

1990

Logan City v. David Craig Carlsen : Brief of Respondent

Utah Court of Appeals

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W. Scott Barrett; Logan City Attorney.

David Craig Carlsen; Appellant in Pro Se.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 900115-CA

IN THE UTAH COURT OF APPEALS

LOGAN CITY,	*	
Plaintiff-Respondent,	*	Case No. 900115-CA
vs.	*	Case Type: APPEAL
DAVID CRAIG CARLSEN,	*	Priority Number 2
Defendant-Appellant.	*	

BRIEF OF RESPONDENT

AN APPEAL FROM THE FIRST CIRCUIT
COURT OF THE STATE OF UTAH, COUNTY OF CACHE
LOGAN CITY DEPARTMENT, THE HONORABLE
CLINT S. JUDKINS, JUDGE PRESIDING

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STATEMENT SHOWING JURISDICTION OF COURT OF APPEALS

This appeal was taken by the Appellant to the Utah Court of Appeals from the First Circuit Court of the State of Utah, County of Cache, Logan City Department pursuant to Rule 26 of the Utah Rules of Criminal Procedure, U.C.A. Section 77-35-26.

STATEMENT OF ISSUES PRESENTED

1. Does Appellant have standing to challenge L.M.C. Section 10.56.010.
2. Was Appellant placed twice in jeopardy for the same offense of no Utah registration.
3. Is Utah's Motor Vehicle Act unconstitutionally vague.
4. Does the Utah Motor Vehicle Seat Belt Usage Act violate equal protection of the laws.

SUMMARY OF ARGUMENT

I. APPELLANT DOES NOT HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF LOGAN MUNICIPAL CODE SECTION 10.56.010.

II. APPELLANT WAS NOT PLACED TWICE IN JEOPARDY FOR THE SAME OFFENSE OF NO UTAH REGISTRATION.

III. UTAH'S MOTOR VEHICLE ACT IS CONSTITUTIONAL. THE TERM "RESIDENT" FOR PURPOSES OF THE ACT IS NOT VAGUE BUT RATHER CLEARLY DEFINED UNDER UTAH LAW.

IV. UTAH'S MOTOR VEHICLE SEAT BELT USAGE ACT DOES NOT DENY EQUAL PROTECTION OF THE LAWS.

A. THE SEAT BELT ACT IS CONSTITUTIONAL ON ITS FACE.

B. APPELLANT DOES NOT RAISE A VALID CLAIM OF CONSTITUTIONALLY OBJECTIONABLE ENFORCEMENT OF THE SEAT BELT ACT.

ARGUMENT

I.

APPELLANT DOES NOT HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF LOGAN MUNICIPAL CODE SECTION 10.56.010.

Appellant contends that Logan Municipal Code (L.M.C.) Section 10.56.010 is unconstitutional. This argument has been improperly brought by Appellant because Appellant lacks standing to challenge the constitutionality of this particular Section. Appellant was, by amended information, charged and convicted in the court below for violating L.M.C. Section 10.04.010 which incorporates U.C.A.

Section 41-1-18.

The Utah Supreme Court stated in Baird v. State, 574 P.2d 713 (1978):

A party to whom a statute is inapplicable cannot question its constitutionality by seeking a declaration of rights. The general rule is applicable that a party having only such interest as the public generally cannot maintain an action. In order to pass upon the validity of a statute, the proceeding must be initiated by one whose special interest is affected, and it must be a civil or property right that is so affected.

The Utah Court further indicated what Appellant must plead to have a valid claim. "Appellant may seek and obtain a declaration as to whether a statute is constitutional by averring in his pleading the grounds upon which he will be directly damaged in his person or property by its enforcement." (emphasis added.) Appellant must allege facts indicating how he will be damaged by actual or likely enforcement of the statute. Baird 574 P.2d at 716. See also Klein v. Roustadt, 716 P.2d 1060 (Ariz. App. 1986) and 1000 Friends of Oregon v. Deva, 669 P.2d 1183 (Or. App. 1983).

Appellant has not been injured by enforcement of L.M.C. Section 10.56.010 and has not shown any threat of enforcement of the statute against him. Under no condition will a determination of the constitutionality of L.M.C. Section 10.56.010 have an impact on the decision of the trial court below.

This court cannot properly address, and Respondent is not required to defend the constitutionality of L.M.C. Section 10.56.010. Appellant clearly lacks standing to challenge the ordinance.

II.

THE APPELLANT WAS NOT PLACED TWICE IN JEOPARDY FOR THE SAME OFFENSE OF NO UTAH REGISTRATION.

Appellant claims that because the City Prosecutor amended its information during trial, the City placed Appellant twice in jeopardy for the same offense. What Appellant claims to be double jeopardy is actually acceptable criminal procedure in Utah supported by statute and a wealth of case law.

A brief recital of the circumstances surrounding Appellant's charge and conviction below will be helpful. Appellant was originally charged by information for violating L.M.C. Section 10.56.010. During trial, prosecution amended the information charging Appellant with violating L.M.C. Section 10.04.010 rather than Section 10.56.010. L.M.C. Section 10.04.010 incorporates U.C.A. Section 41-1-18, which like Section 10.56.010, requires vehicles to be registered according to the laws of Utah. Subsequently, Appellant was convicted of violating Section 10.04.010.

Prosecution's amendment of the information in this case, with court's permission, is acceptable criminal procedure in Utah. U.C.A. Section 77-35-4(d) provides that a "court may permit an indictment or information to be amended at any time before verdict if no additional or different offense is charged and substantial rights of the Defendant are not prejudiced." The City Prosecutor's amendment was clearly within the purview of this section. The City Prosecutor did not alter the substantive charge nor prejudice Appellant's substantial rights. The Utah Court of Appeals stated

in State v. Pierce, 112 Utah Adv. Rep. 37, 38 (1989), that "Utah law allows amendment of an information before a verdict is issued if no new or different offense is charged and the Defendant is not thereby prejudiced." See also State v. Wilson, 105 Utah Adv. Rep. 19 (1989).

In summation, Appellant was initially charged with failing to have his vehicle registered according to the laws of Utah. He came to trial expecting to defend that charge. During trial, the prosecution did not change that charge but merely the ordinance they proceeded under. This change had no effect on Appellant's potential defense to the charge of which he was convicted. It is clear Appellant could have been prepared to defend against either ordinance since both proscribed the identical conduct.

Further, Appellant is in no position to complain about the adequacy of the amended information on appeal because he failed to raise the issue in the trial court. In Pierce, 112 Utah Adv. Rep. at 38, the Utah Appellate Court stated that "if the Defendant fails to raise the inadequacy of the information before trial by written motion, that issue cannot be raised for the first time on appeal." See also State v. Fulton, 742 P.2d 1208, 1215 (Utah 1987). Appellant acknowledges this deficiency in his Appellate Brief but suggests he can raise it now because his "substantial rights" were affected in trial. As shown above, none of Appellant's substantial rights were affected by the City's acts to amend the information.

Appellant was NOT placed twice in jeopardy for the same offense. He was tried once and only once for failure to have his

vehicle properly registered.

III.

UTAH'S MOTOR VEHICLE ACT IS CONSTITUTIONAL. THE TERM "RESIDENT" FOR PURPOSES OF THE ACT IS NOT VAGUE BUT RATHER CLEARLY DEFINED UNDER UTAH LAW.

Appellant claims the Utah Motor Vehicle Act is unconstitutionally vague. Specifically Appellant suggests the term "nonresident", for purposes of required vehicle registration under the Motor Vehicle Act, is not "sufficiently clear and definite to informed persons of ordinary intelligence what their conduct must be to conform to its requirements." Appellant's argument must fail because "residence" is clearly defined under Utah law. Utah Admin R.873-22-1M provides "resident status for the purpose of vehicle and trailer registration pursuant to U.C.A. Section 41-1-19" is as follows:

B. Any person qualifying as a resident, who operates a vehicle, or allows the operation of a vehicle, in this state, must register it immediately. For the purposes of vehicle, boat, boat trailer or outboard motor registration, the term "resident" means, but is not limited to, the following:

1. every person who is a legal resident of this state; (the fact that a person leaves the state temporarily will not be sufficient to terminate residency.)

2. any person engaging in intrastate business and operating a vehicle, boat, boat trailer or outboard motor, as part of the business with this state, or any person maintaining a vehicle, boat, boat trailer or outboard motor, with this state designated as the home state;

3. any person, except a tourist temporarily within this state, or a student, covered under rule R873-22-4M, who owns, leases, or rents a residence or a place of business within this

state, or occupies or permits to be occupied a Utah residence or place of business;

4. any person engaging in a trade, profession, or occupation or accepting gainful employment in this state;

5. any person allowing a vehicle, boat, boat trailer or outboard motor, to be kept or used by a resident of this state; and

6. any person declaring himself to be a resident of Utah to obtain privileges not ordinarily extended to nonresidents, such as going to school or placing children in school without paying nonresident tuition or fees, maintaining a Utah driver's license, etc.

(Emphasis Added.)

Under the Utah Motor Vehicle Act, residence is clearly defined and Appellant fits squarely within the definition. Appellant admitted that at all relevant times he "rented a residence" in Utah (B.3 above) was "gainfully employed" in Utah (B.4 above) and has "maintained a Utah driver's license" (B.6 above). Residency for purposes of the Motor Vehicle Act is "sufficiently clear and definite" to preserve the constitutionality of the Utah statute.

IV.

UTAH'S MOTOR VEHICLE SEAT BELT USAGE ACT DOES NOT DENY
EQUAL PROTECTION OF THE LAWS.

Appellant contends that the Utah Motor Vehicle Seat Belt Usage Act (Seat Belt Act or Act) U.C.A. Section 41-6-181 Et seq. violates the equal protection clause of the Fourteenth Amendment of the United States and similar provisions in the Utah Constitution. Appellant appears to argue the Act is unconstitutional (A) on its face and (B) in its enforcement. Respondent will address these two

aspects of this point separately.

A.

THE SEAT BELT ACT IS CONSTITUTIONAL ON ITS FACE.

Appellant's argument rests primarily in the assertion that because a class of people are excluded from enforcement of the Act, Appellant was subjected to an "arbitrary and invidious discrimination." The class Appellant refers to is those people "engaged in pick-up, delivery, or service operations involving repeated starts and stops and requiring the front seat occupant to frequently and repeatedly enter and leave the vehicle." U.C.A. Section 41-6-183(5). Appellant does not claim any fundamental right involved or membership in a suspect class, therefore, the constitutionality of the Act must be measured by the traditional rational basis test. (Appellant admits the rational basis test applies in his appellant brief).

Recently the Utah Supreme Court reiterated the principles of the rational basis test as set forth by the United States Supreme Court in Lindsey v. Natural Carbonic Gas Co., 220 U.S. 61 (1910). The Utah Court quoted from Lindsey as follows:

1. The equal protection clause of the Fourteenth Amendment does not take from the state, the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary.
2. The classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality.

3. When the classification of such a law is called in question if any state of facts reasonably can be convinced that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.
4. One who assails the classification in such a law, must carry the burden of showing that it does not rest on any reasonable basis, but is essentially arbitrary.

(Emphasis added.) Utah Public Employees v. State, 610 P.2d 1272, 1273-74 (1980). Appellant has the burden in this case to show the Act "does not rest on any reasonable basis". Appellant has failed to meet this initial burden.

Appellant rests his claim on the legal conclusion that the Act subjects him to arbitrary and invidious discrimination and is not rational. The City is not required to respond until Appellant has adequately met his burden of showing the statute does not rest upon any reasonable basis but is essentially arbitrary. However, it is submitted that the basis for excluding persons "involved in repeated starts and stops requiring the front seat occupant to frequently and repeatedly enter and leave the vehicle" is because of reasons obvious on the face of the Act. The Act excludes those persons whose use of a seat belt would be impractical.

Further, the Utah Supreme Court indicated in Ellis v. Social Services Dept., 615 P.2d 1250, 1255-56 (1980) that "there is a general reluctance on the part of the judiciary to declare a legislative enactment facially unconstitutional. All doubts should be resolved in favor of the constitutionality of a statute and no act should be declared unconstitutional unless it is clearly and palpably so." The court continues to say that "a statute must be

read to be consistent with basic constitutional rights, and will be upheld unless it contains a provision which expressly excludes a constitutional protection." See also 16 Am.Jur.2d, Constitutional Law Section 225 and cases cited therein.

Both Appellant's burden, which he has not met and the presumption of constitutionality indicate the deficiency of Appellant's claim. The Act should be found to be constitutional on its face.

B.

APPELLANT DOES NOT RAISE A VALID CLAIM OF CONSTITUTIONALLY OBJECTIONABLE ENFORCEMENT OF THE SEAT BELT ACT.

Appellant suggests the Act is unconstitutional in its application or enforcement. For such a claim Appellant is required to put forward evidence of "deliberate invidious discrimination." State v. Hodgdon, 571 P.2d 557, 560 (Or. App. 1977). Appellant's claim is based merely on hypotheticals.

The City should not be required to respond to this type of empty claim without evidence to support actual discrimination. The Oregon Appellate Court stated the basis for such a claim in Hodgdon: "The key to a claim of constitutionally objectionable enforcement is evidence of deliberate invidious discrimination. The fact that a criminal statute leaves room for the exercise of discretion in its enforcement does not of itself give rise to a violation of equal protection." The court further observed that: "The United States Supreme Court in three recent cases reiterated the principle that a person challenging an official act as a

violation of the Equal Protection Clause must establish that the purpose, not the result, was invidiously discriminatory." Hodgdon, 571 P.2d at 560.

See Washington v. Davis, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976); Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 97 S.Ct.555, 50 L.Ed.2d 450 (1977); and Massachusetts v. Feeney, 98 S.Ct. 252, 54 L.Ed.2d 169 (1977).

In conclusion, Appellant has failed to articulate a legitimate constitutional claim against the Seat Belt Act, facially or through its enforcement.

CONCLUSION

Appellant's assertions in this appeal are nothing more than a mere shell of legitimate claims. Appellant lacks standing to raise a constitutional claim against L.M.C. Section 10.56.010. Appellant was not placed twice in jeopardy for the same offense in the court below, but rather the information charging him was properly amended by the Prosecution. The Utah Motor Vehicle Act is NOT unconstitutionally vague because the Utah Legislature has meticulously defined the term "residence." And finally, Appellant fails to raise legitimate constitutional claims against the motor vehicle Seat Belt Usage Act. Nevertheless, the Act is constitutional.

Appellant was convicted by a jury of his peers for violating City ordinances. This court should affirm the same.

DATED this 27th day of August, 1990.

A handwritten signature in cursive script, appearing to read "W. Scott Barrett", written over a horizontal line.

W. Scott Barrett
Attorney for Logan City

CERTIFICATE OF MAILING

I hereby certify that I mailed two (2) true and correct copies of the foregoing BRIEF OF RESPONDENT, postage prepaid, to Appellant Pro Se David Craig Carlsen, P.O. Box 148, Logan, Utah 84321 this 29th day of August, 1990.

A handwritten signature in cursive script, appearing to read "W. Scott Barrett", written over a horizontal line.

W. SCOTT BARRETT

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