior to the commission of the alleged offense of possession of intoxicating liquor, was convicted of the offense of transporting intoxicating liquor.”

The court then set out the record of the City Court and went on to say:

“It is admitted and so the statute provides, that the city court has jurisdiction of offenses committed only in the county of Salt Lake. It is to be noticed that the docket record of the city court as certified to does not show that the offense of transporting intoxicating liquors was committed in Salt Lake County, or in what county, or even in what state, such offense was committed. That is not shown by the recital of the complaint filed or by the judgment or sentence rendered, as certified to. The complaint itself filed in the city court was not put in evidence. No document or writing or entry of any kind in the city court was put in evidence, except the certified docket record of the proceedings just referred to. Nor was there any evidence of any kind adduced to show that the offense was committed in Salt Lake County, or in what County or State it was committed. Hence it is contended that the essential facts constituting jurisdiction of the city court were not shown, and therefore the certified copy of the record was improperly received, and, though considered in evidence, yet the evidence is insufficient to support the verdict of the jury finding the defendant guilty of the crime of a persistent violator. We think this contention must prevail.”

It must then follow that since there was complete failure of the evidence to show that the present appellant and the defendant in the City Court was the same person, and that there was no evidence to show that the City Court had jurisdiction over the crime of drunk driving, the certified copy of the proceedings of the City Court was erroneously received into evidence, and even though properly received into evidence, was not sufficient evidence to support a verdict of the jury finding defendant guilty.

### POINT NO. 3

That the Court erred in giving its instructions on the issue of the appellant being convicted of a prior offense.

The Court instructed the jury in substance that the certified copy of the proceedings of the City Court of Logan City could be accepted as concrete evidence of a prior conviction. (Tr. 95). As stated heretofore, the prior conviction and every element thereof must be proved beyond a reasonable doubt. In the case of State vs. Bruno, supra, this Court held.

“Applying these legal principles to the instructions given and objected to by the defendant, we are of the opinion that the trial court committed prejudicial error. The instruction complained of informs the jury that the City Court records show that on or about the 3rd day of September, 1924, the defendant was found guilty of having intoxicating liquor in her possession. The defendant was entitled to have the jury pass on the question of whether or not she had theretofore pleaded guilty to having intoxicating liquor in her possession as alleged in the information, and, unless the jury should so find beyond a reasonable doubt,

they could not legally convict her of being a persistent violator of the Prohibition Law of this State as charged."

These instructions complained of violated the rule set forth in the Bruno case, in that the court directed the jury to find the appellant had been previously convicted in the City Court of Logan, notwithstanding the fact that the trial was void of any evidence showing the appellant and the defendant in the prior case were the same person.

These instructions are also erroneous since there was no evidence adduced in the trial that the City Court had jurisdiction of the prior offense of which the appellant was allegedly convicted. State vs. Florence, supra.

Further, these instructions usurped the province of the jury and denied the appellant his constitutional right to a jury trial as guaranteed him by Article 1, Section 10 and 12 of the Constitution of Utah.

### CONCLUSIONS

It must necessarily follow from the foregoing, that the evidence of a prior conviction was not sufficient to support the verdict and that prejudicial error was committed by the Court in giving its instructions. Therefore, the verdict and judgment rendered in this case should be reversed.

Dated this 31<sup>st</sup> day of August, 1953.

Respectfully submitted

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