

Garry DOTY *v.* STATE of Arkansas

CR 84-159

686 S.W.2d 413

Supreme Court of Arkansas
Opinion delivered March 18, 1985

CONSTITUTIONAL LAW — DWI ACT — CONSTITUTIONALITY. — The Omnibus DWI Act is not void for vagueness, does not violate the accused's Sixth Amendment right to confrontation, and does not unconstitutionally shift the burden of proof, or violate the separation of powers doctrine; neither does the intoximeter test violate the accused's right against self-incrimination; furthermore, convictions under the former "driving under the influence" law may be used to enhance a sentence under the new act.

Appeal from Craighead Circuit Court; *Gerald Brown*, Judge; affirmed.

McDaniel, Gott & Wells, P.A., by: *Bobby McDaniel*, for appellant.

Steve Clark, Att'y Gen., by: *Michael E. Wheeler*, Asst. Att'y Gen., for appellee.

PER CURIAM. This appeal of a conviction under the new Omnibus DWI law is affirmed. All the arguments raised have been rejected in prior or contemporaneous cases.

The act is not void for vagueness. *Lovell v. State*, 283 Ark. 425, 678 S.W.2d 318 (1984) reh. den. 283 Ark. 434, 681 S.W.2d 395 (1984); *Long v. State*, 284 Ark. 21, 680 S.W.2d 686 (1984); *Steele v. State*, 284 Ark. 340, 681 S.W.2d 354 (1984). Doty's argument that the act violates his Sixth Amendment right to confrontation was rejected in *Southern v. State*, 284 Ark. 572, 683 S.W.2d 933 (1985), and *Wells v. State*, 285 Ark. 9, 684 S.W.2d 248 (1985). The act does not unconstitutionally shift the burden of proof, *Lovell v. State*, *supra*, or violate the separation of powers doctrine. *Lovell v. State*, *supra*; *Lovell v. State*, 283 Ark. 434, 681 S.W.2d 395 (supplemental opinion on rehearing) (1983); *Sparrow v. State*, 284 Ark. 396, 683 S.W.2d 218 (1985); *Southern v. State*,

supra; *Tausch v. State*, 285 Ark. 226, 685 S.W.2d 802 (1985).

Doty's argument that the intoximeter test violates his right against self-incrimination has been considered and rejected. *Steele v. State, supra*. He argues that convictions under the former driving under the influence law should not be used to enhance a sentence under the new act. That argument was rejected in *Lovell v. State, supra*.

Affirmed.
