

1959

Salt Lake City v. Stanley Mozley Perkins : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Salt Lake City v. Perkins*, No. 9077 (Utah Supreme Court, 1959).
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CLERK'S OFFICE

IN THE SUPREME COURT
of the
STATE OF UTAH

SALT LAKE CITY,
A Municipal Corporation,

Plaintiff and Respondent,

vs.

STANLEY MOZLEY PERKINS,

Defendant and Appellant.

Case No. 9077

APPELLANT'S BRIEF FILED

JUL 21 1959

Clerk, Supreme Court, Utah

VERL C. RITCHIE

Attorney for Appellant

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Defendant and Appellant.

Case No. 9077

APPELLANT'S BRIEF

STATEMENT OF FACT

This is an appeal from a case originating in the Salt Lake City Court wherein the District Court, after a trial de novo, entered a judgment of conviction to the charge of driving an automobile while under the influence of intoxicating liquor. The only question that can now be properly determined by the Supreme Court is that which involves the validity or constitutionality of a statute. In other cases, of course, the decision of the District Courts on such appeals is final.

In this case, appellant was arrested on October, 27, 1958 at Salt Lake City, Utah and was induced to submit to a blood alcohol test without having been offered the choice of the alternative tests under Section 41-6-44.10 of the Laws of 1957, (R. 21). The arresting officer on direct examination testified that he asked appellant if he would submit to a blood alcohol test and testified that "after, when we finally got to the County Hospital, he finally consented, yes. At that time he didn't say "yes" or "no", he wanted more advice to it." (R. 14). On cross examination the arresting officer advised that he had a continual conversation with appellant from the time of arrest to time of taking appellant to the police station and then to the Salt Lake County Hospital and stated that appellant refused at first to take the blood test. (R. 19). Appellant wanted to know what his rights were and the arresting officer at no time told him that he had the alternative choice of several tests under the statute above referred to. The arresting officer, in attempting to explain to appellant what his rights were stated in substance that if he didn't take the blood tests that it was the procedure on refusal that his license would be revoked. (R. 20).

Further, the arresting officer did not advise appellant that he had the right to have his physician take a blood test in addition to the test taken.

The arresting officer was not aware that appellant had such a right. (R. 20).

It is clear that the arresting officer at no time mentioned any other type other than the blood test to defendant. (R. 21).

STATEMENT OF POINTS

POINT I

SECTION 41-6-44.10 LAWS OF UTAH, 1957, UNDER WHICH APPELLANT WAS INDUCED TO SUBMIT TO BLOOD TEST IS INVALID AND UNCONSTITUTIONAL.

ARGUMENT

POINT I

SECTION 41-6-44.10 LAWS OF UTAH, 1957, UNDER WHICH APPELLANT WAS INDUCED TO SUBMIT TO BLOOD TEST IS INVALID AND UNCONSTITUTIONAL.

Appellant contends that the statute in question constitutes a violation of the state and federal constitutional provisions. Indeed, this court has only recently announced that it has "grave doubts as to the validity of the statute." *Ringwood vs. State*, 8 Utah (2d) 287, 33 P. 2d 943. At least, the original opinion filed herein so indicated.

The statute, of course, provides that a driver is deemed to give his consent to a chemical test of his breath, blood, urine or saliva for the purpose of

determining the alcoholic content of his blood, etc. This court in the case of *Ringwood vs. State, supra*, held that the intent of the statute was that the subject could comply by giving a test of anyone of the substances. In that case, as in the present case, the officer confronted the driver with the choice that he must give his blood for the test or his license would be revoked. This court held that such procedure was not in accordance with the requirements of the statute and there was no valid basis for revoking of the license. While, of course, the facts of this case are at variance with those of the *Ringwood* case, we respectfully submit and urge that under the circumstances of the present case the evidence as obtained by the illegal procedure under the above statute should not be available to respondent to sustain the conviction. In other words, appellant contends that because of the failure of respondents to comply with the terms of the statute, i.e., to give the alternative choices of the type of test least objectionable to appellant, that it results in an unconstitutional application of the statute in question, and is invalid as to appellant, even though no proceedings were taken thereunder to revoke appellant's license.

It should be noted that the arresting officer engaged the appellant in almost continual conversation and admitted that appellant at first refused

to consent to any blood test and after purportedly advising the appellant as to what his rights were, (R. 19-20), the arresting officer finally brought the matter up for decision and appellant finally consented (R. 14-20). The officer utterly and miserably failed to carry out the intent and purpose of the statute which definitely and absolutely affected appellant's rights by the unlawful application of the statute. It is not a question alone of defendant's guilt or innocence, but of the illegal and inept manner in which law officers have been allowed to use coercion by insisting that the accused must submit to a blood test or that his driver's license would be revoked.

CONCLUSION

It is respectfully submitted that a decision as to the validity of Section 41-6-44.10 Laws of Utah, 1957 in its application to the facts at hand, should have been made in the District Court, and in any event the Supreme Court should declare said statute unconstitutional and invalid.

Respectfully submitted,

VERL C. RITCHIE
Attorney for Appellant