

1992

Salt Lake City v. Richard Copier : Petition for Rehearing

Utah Court of Appeals

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BRIEF

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DOCKET NO. 920777CA

IN THE UTAH COURT OF APPEALS

CITY OF SALT LAKE,)	
)	
Plaintiff and)	PETITION FOR REHEARING
Appellee,)	
)	
vs.)	
)	
RICHARD COPIER,)	Appeal No. 920777-CA
)	
Defendant and)	(Argument Priority 2)
Appellant.)	
)	

APPEAL FROM THE THIRD CIRCUIT COURT, SALT LAKE DEPARTMENT
JUDGE FUCHS

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FILED
Utah Court of Appeals

SEP 14 1993


Mary T. Noonan
Clerk of the Court

RULE 35 CERTIFICATION

Counsel certifies that this petition for rehearing is presented in good faith and not for delay.

ARGUMENT

The decision of the Court of Appeals appears to leave local governments free to adopt local ordinances with per se DUI blood alcohol violation levels that are different from, greater than, or less than state-mandated levels, so long as the other half of any such local ordinance is consistent with state statute in creating an alternative DUI violation that does not refer to blood alcohol level.

As in this case, every DUI case on appeal will likely include some police officer testimony concerning driving pattern, field sobriety tests, slurred speech, the odor of an alcoholic beverage, a gaze test, and/or police officer opinion testimony concerning intoxication that will provide a sufficient basis for affirming the conviction on other grounds, based on the alternative DUI violation, without reference to blood alcohol level and without reaching the state constitutional law issue raised by variance between state and local DUI blood alcohol violation measures and levels. (Appellant candidly concedes that, as in any DUI case on appeal, some of this kind of testimony was given

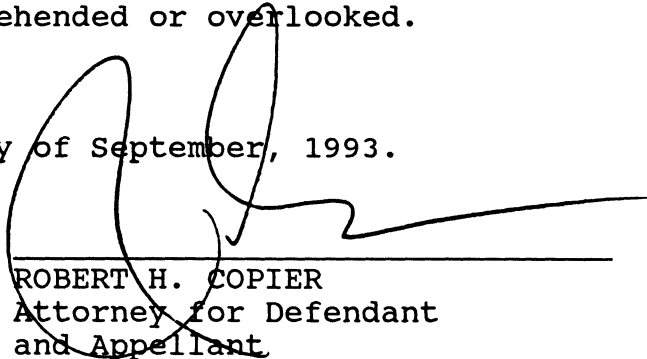
at the trial of this case. Therefore, no transcript was provided, because appellant's motion to arrest judgment and this appeal were both grounded upon the pure issue of law presented by the variance between state and local DUI law.

Local governments could utilize a not-one-drop/zero tolerance per se blood alcohol level that is at variance with the state-mandated level in order to help secure trial court convictions and could then have the convictions upheld on other grounds on appeal based on the alternative language that is not at variance with its state counterpart.

It may well be that the Court of Appeals is of the view that local governments are free to adopt local ordinances establishing blood alcohol violations that are at variance with state statutory enabling provisions, and that such ordinances pass state constitutional muster and are sufficiently consistent with state law as long as such ordinances also include alternative generalized DUI violation provisions that are consistent with their state statutory counterparts. The fact that the Court of Appeals decided this case in favor of Salt Lake City after appellant raised this issue in his reply brief leads to such a conclusion.

However, because the variance gives rise to a state constitutional law issue under Article VI, Section I, of the Constitution of Utah, and because the Court of Appeals did not expressly address the variance issue in the written decision, appellant respectfully submits this petition for rehearing to enable the Court of Appeals to directly address the issue if the issue was somehow misapprehended or overlooked.

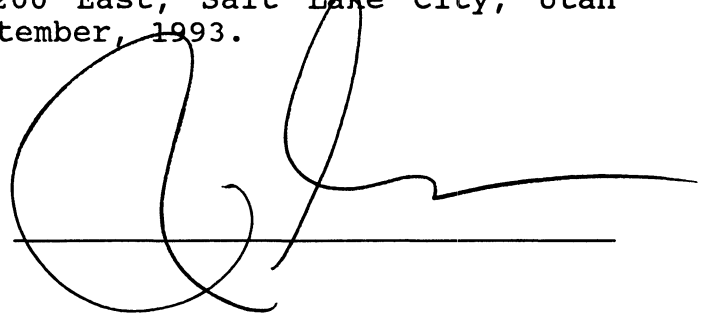
DATED this 14 day of September, 1993.



ROBERT H. COPIER
Attorney for Defendant
and Appellant

CERTIFICATE OF SERVICE

This is to certify that true and correct copies of the foregoing Petition for Rehearing were hand-carried to Salt Lake City Prosecutor, 451 South 200 East, Salt Lake City, Utah 84111, this 14 day of September, 1993.

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a surname that is partially obscured by a horizontal line. The signature is written over a solid horizontal line.

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