

U.S. COURT DECISIONS CONFIRM "DRIVING A MOTOR VEHICLE" IS A CITIZENS RIGHT AND NOT A GOVERNMENT GRANTED PRIVILEGE.

By Jack McLamb (from Aid & Abet Newsletter)

For many years Professionals within the criminal justice System have acted upon the belief that traveling by motor vehicle upon the roadway was a privilege that was gained by a citizen only after approval by their respective state government in the form of the issuance of a permit or license to that Particular individual. Legislators, police officers and court officials are becoming aware that there are now court decisions that prove the fallacy of the legal opinion that "driving is a privilege and therefore requires government approval, i.e. a license". Some of these cases are:

Case # 1 - "Even the legislature has no power to deny to a citizen the right to travel upon the highway and transport his property in the ordinary course of his business or pleasure, though this right may be regulated in accordance with the public interest and convenience. - Chicago Motor Coach v Chicago 169 NE 22

("Regulated" here means traffic safety enforcement, stop lights, signs, etc. NOT a privilege that requires permission i.e.- licensing, mandatory insurance, vehicle registration, etc.)

Case # 2 - "The right of the citizen to travel upon the public highways and to transport his property thereon, either by carriage or by automobile, is not a mere privilege which a city may prohibit or permit at will, but a common right which he has under the right to life, liberty, and the pursuit of happiness." - Thompson v Smith 154 SE 579.

It could not be stated more conclusively that Citizens of the states have a right to travel, without approval or restriction (license), and that this right is protected under the U.S. Constitution. Here are other court decisions that expound the same facts:

Case # 3 - "The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law under the 5th Amendment." - Kent v Dulles, 357 U.S. 116, 125.

Case # 4 - "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the 14th Amendment and by other provisions of the Constitution." - Schactman v Dulles, 96 App D.C. 287, 293.

FUNDAMENTAL RIGHT

As hard as it is for those of us in Law enforcement to believe, there is no room for speculation in these court decisions. The American citizen does indeed have the inalienable

right to use the roadways unrestricted in any manner as long as they are not damaging or violating property or rights of another.

Government, in requiring the people to file for "drivers licenses, vehicle registrations, mandatory insurance, and demanding they stop for vehicle inspections, DUI/DWI roadblocks etc. without question, are "restricting", and therefore violating, the Peoples common law right to travel.

Is this a new legal interpretation on this subject of the right to travel? Apparently not. The American Citizens and Lawmen Association in conjunction with The U.S. Federal Law Research Center are presently involved in studies in several areas involving questions on constitutional law. One of the many areas under review is the area of "Citizens right to travel." In an interview a spokesmen stated: "Upon researching this subject over many months, substantial case law has presented itself that completely substantiates the position that the "right to travel unrestricted upon the nations highways" is and has always been a fundamental right of every Citizen."

This means that the "beliefs and opinions" our state legislators, the courts, and those of as involved in the law enforcement profession have acted upon for years have been in error. Researchers armed with actual facts state that U.S. case law is overwhelming in determining that - to restrict, in any fashion, the movement of the individual American in the free exercise of their right to travel upon the roadways, (excluding "commerce" which the state Legislatures are correct in regulating), is a serious breach of those freedoms secured by the U.S. Constitution, and most state Constitutions, i.e - it is Unlawful.

THE REVELATION THAT THE AMERICAN CITIZEN HAS ALWAYS HAD THE INALIENABLE RIGHT TO TRAVEL RAISES PROFOUND QUESTIONS TO THOSE WHO ARE INVOLVED IN MAKING AND ENFORCING STATE LAWS.

The first of such questions may very well be - If the States have been enforcing laws that are unconstitutional on their face, it would seem that there must be some way that a state can legally put restrictions, such as - licensing requirements, mandatory insurance, vehicle registration, vehicle inspections, D.W.I. roadblocks, to name just a few, on a Citizens constitutionally protected right. Is that not so?

For the answer to this question let us look, once again, to the U.S. courts for a determination on this very issue.

The case of Hertado v. California, 110 U.S. 516. states very plainly: "The State cannot diminish rights of the people."

"the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." - Davis v. Wechsler, 263 U.S. 22, 24.

Would we not say that these judicial decisions are straight to the point - that there is no lawful method for government to put restrictions or limitations on rights belonging to the people?

Other cases are even more straight forward:

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

- Miranda v. Arizona, 384 U.S. 436, 491.

"The claim and exercise of a constitutional right cannot be converted into a crime." - Miller v. U.S., 230 F 2d 486, 489.

"There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights."- Sherar v. Cullen, 481 F. 945. (There is no question that a citation/ticket issued by a police officer, for no drivers license, no current vehicle registration, no vehicle insurance etc. which carries a fine or jail time, is a penalty or sanction, and is indeed "converting a Right into a crime".)

We could go on, quoting court decision after court decision, however, In addition, the Constitution itself answers our question- "Can a government legally put restrictions on the rights of the American people at anytime, for any reason"? (Such as in this particular case - when the government believes it to be for the safety and welfare of the people).

The answer is found in ARTICLE SIX of the U.S. Constitution:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;..shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding". (This tells us that the U.S. Constitution is to be upheld over any state, county, or city laws that are in opposition to it.)

In the same Article it goes on to say just who it is within our governments that is bound by this Supreme Law:

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;". - ART. 6 U.S. CONST.

We know that Police officers, are a part of the Executive branch. We are "Executive Officers".

Article 6 above, is called the SUPREMACY CLAUSE, and it clearly states that, under every circumstance, the above listed officials in these United States must hold this documents tenets supreme over any other laws, regulations, or orders. Every U.S. Police officer knows

that they have sworn a oath to the people of our nation that we will not only protect their lives and property, but, that we will uphold, and protect their freedoms and rights under the Supreme laws of this nation, - the U. S. Constitution.

In this regard then, we must agree that those within government that restrict a Citizens rights, (such as restricting the peoples right to travel,) are acting in violation of his or her oath of office and are actually committing a crime against such Citizens. Here's an interesting question. Is ignorance of these laws an excuse for such acts by officials?

If we are to follow the "letter of the law (as we are sworn to do), this places officials that involve themselves in such unlawful acts in a unfavorable legal situation. For it is a felony and federal crime to violate, or deprive citizens of their Constitutionally protected rights.

Our system of law dictates the fact that there are only two ways to legally remove a right belonging to the people. These are - #1 - by lawfully amending the constitution, or #2 - by a person knowingly waiving a particular right.

Some of the confusion in our present system has arisen because many millions of people have waived their right to travel "unrestricted" upon the roadways of the states and opted into the jurisdiction of the state for various reasons. Those who have knowingly given up these rights are now legally regulated by state law, the proper courts, and "sworn, constitutionally empowered officers-of-the-law," and must acquire proper permits, registrations, insurance, etc.

There are basically two groups of people in this category:

#1 - Any citizen that involves themselves in "commerce," (business for private gain), upon the highways of the state.

Here is what the courts have said about this:

"...For while a citizen has the right to travel upon the public highways and to transport his property thereon, that right does not extend to the use of the highways, either in whole or in part, as a place for private gain. For the latter purpose no person has a vested right to use the highways of the state, but is a privilege or license which the legislature may grant or withhold at its discretion..." - State v Johnson, 243 P. 1073, 1078.

Other U.S. court cases that confirm and point out the difference between the "right" of the citizen to travel and a government "privilege" are - Barney v Board of Railroad Commissioners; State v City of Spokane, 186 P. 864.; Ex Parte Dickey (Dickey v Davis), 85 S.E. 781.; Teche Lines v Danforth, 12 So.2d 784.

There are numerous other court decisions that spell out the JURISDICTION issue In these two distinctly different activities. However, because of space restrictions we will leave it up to officers to research it further for themselves. (See last page for additional references).

#2 - The second group of citizens that are legally under the jurisdiction of the state is the individual citizen who has voluntarily and knowingly waived their right to travel "unregulated and unrestricted" by requesting placement under such jurisdiction through the acquisition of a state - drivers license, vehicle registration, mandatory insurance, etc. (In other words "by contract only".)

We should remember what makes this "legal," and not a violation of the individuals common law right to travel "unrestricted" is that they knowingly volunteer, freely, by contract, to waive their right. If they were forced, coerced or unknowingly placed under the states powers, the courts have said it is a clear violation of their rights.

This in itself raises a very interesting question. What percentage of the people in each state have filed, and received, licenses, registrations, insurance etc. after erroneously being advised by their government that it was mandatory?

Many of our courts, attorneys and police officials are just becoming informed about this important issue and the difference between "Privileges vs. Rights". We can assume that the majority of those Americans carrying state licenses, vehicle registrations etc., have no knowledge of the rights they waived in obeying laws such as these that the U.S. Constitution clearly states are unlawful, i.e. "laws of no effect". In other words - "LAWS THAT ARE NOT LAWS AT ALL."

OUR SWORN DUTY

An area of serious consideration for every police officer, is to understand that the most important law in our land he has taken an oath to protect, defend, AND ENFORCE, is not state laws, nor city or county ordinances, but, that law that supersede all other laws in our nation, - the U.S. Constitution. If laws in a particular police officer's state, or local community are in conflict with the SUPREME LAW of our nation, there Is no question that the officer's duty is to "uphold the U.S. Constitution."

What does this mean to the "patrol officer" who will be the only sworn "Executive Officer" on the scene, when knowledgeable Citizens raise serious objections over possession of insurance, drivers licenses and other restrictions? It definitely means these officers will be faced with a hard decision. (Most certainly if that decision effects state, city or county revenues, such as the issuing of citations do.)

Example: If a state legislator, judge or a superior tells a police officer to proceed and enforce a contradictory, (illegal), state law rather than the Supreme Law of this country, what is that "sworn officer" to do? Although we may not want to hear it, there is but one right answer, - "the officer is duty bound to uphold his oath of office" and obey the highest laws of the nation. THIS IS OUR SWORN DUTY AND IT'S THE LAW!

Such a strong honest stand taken by a police officer, upholding his or her oath of office, takes moral strength of character. It will, without question, "SEPARATE THE MEN FROM THE BOYS." Such honest and straight forward decisions on behalf of a government official have

often caused pressure to be applied to force such officers to set aside, or compromise their morals or convictions.

As a solace for those brave souls in uniform that will stand up for law and justice, even when it's unpopular, or uncomfortable to do so...let me say this. In any legal stand-off over a sworn official "violating" or "upholding" their oath of office, those that would side with the "violation" should inevitable lose.

Our Founding Fathers assured us, on many occasions, the following: Defending our freedoms in the face of people that would for "expedients sake," or behind the guise, "for the safety and welfare of the masses," ignore peoples rights, would forever demand sacrifice and vigilance from those that desired to remain free. That sounds a little like - "Freedom is not free!"

Every police officer should keep the following court ruling, that was covered earlier, in mind before issuing citations in regard to "mandatory licensing, registration and insurance" - verses - "the right of the people to travel unencumbered":

"THE CLAIM AND EXERCISE OF A CONSTITUTIONAL RIGHT CANNOT BE CONVERTED INTO A CRIME." - Miller v U.S., 230 F 2d 486. 489.

And as we have seen, "traveling freely," going about ones daily activities, is the exercise of a most basic right.