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

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 RESPONDENT

Appeal from Conviction in the
District Court of Carbon County
Honorable Henry Ruggeri, Judge

FILED
JUN 15 1964

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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 RESPONDENT

STATEMENT OF NATURE OF CASE

The appellant, Charles Orvel Colston, has appealed from a conviction for the crime of operating a vehicle on a public highway in the State of Utah with a gross laden weight more than for which the vehicle was registered, in violation of 41-1-128, Utah Code Annotated 1953.

DISPOSITION IN LOWER COURT

The appellant was charged by complaint in the City Court of Price, Utah, with operating a vehicle which weighed in excess of the weight for which it was registered. The appellant was convicted and thereafter appealed his conviction to the District Court in and for Carbon County, State of Utah. The trial was held thereon on the 6th day of December, 1963, before the Honorable Henry Ruggeri, Judge, sitting without jury. The appellant was convicted of the crime charged and appealed the conviction to the Supreme Court.

RELIEF SOUGHT ON APPEAL

The respondent submits that the conviction should be affirmed.

STATEMENT OF FACTS

On the 2nd day of February, 1963, the appellant, Charles Colston, pulled a 1957 pickup truck, towing a 30-foot house trailer, into the Peerless Checking Station, Price Canyon, Carbon County, Utah (R-8). The vehicle was weighed by the Highway Patrol (R-8), and found to weigh 15,400 pounds. This was the weight of the combination pickup truck and house trailer. A stencil on the pickup truck indicated that the registration of the vehicle was for only 12,000 pounds (R-8, 13). Upon the combination vehicle being weighed, Officer Bill Himes of the Utah Highway Patrol had a discussion with the appellant, wherein he told the appellant that the unit was registered for 12,000 pounds and that it weighed 15,400 pounds. The appellant made no protest that the unit was not registered for 12,000 pounds, but only indicated that he had never been stopped before. Officer Himes thereafter cited the appellant for operating a vehicle over the registered gross weight.

The appellant presented no evidence, but counsel for the appellant in the District Court made an opening statement by way of offer of proof in which it was indicated that the appellant had registered the vehicle for a 12,000-pound gross laden weight.

At the time of trial in the District Court, the complaint charged the appellant with violation of 41-1-134, U.C.A. 1953. Thereafter, upon motion of the District Attorney, the numerical charge was changed to 41-1-127, U.C.A. 1953. The substance of the complaint, however, clearly

charged the defendant with operating a vehicle which was registered for 12,000 pounds when the vehicle weighed 15,400 pounds. Thus, the substance of the charge was for operating a vehicle over the weight for which it was registered, which is contrary to the provisions of 41-1-128, U.C.A. 1953.

ARGUMENT

POINT I.

THE APPELLANT WAS CONVICTED OF THE OFFENSE CHARGED SINCE THE NUMERICAL DESIGNATION OF THE OFFENSE TO A CORRESPONDING SECTION OF THE UTAH CODE ANNOTATED WAS MERE SURPLUSAGE AND A DEFECT NOT GOING TO THE SUBSTANCE OF THE CRIME CHARGED.

The appellant contends that he was convicted of a crime other than the one charged. The complaint with which the appellant was charged stated that:

“* * * on or about the 2nd day of February, A.D. 1963, at and within the County of Carbon, State of Utah, did commit the crime of Violating Section 41-1-127, Utah Code Annotated, 1953, as follows:

That the said defendant, at the time and place aforesaid, operated a vehicle upon a public highway, to wit: U.S. 50 & 6, at Peerless, Carbon County, State of Utah, which said vehicle was registered in that State of Utah for 12,000 pounds, and which said vehicle at said time and place, weighed 15,400 pounds gross weight.”

The substance of that complaint remained the same when the case was heard on appeal in the District Court in and for Carbon County. The District Attorney made a motion to amend the complaint at the outset to change the numerical charge from 41-1-134, U.C.A. 1953, to 41-1-127, U.C.A. 1953 (R-3). The court granted the motion over the objection of the appellant. The substance of the charge, however, remained the same, in that the detail of

the crime with which the appellant was accused was the operation of a vehicle registered for 12,000 pounds' weight, which in fact weighed 15,400 pounds. Consequently, there was no change in the nature of the crime charged nor did counsel for the appellant appear to be in any way prejudiced by the change, since he strongly and vociferously argued the constitutionality of the offense with which the appellant was charged and clearly was not misled as to the nature of the charge pending against the accused (R-14, 43). The substance of the crime charged alleges a violation of 41-1-128, U.C.A. 1953. It is submitted that the appellant has no basis for complaint or for reversal. 77-11-1, U.C.A. 1953, provides as to what a complaint must contain:

"The complaint must state:

"(1) The name of the person accused, if known; or if not known and it is so stated, he may be designated by any other name.

"(2) The county in which the offense was committed.

"(3) The general name of the crime or public offense.

"(4) The acts or omissions complained of as constituting the crime or public offense named.

"(5) The person against whom or against whose property the offense was committed, if known.

"(6) If the offense is against the property of any person, a general description of such property.

"However, in cases of public offenses triable upon information, indictment or accusation, the complaint, the right to a bill of particulars, and all proceedings and matters in relation thereto, shall conform to and be governed by the provisions of the new chapters 21 and 23 of Title 77, Utah Code Annotated 1953, as enacted by chapter 118, Laws of Utah, 1935.

"The complaint must be subscribed and sworn to by the complainant."

There is no requirement, as can be seen from the above provision, that the complaint specify the numerical sec-

tion of the Code with which an accused is charged to have violated. By merely setting forth a section of the Code, the complaint added to the substance of the offense charged an item of surplusage. 77-21-42, U.C.A. 1953, provides:

“Any allegation unnecessary under the existing law or under the provisions of this chapter, may, if contained in an information, indictment or bill of particulars, be disregarded, as surplusage.”

This section, when read in conjunction with 77-21-43(1), which provides:

“No information or indictment that charges an offense in accordance with the provisions of section 77-21-8 shall be invalid or insufficient because of any defect or imperfection in, or omission of, *any matter of form only*, or because of any miswriting, misspelling or improper English, or because of the *use of a sign, symbol, figure or abbreviation*, or because of any similar defect, imperfection or omission. The court may at any time cause the information, indictment or bill of particulars to be amended in respect to any such defect, imperfection or omission.”

makes it obvious that mere defects in form are not a basis for complaint. Especially is that so where there has been a mere error in a particular symbol or figure which is contained within the complaint which does not change the nature of the substantive offense charged.

In Whartons' Criminal Law and Procedure, Sec. 1770, it is stated:

“* * * Moreover, it is the almost universal rule that when the facts, acts, and circumstances are set forth in the body of an indictment or information with sufficient certainty to constitute an offense and to apprise the defendant of the nature of the charge against him, a misnomer or inaccurate designation of a crime in the caption or other part of the indictment or information will not vitiate it; in such case, the statement of facts controls the erroneous designation of the offense, and the defendant stands charged with the offense charged in the statement of fact. In many jurisdictions it is held that such erroneous designation of the offense may be disregarded as surplusage.

“Indictments have been held sufficient, notwithstanding a misnomer or inaccurate designation of the crime alleged, in view of

statutes providing in effect that no indictment shall be deemed insufficient for any merely formal defect not prejudicing any substantial right of the defendant, although an indictment which fails to name any offense in the charging part thereof is insufficient to sustain a conviction.”

In *State v. Schnell*, 107 Mont. 579, 88 P.2d 19 (1939), a case similar to the instant one was considered by the Montana Supreme Court. The accused was charged with the crime of operating a vehicle under the influence of intoxicating liquor. The appellant contended that he was charged with a crime different than that for which he was convicted. The complaint with which the defendant was charged had given an erroneous name in that it named the offense covered by Sec. 1741.7, Revised Code of Montana, but the facts and circumstances setting out the crime in the complaint alleged an offense in violation of Sec. 1746.1, Revised Code of Montana. In rejecting the contention that the complaint was defective, the Montana Supreme Court stated:

“Here the name given to the offense in the complaint may be omitted as surplusage and the information is still sufficient under section 1746.1, because it still characterizes the offense as a misdemeanor and then proceeds to state how, specifically where and in what manner it was committed. The erroneous name of the offense will be treated as surplusage, since without it the complaint is still sufficient to charge the offense under section 1746.1. 31 C.J. 747.”

In *State v. Scow*, 101 Utah 564, 125 P.2d 954 (1942), this court was concerned with a similar situation to that now before the court. The defendant Scow was charged by information with the crime of pandering, when in fact the substantive allegations in the information set forth the crime of transportation for the purposes of prostitution. The trial court had granted a motion to quash the informa-

tion. In reversing the trial court and holding the information to be proper, the court stated:

"Though it were conceded that the crime of 'pandering' does not encompass under our statutes, the act of 'transporting a female for the purposes of prostitution,' nevertheless it was error, in the instant case, to quash the information.

'The almost universal rule at common law is that a misnomer or inaccurate designation of a crime in the caption or other part of the complaint, indictment, or information will not vitiate it where there is a sufficient (sic) detailing of the facts constituting the offense in the body of the instrument so that the defendant is fully apprised of the nature of the charge against him. In such case the statement of facts controls the erroneous designation of the offense, and the defendant stands charged with the offense charged in the statement of facts.' 121 A.L.R. 1088, 1089.

Cases cited from many jurisdictions support the text. Especially should this rule apply under Sections 105-21-41 and 105-21-42, Laws of Utah 1935, c. 118, providing that repugnant allegations shall not invalidate an information and that unnecessary allegations may be treated as surplusage. Under a similar statute of Iowa, where an indictment named the offense of which the defendant was charged as manslaughter, but the facts set out in the body of the indictment showed a murder, it was held that the court could reject the word 'manslaughter' as surplusage and try the defendant for the crime of murder. *State v. Davis*, 41 Iowa 311; *State v. Shaw*, 35 Iowa 575.

"In the instant case the defendant could not be misled by designating the crime as 'pandering.' What he is alleged to have done is stated. No act under Section 103-51-8 could, under such charge, be proved against him. Two crimes are not charged. The word 'pandering' is used in the information in naming the offense — not in the charging part of the information. True, under Section 105-21-6 and 105-21-8, Laws of Utah 1935, c. 118, a crime may be charged by using the name given the offense by the common law or by statute. But where, as here, the acts alleged to have been committed clearly charge a crime, the incorrect designation of such crime — if it be incorrect — should be disregarded."

In *State v. Burke*, 102 Utah 249, 129 P.2d 560 (1942), the defendant was charged with the crime of gambling when in fact the crime alleged in the information was one

of gaming. In holding that the misnomer of the offense did not affect the substance of the charge, the court stated:

“An erroneous designation of the offense does not invalidate an information if by other proper allegations, the offense charged is made clear, and repugnant allegations shall not invalidate an information. Unnecessary allegations may be treated as surplusage. Laws of Utah 1935, Chapter 118, Section 105–21–42; *State v. Scow*, Utah, 125 P.2d 954.

“The objections to the information are not well taken. *State v. Hill*, 100 Utah 456, 116 P.2d 392; *State v. Anderson*, 100 Utah 468, 116 P.2d 398; *State v. Avery*, Utah, 125 P.2d 803.”

Numerous cases have considered situations where there have been misnomers in the caption of complaints and information, and have found that they are not matters which affect the substance of the charge and consequently do not entitle an appellant to relief. Anno. 121 A.L.R. 1088. The Court of Military Appeals in several cases has ruled that where the charge sets out a violation of a specifically named section of the Uniform Code of Military Justice, but the specification which is the factual allegation charging the crime, sets out an offense different than that named in the charge, an accused cannot complain if the substance of the offense set out in the specification states a crime. Thus, in *United States v. Olson*, 7 U.S.C.M.A. 460, 22 C.M.R. 250, where an improper allegation under the Articles of War was charged under the Uniform Code of Military Justice, the court ruled that the misnomer of the offense did not preclude a valid conviction where the specification clearly charged an offense. See also *United States v. Deller*, 3 U.S.C.M.A. 409, 12 C.M.R. 165; *United States v. Long*, 2 U.S.C.M.A. 60, 6 C.M.R. 60; *United States v. Blevens*, 5 U.S.C.M.A. 480, 18 C.M.R. 104. Obviously, therefore, it is reasonably well settled in this jurisdiction and other jurisdictions that a mere mistake of form in stating the sub-

stance of the particulars alleged in the complaint will not entitle the appellant to relief. Consequently, not only is appellant without a claim of simple error upon which to predicate reversal, he has absolutely no basis for constitutional complaint.

POINT II.

THE TRIAL COURT DID NOT CONVICT THE DEFENDANT IN THE ABSENCE OF EVIDENCE PROVING HIS GUILT.

The appellant has taken the position that the trial court erred in finding him guilty, claiming that there was no evidence of his guilt which would justify the trial court in making such a finding, and consequently such action denied him due process of law. The appellant relies upon three decisions of the United States Supreme Court (among others) for his contention. Primarily the appellant relies upon *Thompson v. Louisville*, 362 U.S. 199 (1960). In that case the United States Supreme Court reversed a decision of the Police Court of Louisville, Kentucky, finding the appellant guilty of loitering and disorderly conduct. The only evidence of the petitioner's having committed the offense charged was that the petitioner, in a cafe, was shuffling his feet on the dance floor, at which time officers arrested him and charged him with the crime from which he appealed. The evidence on behalf of the petitioner showed that he had been in the cafe waiting for a bus to his home, had money, and was usually regularly employed. The manager of the cafe where the accused was alleged to have engaged in disorderly conduct indicated that the accused had merely been standing in the middle of the dance floor patting his foot. Based upon this, the United States Supreme Court said that there was absolutely no evidence of the accused having violated the ordinances charged nor having committed any other crime. The court stated:

“Thus we find no evidence whatever in the record to support these convictions. Just as ‘Conviction upon a charge not made would be sheer denial of due process,’ so is it a violation of due process to convict and punish a man without evidence of his guilt.”

The second case of concern to the appellant’s claim is *Garner v. Louisiana*, 368 U.S. 157 (1961). There the defendants were convicted of the crime of disturbing the peace. The only evidence of the accused’s guilt in that case was that they were sitting peaceably in a restaurant reserved for white persons. There was no evidence of any disturbing conduct by the accused. The United States Supreme Court, therefore, determined that in the absence of any evidence the convictions must be reversed. A similar result occurred in *Taylor v. Louisiana*, 370 U.S. 154 (1962). It is admitted that if an individual is convicted in the absence of any evidence indicating his guilt, such an individual has been denied due process of law both under the Federal Constitution and the Constitution of the State of Utah. *State v. Gordon*, 28 Utah 15, 76 Pac. 882 (1904). However, the present case is not one where there is a complete absence of evidence. Quite to the contrary, there is a clear showing of the appellant’s guilt. He drove a pickup truck and trailer in Carbon County into the weighing station and there it was found to weigh 15,400 pounds. The appellant contends there is no evidence to show that the vehicle was registered for any less amount. However, the evidence in fact shows two bases for a finding of the appellant’s registration. First, the figure 12,000 was stenciled on the side of the vehicle, which figure the Highway Patrol officer testified, without objection, indicated that the appellant’s vehicle was registered for 12,000 pounds gross laden weight. In addition, when the Highway Patrol officer cited the appellant, he stated in the appellant’s presence that the

appellant's vehicle was registered for only 12,000 pounds. The appellant made no response in protest to the assertion that his vehicle was registered for only 12,000 pounds. Consequently, there is a circumstance which constitutes an admission by the appellant as to the registration of his vehicles. Therefore, there is not the complete absence of evidence which the appellant contends denied him due process of law. This case is substantially different than the case of *Thompson v. Louisville*, supra. Nor does that case go as far as appellant would contend. Thus, in Anno. 80 A.L.R.2d 1362, 1375 discussing the problem of a conviction of a criminal offense without evidence as being a denial of due process of law, the Annotation states with reference to the effect of *Thompson v. Louisville*:

"In holding in *Thompson v Louisville* (1960) 362 US 199, 4 L ed 2d 654, 80 S Ct 624, 80 ALR2d 1, that the due process guaranty of the Fourteenth Amendment required reversal of a state court conviction of crime where the prosecution introduced no evidence, the United States Supreme Court stated for the first time a rule binding state convictions by constitutional limitations respecting quantum of evidence. If *Thompson* is to be regarded as indicating the Supreme Court's acceptance of the role of reviewer of sufficiency of the evidence whenever it is asked to overturn on due process grounds a state conviction, then, manifestly, the decision is of far-reaching importance, throwing grave doubt upon the continued authoritative effect of existing law as to the scope of Supreme Court review.

"But there is sound reason to believe that *Thompson* is not to be so regarded, but on the contrary is to be viewed as reaching only the very rare conviction which, like the conviction involved in *Thompson*, is classifiable as a 'no evidence' case. It is submitted that no change in scope of review is involved in Supreme Court examination of the record in a criminal case to determine whether there was any evidence to support the conviction, so long as the court's consideration of the quantum of evidence issue stops when it has determined that there is not a total lack of evidence on behalf of the prosecution. And such a limited examination of the record would seem fully consonant with the principle, recognized by the Supreme Court, that in its review of a conviction of crime, regard for the requirements of due process inescapably imposes

upon it an exercise of judgment upon the 'whole course of the proceedings' in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking people even toward those charged with the most heinous offenses."

The present case is not a situation where there is not any evidence of the accused's guilt. Quite to the contrary, the only evidence received by the court is evidence of the accused's guilt, and although admittedly it is a short record in the instant case, the evidence clearly provides a basis for the trial court's decision, and the appellant cannot be said to have been denied due process of law.

POINT III.

41-1-127, U.C.A. 1953, PROVIDING FOR THE REGISTRATION OF CERTAIN MOTOR VEHICLES, IS NOT UNCONSTITUTIONAL, AND THE APPELLANT'S FAILURE TO COMPLY WITH THE REGISTRATION PROVISIONS OF THAT STATUTE WARRANTED HIS CONVICTION UNDER THE PROVISIONS OF 41-1-128, U.C.A. 1953.

41-1-127, U.C.A. 1953, establishes the registration requirements for motor vehicles operating on the highways of the State of Utah. 41-1-127(f) establishes registration fees and requirements of registration based on gross laden weight. 41-1-127, U.C.A. 1953, as it is presently written, was enacted by Laws of Utah 1963, Chapter 67, Section 1, and therefore was not in effect at the time the accused was charged and at the time the offense with which he was charged was committed. The provisions of 41-1-127(f), which were in effect at the time the instant offense was committed, read as follows in its material part:

"A registration fee on all motor vehicles designed, used, or maintained for the transportation of passengers for hire or for the transportation of property, based on gross laden weight as set forth in the licensee's application for registration, unless exempt under section 41-1-19, or unless complying with the provisions of section 41-1-88.

"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."

Section 41-1-128, U.C.A. 1953, makes it illegal to operate a vehicle in violation of the provisions of 41-1-127, U.C.A. 1953. The appellant has contended that 41-1-127 as it existed at the time of the instant offense was unconstitutional. Appellant's contention is that the law is discriminatory and arbitrary and, therefore, is in violation of Article I, Section 24, of the Utah Constitution providing for uniform legislation, and the Fourteenth Amendment to the United States Constitution providing for the equal protection of the laws. Appellant's major argument is that, to the extent that passenger cars when operated in combination with trailers are excluded from the provisions of 41-1-127(f), U.C.A. 1953, and pickup trucks, which the appellant was operating, are not, the statute is arbitrary and capricious and there is no justification for the distinction. The general rule relating to the powers of the Legislature to enact regulatory laws and revenue producing laws based upon the operation of vehicles on State highways is set forth in 60 C.J.S., Motor Vehicles, Sec. 138:

"A provision for license fees for motor vehicles must not discriminate in respect of amount against certain classes without reason and without relation to the general purpose of the motor vehicle laws; but the mere fact that the amount of the license fee or tax imposed on one class of motor vehicle owners or operators is different from that imposed on another class does not render a regulation invalid where the classification is a reasonable one and all owners or operators within each class are treated alike, even though the classification may cause a disproportionate payment of taxes by isolated individuals in such classes.

"Regulations have been held valid as not being unreasonable, discriminatory, or violative of constitutional provisions which base

or grade the amount of the license fee or tax according to the type, size, weight, according to the capacity or load, or according to the seating capacity of the particular vehicle, or, in the case of jitneys and like vehicles, according to the amount charged for transportation. * * *

This court has recognized the validity of provisions regulating the operation of motor vehicles on the highway and requiring special registration permits based upon the weight or other nature of the vehicle being operated. In *Carter v. State Tax Commission*, 98 Utah 96, 96 P.2d 727 (1939), this court considered the provisions of 41-1-127, U.C.A. 1953, as then written. The court upheld the constitutionality of the breakdown based upon gross weight, although the court did strike down a provision relating to assessment based upon the fuel used as not being germane to the title of the legislation. In affirming the constitutionality of the Act so far as it based registration and regulation on theory of weight or vehicle use, the court stated:

“* * * The Legislature determines the lines of separation between classes. That is their prerogative, and the courts have no right to interfere on any theory that those lines were improperly placed — that the weights selected for a division into classes were not properly selected. Presumably the Legislature had the necessary information before it to justify such segregation into classes. It is obvious that the ground of difference between classes has a fair and substantial relation to the object of the legislation, that is, to regulation based upon the wear and tear to which the roads are subjected by the licensee. The cases are many upholding such a classification. *People v. Deep Rock Oil Corporation*, 343 Ill 388, 175 NE 572; *Morf v. Bingaman*, 298 US 407, 56 S Ct 756, 80 L ed 1245; *Ogilvie v. Hailey*, 141 Tenn 392, 210 SW 645; *Raymond v. Holm*, 165 Minn 215, 206 NW 166; *McReavy v. Holm*, 166 Minn 22, 206 NW 942; *Wilson v. State*, 143 Tenn 55, 224 SW 168; *Ard v. People*, 66 Colo 480, 182 P 892; *Kane v. Tilas*, 81 NJL 594, 80 A 453, LRA1917B 553, Ann Cas 1912D 237; and *Camas Stage Co. v. Kozer*, 104 Or 600, 209 P 95, 25 ALR 27.

“Now paragraphs (a) and (b) of section 133, are a continuation of the same principle. Presumably the Legislature had before it facts justifying the conclusion that vehicles of a weight of 13,000

pounds and more, and of 20,000 pounds and more, are exceptionally injurious to the highways, and therefore they should pay an additional license fee to compensate for that extra injury. We as a court cannot gainsay that. Even though we might believe it a 'piling on' of fees, the right to exercise its judgment lies with the Legislature. To hold otherwise would deprive that branch of our government of its independence."

This court, therefore, recognized that the Legislature has substantial prerogatives in determining the classifications for regulatory legislation and that such legislation enjoys every presumption of constitutionality. *Thomas v. Daughters of Utah Pioneers*, 114 Utah 108, 197 P.2d 477 (1948) ; *Gubler v. Utah State Teachers' Retirement Board*, 113 Utah 188, 192 P.2d 580 (1948) ; *Salt Lake City v. Tax Commission*, 11 Utah 2d 359, 359 P.2d 397 (1961). More recently in *Wycoff Company v. Public Service Commission*, 389 P.2d 57 (Utah 1964), this court had occasion to consider an attack against the constitutionality of the Utah Motor Carrier Act. In that case it was alleged that the Utah Motor Carrier Act was unconstitutional because it exempted from coverage certain classes of vehicles, such as school vehicles, mail trucks, agricultural vehicles, newspaper trucks, towing and wrecking trucks, etc. In that case the court stated in sustaining the constitutionality:

"We have given careful consideration to classes of transportation exempted under 54-6-12 and conclude that in each instance the classification is reasonable. For the most part, the transportation exempted is casual, seasonal, slow-moving, not on regular routes or schedules, frequently in special equipment, and for comparatively short distances. Each of the exemptions have been held reasonable by other courts."

As a consequence, it appears that unless the action of the Legislature in carving out a particular exception in the coverage of a statute has acted without any reasonable basis so that there is in fact no difference between the exempted

group and the non-exempted group, the legislation will be sustained. In *State v. Mason*, 94 Utah 501, 78 P.2d 920, this court upheld a statute requiring that a license be obtained for commercial activities where the statute exempted commercial merchants dealing with agricultural products. The court held that the exemption was a reasonable action for the Legislature to take. See also *Garrett Freightlines v. State Tax Commission*, 103 Utah 390, 135 P.2d 523, which upheld the Use Fuel Tax Act of 1941. The Supreme Court will not concern itself with the wisdom or policy of the law so long as there appears to be some reasonable basis for the Legislature's classification. *Hansen v. Public Employees' Retirement System*, 122 Utah 44, 246 P.2d 591.

Clearly, there is an apparent justification for the Legislatures' exclusion of passenger vehicles when used in combination with a trailer, while at the same time encompassing a pickup truck or truck when used in combination with a trailer. First, it is obvious that the weight of a passenger vehicle will usually not be as great as the weight of a pickup truck or other such vehicle, and as a consequence, there will be less wear on the public roads. Secondly, passenger vehicles are limited in their power output and are usually not capable of hauling large trailers, which means that where a passenger vehicle is used in combination with a trailer, the trailer would most probably be a small unit used casually for camping trips or recreation purposes. Third, the distance for which an automobile may be used to haul a trailer is substantially less than for a truck, because of the difference in the power of both vehicles. Consequently, extensive use of the public roads is less likely where a passenger vehicle rather than a truck is hauling a trailer. Fourth, most families have passenger vehicles, and when hauling a pas-

senger vehicle and a trailer, it is usually for sporadic use for family purposes, whereas where an individual owns a truck or pickup truck which is capable of hauling a large unit, it is most probable that the truck-trailer combination will be used more extensively and will not be the sporadic family type of use associated with passenger vehicle-trailer units.

As noted in 60 C.J.S. Motor Vehicles, Sec. 138, *supra*, if there is a general purpose behind the Legislature's classification, the mere fact that in a particular instance there is a disproportionate amount of inconvenience to particular individuals fitting within the class will not justify a determination that the legislation is unconstitutional. See also *Prouty v. Coyne*, 55 F.2d 289 (D.C.S.D.).

Appellant's argument that the subsequent amendment to 41-1-127(f), U.C.A. 1953, by the Legislature in 1963 indicates the Legislature felt the previous enactment to be unconstitutional is without merit. The previous provision had been on the books some four years, and there is nothing in the legislative journals nor the title of the amendatory bill (see Laws of Utah 1963, Chapter 67, Sec. 1), which would lead to the conclusion that the Legislature felt its previous enactment to be unconstitutional. The Legislature may, for the purposes of legislative policy, effect changes in statutes from time to time as the reasonable discretion of the Legislature dictates, without it being inferred that any previous action of the Legislature was contrary to constitutional principles. As noted above, there are substantial reasons supporting the classification that the Legislature had previously established. By the same token, the Legislature may feel that there are other justifications which warrant some different classification. However, neither situation necessarily implies arbitrary action on the part of the Legislature. Consequently, it is clear that the appellant's chal-

lenge to the constitutionality of 41-1-127(f), U.C.A. 1953, as it existed at the time of the offense charged, is without merit.

CONCLUSION

The appellant has had two full trials on the issue of his guilt or innocence of the crime charged and has had full exploration of his recourse in the trial courts. A thorough analysis of his claims for relief before this court demonstrates that there is no merit to the appellant's appeal. Consequently, this court should affirm the conviction.

Respectfully submitted,

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