

1988

# Bountiful City v. David W. Gennill : Brief of Respondent

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

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BOUNTIFUL CITY,

Plaintiff and Respondent,

vs.

DAVID W. GENNILL,

Defendant and Appellant.

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Priority No. 2

Case No. 880533-CA

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RESPONDENT'S BRIEF  
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Appeal from the Judgment of the  
Second Circuit Court Bountiful Department  
In and for Davis County, State of Utah,  
The Honorable S. Mark Johnson, Presiding

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Case Cited:

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RESPONDENT'S BRIEF

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction over this appeal from a Circuit Court conviction under Section 78-2a-3 of the Utah Code Annotated 1953, as amended.

STATEMENT OF THE NATURE OF THE PROCEEDINGS

This case concerns an appeal by the Defendant of his conviction in the Bountiful Department of the Second Circuit Court of the charge of Driving Under the Influence of Alcohol, in violation of a Bountiful City Ordinance.

STATEMENT OF THE ISSUES

Did the Circuit Court commit reversible error in giving Jury Instruction number 7 concerning the elements of driving under the influence of alcohol, or in Jury Instruction Number 8 concerning the definition of "under the influence of alcohol"?

### STATEMENT OF THE FACTS

The Respondent accepts the Appellant's statement of the facts with the following modifications:

1. Officer Boyle had ample cause to make a traffic stop for further investigation, which is shown in his testimony. However, this issue is not raised on appeal and needs no further elaboration.

2. The Defendant refused to take a breath test.

3. Although Defendant objected at trial to Jury Instructions Numbers 7 and 8, he had no written proposed instructions (R. 73-74).

### SUMMARY OF ARGUMENT

The Defendant failed to propose written alternative jury instructions as required by Rule 51 of the Utah Rules of Civil Procedure. Even if the trial Court should have given instructions differing from those given, its failure to do so in the absence of a written request does not warrant reversal.

### ARGUMENT

At the time counsel for the Defendant objected to Jury Instructions Numbers 7 and 8, the following dialogue took place (R. 73-74):

THE COURT: No. 7 and No. 8 construed together, I think, meet the requirements of the law. You don't have a proposed instruction anyway; is that correct?

MR. OLIVER: My proposed instructions, your Honor, would simply include the fact that he....

THE COURT: Well, do you have one with you? Do you have one prepared?

MR. OLIVER: No, I don't your Honor.

Rule 51 of the Utah Rules of Civil Procedure, which applies in this case, provides:

At the close of the evidence or at such earlier time as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in said requests....(Emphasis added)

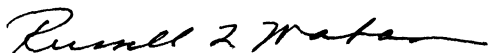
In State v. Erickson, 568 P.2d 751 (Utah 1977), the Utah Supreme Court quickly handled another appeal on a jury instruction where no written instruction was proposed. In a per curiam decision it was held:

As to the claim of error in the instructions it should be noted that no written request was made as required by Rule 51, U.R.C P..... Although the trial court might properly have instructed on the value of the property its failure to do so in the absence of a written request does not warrant reversal.

#### CONCLUSION

The lower court conviction should be affirmed.

Dated this 27th day of March, 1989.

  
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RUSSELL L. MAHAN  
Attorney for the Respondent



CERTIFICATE OF DELIVERY

I hereby certify that I delivered a copy of the foregoing Respondent's Brief this 27th day of March, 1989, to D. Bruce Oliver, 505 South Main, Bountiful, Utah 84010.

*Russell J. Watson*