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The State of Utah v. Charles Orvell Colston : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT of the STATE OF UTAH

STATE OF UTAH,

Plaintiff - Respondent,

vs.

CHARLES ORVEL COLSTON

Defendant - Appellant.

Case No. 10076

BRIEF OF APPELLANT

Appeal from conviction of Vehicle Registration in
The District Court of Carbon County,
Hon. Henry Ruggeri.

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STATEMENT OF THE NATURE OF CASE

This is a criminal action. The defendant was charged with Improper Registration (41-1-127, U.C.A., *1953*).

DISPOSITION IN LOWER COURT

The case was tried without a jury in the City Court of Price, Utah. The Defendant was convicted and appealed to the District Court of Carbon County. Judge Henry Rugerri presided.

The defendant was convicted again and appeals on constitutional grounds.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the judgment and dismissal of the complaint as a matter of law on constitutional grounds.

STATEMENT OF FACTS

The *evidentuary* facts which are material to this case, as offered by the state, are:

1. The defendant was the driver of a pickup truck, pulling a house trailer.

2. Both truck and trailer weighed an accumulated 15,400 pounds on the scales at the weigh station in Carbon County.

3. The highway patrol weighmaster looked at the registration certificate which was in the glove box of the truck; looked at the numbers 12,000 which were stenciled on the side of the truck; issued a citation to the defendant for *Improper Registration;* and permitted the defendant to drive away in the same truck, pulling same trailer.

4. Period!

The *procedural* facts are:

1. The defendant entered a plea of innocence in the Price City Court to a complaint alleging violation of Title 41-1-*134*, U.C.A., 1953; was tried without a jury; was convicted; and appealed to the District Court of Carbon County.

2. The case was tried before the District Court without a jury, Judge Henry Ruggeri presiding, on the very same complaint (*very same piece of paper*); and over objection (T. 4), the state was permitted to amend (T. 6) by deleting Section *134* and inserting Section *127*, an entirely new charge.

3. The defendant contended such an amendment was tantamount to a dismissal of Section *134* (T. 24); a misdemeanor, cause jeopardy to set in (Title 77-51-6, U.C.A., 1953); and that the court was without juridiction to proceed with Section *127* (T. 24). The court ruled otherwise (T. 25).

4. The state called the weighmaster as its only witness (T. 7). The trial court sustained defendant's objection that the hearsay testimony of this witness was not the best evidence concerning the registration of the truck and trailer (T. 9), though he was permitted to testify that each had been registered *separately* and *not* as one unit or *combination* (T. 12). His testimony pertaining

to the accuracy of the scales was likewise excluded with objection (T. 11, 12), because, too, it was admitted the state had not checked them for over 8½ months (T. 11).

5. The state rested. The defendant made a motion to dismiss, and the court took it under advisement (T. 14).

6. Defendant called no witnesses, but gave somewhat of a proffer of proof for purposes of informing the trial court of his position and to preserve the record for appeal.

The following grounds were cited in support of defendant's Motion to Dismiss:

a. The state had failed to prove a public offense had been committed (T. 14).

b. The state had failed to prove the defendant had committed a public offense (T. 14).

c. The state had failed to prove either of the above two by sufficient evidence (T. 14).

d. The defendant had been in jeopardy when Section *134* was replaced by Section *127* in the complaint (T. 24).

7. Both sides rested, summed up and submitted the matter (T. 14-46).

8. Deenfdant's motion to dismiss was denied (T. 46).

9. The court found the defendant was "guilty of the charge made against him," Section *127*, (T. 46, 47) and sentenced him to pay a fine or serve time (T. 47).

The court stated: "I *don't* think Mr. Colston here is *wilfully* doing anything that is not right; that he is here spending money to determine his constitutional rights in this matter. The court has taken that into account." (T. 48)

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN CONVICTING DEFENDANT UPON A CHARGE NOT MADE AND BY SO DOING DENIED DEFENDANT DUE PROCESS OF LAW.

The defendant was denied due process because the charge for which he was convicted (Title 41-1-*128*, U.C.A., *1953*, unlawful operation of registered vehicle

with excessive gross laden weight) was not made. (*Cole vs. Arkansas,* 333 U.S. 196, 92 L. Ed. 644, 68 S. Ct 255; *"Shufflin' Sam" Thompson vs Louieville,* 362 U.S. 100, 4 L. Ed. 2d 654, 80 S. Ct. 624, 80 A.L.R. 2d 1355; *DeJong v. Oregon,* 299 U.S. 353, 81 L. ed. 278, 57 S. Ct. 255; 14th Amendment of United States Constitution; Article 1, Section 7, Utah Constitution.)

The original charge made was Title 41-1-*134,* U.C.A., *1953,* (delinquent *registration* fees).

The charge, as permitted to be amended, was Title 41-1-*127,* U.C.A., *1953,* (*registration fees* — gross laden weight), having sub-sections from (a) to (h), inclusive. Sub-sections (a) to (g), inclusive, merely set out the particulars as to vehicles, weights and fees, and provide no penalties. Sub-section (h) is the only provision in all of Section *127* making an act unlawful. And that is limited to stenciling a gross laden weight on a vehicle that does not correspond with the gross laden weight on the certificate of registration.

Such is not the instant case. *The defendant has not violated the law for which he stood charged.* (Title 41-1-*127,* U.C.A., *1953*)

It is interesting, important and necessary that Sub-section (h) be scrutinized more cautiously, wherein it shall be discovered that (verbatim) "the tax commission

shall require that *every vehicle* (Note singularity!) *registered by gross laden weight,* have painted, or stenciled upon both the left and the right sides thereof, in a conspicuous place, in letters of a reasonable size as determined by the tax commission, the gross laden weight for which *it* is *registered;* provided, where vehicles are *registered in combination,* the gross laden weight for which the *combination of vehicles* (Note plurality!) is registered shall be displayed upon the power unit thereof as provided for herein.

In the instant case:

1. Defendant owned and *registered* his sedan automobile, *passenger* car, (T. 21, 44) *separately* (as provided in Title 41-1-*127-b,* U.C.A., *1953*).

2. The defendant owned and *registered* his *house trailer* (T. 13, 16, 21, 44) *separately* (as provided in Title 41-1-*127*-c, U.C.A., *1953*).

3. Defendant owned and *registered* his *pickup truck* by and for twice the laden weight (T. 16, 21, 32, 44) *separately* (as provided for in Title 41-1-*127*-f, U.C.A., *1953*, first paragraph, re transportation of property, After all, a truck!).

The second paragraph of Title 41-1-*127* (f), U.C.A., *1953*, provides (verbatim) that "where *motor* vehicles,

except passenger cars, are operated in *combination* with semitrailers, or trailers (including house trailers), each such *motor* vehicle shall be required to register for the total gross laden weight of all of said *combination. A* (1) set of identification plates shall be issued for each *motor* vehicle *so registered.*"

A *trailer* is a vehicle, *not* a *motor vehicle*. (41-1-(1)-(a), U.C.A., 1953).

A *pickup truck* is a *motor* vehicle. (41-1-(1)-(b) U.C.A., 1953).

The *trailer* was registered *separately, as a trailer,* and received its own identification plates (T. 13, 16, 21).

The *pickup truck* was registered *separately,* as a *pickup truck,* and received its own identfication plates (T. 13, 16, 21).

The two were *not "so registered,"* last two words of second paragraph, (41-1-*127*-(f), U.C.A., *1953*), as to be operated as a *combination.* And the tax commission did *not* issue " *A*(1) set of identification plates," (last sentence, second paragraph, 41-1-*127*-(f), U.C.A., *1953*) for any *combination*. It issued *two* (2) *sets* of plates.

The defendant did *not operate for hire* (T. 34, 35, 37, 40, 41, 44, 45). He used his *passenger car* for pleasure;

his *pickup truck* for pleasure and for work as a carpenter- and once or twice a year, with his pickup truck would pull his *personal* house *trailer* for *personal use* to the site of his work away from his home in Salt Lake City (T. 36, 44, 45), for saftey measures and personal convenience. This was lawful. He could have done the same with his passenger car — or any other *motor* vehicle which was registered *separately* and not as a *combination.*

He has been convicted of a charge which was not made. (T. 41-1-*128,* U.C.A., 1953).

"Although the fines imposed by a state court judgment are small, the Supreme Court of the United States will grant certiorari to review judgment where due process questions are substantial." ("Shufflin' Sam" *Thompson c. Louieville,* 362 U.S. 100, 4 L. Ed. 654, 80 S. Ct. 624, 80 A.L.R. 2d 1355). And the instant case!

POINT II

THE TRIAL COURT ERRED IN CONVICTING THE DEFENDANT WITHOUT EVIDENCE OF HIS GUILT AND BY SO DOING DENIED DEFENDANT DUE PROCESS OF LAW.

The defendant was denied due process because he was convicted *without any evidence* of his guilt. (*"Shufflin' Sam" Thompson vs. Louieville,* 362 U.S. 100, 4 L. Ed. 2d 654, 80 S. Ct. 624, 80 A.L.R. 2d 1355; *Akins v. Texas,* 325 U.S. 398, 89 L. Ed. 1519, 63 S. Ct. 1241 (Concurring Opinion); *Buchanan vs. Warley,* 245 U.S. 60, 38 S. Ct. 16, 62 L. Ed. 149; *Garner v. Louisiana,* Dec. 11, *1961,* 368 U.S. 157, 7 L. Ed. 2d 207; *Mooney vs. Holohan,* 294 U.S. 103, 79 L. Ed. 791, 55 S. Ct. 340, 98 A.L.R. 406; *Moore vs. Chesapeake & Ohio Ry. Co.,* 340 U.S. 573, 95 L. Ed. 547, 71 S. Ct. 428; *Moore v. Dempsey,* 261 U.S. 86, 67 L. Ed. 583, 43 S. Ct. 265; *Pepole v. Monterey Fish Products Co.,* —— Cal. Sup. ——, 234 P. 398; *Schware v. Board of Bar Examiners,* 353 U.S. 232, 1 L. Ed. 2d 796, 77 S. Ct. 752, 64 A.L.R. 2d 288; *Taylor vs. Louisiana,* June 4, *1962,* 370 U.S. 154, 8 L. Ed 2d 395, 82 S. Ct. 1188; *Tot vs. United States,* 319 U.E. 463, 87 L. Ed. 1519, 63 S. Ct. 1241 (Concurring Opinion); *United States ex. rel. Vojtover vs. Commissioner of Immigration,* 273 U.S. 103, 71 L. Ed. 560, 47 S. Ct. 302; *Wong Sun & James Wah Toy vs. United States,* January, *1963,* 371 U. S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 40; *Yick Wo vs. Hopkins,* 118 U.S. 356 30 L. Ed. 220, 6 S. Ct. 1064; 14th Amendment of United States Constitution; Article 1, Section 7, Utah Constitution.

He was convicted for a vehicle *registration* violation (41-1-*127,* U.C.A., *1953,* though orginally tried under 41-1-*134,* U.C.A., *1953,* and the body of the charge in both instances contained statutory language of 41-1-*128,* U. C. A. *1953*).

Permit the state to select its choice. *127? 128? 134?*

It matters not! All three pertain to "*registration.*" And, actually, there is absolutely *no "registration" in evidence.*

The trial court properly ruled that the weighmaster's hearsay testimony about "*registration*" was not the best evidence (T. 9), notwithstanding the bottomless position assumed by the state, i.e., "Of course it is as far as the State is concerned in that we do not have his *registration* in our posession." (T. 9)

But *all three registrations* were in the state's (legal) possession. They were at the State Capitol. They just *were not in evidence.* ". . . .of course it is probably my fault we *don't* have the witnesses here to show "*registration*" . . . . I was hoping we could stipulate to that, but evidently we can't. But at least we do have a sign on the side of the truck which *indicates* . . . the *registration* . . ."

Indications are not *proof!* The "presumption of innocence," though seldom followed by the lay juror, is still to be applied by the learned justices of the appellate court. And the "burden of proof beyond a reasonable doubt" is not met by what is *indicated* by a stenciled sign on the side of a pickup truck.

In our American courts of justice, the burden of proof is — and must be, if at all — met by judicially acceptable evidence of *proof*. Not *"almost," "just about,"* or *"not at all"* evidence of mere *"indications."*

In the instant case, the defendant was convicted without evidence.

POINT III

THE TRIAL COURT ERRED IN CONVICTING THE DEFENDANT BY APPLICATION OF STATE STATUTE THAT IS ARBITRARY, UNREASONABLE, DISCRIMINATORY, AND NOT UNIFORM CLASS LEGISLATION IN VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

The second paragraph of Title 41-1-*127* (f), U.C.A., *1953,* provides (verbatim) that "where motor vehicles, *except passenger cars,* are operated in combination with semitrailers, or trailers (including house trailers), each such motor vehicle shall be required to register for the total gross laden weight of all units of said combination. A set of identification plates shall be issued for each motor vehicle so registered."

This is the charge under which the defendant was convicted.

The statute was *not* uniform (Art. I, Sec. 24, Utah Constitution). It was unreasonable and discriminatory class legislation.

Apparently, the legislature, likewise, thought the statute to be unreasonable, discriminatory and not uniform.

Why?

Because in *1963, after* the defendant was charged under Title 41-1-*127*(f), U.C.A., *1953,* the legislature itself expressed its latest legislative intent by *amending* that very statute by adding ". . . *pickup trucks not operated for compensation or for hire* . . " along with "*passenger cars*" as constituting an exception to its *combination registration* requirement.

Ttle 41-1-*127* (f), U.C.A., *1953, as amended, 1963,* (applicable second paragraph) now reads:

"Where motor vehicles, *except passenger cars and four-wheeled pickup trucks not operated for compensation or for hire* and the combined gross weight of the truck and trailer does not exceed 10,000 pounds, are operated in combination with semitrailers or trailers (including house trailers), each such motor vehicle shall be required to register for the total gross laden weight

or all units of said combination. A set of indentification plates shall be issued for each motor vehicle so registered."

In the instant case, there is evidence that the defendant drove his *separately registered pickup truck,* pulling his *separately registered house trailer.* (T. 8, 13)

The trial court took judicial notice that the weight of the (defendant's) pickup truck was 6000 pounds (T. 16). There is no evidence as to the weight of the trailer. The weighmaster said the accumulated weight of both the pickup truck and trailer was 15,400 pounds (T. 8). However, the court erred by admitting into evidence over objection (T. 8, 9) the hearsay evidence without a qualified exception pertaining to the weighmaster's remarks to the silent defendant with reference to the certificates of registration which had been excluded properly before as not having been the best evidence.

Nor is there any evidence of the number of wheels on the pickup truck of the defendant.

Nevertheless, the intent of the legislature to exclude certain pickup trucks for the statute is clear, concise and controlling.

In view of the use of all vehicles by the defendant (personal, occasional, and *never* for compensatin nor

for hire), it would be unreasonable, discriminatory and in violation of due process to penalize a single member of the class of owners of house trailers and/or pickup trucks just because on isolated occasions he decides to pull his house trailer with his pickup truck rather than his passenger car, when all three vehicles have been registered *separately*, and the pickup truck for twice the required weight.

Moreover, when it is safer and less damaging on and to the highways to pull his house trailer with his pickup truck rather than his passenger car! And none of the weight of the trailer is in the pulling vehicle (41-1-1-(g), U.C.A., *1953*)

And, still, moreover, when the statute (rate increases) is *revenue producing*, not *regulatory* for the protection of the public. (*Carter v. State Tax Commission* 98, U. 96, 96 P.2d 727, 126 A.L.R. 1402.)

This court should, in retrospect, at least, by its analysis of the legislative intent, evidenced by the *1963* amendment, rule that the *1953* version of the statute, under which the defendant was convicted, violated due process.

All laws shall be uniform. (Art. I, Sec. 24, Utah Constitution; Fourteenth Amendment, United States Constitution; *State v. Holtgrove*, 58 U. 563, 200 P. 894 26 A.L.R. 696).

There is discrimination in violation of due process if a statute confers particular privileges upon a class arbitrarily selected (passenger cars pulling personal house trailers) from a larger number of persons (anyone pulling his own personal house trailer for personal use), all of whom stand in the same relation to the privileges granted, and between the persons not so favored (pickup trucks pulling personal house trailers) no reasonable distinction or *substantial* difference can be found justifying the inclusion of one and the exclusion of the other. (*Carter v. State Tax Commission,* 98 U. 96, 96 P. 2d 727, 126 A.L.R. 1402).

Such exemptions, however, must apply to all alike who are of the classes and in the situation included (house trailers pulled for personal use and not for compensation nor for hire); and if the statute granting the exemption has the effect of conferring on certain persons (passenger cars pulling house trailers for personal use . . .) privileges or immunities not granted to other persons (pickup trucks pulling house trailers for personal use. . .) similarly situated, it is unconstitutional in violation of due process (*State v. Pate,* 138 P. 2d 1006, 26 A.L.R. 747, 72 A.L.R. 1004)

See also: *Bleon v. Emery*, 60 U. 582, 209 P. 627; *Board of Education etc. vs. Hunter*, 48 U. 373, 159 P. 1019; *Franchise Motor Freight Ass'n et al vs. Ceavey et al.*, ___ C.R. ___, 235 P. 1000; *Kellaher v. Portland*, 57 Ore. 575, 110 P. 492, 126 A.L.R. 1427; 14th Amendment of United States Constitution; Article 1, Section 7, Utah Constitution; 5A Am Jur., Automobiles and Highway and Traffic, par. 1-86; 5 Am. Jur., Automobiles, par. 113; 60 C.J.S., Motor Vehicle, par. 16.

It is well settled that the authority and duty to ascertain the facts which will justify classified legislation rests in the *first* instance with the legislature. (*Anastsion v. Superior Court*, ___ Cal. Sup. ___, 227 P. 762, *People v. Monterey Fish Products Co.*, ___ Cal. Sup. ___, 234 398, the *next* instance with the courts.

A casual review of the factual situation in the instant case (though *no evidence* before the court) viewed in the judicial light of a review of the authorities cited, will dictate a conclusion by this court that the *1953* statute, under which the defendant was convicted, was unconstitutional in that it arbitrarily excluded the pickup truck class of individuals. The legislature so concluded (*1963* amendment). This court should, likewise, so conclude.

CONCLUSION

The defendant has been denied due process of law which is guaranteed by our State and Federal Constitions and Statutes. He has been deprived of a fair trial before an impartial jury. His conviction is not sustained by the evidence. The trial and verdict constitute a miscarriage of justice and should be reversed.

Respectfully submitted,

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