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Constitutional Law - Safety Responsibility Law as a Deprivation of Due Process - People v. Nothaus, 363 P.2d 180 (Colo. 1961)

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petition by the defendants in the *Goduto* case. Therefore, the point in issue is whether or not the Illinois state courts can convict the defendants of trespass without a prior determination by the National Labor Relations Board of their right to be on the property. Because the defendants did not follow the procedure established by Congress to protect their rights, the Illinois Supreme Court held that they could exercise jurisdiction. This seems to be the logical decision, for to deny the jurisdiction of the states because of the unions' failure to apply for a determination of its rights would make the states' interest in the prevention of violence subject to the course of action decided upon by the labor union. The cases have repeatedly held that the states' interest in the safety of the public and prevention of violence is predominant.[38]

Therefore, the Illinois courts properly took jurisdiction over the acts of the defendants in the *Goduto* case because their repeated refusals constituted a threat of violence to the community. Furthermore, although the Illinois state courts did not have the power to determine whether or not the defendants' trespass was excused under section 7 of the National Labor Relations Act, the defendants were properly convicted because of their failure to apply to the National Labor Relations Board for a determination of their rights. This follows since the rights of the states to control violence have been held to take precedence over rights granted labor unions in section 7.[39] It was the course of action decided upon by the labor union which created the situation where their rights under section 7 could not be determined. It would be incongruous to find that the state's interest in the protection of the public was subject to the course of action decided upon by the labor unions, since the states have a duty to protect the peace and order of society.[40]

[38] United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656 (1954); United Auto. Workers v. WERB, 351 U.S. 266 (1956); Youngdahl v. Rainfair Co., 355 U.S. 131 (1957).

[39] *Ibid.*

[40] A petition for certiorari in the case of People v. Goduto is presently pending before the United States Supreme Court. 30 U.S.L. Week 3097 (U.S. Sept. 22, 1961) (No. 437).

CONSTITUTIONAL LAW–SAFETY RESPONSIBILITY LAW AS A DEPRIVATION OF DUE PROCESS

The defendant, a resident of Colorado, was involved in an automobile accident while driving within the state. Within a one year period after the first accident, the defendant was involved in a second in which he was charged with driving while under a license suspension order issued by the

Colorado Motor Vehicle Department. The trial court found that the defendant's driver's license had been summarily revoked after the first accident pursuant to the Colorado Safety Responsibility Law.[1] The Colorado Supreme Court held that the statute which allows revocation of a driver's license without prior hearing or trial, is unconstitutional as a violation of due process. *People v. Nothaus*, 363 P.2d 180 (Colo. 1961).

The Colorado statute states that any person involved in a motor vehicle accident in the State of Colorado is required to file with the Motor Vehicle Division of the Department of Revenue a full report of what occurred.[2] The report must be submitted by all parties regardless of fault.

The Director of Revenue is required to suspend the license of every operator, and the vehicle registration of every owner who was "in any manner involved"[3] in the accident. Suspension may be avoided where the party involved in the accident, regardless of liability, deposits security or has liability insurance referred to in the statute as "sufficient in the judgment of the Director to satisfy any judgments for damages from such accidents as may be recovered against such operator or owner."[4]

The statute, not unique to Colorado, has been enacted with slight modifications in forty-two other states.[5] The underlying purpose has been to protect citizens from financially irresponsible drivers on the highway. In all instances such statutes have been held to be constitutional and not violative of due process. The Louisiana Appellate Court, in *Sharp v. Department of Public Safety*,[6] where a driver's license was revoked under a

[1] COLO. REV. STAT. art 7, 13-7-1 to 13-7-39 (1953).

[2] COLO. REV. STAT. art. 7, § 13-7-6 (1953).

[3] COLO. REV. STAT. art. 7, § 13-7-7 (1953).

[4] *Ibid.*

[5] For example: CODE OF ALA. tit. 36, §§ 74(42–83) (1958); CAL. CODE ANN. Vehicle Code, Div. 7, ch. 1, §§ 16000–16503 (Deering, 1959); CONN. GEN. STAT. tit. 14, §§ 112–281 (1958); DEL. CODE ANN. tit. 221, §§ 2901–2972 (1953); FLA. STAT. ch. 324.011–324.271 (1959); IDAHO CODE ch. 15, §§ 49–1501 to 49–1540 (1957); IND. STAT. §§ 47-1044 to 1051 (Burns 1952); IOWA CODE ANN. ch. 312A, §§ 1-38 (1949); KY. REV. STAT. ch. 187, §§ 290–990 (1960); REV. STAT. OF ME. ch. 19, §§ 64–71 (1944); COMP. LAW OF MICH. ch. 256.251–256.269 (1948); MINN. STAT. ch. 170, §§ 170.21–170.57 (1957); MO. REV. STAT. ch. 303, §§ 303.010–303.340 (1949); REV. CODE OF MONT. tit. 53, ch. 4, §§ 53.401 to 53-458 (1947); CONSOL. LAWS OF N.Y. ANN. V and T, art. 6, §§ 310–321 (1960); NEV. REV. STAT. ch. 485, §§ 485.010–485.420 (1960); N.C. GEN. STAT. ch. 20, art. 9, §§ 20–224 to 20–279 (1953); OKLA. REV. STAT. tit. 47, ch. 14, §§ 501–542 (1951); ORE. REV. STAT. tit. 39, ch. 486, §§ 486.001–486.991 (1959); PA. STAT. ANN. tit. 75, art. 14, §§ 1401–1436 (Purdons 1960); GEN. LAW OF R.I. tit. 31, ch. 31, §§ 31-31-1 to 31-31-22 (1956); TEX. STAT. art. 6701h, §§ 1–43 (Vernon 1952); UTAH CODE ANN. tit. 41, ch. 12, §§ 41-12-1 to 41-12-41 (1953); VT. STAT. ANN. tit. 23, ch. 11, §§ 801–921 (1959); CODE OF VA. tit. 46.1, ch. 6, §§ 46.1–388 to 514 (1950); W.VA. CODE OF 1955 ANN. ch. 17D, art. 1–3, §§ 1721–482 to 539; WIS. STAT. ANN. ch. 344.01–.52 (1958); WYO. STAT. tit. 31, ch. 6, §§ 31–277 to 315 (1957).

[6] 114 S.2d 121 (La. 1959).

safety responsibility statute similar to the one involved in the *Nothaus* case, rejected the plaintiff's view that the act was unconstitutional. The court stated that "the constitutionality of such license suspension provisions [has] been upheld without exception."[7]

The Supreme Court of Colorado found the statute unconstitutional on two points, first that it was a violation of due process, and second, that it was not a proper exercise of the police power of the state. The majority of the court was aware of the fact that they could not cite any cases to support its decision, despite the fact that the *Nothaus* case is in no manner a case of first impression.

The court first sustained the plaintiff's argument on the theory that the effect of the enforcement of the statute causes a deprivation of property without due process of law.[8] The court stated, "[t]he term property within the due process clause includes the right to make full use of the property which one has an inalienable right to acquire."[9] The decision went on to state that when a citizen meets the standards of fitness and competence set down by the state, necessary to obtain a driver's license, he thereby acquires the right to drive upon the highway until, by due process of law and in the interest of public safety, he is deprived of it. "The question of whether a constitutionally guaranteed *property right* can be denied for some justifiable reason, is essentially a judicial question . . . ."[10]

Consideration must be given to the Colorado decision for its holding that drivers' licenses embrace a property right. The courts of many states have drawn a distinction between licenses which are entitled to the constitutional guarantees afforded rights and licenses which are given the status of privileges. The courts have usually held that licenses regarding alcohol, driving, dance halls, pool rooms, theaters, fishermen, and popcorn stands to be within the concept of privileges. Licenses afforded the constitutional guarantees given rights are those concerned with the more dignified callings such as law, medicine, architecture and accounting.[11] The Colorado court in granting drivers' licenses constitutional guarantees gives an entirely new insight to the status of drivers' licenses.

Contrary to the Colorado holding that a driver's license is a property right, a leading case in this area is *Goodwin v. Yavapai County*.[12] In this case the plaintiff claimed that his driver's license, which was summarily re-

[7] *Id.* at 123.

[8] People v. Nothaus, 363 P.2d 180 (Colo. 1961).

[9] *Id.* at 182.

[10] *Id.* at 182. (Emphasis added.)

[11] DAVIS, CASES ON ADMINISTRATIVE LAW 162 (1959).

[12] 68 Ariz. 108, 201 P.2d 124 (1948).

voked after he pleaded guilty to a drunken driving charge, was a property right. The court held that a driver's license was not a property right.

> A license to operate a motor vehicle is not a contract or property right, but a mere privilege, the enjoyment of which depends upon compliance with the conditions prescribed by the state and is subject to its control.[13]

Prior to the Colorado decision, all courts have held that a driver's license represents a privilege and does not in any legal or constitutional sense amount to property. Revocation has been held not to be a deprivation of property without due process of law.[14] To operate an auto is not a natural right, nor does a license represent a property right. Licenses may be suspended or revoked without opportunity to be heard.[15]

Secondly, the Colorado Supreme Court held that this statute cannot be enforced within the police power of the state. In its decision the court stated that any limitation on a validly licensed driver must be based on a proper exercise of police power to protect the public health, safety and welfare.[16] The majority continued, saying that to compel the deposit of security or the showing that one has financial responsibility to indemnify another against financial loss, has nothing to do with the protection of the public health, safety and welfare. "The public gets no protection whatever from the deposit of such security,"[17] and thus the Colorado court concluded that the Safety Responsibililty Law is not a valid statute under the exercise of the state police power.

The courts of many states have uniformly held contrary, asserting that the purpose of such a safety responsibility statute is to protect the public against the operation of motor vehicles by reckless and irresponsible persons.[18] The theory expressed in the instant case is refuted by *Escobedo v.*

[13] *Id.* at 115, 201 P.2d at 128.

[14] Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952); State v. LaPlante, 47 R.I. 258, 131 Atl. 641 (1926).

[15] Nulter v. State, 119 W. Va. 312, 193 S.E. 549 (1937).

[16] People v. Nothaus, 363 P.2d 180 (Colo. 1961).

[17] *Id.* at 183.

[18] Reitz v. Mealy, 314 U.S. 33 (1941); Ex Parte Poresky, 290 U.S. 30 (1933); Sprout v. City of South Bend, 27 U.S. 163 (1928); State v. Price, 49 Ariz. 19, 63 P.2d 653 (1937); Escobedo v. State Department, 35 Cal.2d 870, 222 P.2d 1 (1950); Ballow v. Reeves, 238 S.W.2d 141 (Ky. 1951); In Re Opinion of the Justices, 251 Mass. 569, 147 N.E. 681 (1925); DeVries v. Alger, 329 Mich. 68, 44 N.W.2d 872 (1950); Surtman v. Secretary of State, 309 Mich. 270, 15 N.W.2d 471 (1944); Ragland v. Wallace, 80 Ohio App. 210, 70 N.E.2d 118 (1946); In Re Opinion of the Justices, 81 N.H. 566, 129 Atl. 117 (1925); Garford Trucking Co. v. Hoffman, 114 N.J.L. 522, 177 Atl. 882 (1935); Heart v. Fletcher, 184 Misc. 659, 53 N.Y.S.2d 369 (1945); Sullins v. Butler, 175 Tenn. 468, 135 S.W.2d 930 (1940); Gillaspie v. Department of Public Safety, 152 Tex 459, 259 S.W.2d 177 (1953); Prichard v. Battle, 178 Va. 455, 17 S.E.2d 393 (1941); Nulter v. State, 119 W.Va. 312, 193 S.E. 549 (1937); State v. Stehlek, 262 Wis. 642, 56 N.W.2d 514 (1953).

State.[19] In that case the plaintiff, whose license was revoked under an almost identical financial responsibility law of California, pleaded that it was more in the public interest that he should be able to drive his truck and support his nine children, than it was to keep him, a financially irresponsible driver, off the highway. Escobedo further contended that in fact this law did not meet the compelling public interest. The court held that such a law did meet the public interest saying that, "the compelling public interest here appears from the obvious carelessness and financial irresponsibility of a substantial number of drivers. . . ."[20] To establish such a safety responsibility law is a power inherent in every sovereign government.[21] Safety responsibility statutes are within the police power of the state, and may be enacted in conformance with constitutional limits.[22] Where a driver's license was revoked under a similar and earlier safety responsibility law, in spite of the plea that the law was not in the interest of the general welfare, the court in *Rosenblum v. Griffin*[23] held that such a law was reasonable and proper.

> [P]rotection for securing redress for injured highway travelers is a proper subject for police regulation, as well as protection from being injured. It is a reasonable incident of the general welfare that financially irresponsible persons be denied the use of the highway. . . .[24]

In the dissenting opinion two justices stated that to enable one "to roam the highway in search of a second accident"[25] is precluded by this type of Safety Responsibility statute. Although this argument has merit it does not apply to the innocent driver who is involved in an accident without fault. The minority of the court argued that the great weight of authority has held contra to this decision, but this argument is of no value if in all prior decisions basic consitutional guarantees have been overlooked. The Colorado court has taken the lead in attempting, and perhaps justifiably so, to create a property right in the area of drivers' licensing. It can be hoped that the court's rationale for this decision is a realization of basic constitutional rights and not a desire to influence the legislature to enact more stringent financial responsibility laws.

[19] 35 Cal.2d 870, 222 P.2d 1 (1950).

[20] *Id.* at 876, 222 P.2d at 5. In California there were 3,879,931 motor vehicles in 1950. In the first four months after the act, 19,808 drivers were ordered to establish adequate security, and 6,576 licenses were suspended under the law.

[21] Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951).

[22] Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952).

[23] 89 N.H. 314, 197 Atl. 701 (1938).

[24] *Id.* at 318, 197 Atl. at 704.

[25] People v. Nothaus, 363 P.2d 180, 184 (Colo. 1961).