

1989

City of Monticello v. Lee Christensen : Reply Brief

Utah Supreme Court

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Lee Christensen; Pro Se.

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UTAH SUPREME COURT
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IN THE UTAH SUPREME COURT

CITY OF MONTICELLO)
(
Plaintiff/Respondant)
(
(
(
v.)
(
(
LEE CHRISTENSEN,)
(
Defendant/Appellant)

Case No. 89-0163
Priority No. 2

REPLY BRIEF

On Writ of Certiorari granted June 12, 1989
To the Utah Supreme Court

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pro se
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-mailing-
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SEP 13 1989

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STATEMENT OF JURISDICTION

Jurisdiction is conferred upon this Court by the issuance of Writ of Certiorari, by this Court on June 12, 1989, and by reliance upon Rules 42 and 43 of the Rules of the Utah Supreme Court, as well as Rule 26 of the Utah Rules of Criminal Procedure.

This is a criminal matter which began in the Justice of the Peace Court of Monticello, appealed first to the Circuit Court, and then to the Utah Court of Appeals, where the appeal was dismissed for lack of Jurisdiction, (The Court however did not support Monticello's position in dismissing the appeal [see City of Monticello v. Christensen 769 P.2d 853 (Utah App. 1989)]). The appeal is here in this Court by grant of Writ of Certiorari.

STATEMENT OF ISSUES

Since the Court has not issued any limitations regarding the issues on review the Petitioner believes that the relevant issues on appeal are as originally stated in his initial brief, to wit:

1. Is a "pro se" appellant to be held to the same stringent standards as an appellant who is represented by a professional law trained individual?

2. Does a "pro se" appellant have a right to have his appeal heard on it's merits, regardless of how inartfully he has argued his case in the lower Courts?

3. Does an accused person have a right to appeal to the Utah Court of Appeals, of a criminal matter, under the Utah Constitution Article 1 Sec. 12?

4. Does the State of Utah have to give "full Faith and Credit" to the "public acts" of the State of Wyoming, under Article IV Sec. 1 of the Constitution of the United States?

5. Does the State of Utah have the power to suspend a license which was validly issued in the State of Wyoming?

6. Can a person, who has been issued, and has in his possession a valid, properly issued license be charged under UC 41-2-28 "Driving Under Suspension of License"?

AUTHORITIES RELIED UPON

Constitutional Provisions

UTAH CONSTITUTION

Article I Section 12

"In all criminal prosecutions the accused shall have the right to * * * appeal in all cases * * *"

Article VIII Section 3

"* * * The Supreme Court shall have appellate jurisdiction over all other matters to be exercised as provided by statute, and power to issue all writs and orders necessary for the exercise of the Supreme Court's jurisdiction or the complete determination of any cause."

U.S. CONSTITUTION

Article IV Section 1

"Full Faith and Credit shall be given in each State to the public acts, Records and judicial Proceedings of every of Every other State."

Statutes

UTAH CODE ANNOTATED

UC 41-2-1(n)

"License means the privilege to operate a motor vehicle over the highways of this state."

UC 41-2-4

"(1) A nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator's license certificate issued to him in his home state or country may operate a motor vehicle in this state only as an operator.* * *"

UC 41-2-28

or "A person whose Operator's License has been suspended
motor revoked as provided by this act, and who drives any
license is vehicle upon the highways of this State while that
suspended or revoked is guilty of a crime."

UC 41-17-3 "Driver's License Compact Article II(b)

the "'Home state' means the state which has issued and has
power to suspend or revoke the use of the license or
permit to operate a motor vehicle"

(emphasis added)

UC 41-2-603 (5) "Driver's License Compact

not "The licensing authority of the issuing jurisdiction *may*
suspend the privilege of a motorist for whom a report
has been issued."

(emphasis added)

WYOMING STATUTES

WS 31-9-204

"* * * Upon receipt of such certification that the operating
privilege of a resident of this State has been suspended
or revoked in any such other state pursuant to a law
providing for its suspension or revocation for failure to
provide security for the payment of judgements arising out
of a motor vehicle accident or for failure to deposit both
security and proof of financial responsibility * * * the
superintendent shall suspend the license of such resident*
* * "

(This statute was in place when defendant was convicted
but Wyoming has since enter the Compact and adopted the
same Statutes as listed above)

STATEMENT OF CASE

This is a criminal case which was tried originally in the
Monticello Justice of the Peace Court of Monticello, the Honorable
Justice Wright presiding, and was tried deNovo in the Twelfth (now
Seventh) Circuit Court the Honorable Judge Halliday presiding. At
both Trials defendant/appellant Lee Christensen (hereinafter

referred to as Christensen) was found guilty of driving on a Suspended License in violation of UCA 41-2-28 although an abstract of his valid Wyoming License was in evidence (See Court Record Item 20 Page 30-31). The case was appealed to the Utah Court of Appeals and dismissed due to lack of jurisdiction owing to the fact that Christensen was unable to provide transcripts of the trial in the Circuit Court to establish that he had raised Constitutional issues in that Court [(see Monticello v. Christensen 769 P.2d 853 (Utah App. 1989)]. Writ of Certiorari was granted by the Utah Supreme Court on June 12, 1989. This case is properly before this Court by the Court's own power to grant certiorari to determine the law (See Article VIII Section 3 of the Utah Constitution.)

FACTS

Christensen would wish to add the following facts (not already submitted either in Appellants Brief or in Respondents Brief) to the record for the purpose of clarification.

1. Christensen was issued a license by the state of Utah on August 9, 1979, which was made to expire on July 17, 1980. (see exhibit B)

2. Since the date of that expiration Christensen has not reapplied for licensing by the state of Utah, but has been subsequently licensed by the states of California, Alaska, and Wyoming as his residences have changed.

3. Christensen was issued a license by the state of Wyoming on July 17, 1984 (See Exhibit A). which did not expire until July 17, 1988.

4. At the time of the accident (October 2, 1986) for which his license was allegedly suspended, he presented his Wyoming license,(see Exhibit B).

5. At the time Christensen was arrested for "Driving on Suspension" he presented his *still valid (see Exhibit A) Wyoming Driver's License* (see recorded transcript of the trial in Circuit Court tape #88SJ008 digital reading 3302-3140-Testimony of Officer Palmer)

SUMMARY OF ARGUMENT

Christensen did appear "pro se" during all phases of this case, contrary to the allegations contained in Monticello's Brief, and is not asking for "special treatment" only that the Court view his uneducated, inartful arguments, exactly for what they were intended to be, a layman's assertion of his constitutional rights, as he understands them and is capable of articulating them.

Christensen did raise the "Full Faith and Credit" argument in both the Justice of the Peace and Circuit Courts, and challenged Utah's power to suspend his Wyoming license. Because of his inability to provide transcripts to the Utah Court of Appeals he was unable to establish proof of his prior arguments, especially in light of Monticello's insistence that he never raised the issues, therefore his appeal was dismissed in that Court. That problem is overcome in this appeal by the Court's granting transcripts.

Utah has no power under the U.S. Constitution to suspend a license issued by the state of Wyoming, and if such statutory authority was created by statute (which it is not) it would be invalid under the Constitution of the United States.

ARGUMENT

ARGUMENT ONE

Christensen was not represented by law trained counsel, indeed he was not represented at all as evidenced by the fact that he at all times spoke, cross-examined witnesses, and argued motions for himself. (See recorded transcripts tape 88SJ008 digital reading 2740 to end and tape 88SJ010) No one else spoke for him, although Judge Halliday did allow, pursuant to Christensen's motion, a paralegal to sit at counsel table, for the limited purpose helping him with documents, and staying on point of law. It was clearly understood by the Court, through Christensen's motion, and argument that he was representing himself. Many lawyers have paralegals, witnesses, defendants, and other personnel who sit at counsel table with them

for much the same purposes, and yet that never means, or is interpreted to mean that those persons are representing the lawyer, and cannot be construed as such here. Christensen did in fact appear "pro se"

ARGUMENT TWO

Christensen did raise the "full Faith and Credit" argument in the Circuit, as well as the Justice of the Peace Courts, although he did so inartfully, and not in the manner that a law trained individual may have done. He did not quote the Article and Section of the U.S. Constitution but he did state it clearly enough for all parties to understand the essence of the issue, on argument of his motion for dismissal (See recorded transcripts tape 88SJ010 digital reading 165-270) to wit;

CHRISTENSEN (Arguing motion to the Court)

"I am a licensed driver in the State of Wyoming and the State of Wyoming recognizes that license as it states in the abstract, my status is clear. Because I am being charged with unlawful to drive while license is suspended or revoked, that's not the case because I do have a license to drive and that license or privilege extended by the state of Wyoming and is recognized in all the states of the Union including Utah. * * * The point always comes back to I was licensed by the state of Wyoming and it has to be recognized by the state of Utah* * *there again, as the abstract shows, I have a license to drive and I was driving on that license and I don't, I just don't see where the law can be applied to me because I'm charged with not driving with a license. At the time I had the license in my possession and I was authorized to drive and will be so until my birthdate. And so I feel this ought to be dismissed because my driving status states that I am licensed by the state of Wyoming and Wyoming recognizes it * * *

As Christensen did in fact appear "pro se", his failure to exactly specify the Constitutional citation he referred to, and the inartful method of his argument, should be overlooked by the Court, as the issue pressed was clear enough for consideration. In Haines v.

Kerner 404 U.S. 519(1971) the Court held that a "pro se's" case should be heard on it's merits regardless of it's inartfulness.

ARGUMENT THREE

In State v. Munger 642 P2d 721 (Utah 1982) Justice Durham rejected a "pro se's" appeal because;

".....The alleged error relates solely to construction".

and relied upon the statutory rule in UC 78-3-5 which allowed for appeals to the Supreme Court where constitutional issues are present. In Munger, no constitutional issues were raised. The instant case raises a very distinct constitutional issue, although it is not argued with the finesse a lawyer might use.

Furthermore, Monticello, in it's Brief relies upon a Constitutional section which was repealed in 1985, and had no bearing on a case tried in 1987 (Utah Constitution Article VIII Section 9) and the law on such appeals is now governed by statute (UCA 77-35-26 (13), while the Utah Supreme Court is given wider power to determine any cause through the issuance of writs (Utah Constitution Article VIII Section 3) which was in this case accomplished by the issuance of the Writ of Certiorari by this Court on June 12, 1989, possibly because the Court understood that a constitutional issue was being raised, which was a case of first impression in the state of Utah.

ARGUMENT FOUR

Christensen believes that, although he did so inartfully, he did raise the Full Faith and Credit argument in both the lower Courts (his argument in the Justice Court was a similar argument as is presented in the Circuit Court) Monticello's Prosecutor, Mr. Anderson, asserts that he would have dismissed the case at an earlier time had he been aware of that argument then, yet he is law trained and should be much more cognizant of Direct Constitutional quotations, than

Christensen, an uneducated construction worker, and should have recognized Christensen's statements that his license was issued by Wyoming and must be recognized in all of the States including Utah as a paraphrase of U.S. Constitution Article IV Section 1. It is after all a prosecutor's ethical duty to seek justice, not solely convictions

ARGUMENT FIVE

The state of Utah recognizes that it does not have the power to suspend licenses issued by other states in its definition of "Home state" within the Driver's License Compact, as well as its various instructions on how to handle a violation by a nonresident driver. Wyoming before joining the Compact provided a procedure whereby a Wyoming resident's license could be suspended for violations in another state (WS 31-9-204) which cannot be interpreted as consent for another state to suspend its resident's licenses.

Further of the cases relied upon by Monticello, only New Hampshire v. French, 117 N.H. 785, 378 A.2d 1377 is applicable as in that case the defendant was issued a valid license by another state *before* the alleged suspension took place, and in that case the court reversed the conviction of Driving on Suspension, although not on the Full Faith and Credit issue. Christensen, like French was issued his license by Wyoming (in 1984) before the alleged suspension took place (1986), and Utah may have taken the proper steps for Wyoming to suspend his license, but for some reason did not, therefore, no suspension took place because Utah is not empowered to suspend the license granted by another state.

The other cases relied upon by Monticello, Connecticut v. Roy 23 Conn. Supp, 176 A.2d 66, District of Columbia v. Fred 281 U.S. 49, State v. Harkness, 189 Kan. 581, 370 P. 2d 100, State v. Dalton, 13 Wash. App. 94, 533 P. 2d 864, State v. Justesen, 63 Or. App. 544, 665 P. 2d 380, are not applicable as each of them involves a case where the defendant's license was suspended in one state, and sought a license in the other state while his license was still under suspension

in the original state. At trial Christensen introduced the abstract of his Wyoming license(see recorded transcripts tape digital number 3230-3290), which dates were sufficient to prove that his license was validly issued *prior to the alleged suspension of his license by Utah* (in 1986)

ARGUMENT SIX

Christensen's license from Wyoming was valid at the time of his arrest,(as evidenced by his Wyoming license abstract Exhibit A). Even the Arresting Officer was aware of it's validity as his testimony clear shows (See recorded transcripts tape 88SJ008 digital reading 3020-3140) in particular where he states the following;

OFFICER PALMER TESTIMONY

Officer Palmer: " * * * He produced a Wyoming Driver's License and apparently the Wyoming Driver's License was valid * * *

On cross examination by Christensen

Christensen: "* * * Again as you stated before* * * when you asked for my driver's license I gave you a valid Wyoming Driver's

License"

Officer Palmer: "That is correct."

* * *

Christensen: "* * * But you had no indication that my Wyoming license had been suspended?"

Officer Palmer: "That is correct."

having had testimony and evidence presented showing the validity of Christensen's license issued by Wyoming, Monticello should have of it's own motion dismissed the case against Christensen on the Full Faith and Credit argument. Then this "seemingly endless litigation" could have been avoided. Christensen's financial resources are not great either, and he is not being paid to pursue this appeal either. Mr. Anderson could have saved the City of Monticello great expense at the lower Court level.

SUMMARY

It is true that this case should not have been allowed to proceed this far. Christensen was validly licensed by Wyoming prior to any alleged suspension took place and therefore, to suspend his license Utah must go through the State of Wyoming in order to not violate the Full Faith and Credit Clause of the U.S. Constitution.

Further as a "pro se" Christensen's arguments may not be as sophisticated as those of an attorney, but the issue was raised and his argument deserves to be heard on it's merits.

Christensen respectfully urges the Court to reverse his conviction and to order the return of his money now in the Possession of the Courts, as well as any such other relief as the Court deems appropriate.

Dated this 26th day of August 1989.

Respectfully submitted

Lee Christensen

CERTIFICATION OF MAILING

I certify that four true and correct copies of the copies of the foregoing Reply Brief was mailed to the opposing counsel by placing same in the U.S. Mail first class postage prepaid to the following address

Lyle Anderson
P. O. Box 275
Monticello, Utah 84535

on the 7th day of September 1989

Lee Christensen

WYOMING
DEPARTMENT OF REVENUE AND TAXATION
DRIVER RECORD INFORMATION

0-46127
Christensen, Lee Hatfield
5 Hwy 30 East
Linston, WY 82930

PAGE: 1
DATE: 1987/10/22

B: 1943/07/17 HGT: 5-10 FT-IN WGT: 200 LBS SEX: M SSN: 529-29-3358
DRIVER LICENSE: NO. : 100852-672 CLASS : C OLD DL: 7284199015
ISSUED: 1984/07/17 LAST DATE VALID: 1988/07/17

RESTRICTIONS : NONE

DESCRIPTION	OCCUR/CONV DATE	END DATE
Failure to Yield Right-of-way	1986/10/02	
CIT191422UT	1986/10/15	

Status Clear

END OF DRIVING RECORD

EXHIBIT A



DEPARTMENT OF PUBLIC SAFETY

NORMAN H BANGERTER GOVERNOR

JOHN T NIELSEN COMMISSIONER
D DOUGLAS BODRERO, DEPUTY COMMISSIONER
L DALE ELTON DEPUTY COMMISSIONER

October 23, 1987

Lyle Anderson
City Attorney
P.O. Box 275
Monticello, Utah 84535-0275

Re: Leo H Christensen
In reply, please refer to
Accident File No. 2-10-636649

Re: Motor vehicle accident which
occurred on October 2, 1986
in or near Salt Lake City
D.L/File No.: 2155275

TO WHOM IT MAY CONCERN:

Leo H Christensen was issued a Utah Driver License on August 9, 1979 which was made to expire on July 17, 1980. He has not renewed his Utah driving privilege since that time. However, on October 2, 1986 he was involved as the responsible person in an accident. At that time he showed the officer a Wyoming driver license, number 7284199015.

The accident resulted in substantial damages. On February 5, 1987 Mr. Christensen was suspended for one year by Financial Responsibility pursuant to the October 2, 1986 accident. That suspension will end on February 5, 1988.

If there are further questions in this matter, please contact this office.

Respectfully,

G. Barton Blackstock
Bureau Chief
Records

GBB:kh:ngm

EXHIBIT B