

1959

Salt Lake City v. Stanley Mozley Perkins : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

James L. Barker, Jr.; Jack L. Crellin;

Recommended Citation

Brief of Respondent, *Salt Lake City v. Perkins*, No. 9077 (Utah Supreme Court, 1959).
https://digitalcommons.law.byu.edu/uofu_sc1/3384

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

OCT 14 1959
Case No. 9077

IN THE SUPREME COURT
of the
STATE OF UTAH

FILED

AUG 7 - 1959

SALT LAKE CITY,
A MUNICIPAL CORPORATION,
Plaintiff and Respondent,

—vs.—

STANLEY MOZLEY PERKINS,
Defendant and Appellant

Supreme Court, Utah

BRIEF OF RESPONDENT

JAMES L. BARKER, JR.
City Attorney

JACK L. CRELLIN
Assistant City Attorney

TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF FACTS	1
STATEMENT OF POINTS.....	2
ARGUMENT	2
POINT I. THE INVALIDITY OR UNCONSTITUTION- ALITY OF SECTION 41-6-44.10, UTAH CODE ANNO- TATED, 1953, AS ENACTED BY THE LAWS OF UTAH, 1957, IS IMMATERIAL TO THE CONVIC- TION OF THE DEFENDANT OF THE CHARGE OF DRIVING AN AUTOMOBILE WHILE UNDER THE INFLUENCE OF ALCOHOL AND THEREFORE, THE JUDGMENT OF THE DISTRICT COURT IS FINAL AND NON-APPEALABLE.	2
CONCLUSION	4

CONSTITUTIONAL PROVISIONS CITED

Utah Constitution, Art. VIII, Sec. 9.....	3
---	---

STATUTES CITED

Section 41-6-44.10, U. C. A., 1953, As Enacted.....	2
Section 78-4-17, U. C. A., 1953	3

CASES CITED

Ringwood v. State, 8 Utah 2d 287, 333 P.2d 943.....	3
Salt Lake City v. Perkins, 122 U. 43, 295 P. 2d 1176.....	3

IN THE SUPREME COURT of the STATE OF UTAH

SALT LAKE CITY,
A MUNICIPAL CORPORATION,
Plaintiff and Respondent,

—vs.—

STANLEY MOZLEY PERKINS,
Defendant and Appellant

Case No. 9077

BRIEF OF RESPONDENT

STATEMENT OF FACTS

Appellant was arrested on October 27, 1958, in Salt Lake City, Utah and charged with operating a motor vehicle while under the influence of intoxicating liquor contrary to Section 105 of the Traffic Code of Salt Lake City, Utah. From a conviction in the City Court the appellant appealed for a trial de novo to the Third Judicial District Court, and now appeals to this court from his conviction by the district court.

Following his arrest the appellant consented to the extraction of a blood sample from his body at the County

Hospital for the purpose of blood alcohol analysis. (R. 14) He was advised by the arresting officer that he could submit to the blood test or refuse to submit thereto and that the blood alcohol test would be used as evidence for or against him. (R. 19, 32) There is no evidence whatsoever in the record that this blood test was extracted from the appellant without his consent.

STATEMENT OF POINTS

POINT I

THE INVALIDITY OR UNCONSTITUTIONALITY OF SECTION 41-6-44.10, UTAH CODE ANNOTATED, 1953, AS ENACTED BY THE LAWS OF UTAH, 1957, IS IMMATERIAL TO THE CONVICTION OF THE DEFENDANT OF THE CHARGE OF DRIVING AN AUTOMOBILE WHILE UNDER THE INFLUENCE OF ALCOHOL, AND, THEREFORE, THE JUDGMENT OF THE DISTRICT COURT IS FINAL AND NON-APPEALABLE.

ARGUMENT

POINT I

THE INVALIDITY OR UNCONSTITUTIONALITY OF SECTION 41-6-44.10, UTAH CODE ANNOTATED, 1953, AS ENACTED BY THE LAWS OF UTAH, 1957, IS IMMATERIAL TO THE CONVICTION OF THE DEFENDANT OF THE CHARGE OF DRIVING AN AUTOMOBILE WHILE UNDER THE INFLUENCE OF ALCOHOL, AND, THEREFORE, THE JUDGMENT OF THE DISTRICT COURT IS FINAL AND NON-APPEALABLE.

The appellant contends that Section 41-6-44.10, Utah Code Annotated, 1953, as enacted by the Laws of Utah,

1957, is invalid and unconstitutional. To this contention respondent can only inquire, "What possible difference can the determination of this question have upon the result of this case?" The statute which appellant attacks provided, prior to the amendment by the 1959 Legislature, that a driver is deemed to give his consent to a chemical test of his breath, blood, urine or saliva for the purpose of determining the alcoholic content of his blood, and further provided for the revocation of one's driver's license for failure to submit to such a test under the conditions authorized therein. In the case of *Ringwood v. State*, 8 Utah 2d 287, 333 P.2d 943, relied upon by appellant, this court held that the revocation of a driver's license was improper under this statute when the driver was not given a choice of the chemical tests designated therein and was told by the arresting officer that he must submit to a blood test or have his operator's license revoked. It is respectfully submitted that neither the statute nor the *Ringwood* case bears any relationship to the case at bar. The appellant was convicted of drunk driving. No attempt has been made to revoke his driver's license pursuant to the statute above cited. The sole question here is the admissibility of the blood test consented to by appellant as evidence against him in the trial court proceedings. Therefore, in the absence of a question as to the validity or constitutionality of a statute or ordinance, the judgment of the district court is final and non-appealable to this court. *Utah Constitution*, Art. VIII, Sec. 9; Section 78-4-17, U.C.A., 1953; *Salt Lake City v. Perkins*, 122 Utah 43, 245 P.2d 1176.

CONCLUSION

The appellant herein seeks to have a determination made by this court of the constitutionality of a statute which clearly is not involved in this action. Consequently this court should hold that the action of the district court in finding the appellant guilty of operating a motor vehicle while under the influence of intoxicating liquor is final and cannot be appealed to this court.

Respectfully submitted,

JAMES L. BARKER, JR.

City Attorney

JACK L. CRELLIN

Assistant City Attorney

Attorneys for Respondent