

1993

State of Utah v. Mark G. Miller : Petition for Rehearing

Utah Court of Appeals

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Attorney General's Office; Attorney for Respondent.

Ronald W. Perkins.

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**UTAH COURT OF APPEALS
BRIEF**

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930090

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	/	
Plaintiff/Respondent	/	
vs.	/	
MARK G. MILLER,	/	Court of Appeals No.
Defendant/Appellant	/	930090-CA
		Priority No. 2

APPELLANT'S PETITION FOR RE-HEARING

THIS IS AN APPEAL FROM CONDITIONAL PLEAS OF GUILTY ENTERED IN THE FIRST JUDICIAL DISTRICT COURT IN AND FOR CACHE COUNTY, STATE OF UTAH ON THE 17TH DAY OF DECEMBER, 1992 BEFORE THE HONORABLE GORDON J. LOW, DISTRICT COURT JUDGE ENTERED AFTER THE TRIAL JUDGE HAD DENIED VARIOUS MOTIONS OF DEFENDANT TO SUPPRESS OR DISMISS THE PROCEEDINGS AGAINST DEFENDANT.

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FILED

OCT - 4 1993

COURT OF APPEALS

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APPELLANT'S PETITION FOR RE-HEARING

JURISDICTION

Jurisdiction to hear the above entitled appeal is conferred upon the Utah Court of Appeals, pursuant to Utah Code Annotated 77-1-6(1)(g)(b).

STATEMENT OF THE ISSUES ON APPEAL AND STANDARD OF APPELLATE REVIEW

1. Did the lower court commit error by not granting the defendant's motion to dismiss or suppress the criminal information against the defendant.

DEFENDANT/APPELLANT'S REQUEST FOR EXPANSION OF ORDER

The Utah Court of Appeals on September 21, 1993, issued an order pursuant to a Rule 31 Hearing wherein the court determined reasonable suspicion to stop the vehicle existed and affirmed the convictions of unlawful possession of drug paraphernalia, DUI, and failure to use headlights, but reversed the lower court's determination relative to the admission of defendant's urine sample.

The defendant requests this court remand the DUI for further proceedings rather than affirming the conviction because admission of the urine sample affects such offense.

ARGUMENT

The defendant/appellant requests that the driving under the influence of alcohol and/or drugs be remanded for trial rather than affirm the conviction, and in support thereof, the pertinent facts appear in both the transcript from the preliminary hearing as well as in the transcript of the suppression hearing conducted on November 17, 1992, relative to the admission of the urine sample and its effect on the driving under the influence offense.

During the preliminary hearing evidence was produced to the court that the defendant submitted to an intoxilizer test, and that the results of such intoxilizer illustrated a .068 Blood alcohol level, (TR 4, 53)

During the Suppression hearing on November 17, 1992, the following argument was offered to the court relative to why the results of the urine sample would be offered into evidence by the State's attorney.

Mr. Jenkins (State's attorney)" Let's put this into perspective. First of all, in order to decide that, we have to understand why this state would offer into evidence the lab reports on the urine specimen.

The court: Okay.

Mr. Jenkins: It would be for two purposes. Mr. Miller is charged with both possession of a controlled substance, cocaine, and secondly, with driving under the influence. I believe that the charge is driving under the influence of alcohol and/or drugs, and the

breathalyzer that Mr. Miller took showed a .068 breath -- or blood alcohol content. The urine sample shows that he indeed had samples of cocaine and marijuana in his system which support the DUI, drug/alcohol charge.

The court: Let me see, we are offering it on an amended information? Alright. we are.

Mr. Jenkins: Okay

The court: I answered my own question go ahead.

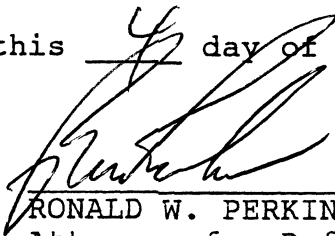
Mr. Jenkins: And so the relevance of the urine sample would go at least to the DUI charge to show the influence of drugs as well as alcohol... (11-17-82 Supp. TR)

Consequently, the defendant/appellant asserts that the driving under the influence of alcohol and/or drugs offense should also be remanded for further proceeding and such conviction should not be affirmed in light of the effect of the urine sample on the DUI.

CONCLUSION

Based upon this court's order in issuing a Rule 31 decision of the Utah Rules of Appellate Procedure, the defendant, Mark G. Miller, requests that this court expand the order of September 21, 1993 to include remanding the driving under the influence of alcohol and/or drugs offense for further proceedings along with the unlawful possession of a controlled substance count which has by previous order remanded for further proceedings as may be appropriate (because the urine sample relates to both counts).

RESPECTFULLY SUBMITTED this 4 day of September, 1993.

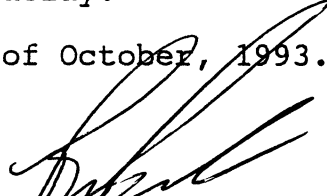


RONALD W. PERKINS
Attorney for Defendant-Appellant

CERTIFICATE OF COUNSEL

Comes now Ronald W. Perkins, Esq., attorney for the defendant-appellant, Mark G. Miller, and hereby certifies the Petition for Re-Hearing is asserted in good faith by petitioner and is not presented for the purpose of delay.

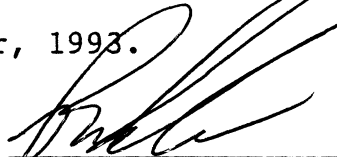
DATED this 4 day of October, 1993.



RONALD W. PERKINS
Attorney for Defendant/Appellant

PROOF OF SERVICE

I hereby certify that a true and correct copy of the foregoing
Petition for Re-Hearing was sent to the attorney for the State of
Utah, Todd A. Utzinger and David B. Thompson, Assistant Attorneys
General, at 236 State Capitol Building, Salt Lake City, Utah 84114
on this 4 day of October, 1993.



RONALD W. PERKINS
Attorney for Defendant/Appellant

ADDENDUM

