1981

State of Utah v. Caral Lee Owens and Rudell Owens : Brief of Respondents

Utah Supreme Court

Noall T. Wootton; Steven B. Killpack; Attorneys for State;
Shelden Carter; Gregory M. Warner; Attorneys for Respondents;

SUPREME COURT
STATE OF UTAH

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STATE OF UTAH, :

Plaintiff/Appellant, :

-vs- : Case No. 17038

CARAL LEE OWENS and RUDELL OWENS, :

Defendants/Respondents:

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BRIEF OF RESPONDENTS

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STATEMENT OF THE NATURE OF THE CASE

An information was filed against the defendants alleging a violation of Section 76-6-404 and Section 76-6-412, of the Utah Code Annotated, 1953, as amended. The significant portions of the information cited the language of Section 76-6-410(b) and read:

> "On or about the 18th day of June, 1979, at Utah County, State of Utah, Caral Lee Owens and Rudell Owens, at the time and place aforesaid, having custody of any property pursuant to a rental or lease agreement where it is to be returned in a specified manner or at a specified time, intentionally failed to comply with the terms of the agreement concerning returns so as to render such failure a gross deviation from the agreement, said property being of value in excess of $1,000."

Defendants, through counsel, moved the Court to quash the information on the basis that the statutory language of Section 76-6-410(b) and the charging language of the information were unconstitutionally vague, denying the defendants due process of law.

On April 4, 1980, Judge Allen B. Sorensen found that Section 76-6-410(b) was unconstitutionally vague and, therefore, void and granted defendants' motion to quash.

Appellant sought appeal from the ruling of unconstitutionality of Section 76-6-410(b).

DISPOSITION IN LOWER COURT

Pursuant to defendants' motion to quash the information on the basis that the charging statute, Section 76-6-410(b) was unconstitutionally vague and thereby denied defendants due process of law, the information was dismissed by order of the Court. The defendants were discharged and the State has sought appeal to the Supreme Court.

RELIEF SOUGHT ON APPEAL BY APPELLEE

Dismissing the appeal upon the basis that the appeal is taken by Utah County Attorney's Office and, as such, is not a proper party to prosecute and pursue the appeal of criminal cases in the Supreme Court of the State of Utah.

Upholding the finding of the lower court that Section 76-6-410(b) and the language of such section as implemented through the information filed in the above matter is unconstitutionally vague.

STATMENT OF FACTS

The appellant's recitation of facts are in conformance with respondents' understanding and with the statements contained in respondents' "Statement of the Nature of the Case".

ARGUMENT

POINT I

THE UTAH COUNTY ATTORNEY LACKS THE AUTHORITY TO PURSUE AND PROSECUTE THIS APPEAL.

The Utah County Attorney is a constitutional officer and is empowered to perform such duties as may be proscribed by law. State vs. Jiminez, Utah, 588 P.2d 707 (1978).

The power and duties of the County Attorney are proscribed by the Legislature in Section 17-18-1, UCA, which provides in pertinent parts:

> "The County Attorney is a public prosecutor, and must: (1) conduct on behalf of the state all prosecutions for public offenses committed within this county. . . (3) . . . the county attorney shall appear and prosecute for the state in the district court of his county in all criminal prosecutions and may appear in all civil cases in which the state may be interested and render such assistance as may be required by the attorney general and all such cases that may be appealed to the Supreme Court. . . ."

The attorney general is a constitutional officer whose duties are also proscribed by law. State vs. Jiminez, supra. Section 67-5-1, UCA, provides in pertinent parts, the role of the attorney general:

> "It is the duty of the attorney general: (1) to attend the supreme court of this state and all courts of the United States and prosecute or defend all causes to which the state. . . is a party. . . (5) to exercise supervisory powers over the . . . county attorneys of the state in all matters pertaining to the duties of their office. . . (7) when required by the public service or directed by the governor to assist in any . . county attorny in the discharge of his duties."

This appeal is taken by the Utah County Attorney in the name of the State. The record does not disclose that the Utah County Attorney is rendering "such assistance as may be required by the attorney general in all such cases that may be appealed to the

supreme court."

The appeal must be dismissed where the Utah County Attorney takes an appeal in the name of the State without the indication in the record that such appeal is pursued by the county attorney as to render such assistance as may be required by the attorney general in a case that is appealed to the supreme court. State vs. Loddy, (Utah, September 29, 1980) 618 P.2d 60.

POINT II

THE CHARGING SECTION, UCA 76-6-410(b) IS SO VAGUE IN DEFINING THE PROHIBITIVE ACTS THAT IT DENIES THE DEFENDANTS DUE PROCESS OF LAW.

The United States Supreme Court has long held that no one may be required at the peril of life, liberty, or property to specultate as to the meaning of penal statutes; all are entitled to be informed as to what the State commands or forbids. Linzetta vs. New Jersey, 306 US 451, 59 S. Ct. 618 (1939); Giaccio vs. Pennsylvania, 383 US 399, 86 S. Ct. 518.

Thus, a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess as it's meaning and differ as to it's applicatio violates the first essential madates of the due process clause. Connally vs. General Construction Company, 269 US 385, 46 S. Ct. 126 (1926); United States vs. Cardiff, 344 US 174, 73 S. Ct. 180 (1952).

The reason for such requirements of statutory certainty are obvious and delineated by the Supreme Court in Grayned vs. City of

Rockford, 408 US 104, 92 S. Ct. 2294 (1972):

> "Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissably delegates basic policy matters to policemen, judges and juries for resolution on an ad hock subjective basis, with the attended dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abutts upon sensitive areas of basic first amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone. . . than if the boundaries of the forbidden areas were clearly marked."

In State vs. Musser, (Utah, 1950) 223 P.2d 193, the Utah Supreme Court concluded that the statute must give adequate guidance to those who would be law abidding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused.

In the present statute before the Court, a person is left to speculate as to the meaning of or what might constitute a gross deviation from an agreement. Further, such language as "gross deviation" impermissably delegates basic legislative policy matters to policemen , judges, and juries for resolution on an ad hock subjective basis, with the attendant dangers of arbitrary and discriminatory application.

When a judge or jury is confronted with finding a gross deviation from a rental agreement, the opportunity to varying, subjective and unequal application of the law is present. One jury may find that a gross deviation may constitute one or two

days, while another might extend it over a period of months or even years before they would constitute any violation in the rental agreement to be a gross deviation. Allowing a jury to define the law by allowing them to determine what gross deviation means, would allow an unequal, arbitrary and discriminatory enforce of the statute. A defendant who appeals to the likings of the jury would surely be granted further extension on any agreement before the jury could conclude that there was a gross deviation of the rental contract; however, a different result could be applied where the individual is of a minority or of a personality to the disliking of the jury.

Appellant has cited numerous cases where the Court has ruled with regard to some aspect of a statute somewhat resembling Section 76-6-410(b) of the Utah Code Annotated. In each case, State vs. Craney, 381 A.2d 630 (ME 1978), State vs. Murgatory, 349 A.2d 600 (NH 1975), People vs. Lafler, 393 NY.2d 484 (1977), People vs. Rici, 410 NY. Supp.2d, 619 (1978), and the Utah Court in State vs. McElhaney, 579 P.2d 328 (Utah 1978), State vs. Chavez, 605 P.2d 1226 (Utah 1979), the Court has ruled upon some aspect of the case but has failed to confront the issue of whether the language of "gross deviation" is unconstitutionally vague. The case is a matter of first impression in the State of Utah and has not been ruled on in other states with the exception of the Court of Appeals of Oregon in State vs. Boyd, 28 Oregon. App. 725, 560 P.2d 689.

In State vs. Boyd, the Oregon appellate Court confronted the following language:

> "Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, he knowingly retains or withholds possession thereof without consent of the owner for a so lengthy a period beyond the specified time as to render such retention and possession a gross deviation from the agreement."

The Court upheld the constitutionality of the statute in a five-word ruling; after reciting that the trial court held the statute unconstitutionally vague, the Court stated: "We find to the contrary."

The Court cited State vs. Samter, 4 Oregon App. 349, 479 P.2d 237 (1971) as supportive precedent.

In State vs. Samter, the Court of Appeals of Oregon did not confront a statute or language reflecting the statute before the Court, particularly, "gross deviation." Defendants contend that the Oregon Court failed to deal adequately with the issue of vagueness in it's five-word ruling.

The Utah Court in various cases has found a statute's language void vagueness. In State vs. Packard, 122 Utah 369, 250 P.2d 561 (1952), the section under attack was section 49-1-29 to 32, UCA, 1943; the one with which the Court dealt chiefly concerned section 29 which provided as follows:

> "It is the duty of every person before commencing employment with any person, firm or corporation who the employees are out on labor strick, called by a national recognized union to register with the Industrial Commission of Utah."

The defendant contended that the above language was vague and

uncertain.

In holding that the statute was unconstitutional and void, the court held that the statute failed to inform persons of ordinary intelligence, who would be law abiding, what their conduct must be to conform to it's requirements and the statute failed to advise the defendant what constitutes the offense with which he was charged. Further, the court held that the statute was susceptible of different interpretation and application by those charged with responsibility of implying and enforcing it.

The Packard court cited City of Price vs. Jaynes, 133 Utah 89, 191 P.2d 606 wherein a city ordinance provided that:

> "The right. . . to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated."

The Jaynes court held that such language was vague and uncertain.

In State vs. Musser, 118 Utah 537, 223 P.2d 193, the court held that the phrase "to commit any act injurious. . . to public morals" was unconstitutionally vague.

Recently, the Supreme Court dealt with the issue before this Court in State vs. Bradshaw, (Utah 1975) 541 P.2d 800. In Bradshaw, the defendant was found guilty of violating section 76-8-305, UCA, 1953, which read as follows:

> "A person is guilty of a class "B" misdemeanor when he intentionally interferes with a person recognized to be a law enforcement offical seeking to effect an arrest or detention of himself or another regardless of whether there is a legal basis for the arrest."

The Court held:

"The language of the particular statute we are here dealing with is undoubtedly subject to the constitutional challenge of vagueness. That part of the statute "'regardless of whether there is a legal basis for the arrest" may be subject to various meanings and interpretations. If the intention of the Legislature was to penalize a law abiding citizen by incarceration because he did not willing submit to an unlawful arrest, a statute authorizing the same is in violation of both Utah and the United States Constitution. . . in that it permits and authorizes an arrest without probable cause and without lawful basis for the arrest. Likewise, the word "interfeers" as used in the statute without further definition or elaboration may mean any protest or verbal remonstration with an officer as well as the employment of physical force to avoid an arrest. We are of the opinion that the language of the statute as above pointed out fails to inform an ordinary citizen who is seeking to obey the laws as to the conduct sought to be proscribed. The statute in the particulars above referred to is in violation of the constitution of this state and the United States and, therefore, invalid."

CONCLUSION

The language of the charging statute, particularly "gross deviation from the agreement" is unconstitutionally vague. It fails to give adequate warning to a person of ordinary intelligence to know what is prohibited so that he or she may act accordingly. Secondly, the statutes allows for arbitrary and discriminatory enforcement by police officers and those in charge of prosecution of offenses. Finally, the law impermissably delegates basic policy matters within the sole discretion of the Legislature to policemen, judges and juries, for resolution on an ad hock subjective basis with the attendant dangers of arbitrary and discriminatory application to define what is a crime or not a crime.

The County Attorney lacks the constitutional power to prosecute this appeal.

DATED this 29th day of December, 1980.

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MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing to the Utah County Attorney, 51 South University, Provo, Utah, 84601, postage prepaid this _____ day of December, 1980.