

1983

# The State of Utah v. Robert Hicken : Brief of Appellant in Support of Petition for Rehearing

Utah Supreme Court

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David L. Wilkinson; Robert N. Parrish; Attorneys for Appellant;  
Shelden R. Carter; Young, Backlund, Harris & Carter; Attorney for Respondent;

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SHELDEN R CARTER  
YOUNG, HARRIS & CARTER  
Attorneys for Defendant/Respondent  
350 East Center  
Provo, Utah 84601  
Telephone: 375-9801

FILED

IN THE SUPREME COURT OF THE STATE OF UTAH MAR 8 1983

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Clerk, Supreme Court, Utah

THE STATE OF UTAH,	:	
Plaintiff/Appellant,	:	RESPONDENT'S BRIEF IN
vs.	:	OPPOSITION TO PETITION
	:	FOR REHEARING
ROBERT HICKEN,	:	Case No. 18321
Defendant/Respondent.	:	

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The Utah Supreme Court affirmed the lower court's dismissal of information against the defendant. Respondent seeks a denial of appellant's request for rehearing.

ARGUMENT

The State chose to charge the defendant with distribution of marijuana and thereby seek the application of the accomplice statutes of the provisions of Section 76-2-202 of the Utah Criminal Code. Defendant responded that he was more properly charged with the offense of "arranging to distribute or dispense a controlled substance for value in violation of Section 58-37-8 of Utah Code Annotated"; that the provisions of Section 76-2-202 of the Utah Criminal Code were not applicable to the present section since specific provisions of Utah Controlled Substance Act, Section 58-37-19, pre-empted the application of said accomplice section.

Section 58-37-19 of said act provides:

Act controlling over conflicting provisions of other state laws.--It is the purpose of this act to regulate and control the substance designated within this Section 58-37-4 and whenever the requirements prescribed, the offenses defined or penalties imposed relating to the substances controlled by this act shall be or appear to be in conflict with Title 58, Chapter 17, or any other laws of this state, the provisions of this act shall be controlling.

Further attention is drawn to the provisions of Section 76-1-103(1) of the Utah Criminal Code. Said provisions provide:

The provisions of this code shall govern the construction of, punishment for and defenses against any offenses defined in this code or, except where otherwise specifically provided or the context otherwise requires, any offense defined outside this code; provided such offense was committed after the effective date of this code.

The State hereby seeks to argue upon its petition for rehearing that the Court erred in the interpretation and construction of the provisions of 58-37-8(1)(a)(iv). The State argues that it is necessary to have a "turkey buy" for the provisions of the arranging statute to apply. The State argued and the Court heard said argument upon the appeal on its merits. The Court responded to said argument with the following language:

Clearly the legislature was not that myopic. Subsection (iv) makes it unlawful to agree, consent, offer or arrange to distribute or dispense a controlled substance for value or to negotiate to have a controlled substance distributed or dispensed for value and distribute, dispense, or negotiate the distribution or dispensing of any other liquid, substance, or material in lieu of the specific controlled substance so offered, agreed, consented, arranged or negotiated (emphasis added).

Consequently, the arranging to distribute or dispense a controlled substance for value is a violation of this act and subject to the penalties prescribed therefor. No "turkey buy" is necessary.

CONCLUSION

The petition for rehearing should be denied. The petition raises no further issues that have not been treated at the prior hearing.

RESPECTFULLY SUBMITTED this 25 day of March, 1983.

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SHELDEN R CARTER  
Attorney for Defendant/Respondent

I HEREBY CERTIFY that I mailed a copy of the foregoing to David L. Wilkinson, Attorney General, Robert N. Parrish, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, postage prepaid, this 25<sup>th</sup> day of March, 1983.

***Shirley Reynolds***

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