

1963

State of Utah v. James Loyd Underwood : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

A. Pratt Kesler; Gordon A. Madsen;

Patterson, Foley & Phillips; C. C. Patterson; Robert V. Phillips; Attorneys for Appellant;

Recommended Citation

Brief of Appellant, *State v. Underwood*, No. 9723 (Utah Supreme Court, 1963).

https://digitalcommons.law.byu.edu/uofu_sc1/4143

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

No. 9723

In the Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondents,

vs.

JAMES LOYD UNDERWOOD,

Defendant-Appellant.

Appellant's
RESPONDENT'S BRIEF

Appeal from the Judgment of the 2nd District Court
of Weber County, Hon. Parley E. Norseth, Judge.

PATTERSON, FOLEY & PHILLIPS
C. C. PATTERSON and ROBERT
V. PHILLIPS
427 - 27th Street
Ogden, Utah

Attorneys for Appellant

UTAH STATE ATTORNEY GENERAL

Salt Lake City, Utah

Attorney for Plaintiff-Respondent

I N D E X

STATEMENT OF KIND OF CASE.....	2
DISPOSITION IN LOWER COURT	2
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2

ARGUMENT

POINT I. That the revocation in question resulted from an error in the Drivers License Division of Motor Vehicles Department of the State of Utah	4, 5
---	------

POINT II. That the notice and suspension given the Defendant by the Drivers License Division of the State of Utah did not comply with fundamental rules of due process	4, 6
--	------

A—Said Notice misled the Defendant into believing that he had no right to appeal.....	4, 6
---	------

B—Said notice left days blank and was in effect so ambiguous to give defendant no notice of revocation	5, 12
--	-------

CONCLUSION	13
------------------	----

CASES CITED

The Application of Goodwin, 17 N.Y.S. 2d 426 N.Y. 1940	8
Fake v. MacDuff, 116 N.Y.S. 2d 597	9

	Page
Kafka v. Fletcher, supra (272 APP DIV 364, 71, N.Y.S. 182)	10
McAnerney v. State, 341 P 2d 212 Utah, 1959.....	7
Ratliff vs. Lampton et al, 195 P 2d 792 Calif. 1948.....	10
Schutt v. Macduff, 127 N.Y.S. 2d 116 N.Y. 1954.....	8
Sheridan v. Fletcher, supra	9

TEXTS CITED

Vehicle Code, Sec. 304, 307, 315 Sub. A3.....	11
---	----

IN THE SUPREME COURT
of the
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondents,

vs.

JAMES LOYD UNDERWOOD,

Defendant-Appellant.

RESPONDENT'S BRIEF

STATEMENT OF KIND OF CASE

This case is an appeal from a conviction in the District Court on the charge of driving a motor vehicle during the period of revocation.

DISPOSITION IN LOWER COURT

The case was tried de novo on appeal from City Court in the District Court in Weber County, Utah, on a stipulated set of facts and from a judgment of guilty the Defendant appeals.

RELIEF SOUGHT ON APPEAL

The Defendant seeks reversal of judgment and acquittal of the charges of driving during revocation.

STATEMENT OF FACTS

On the 11th day of June, 1960, the Defendant was charged with operating a motor vehicle upon a public highway of the State of Utah, U-204, in Weber County, Utah, while his driver's license was suspended. That at the trial of the case, it was stipulated that Mr. Underwood, the Defendant, was in effect driving a motor vehicle at the time charged. (T-3) However, the validity of the revocation of the Defendant's driver's license was attacked at the hearing (T-3). The record indicates that prior to being arrested for the present alleged infraction, Mr. Underwood had a six-month suspension for moving violations (T-4), that six-month period of suspension had completely and fully run and at the conclusion of the period, Mr. Underwood went to the State Capitol to the Drivers' License Division to secure a return of his license (T-5). He was informed by the Driver's License Division that they had lost his driver's license somewhere in the Department and it would be necessary to issue him a second duplicate license. (T-5) In order to receive the second license, Mr. Underwood signed an affidavit, at the departments request, that he did not have the original driver's license in his possession. He then received a duplicate license permitting him to drive on the roads of the State of Utah. Hereinafter for the purpose of clarification, the lost license will be referred to as the "original license" and the second license issued as the "duplicate license". Thereafter

the Defendant had a duplicate license in his possession and the right to drive upon the roads of the State of Utah. About the time the duplicate license was to expire, Mr. Underwood received from the State of Utah his original license which had the same expiration date so that he had two driver's licenses in his possession, both the original and the duplicate. (T-6)

Thereafter, Mr. Underwood for a second time received a second order of suspension for moving violations from the Drivers' License Division. At that time he surrendered the duplicate license to the State of Utah pursuant to the order but did not surrender the original license since it had expired at the time of the order. The Defendant then upon one occasion drove his motor vehicle and was picked up and ultimately cited for driving during revocation and at that time displayed to the arresting officer the original driver's license which was expired but which he had maintained in his possession. This was, however, not the instant charge. Upon receipt of notice by the Drivers' License Division that Mr. Underwood had his original driver's license in his possession, the State of Utah Drivers' License Division gave Mr. Underwood an additional year's revocation for making an alleged false affidavit that he did not have a driver's license in his possession at the time of receipt of the duplicate license. (T-8) This, in spite of the fact that it was the State of Utah Drivers' License Division who was responsible for the error and it was the same division who had actual notice of the fact that the affidavit was not false since the original driver's license was in their possession at the time. It was that year's revocation given to Mr. Under-

wood for making a false affidavit that cause the instant case since Mr. Underwood was driving during that period of revocation when picked up and charged. Mr. Underwood received no notice of a right to a hearing, but was rather sent department driver's license order, a copy of which is found in the file, at page 14. Mr. Underwood had further been before Mr. Miller of the Drivers' License Division and had been advised that there was no reason for him ever to return because it would do no good (T-14) and Mr. Underwood, in reliance on what Mr. Miller said and on the wording of the order which stated as a past fact "it is hereby ordered that the above described driving privilege and license privilege and license issued to the above named person be, and the same are hereby revoked for the period of one year . . . your driver's license will be held for an an additional year from the date it is received in this department." No notice of any right to hearing was given, but rather Mr. Underwood was advised as a past fact that his license had been revoked.

POINT I. THAT THE REVOCATION IN QUESTION RESULTED FROM AN ERROR IN THE DRIVERS LICENSE DIVISION OF MOTOR VEHICLES DEPARTMENT OF THE STATE OF UTAH.

POINT II. THAT THE NOTICE AND SUSPENSION GIVEN THE DEFENDANT BY THE DRIVERS LICENSE DIVISION OF THE STATE OF UTAH DID NOT COMPLY WITH FUNDAMENTAL RULES OF DUE PROCESS.

A. SAID NOTICE MISLED THE DEFENDANT

INTO BELIEVING THAT HE HAD NO RIGHT OF APPEAL.

B. SAID NOTICE LEFT DAYS BLANK AND WAS IN EFFECT SO AMBIGUOUS TO GIVE THE DEFENDANT NO NOTICE OF REVOCATION.

ARGUMENT

POINT I. THAT THE REVOCATION IN QUESTION RESULTED FROM AN ERROR IN THE DRIVERS LICENSE DIVISION OF MOTOR VEHICLES DEPARTMENT OF THE STATE OF UTAH.

As set out in the record, the facts suggest that any error in the case was the error of the State of Utah through the Motor Vehicle Department and not the error of Mr. Underwood.

It is submitted that it is contrary to any principal of law and justice to punish an individual for the error of the government through its administrative body, the Drivers License Division. This was the type of mistake that certainly could happen to any administrative agency but it is further the type of error that once having occurred should be corrected by the Motor Vehicle Division and should not result in a penalty being imposed upon Mr. Underwood.

The present action comes to this Court based upon the fact that Mr. Underwood did drive his automobile during the period of the erroneous suspension. He is now in the position that he is in jeopardy of punishment for violating a suspension order which, had the Driver's License Division been cognizant of its own acts, would have never been issued.

POINT II. THAT THE NOTICE AND SUSPENSION GIVEN THE DEFENDANT BY THE DRIVERS LICENSE DIVISION OF THE STATE OF UTAH DID NOT COMPLY WITH FUNDAMENTAL RULES OF DUE PROCESS.

A. SAID NOTICE MISLEAD THE DEFENDANT INTO BELIEVING THAT HE HAD NO RIGHT TO APPEAL.

The uncontroverted record in the case indicates that Mr. Underwood received notice from the State of Utah in the form set forth in the appendix. That the terminology of the revocation read as follows:

"It is hereby ordered that the above described driving privilege and License issued to the above named person be, and the same are hereby revoked for a period of one year, beginning....., 19.....

YOUR DRIVER'S LICENSE WILL BE HELD FOR AN ADDITIONAL ONE YEAR FROM THE DATE IT IS RECEIVED IN THIS DEPARTMENT."

"It is further ordered that you, the above named person, shall NOT operate any motor vehicle on the highways of this state during the period above set forth, and that you forthwith surrender to this DEPARTMENT your said license (unless heretofore surrendered) as in said Act provided.'

"This cause for such action is stated as follows: MAKING OF A FALSE AFFIDAVIT."

The wording of the order as set forth clearly indicates that the revocation had taken place and that it

was a past accomplished fact and contrary to the procedure in other Departments does not advise the Defendant of any right to appeal but rather clearly misleads him into believing that the suspension was an accomplished fact and by its wording, to the layman, does not appear to leave any door open for review or appeal.

The Law throughout the United States clearly indicates that revocation by orders of this type must comply with fundamental rules of due process in legal proceedings. As late as 1959 this Court in the case of *McAnerney v. State*, 341 P(2) 212 Utah 1959 has made the following pronouncement:

“For the guidance of the department of public safety, we observe that if there is a request by a suspended driver, he should have the privilege of having witnesses subpoenaed in his own behalf. The department, in conducting its hearings, should substantially comply with the fundamental rules of due process in legal proceedings, even though all of the particular formalities required in Court proceedings need not be met.

Though the applicant contends that in the hearing before the department, he was denied due process of law, we are of the opinion that the provisions of the law are reasonable regulations in the safeguarding of lives and property upon the highway, even though a driver may have his license suspended pending the hearing. The right to hearing before the department and its determination being subject to re-examination

in the Court is sufficient to protect the substantial rights of the driver.”

There are numerous cases in which the rights to a driver's license are discussed. Among those are the following, to-wit:

Schutt v. Macduff

127 N.Y.S. 2d 116 N.Y. 1954.

“A license to operate an automobile is not a gift or favor from a sovereign but it is a thing of real value which may not be revoked arbitrarily and taken away capriciously. One possessing a driver's license and having the proper ability and qualifications to drive an automobile may not be deprived of his license without opportunity to be heard upon all possible issues of law and fact. The statute declaring that a motor vehicle operator is deemed to have consented in advance to blood and chemical tests for the purpose of determining alcoholic content of his blood, if test is administered at direction of police officer having reasonable ground to suspect such operator of driving in an intoxicated condition, and subjecting person to revocation of his license upon a refusal to submit to tests is unconstitutional as denial of due process in absence of the inclusion of a provision limiting its application to the case where there has been a lawful arrest and provision entitling the licensee to an ultimate hearing upon adequate record before the final revocation of the license.”

The Application of Goodwin

17 N.Y.S. 2d 426 N.Y. 1940.

"One to whom the motor vehicle bureau issues a license to drive an automobile has a vested right therein which cannot be taken from him capriciously or arbitrarily. In a proceeding to revoke an automobile driver's license, a commissioner of motor vehicles has quasi judicial functions, which he must exercise in a legal manner, one whose automobile license is sought to be revoked on another ground than his conviction of a crime has the right to be confronted with witnesses and given the opportunity to cross-examine his accusers at a hearing before the commissioner of motors. Failure to give the accused an opportunity to be heard in his own defense and to cross-examine his accusers violates a basic right accorded to every citizen under our constitution."

Fake v. Macduff

116 N.Y.S. 2d 597.

"This is a proceeding for the revocation of a motor vehicle operator's license wherein the driver sought an order directing the commissioner of motor vehicles to show cause why an order should not be made commanding him to annul and cancel his order suspending petitioner's operator's license.

"The petitioner was entitled to a judicial hearing and not a mere inquisition."

"As stated by Justice Heffernan, written for the Court in *Sheridan v. Fletcher*, *supra*:

'A licensee to operate a motor vehicle is a

valuable one; it is a right of which no citizen should be deprived except on clear and convincing proof warranting such drastic action.’”

“As stated by Justice Cohan, writing for the Court in *Kafka v. Fletcher, supra* (272 APP 364, 71, N.Y.S. 182)”.

‘We also desire to call attention to the fact that in a proceeding such as this where revocation or suspension of a license is permissive, the statute requires that the holder of the license shall have the opportunity to be heard except where such revocation or suspension is based solely on a Court conviction.’”

*** Good cause must be shown to warrant revocation or suspension of a license, based upon competent, legal testimony. At such hearing petitioner has the right to be confronted by the witnesses who testified against him and he should be afforded an opportunity to cross-examine his accusers.’”

N.Y. 1952

Ratliff v. Lampton et al

195 P 2d 792 Calif. 1948

“The question is whether the department was authorized to revoke the license without giving plaintiff an opportunity to be heard. The answer is to be found in the pertinent provisions of the Vehicle Code as amended in 1945 which were in force and effect when the order was issued.

“We are not concerned with those provisions

which make it mandatory upon the department to revoke or suspend the privilege of any person to operate a motor vehicle upon the highway upon receipt of a record showing that he has been convicted of certain specified offenses. Vehicle Code, Section 304, 307, 315, Sub. A 3. In such cases the facts have already been determined in a criminal proceeding. A different situation is present, however, where, as here, the department just makes an independent determination of facts as a basis for its actions, and this was recognized by the legislature in the detailed, albeit somewhat confusing, provision of the 1954 Code relative to investigation, re-examination, hearing and review. Section 315 provided that a person was entitled to demand a hearing before the director within 60 days after notice of suspension or revocation by the department. The hearing might be held before the director or representatives appointed by him and was to be conducted as near as practicable according to the rules of procedure governing civil actions. It was further provided that an application for a hearing should not operate to stay any action of the department. . .

‘There was no express provision in the Code which authorized the department to revoke plaintiff’s license without first giving him an opportunity to be heard, and where, as here, a license can be revoked only for good cause, this requirement carries with it the right to notice and hearing as a condition to revocation unless there is

a clear showing of legislative intent to dispense with that right.'

. . . The fact that the Vehicle Code provided for a revocation subsequent to the review does not alter this rule. We should not imply legislative intent to deprive a person of this license without the prior opportunity to be heard unless compelled to do so by the plain language of the statute, regardless of whether there is a right to an administrative review after revocation."

POINT II. B. SAID NOTICE LEFT DAYS BLANK AND WAS IN EFFECT SO AMBIGUOUS TO GIVE DEFENDANT NO NOTICE OF REVOCATION.

It is further respectfully submitted that the revocation order is ambiguous in that: (1) It states no definite period of suspension but rather leaves the beginning date blank. (2) That it indicates the time to commence the year of revocation from the date the license was received by the Department of Motor Vehicles, while the license had long before expired and was not in effect, a valid drivers license under any stretch of the imagination. It is submitted that any suspension time should run from the time the license expired rather than from the time it was surrendered to the Department since in force and effect it was a useless piece of paper having long since expired.

It is therefore submitted that by reason of its ambiguous and, too, by reason of the date the suspension was to start that the order itself should not be entitled to the force and effect of law.

CONCLUSION

It is submitted that the tenor of this notice entitled Order gave the defendant no notice of his right to appeal and rather couched as it was in terminology of the present tense, tended to mislead the defendant into believing that he had no right of appeal. In light of the pronouncement of the Supreme Court in the first cited case above, that fundamental rules of due process should apply to this type hearing, it is submitted that rather than due process, the Order itself suggests and presents a misleading inference that the defendant had no right to appeal. The Order itself, it is submitted was vague and ambiguous in that it indicates a revocation for a period of one year and has no beginning date that the revocation is to run.

The above facts, coupled with the fact as stipulated in the hearing before this Court that the defendant had a meritorious defense to the action and who, as a matter of fact, rather than making a false affidavit, had made a true affidavit and any errors committed in the subject case were the errors of the State of Utah through the Driver's License Division who is the moving party in the matter.

It is submitted to the Court in conclusion that the defendant was denied due process in the revocation of his driver's license in that he was substantially misled into believing that he had no right to appeal based upon the wording of the suspension Order itself and the advice given him by Mr. Miller that under no circumstances or event was he to return to his office. If, in fact, the purpose of the criminal law is to deter future mis-

conduct, then in fact, there is no purpose in proceeding against a man in compliance with the Motor Vehicle Code, when, as a matter of fact, the general offense the man is charged with is based upon a mistaken order out of the Driver's License Division and further the mistaken order was based upon the acts of the Division itself and not upon any misconduct of the defendant, James Loyd Underwood.

It is respectfully submitted that for the reasons set forth in this Brief, the present case charging the defendant, James Loyd Underwood, with driving during revocation, should be found in Mr. Underwood's favor and a verdict of Not Guilty rendered.

Respectfully submitted,

C.C. PATTERSON AND
ROBERT V. PHILLIPS,

*Attorneys for the Appellant
and Defendant*

427 - 27th Street
Ogden, Utah