

1979

Logan City v. Robert Kelly Bassett : Petition for Rehearing

Utah Supreme Court

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Brian R. Florence; Attorney for Defendant;

J. Blaine Zollinger; Robert B. Hansen; Attorneys for Plaintiff-Respondents;

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IN THE SUPREME COURT OF THE
STATE OF UTAH

LOGAN CITY,)
Plaintiff-Respondent,)
vs.)
ROBERT KELLY BASSETT,)
Defendant-Appellant.)

Case No.
16320

BRIEF OF APPELLANT

PETITION FOR REHEARING

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FILE

SEP 14 1979

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE
STATE OF UTAH

LOGAN CITY,)	
Plaintiff-Respondent,)	
vs.)	
ROBERT KELLY BASSETT,)	Case No.
Defendant-Appellant.)	16320

PETITION FOR REHEARING

The appellant, through his attorney Brian R. Florence, petitions the Court for a rehearing as follows:

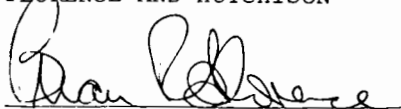
1. That appellant filed his appeal with the above Court.
2. That on August 24, 1979, the Utah Supreme Court dismissed the appeal for lack of jurisdiction stating that appellant had not raised an issue concerning the validity or constitutionality of a statute.
3. That the factual circumstances surrounding this appeal occurred prior to the effective date of the Circuit Court Act of 1977. It became effective July 1, 1978.
4. That pursuant to 78-4-17, Utah Code Annotated, 1953, which was the governing law prior to the effective

date of the Circuit Court Act of 1977, provided that all final judgments of the District Court on appeals from the City Court by the State or City in criminal cases may be appealed by either party to the Supreme Court.

5. That this appeal was initiated by the appellant because of the appeal by the City originally and the appellant should therefore be entitled to have the issue decided by the Supreme Court.

DATED this 13th day of September, 1979.

FLORENCE AND HUTCHISON

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BRIAN R. FLORENCE
Attorney for Defendant-Appel
818-26th Street
Ogden, UT 84401

IN THE SUPREME COURT OF THE
STATE OF UTAH

LOGAN CITY,)	
Plaintiff-Respondent,)	
vs.)	
ROBERT KELLY BASSETT,)	Case No.
Defendant-Appellant.)	16320

BRIEF OF AUTHORITIES AND ARGUMENT ON PETITION FOR REHEARING

These pertinent facts from the original Brief of Appellant are restated for the purpose of this Brief as follows:

A) The appellant was originally charged in a three count Complaint of driving with a blood-alcohol content of .10% or higher, driving a motor vehicle through a red stop light, and being a person under the age of twenty-one years with alcoholic beverages;

B) At trial on April 12, 1978, the Logan City Court dismissed the charge of driving with a blood-alcohol content of .10% or higher;

C) On April 17, 1978, Logan City appealed the City Court decision;

D) That while Logan City's appeal was pending in the First Judicial District Court, the defendant filed a Motion to Dismiss contending that 77-51-6, Utah Code Annotated, constituted a bar to further prosecution of the appellant;

E) That District Court Judge Christoffersen declined to rule on that motion and remanded the matter back to Logan City Court;

F) The Logan City Court denied that motion and appellant had to file his own appeal to the District Court.

At the time Logan City filed their appeal to the First Judicial District Court, the Circuit Court Act of 1977 had not yet taken effect. Prior to the effective date of the Circuit Court Act, 78-4-17, Utah Code Annotated provided: "All final judgments of the District Court on appeal from the City Court by the State or City in criminal cases may be appealed by either party to the Supreme Court".


While the precise issue raised by the appellant in this appeal was not the issue raised by Logan City in their appeal to the District Court, it was properly raised by appellant. Judge Christoffersen declined to rule on appellant's issue and remanded the matter back to the Logan City Court. It is submitted that the old provision of

78-4-17, Utah Code Annotated, intended to give either party the right of appeal to the Supreme Court when appeals were initiated by the State or City in criminal cases from the City Court. The appellant would not be in this position but for the appeal of Logan City. The appellant was forced to appeal this particular issue from the Logan City Court. The appellant timely raised the issue in the City's appeal and the Supreme Court can and should properly decide the issue raised by appellant.

DATED this 13th day of September, 1979.

Respectfully submitted,

FLORENCE AND HUTCHISON

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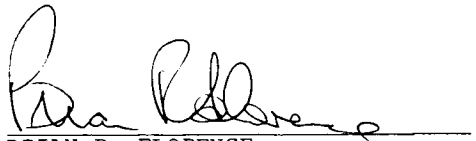
BRIAN R. FLORENCE
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818-26th Street
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CERTIFICATE OF MAILING
AND DELIVERY

I hereby certify that I mailed two true and correct copies of the foregoing Petition and Brief, postage prepaid, to J. Blaine Zollinger, Attorney for plaintiff-respondent, 256 North 100 West, Logan, UT 84321, on this 13th day of September, 1979.

I further certify that I personally delivered two true and correct copies of the foregoing Petition and Brief to Robert B. Hansen, Utah State Attorney General, 236 State Capitol Building, Salt Lake City, Utah, on the 14th day of September, 1979.

I further certify that I personally delivered ten true and correct copies of the foregoing Petition and Brief to the Utah Supreme Court, State Capitol Building, Salt Lake City, Utah, on the 14th day of September, 1979.

A handwritten signature in dark ink, appearing to read 'Brian R. Florence', is written over a horizontal line.

BRIAN R. FLORENCE
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