1994

City of Orem v. Aaron Raiser : Petition for Rehearing

Utah Court of Appeals

Ed Berkovich; City of Orem City Attorney .
Aaron Raiser; Defendant.

IN THE COURT OF APPEALS

CITY OF OREM, APPELEE and Plaintiff	PETITION FOR REHEARING
V.	case 940722-CA
AARON RAISER DEFENDANT and APPELANT	

DOCKET NO. 940722

Orignally heard 4th Circuit court, Orem by Judge Dimmick

Appealed to court of appeals: Summary affirmance considered by Judge Greenwook, Judge Orme, Judge Wilkins.

CITY OF OREM
CITY ATTORNEY
ED BERKOVICH
56 N. State. St.
Orem, Utah 84057

DEFENDENT
AARON RAISER

861 W. COLUMBIA LN. APT 13
PROVO, UTAH 84604
801.374.6089

IN THE COURT OFAPPEALS

City of Orem, Plaintiff and Appelee	
v.	PETITION FOR REHEARING Case 940722-CA
Aaron Raiser, Defendant and Appelant.	

I, Aaron Raiser, do petition for a rehearing in my case.

Reasons:

1. Judge Greenwood and Judge Orme in their memorandum decision stated:

"However, the trial court apparently found, based on the officer's testimony, that the defendants car was "a car length behind the stop line" when the light changed to red."

This is inadequate. The officer in his testimony, according the the transcript stated: "Approximately one car length behin the stop light".

This is a big difference here.

A. The officer said "Approximately". Since this case is over feet and inches, an approximation is inadequate. In my original defense I pointed out that the conditions were such that the officer could have been off in his approximate placement of my car.

a. It was dark out. This making it more difficult to see and to position my car at the intersection. I attempted to show in the appendix with the night photographs that the officer would have had a difficult time seeing the intersection lines. Especially if he had to also view

the street light and my car and he didn't have very much time to focus his view and attention on the intersection lines.

b. The street light at that part of the intersection was out, adding to the difficulty to see the intersection.

I attempted to show in the appendix with the night photographs that the light was out.

c. State street crosses 400 N. at an angle, making it difficult to position a car with respect to the intersection. Also the officer had to view my car with respect to the light at an angle. These factors I claim the judge did not fully consider. I attempted to enlighten the court on these things with material from the appendix, but the two Judges who ruled against me would not consider them.

The court of appeals overlooked the significance of the word approximate in the officers testimony.

2. The court of appeals, pursuant to Rule 11., should have contacted the the original judge in the case to resolve the difference in whether the word light or line was said by the officer. This they did not do. If he said light, as the transcript states, I am innocent. This I showed very adequetely in appendix A. of my response the summary affirmance I made.

3. The most important part in the presentation of my case in trail court was at the drawing board. This information, and the accompanying details, were not available to the court of appeals. I attempted provide this information in appendix A, which the Judge Greenwood and Judge Orme would not consider. (Appendix A is an areal photo of the intersection obtained from the City of Orem Engineer) They cannot accurately reveiw my case without the information presented at the original hearing.

In fairness, the court should see if the prosecution will allow this information.

4. In the notice of summary affirmance, the court did not address a main objection of mine in that judge of the trial court interrupted me at the beginning of my presentation, and said:

Judge: "Let me see if I can put your mind at rest Aaron. If I am being asked to decide where a car is within several feet within a fraction of a second that is so far away from proving beyond reasonable doubt. I will acquit hundred percent of those. Everyone that I think is asking me to do that are cutting up perception into that fine line. Hundred percent of those that instruct me that way have been acquited. It has to be so clearly behind the line beyond reasonable doubt behind the line. The only way it is even possible and remotely approaching that is that you are a discernable distance from the witnesses view behind the line and a good opportunity to see.

So that what you are characterizing here if it is that high (the tape says "by", not "hight") a factor of 4 of 5 you are going to be

found not guilty. (In the tape here the judge says "I am going to acquit you.) I have no question. It has to be a lot, a lot worse then that. It has to be clearly above that."

I responded: "Do you want me to proceed?"

Judge: " I don't think you need to if that is the way this evidence is coming in, you will win"

This effected greatly the way I continued. Further I saw no where in the prosecutions case where they came event close to showing by a factor of 4 or 5 from where the officer said I was. (and this was after the officer gave his testimony) This was most unfair of the Judge to do that to me. Most unfair.

5. In this notice of summary affirmance, It was said:

"In reviewing a challenge to the sufficiency of the evidence in a bench trial, we review the evidence to see whether the verdict is 'clearly erroneous'". see Provo City Corp v. Spotts.

In the Spott's case a car pulled up "10 feet" in front of a police officer, in uniform, in an

unmarked car. The officer visually saw in BROAD DAYLIGHT (3 pm in afternoon) someone in the car somking "a joint". The officer approached the driver and could SMELL the smell of a joint. The officer could SEE that the driver was stoned. Also the driver VERBALLY admitted having smoked a joint.

The accused appealed saying the officer did't have physically evidence and that he admitted smoking the joint because he was nervous. Thus, the original verdict was not "clearly erroneous". In my case, At night, an officer attempts to approximate my location at an intersection, where the street light is out by the intersection, my car is traveling a around 45 mph, the officer is at a distance and an angle in viewing both my car and the light. Furthermore, the lines are faded at the intersection. Furthermore the first words the officer said to me was "that was close". It wasn't until after he ascertaind I was a student from out of state he proceeded to give me a ticket I did not deserve. I could have asked the officer in trial why he adked me if I was a student and from out of state before giving me a ticket. I saw little reason to do so after what the judge said in item 4 above.

5. I am not sure what the notice of summary disposition meant by the reference to State v. Moosman. When looked through it I could not find the quote.

I affirm my innocence in this case. I was past the inside crosswalk line closest to the intersection. This I can say with certainty. I tried to explain both in the original trial and in the response to summary judgement how and why the officer could have been off by the few feet he was.

Aaron Raiser
861 W. Columbia Ln. Apt 13
Provo, Ut 84604

801.374.6089

I certify a true and correct copy of this petition for rehearing was mailed to

City Attorney, Orem
56 N. State St.
Orem, Utah 84057

this 3rd day of April, 1995.