

1983

American Fork City v. Louis L. Cosgrove : Appellant's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

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AMERICAN FORK CITY, :
Plaintiff/Respondent, :
vs. : Case No. 19174
LOUIS L. COSGROVE, :
Defendant/Appellant. :

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APPELLANT'S BRIEF

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Appeal from the Fourth Judicial District Court
in and for Utah County, State of Utah
Honorable David Sam, Judge

--ooo0ooo--

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APPELLANT'S BRIEF

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STATEMENT OF THE NATURE OF THE CASE

Defendant has appealed his conviction from the Circuit Court for Utah County, State of Utah, American Fork Department, for the offense of driving under the influence of alcohol. Defendant seeks a reversal of the conviction entered herein and upheld on appeal by the Fourth Judicial District Court for Utah County, State of Utah. Further, defendant seeks the Court's ruling upon defendant's motion to suppress which was filed with the Court and the objection made by counsel to the introduction of the breathalyzer test by the prosecuting authority, American Fork City.

DISPOSITION IN THE LOWER COURT

The Court sustained the conviction and upheld the admission of the breathalyzer evidence.

RELIEF SOUGHT ON APPEAL

Defendant seeks a reversal of the judgment.

STATEMENT OF FACTS

Defendant was arrested for the offense of driving under the influence of alcohol. After defendant was stopped, the officer searched the defendant and requested him to perform certain field sobriety tests. After said field sobriety tests were completed, the officer placed the defendant under arrest and transported him to the American Fork City Police Department. At said location, the officer requested the defendant to take a chemical test, particularly the breathalyzer examination. The defendant initially refused to take the chemical test examination. The officer then advised the defendant, pursuant to the implied consent statute (§41-6-44.10 Utah Code Annotated), that if the defendant refused to submit to the chemical test as requested by the peace officer, the defendant's refusal could result in the revocation of his license to operate a motor vehicle within the State of Utah. After the defendant was advised of the consequences pursuant to Section 41-6-44.10, and recognizing the possible loss of his license, the defendant complied with the officer's request and submitted to the test.

At trial, defendant objected to the introduction of the breathalyzer test in that it denied the defendant's constitutional rights as guaranteed under the Utah State Constitution, Article 1, Section 12, as further explained in the case of Hansen v. Owens, 619 P.2d 315 (Utah 1980).

ARGUMENT

The Utah State Constitution, Article 1, Section 12, provides:

RIGHTS OF ACCUSED PERSONS: In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel . . . the accused shall not be compelled to give evidence against himself . . .

In the recent case of Hansen v. Owens, supra, the plaintiff in original proceedings sought to enjoin enforcement of an order directing petitioner (plaintiff) to furnish examples of his handwriting for use in connection with forgery charges against him. The petition focused attention upon the meaning and effect to be given to the protective provisions of the state and federal constitutions relating to being required to incriminate oneself.

The Court stated:

However, it seems significant that the framework of our Utah Constitution in Section 12 of Article 1 stated that: "The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against herself nor a husband against a wife . . ."

In legal formulations, it is to be assumed that the words used were chosen advisedly. This is particularly true in such foundational documents as constitutions which it can be assumed are framed with greater than usual care and deliberation . . . "to give evidence against himself" as used in our constitution, was intended to mean something different and broader than the phrase "to be a witness against himself" as used in the federal constitution.

. . . the order directs the accused to do the affirmative act of writing. Considered under our Utah Constitutional provision, we see no controlling distinctions between making him respond to questions for possible use against him relating to an alleged crime and making him write for that purpose.

SUMMARY

The defendant's performance of the field sobriety test and the performance of a breathalyzer test required an affirmative act upon the defendant at the request, command, or demands of a police officer, an agent of the State of Utah. Such acts

...d the accused to give evidence against himself.

The requirement that defendant submit to the breathalyzer
... test is in violation of the Utah State Constitution and
... evidence obtained thereby should be suppressed.

DATED this 27 day of July, 1983.


SHELDEN R CARTER
Attorney for Defendant/Appellant

I HEREBY CERTIFY that I mailed a copy of the foregoing to
Rollin Thorley, Attorney for Plaintiff/Respondent, 306 West Main
Street, American Fork, Utah 84003, postage prepaid, this 27th
day of July, 1983.

