

2001

Kenneth W. Gibb v. Earl N. Dorius : Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH DEC 6 1975

BRIGIAM YOUNG UNIVERSITY
J. Reuben Clark Law School

KENNETH W. GIBB,
Plaintiff-Respondent, :
-vs- Case No.
EARL N. DORIUS, Director, : 13626
Driver License Division,
State of Utah, :
Defendant-Appellant.

----- : -----
APPELLANT'S PETITION FOR REHEARING

PETITION FOR REHEARING FROM THE DECISION OF THE SUPREME COURT OF UTAH SUSTAINING THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE D. FRANK WILKINS, JUDGE, PRESIDING.

FILED
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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE
STATE OF UTAH

KENNETH W. GIBB,

Plaintiff-Respondent,

-vs-

EARL N. DORIUS, Director,
Driver License Division,
State of Utah,

Defendant-Appellant.

:
:
:
Case No.
: 13626

APPELLANT'S PETITION FOR REHEARING

Comes now the appellant, Earl N.
Dorius, Director, Driver License Divi-
sion, State of Utah, by and through his
attorney of record, and pursuant to
Rule 76(e), Utah Rules of Civil Pro-
cedure, as amended, herein and hereby
petitions the Court for a rehearing

for the following reasons:

POINT I

THE COURT ERRED IN FAILING TO SET FORTH IN THE OPINION WHAT RECOGNITION SHOULD BE GIVEN TO THE STATUS OF THE SALT LAKE CITY-SALT LAKE COUNTY HEALTH DEPARTMENT, AND ITS PHYSICIAN-DIRECTOR (DR. HARRY GIBBONS), OR TO THE UTAH DIVISION OF HEALTH, AND ITS DIRECTOR, (DR. LYMAN OLSON), OR TO THE RULES AND REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES, STATE DIVISION OF HEALTH, IN AND FOR THE STATE OF UTAH, AS PROMULGATED DECEMBER 30, 1969, WHICH ARE PUBLISHED AND A MATTER OF PUBLIC RECORD AND SHOULD HAVE BEEN TAKEN INTO ACCOUNT BY THE

COURT IN ADDITION TO AND IN CONNECTION WITH THE MEDICAL PRACTICES ACT, IF SAID ACT IS CONTROLLING.

POINT II

THE COURT ERRED IN FAILING TO TAKE INTO CONSIDERATION SECTION 26-15-4 (10) AND (20), IN ADDITION TO THE MEDICAL PRACTICES ACT AND FURTHER THE FEDERAL SAFETY ACT OF 1966 AND THE LEGISLATIVE ENACTMENTS OF THE LEGISLATURES OF 1967 AND 1969, TO COMPLY WITH THE ABOVE FEDERAL ACT; AND THE STATUTES OF THE STATE SO ENACTED AND ANY RULES AND REGULATIONS PROMULGATED THEREUNDER, SETTING FORTH THE CRITERIA FOR INDIVIDUALS AND PHYSICAL FACILITIES FOR

TESTS AND TESTING OF BLOOD SAMPLES
IN AND FOR THE STATE OF UTAH, AND
FOR ANY POLITICAL SUBDIVISIONS
THEREOF.

POINT III

THE COURT ERRED IN THAT THE OPINION
IN CHIEF FAILS TO CLARIFY THE DISPUTED
QUESTION ARGUED AT THE TRIAL LEVEL AS
TO THE AUTHORITY OF THE PERSON TO TAKE
THE BLOOD SAMPLE, AND THEREBY CONFUSED
THE ISSUE AS TO WHO A "DULY AUTHORIZED
LABORATORY TECHNICIAN" IS, OR SHOULD
BE, OR WHEN, BY WHOM, OR WHERE, SAID
BLOOD SAMPLES MAY BE DRAWN PURSUANT TO
SECTION 41-6-44.10, UTAH CODE ANNOTATED
1953, AS AMENDED; AND THE COURT FURTHER
FAILED TO DISTINGUISH THE "DULY

AUTHORIZED LABORATORY TECHNICIAN" FROM
THE UNAUTHORIZED LABORATORY TECHNICIAN,
WHOMEVER OR WHEREVER HE MAY BE.

POINT IV

THE COURT FAILED TO DETERMINE
WHETHER A DULY AUTHORIZED LABORATORY
TECHNICIAN WOULD BE A QUALIFIED EMPLOYEE,
ACTING WITHIN THE SCOPE OF HIS EMPLOY-
MENT, WITHIN OR UNDER THE DIRECTION OF
A DULY CERTIFIED LABORATORY UNDER THE
UTAH DIVISION OF HEALTH.

POINT V

THE COURT FURTHER ERRED IN THAT
IF AS THE OPINION IN CHIEF SUGGESTS,
THERE WAS A QUESTION ABOUT THE AUTHORITY
OF MR. DAVIS, THEN THE CASE SHOULD BE
REMANDED TO THE TRIAL COURT TO MAKE

A FACTUAL DETERMINATION AS TO WHETHER
MR. DAVIS WAS ACTING WITHIN THE SCOPE
OF HIS EMPLOYMENT WHEN HE WAS PRESENT
AT THE JAIL, PREPARED TO TAKE A BLOOD
SAMPLE, AT THE DIRECTION OF THE PEACE
OFFICER, PURSUANT TO THE STATUTE,
SECTION 41-6-44.10, UTAH CODE ANNOTATED
1953, AS AMENDED.

Respectfully submitted and Brief
in Support of the above follows,

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