

1979

Richard L. A. Phillips v. Rex Vance : Brief of Appellant in Support of Petition for Rehearing

Utah Supreme Court

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Robert B. Hansen; Earl F. Dorius; Attorneys for Respondent;

Brad Rich; Attorney for Appellant;

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IN THE SUPREME COURT OF THE STATE OF UTAH

RICHARD L. A. PHILLIPS,	:	
	:	
Plaintiff-Appellant,	:	
	:	
-v-	:	
	:	
REX VANCE, Sheriff of Salt Lake	:	Case No. 15944
County, State of Utah,	:	
	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT IN SUPPORT OF PETITION FOR REHEARING

Brief in support of Appellant's petition for hearing the
above entitled matter based on the April 11, 1979 Supreme Court
Per Curiam Opinion.

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REX VANCE, Sheriff of Salt Lake	:	Case No. 15944
County, State of Utah,	:	
	:	
Defendant-Respondent.	:	

BRIEF OF APPELLANT IN SUPPORT OF PETITION FOR REHEARING

STATEMENT OF THE NATURE OF THE CASE

The appellant, RICHARD L. A. PHILLIPS, moves for a rehearing of the decision made April 11, 1979, by the Supreme Court of the State of Utah denying his appeal and remanding to the trial court.

RELIEF SOUGHT ON REHEARING

Appellant seeks a reversal of the Court position as set forth in the April 11, 1979 per curiam decision and asks that the Court remand the appellant's petition for a writ of habeas corpus to the trial court with instructions to grant appropriate discovery.

STATEMENT OF THE FACTS

The facts as set forth in the appellant's brief heretofore filed are applicable to the brief in response of petition for rehearing.

ARGUMENT

POINT I

THE COURT MISCONSTRUED OR OVERLOOKED SOME MATERIAL FACTS CONTAINED IN THE RECORD OF THE TRIAL COURT'S ACTION IN DENYING THE APPELLANT'S WRIT OF HABEAS CORPUS.

It is the appellant's contention that a petition for rehearing is appropriate in the circumstances of this case. As the Court said in Cummings v. Nielson, 31 Utah 157, 129 P. 619 (1913) at p. 624:

When this court, however has considered and decided all of the material questions involved in a case, a rehearing should not be applied for, unless we have misconstrued or overlooked some material fact or facts, or have overlooked some statute or decision which may affect the result or that we have based the decision on some wrong principle of law, or have either misapplied or overlooked something which materially affects the result.

It is the appellant's contention that the decision heretofore reached by the Court represents just such a misconstruction in two respects. First, because it sets forth in the fourth paragraph the contention that the interrogatory questions "could have no bearing on the defense that the petitioner was not in California when the crime was committed". Secondly, because in that same paragraph, the Court says, "The petitioner knew as well as anybody else whether he was in California at the particular; and he could have so testified".

It is the appellant's contention that the opinion misconstrues the trial court record in that it is the uncontroverted con-

tion of the appellant on the trial record (R. 30) that the information sought by the interrogatories would be relevant to the determination of whether the appellant was in the State of California at the time of the alleged offense. The respondent at no time during the hearing made any contention that the subject of the interrogatories were either immaterial or irrelevant to the considerations then before the Court. On the contrary, it appears that the record as a whole acquiesces in the appellant's contention that the information requested in the interrogatories would have been both relevant and material for the consideration of the Court in considering whether to grant a writ of habeas corpus.

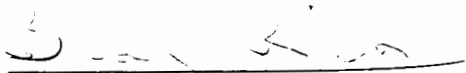
There is nothing in the record to indicate that the appellant's requests would not have been useful to the appellant's contention that he was out of the state at the time. On the contrary, the ruling of the Court (R. 31) revolves around considerations of time and of the responsibility of the State in gathering information.

Secondly, the per curiam opinion seems to indicate that the appellant should have taken the stand himself. Appellant simply points out that what appears in the trial record (R. 32) again uncontroverted in the proceedings at the trial court, that being forced to put the appellant on the stand in his own behalf has the effect of waiving his rights to remain silent at a point immediately prior to his becoming involved in another state in a criminal action. It has the effect at a very early preliminary stage of

making once and for all what may be the most important tactical decision of the entire case and that is whether the appellant would take the stand. Secondly, it is quite clear that even if the appellant did take the stand, there are significant questions about his testimony in terms of motive to lie and bias in his testimony, since he is under extradition. His testimony, under no circumstances, could be construed as the best possible for demonstrating the validity of his claim. Both of these concerns were set forth before the trial court (R. 32) and it is the appellant's contention neither one of them have been taken into account in making the Court's decision.

Appellant urges the Court to grant a rehearing in the above entitled matter and to decide the above entitled case purely on the record of the trial court. Appellant urges the Court to reconsider taking into account the facts apparent on the face of the record that the trial court made no determination as to relevancy and that the trial court record clearly demonstrates that the information would have been not only relevant to the appellant's contention, but also much more direct, valuable, believable evidence than the testimony of appellant himself.

Respectfully submitted,



BRAD RICH
Attorney for Appellant

CERTIFICATE OF DELIVERY

I hereby certify that I delivered a copy of the foregoing
Brief of Appellant in Support of Petition for Rehearing to the
Office of the Attorney General, 236 State Capitol Building, Salt
Lake City, Utah 84111, this _____ day of _____, 1979.
