

2001

The State of Utah v. Richey Lee Jackson : Petition for Rehearing

Utah Supreme Court

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Vernon B Romney; Attorney General; Attorneys for Respondent.

Robert M McRae; Hatch, McRae and Richardson; Attorneys for Appellant.

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IN THE SUPREME COURT
OF THE STATE OF UTAH

1975
BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

THE STATE OF UTAH,

Plaintiff-Respondent,

In the Interest of:

RICKEY LEE JACKSON,
a minor,

Defendant-Appellant.

Case No.
13661

PETITION FOR REHEARING

Robert M. McRae
HATCH, McRAE &
RICHARDSON

Attorneys for Defendant-Appellant
370 East Fifth South Street
Salt Lake City, Utah 84111

Vernon B. Romney
ATTORNEY GENERAL

Attorneys for Plaintiff-Respondent
236 State Capitol Building
Salt Lake City, Utah 84114

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PETITION FOR REHEARING

The court having issued its opinion in the above entitled case, the Defendant through counsel respectfully moves the court for rehearing in accordance with 76(e) (1) Utah Rules of Civil Procedure and in doing so contends that the court erred. Defendant requests the court to review the evidence in this case in light of the quotation contained in the last paragraph of the court's decision wherein the trial court judge is quoted as follows:

“Rickey, let me try and explain something to you . . . and that is, that at a certain point, even if there were a valid concept of self-defense, at a certain point you became the aggressor. The law specifies that as long as the danger exists, self-defense could be defense, but when the danger is removed then that would no longer exist. And when, if you wanted to classify Alfonso Suazo as the assailant, then at the point where he withdrew and walked around to the front of the car on the other side of the car, and you followed in pursuit, you became the aggressor.”

An examination of the record will show that this statement had to refer to aggression against Gonzales and/or Mondragen who were the alleged victims in the the two assault with deadly weapon charges, counts two and three, as will be shown in this petition.

The point which defendant-appellant wished to raise and impress upon this court is that the trial judge was confused with the identifications of the three victims involved. Neither the record nor any of the evidence adduced shows, nor can it be inferred, that Suazo, the deceased, ever went “to the other side of the car” with the defendant in pursuit as is reflected in the last sentence of the opinion in this case:

“The evidence reveals that the defendant at the time both vehicles were stopped on the highway *and while he was seated in his automobile fired the fatal shots*”. [emphasis added]

Under these facts the aggression, if any — and we do not agree any exists — was displayed against Gon-

zales and Mondragen and not against the deceased Suazo who had already been shot.

Appellant submits that Judge Garff in his misunderstanding of the facts and differentiating the alleged victims has not been able to distinguish between the identities of the people involved. Further, this confusion has been perpetuated in the misidentification of the three assailants involved with the defendant and their respective participation in the altercation.

Due process requires a re-examination of the acts of the defendant as applied to Suazo with consistency. It is apparent to appellant that the trial judge did not differentiate between the alleged crimes and the alleged assailants.

Respectfully submitted,

**ROBERT M. McRAE
HATCH, McRAE &
RICHARDSON**

Attorneys for Defendant-Appellant

**370 East Fifth South Street
Salt Lake City, Utah 84111
Telephone: 364-6474**

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