

1980

the State of Utah v. Frank Vlacil : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

THE STATE OF UTAH,)	
)	
Plaintiff-Respondent,)	
)	
vs.)	Case No.
)	
FRANK VLACIL,)	16863
)	
Defendant-Appellant.)	
)	
)	

BRIEF OF APPELLANT

Appeal from the Verdict of the Seventh Judicial
District Court in and for Carbon County, State of Utah,
the Honorable Boyd Bunnell presiding.

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant was convicted of the crime of illegal possession of a firearm by an alien in the Seventh Judicial District Court, in and for Carbon County, State of Utah, the Honorable Boyd Bunnell presiding.

DISPOSITION IN THE LOWER COURT

After appellant's conviction he was sentenced to an indeterminate term not to exceed five years in the Utah State Prison and was released on bail pending this appeal.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the judgment rendered by the Court and an entry of a judgment of acquittal, or in

the alternative a new trial.

STATEMENT OF FACTS

On the morning of February 22, 1979, the appellant, Frank Vlacil, who is not a citizen of the United States, was arrested by several Price City and Helper City police officers in the parking lot of the Davis Trailer Court. (T. 55, 56) The officers approached appellant's van and asked the occupants, appellant and Libor Hykl, to exit the van. (T. 56,57,59) The occupants exited the van and were then ordered to lie on the ground. (T. 56,57) While they were lying on the ground, Officer Holdaway of the Price City Police Department went to the van and looked inside the driver's window. (T. 54,55,57) Officer Holdaway saw and removed a rifle or a rifle-type weapon from the van. (T. 57) Later that morning, appellant told Deputy Sheriff Semken that he and Libor Hykl had bought the gun from a man in East Carbon and that appellant kept the gun behind the dryer in his trailer. (T. 69,70) Appellant is now charged with not being a citizen of the United States in possession of firearms.

POINT I

SECTION 76-10-503, UTAH CODE ANNOTATED, 1953 AS AMENDED, VIOLATES THE UTAH STATE CONSTITUTION AND THE UNITED

STATES CONSTITUTION BECAUSE IT PROHIBITS ALIENS FROM
POSSESSING FIREARMS FOR THEIR DEFENSE AND SECURITY.

Article I Section 6 of the Utah Constitution
reads as follows:

"The people have the right to bear arms
for their security and defense, but the
Legislature may regulate the exercise of
this right by law."

The Second Amendment of the United States
Constitution states:

"A well-regulated militia being necessary
to the security of a free state, the right
of the people to keep and bear arms shall
not be infringed."

In this case appellant, who is not a citizen of
the United States, was convicted of illegal possession of
a firearm pursuant to Section 76-10-503, Utah Code Annotated,
1953 as amended. The language of that section is as follows:

"Any person who is not a citizen of the
United States ... shall not own or have
in his possession or under his custody
or control any dangerous weapon as
defined in this part. Any person who
violates this section is guilty of a Class
A Misdemeanor, and if the dangerous
weapon is a firearm or sawed-off shotgun,
he shall be guilty of a felony of the
third degree."

The validity of this statute as it pertains to
aliens has been questioned only one time before this Court.
The Court upheld the constitutionality of the statute under
Article I Section 6 in State v. Beorchia, 530 P. 2d 813, 814

(1974):

"It is quite evident from the language above set forth that the Legislature had sufficient power to enact the Statute in question."

The Court further held that the statute was not violative of the Fourteenth Amendment of the United States Constitution because the Statute was directed toward the safeguarding of the public peace and security and thus is a proper exercise of the police powers.

The power of the Utah State Legislature to regulate the "right to bear arms" is not contested here. It is the power of the legislature to absolutely prohibit aliens from possessing firearms for any purpose which is questioned.

The Michigan Supreme Court held a portion of a similar statute void in People v. Zerillo, 219 Mich. 635, 189 N. W. 927 (1922), on the grounds that the legislature "has no power to constitute it a crime for a person, alien or citizen, to possess a revolver for the legitimate defense of himself and his property." Zerillo, 189 N. W. at 928.

The statute before the Michigan court prohibited an alien to hunt for or capture or kill any wild bird or animals, except in defense of his person or property, "and to that end" such a person could not own or possess firearms of any kind. It also provided that upon a showing

of necessity and the recommendation of two citizens, the sheriff of the county may issue a permit to an unnaturalized foreign-born resident to possess firearms. The Court found this second provision void because it was not a regulation, but rather a prohibition and a confiscation making it a crime for an alien to possess a revolver unless permitted to do so by the sheriff of the county where he resides. The Court held that the legislature had no power to prohibit possession of a firearm for the legitimate defense of self and property, where the constitution gives every person a right to bear arms for self defense, and gives aliens who are bona fide state residents the same rights as citizens in respect to the possession, enjoyment and inheritance of property. Recognizing the power of the legislature to regulate the carrying and use of firearms, the Court found the first portion of the statute to be a proper regulation, limiting an alien's right to use firearms in hunting or capturing or killing any wild birds or animals only when used in defense of person or property.

The Michigan Court stressed that the constitutional provision granting "every person ... a right to bear arms for the defense of himself and the state" "is a limitation upon the power of the legislature to enact any law to the contrary." Zerillo at .

The provisions granting the people the right to bear arms are essentially the same in both the Michigan and Utah State Constitutions. Both Section 76-10-503, Utah Code Annotated, 1953 as amended, as it pertains to aliens, and the Michigan statute have the similar effect of prohibiting the possession of firearms for any purpose by aliens. For these reasons this court should follow the sound logic and reasoning of the Michigan Supreme Court and in the present case, declare Section 76-10-503 an abuse of legislative power and therefore invalid.

The decision in State v. Beorchia, 530 P. 2d 813 (1974), rested upon two cases, Ex parte Ramirez, 226 P. 914 (1924), and Patsone v. Pennsylvania, 232 U. S. 138 (1914). Unlike Utah Code Annotated, 1953, Section 76-10-503, the statutes upheld in these cases did not absolutely prohibit the possession of firearms by aliens. In Ramirez, the California statute prohibited aliens from owning or possessing only firearms of a size capable of being concealed on the person. "This would permit aliens to have shotguns, rifles, or other large weapons for all lawful purposes." Ramirez, 226 P. at 919. The Pennsylvania statute in Patsone was a game law prohibiting aliens from killing any wild bird or animal except in defense of person or property, and "to that end" made it unlawful for aliens

to own or possess a shotgun or rifle. The prohibition did not extend to such firearms as pistols which may be needed for self defense. Patsone, 232 U. S. at 543. Contrary to the California and Pennsylvania statutes, the Utah statute acts to absolutely disarm aliens for all lawful purposes. The basis for the decision in Beorchia is not sound.

POINT II

UTAH CODE ANNOTATED SECTION 76-10-503 (1953 AS AMENDED) IS AN IMPROPER EXERCISE OF THE STATE'S POLICE POWER BECAUSE IT ENCHROACHES UPON THE FIELD OF IMMIGRATION AND NATURALIZATION OVER WHICH THE FEDERAL GOVERNMENT HAS EXCLUSIVE CONTROL AND IS THEREFORE INVALID.

The Court's reasoning in State v. Beorchia, 530 P. 2d 813, 815 (1974) upholding Utah Code Annotated Section 76-10-503 (1953 as amended) as "a proper exercise of the police power" cannot stand. To contend that such regulation of aliens falls within state police power ignores the uniquely federal character of the alien. Because of its impact on foreign relations, alien regulation is an exception to the rule that the intention of Congress to exclude states from exerting their police power ordinarily must be clearly manifested. Allen-Bradley Local IIII v. Wisconsin, 315 U. S. 740, 749 (1942). Whenever a state

statute invades the legislative domain belonging exclusively to Congress, the statute is void, no matter how closely linked it may be to powers conceded to belong to the states. Henderson v. Mayor of New York, 92 U. S. 259, 272 (1876). The provisions of the Utah statute which regulate the activities of aliens encroaches upon a field reserved to federal action, and is therefore void.

The Supreme Court struck down a state statute which required the registration of aliens on the grounds of federal pre-emption of the field:

"The power to restrict, limit, regulate and register aliens as a distinct group is not an equal and continuously existing concurrent power of state and nation, but that whatever power a state may have is subordinate to supreme national law."
Hines v. Davidowitz, 312 U. S. 52, 68 (1940)

Control over immigration and naturalization is entrusted exclusively to the Federal government and a state has no power to interfere. United States Constitution, Article I, Section 8, Cl. 4; Truax v. Raich, 239 U. S. 33, 42 (1915) (state anti-alien labor law held void); Takahasi v. Fish and Game Commission, 334 U. S. 410 (1948) (state statute prohibiting issuance of commercial fishing license to aliens not eligible for citizenship held void); Graham v. Richardson, 403 U. S. 365, 376-80 (1971) (state statute that denied welfare benefits to resident aliens, or to aliens not

meeting a requirement of durational residence within the United States held void); Examining Board v. Flores de Otero, 426 U. S. 572, 602 (1975) (Puerto Rican statute restricting licenses for civil engineers to United States citizens held void); Mathews v. Diaz, 426 U. S. 67, 84, 85 (1976); Nyquist v. Mauclet, 432 U. S. 1, 12 (1977) (state statute barring certain resident aliens from financial assistance for higher education held void).

"Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states." Takahashi v. Fish and Game Commission, 334 U. S. at 419.

In Takahashi, 334 U. S. at 419-20, the Supreme Court held that California had no power to place further burdens upon a segment of its lawful legal inhabitants by banning them from following a vocation simply because Congress had declared such group ineligible for citizenship. Congress' power over immigration and naturalization is broad but the power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.

Congress has regulated the possession of firearms by aliens. The statute prohibits only aliens who are illegally in the United States from possessing firearms.

Title 18 Appendix U.A.C. §§ 1201 to 1203. Section 1202 reads in pertinent part as follows:

"(a) any person who--

(5) being an alien illegally or unlawfully in the United States, and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than \$10,000.00 or imprisoned for not more than two years, or both.

By enacting Utah Code Annotated Section 76-10-503, (1953 as amended), as it pertains to aliens, the State has overstepped the bounds of its power. The statute impermissibly "adds to" the conditions imposed by the federal regulation by prohibiting all aliens within its borders, whether illegally present in the United States or not, from possessing firearms. The federal statute is the supreme law of the land, and the law of Utah must yield to it. So much of Utah Code Annotated Section 76-10-503 which conflicts with that federal regulation must be held invalid.

Congress has not seen fit to impose any such burden or restriction on aliens who are legally in this country. Rather, it has broadly declared:

"All persons within the jurisdiction of the United States shall have the same right in every state and territory... to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens..." Title 42 U.S.C. §1981.

The protection of this statute extends to aliens as well as citizens. Takahaski v. Fish and Game Commission, 334 U. S. 410, 419 n.7.

The Utah statute conflicts with these overriding national policies in an area entrusted to the federal government. It effectitvely disarms all aliens and restricts their rights to defend by firearms their persons and property. For this additional reason, the statute must be struck down.

CONCLUSION

Appellant's conviction under Utah Code Annotated Section 76-10-503, should be reversed on the grounds that the statute effectively disarms aliens for the defense of property and self and is thereby unconstitutional under Article I Section 6 of the Utah Constitution and the Second Amendment of the United States Constitution. Furthermore, insofar as the statute attempts to regulate the activities of aliens, it is void because the federal government has pre-empted that field of regulation.

Respectively submitted,

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