

Case No. 20160646-CA

IN THE
UTAH COURT OF APPEALS

SOUTH SALT LAKE CITY,
Plaintiff/Appellee,

v.

S. STEVEN MAESE,
Defendant/Appellant.

Brief of Appellee

Appeal from convictions on two traffic offense infractions in the Third Judicial District Court, Salt Lake County, the Honorable Randall Skanchy presiding, wherein the defendant's request for a jury trial on infraction charges was denied.

R. SHANE JOHNSON (14217)
75 East 400 South, Suite 201
Salt Lake City, Utah 84111
Telephone: (801) 364-2222

Attorney for Appellant

STEPHEN K. AINA (14579)
MARCUS GILSON (15142)
220 East Morris Avenue, 2nd Floor
South Salt Lake City, Utah 84115
Telephone: (801) 413-6093

Attorneys for Appellee

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IN THE
UTAH COURT OF APPEALS

SOUTH SALT LAKE CITY,
Plaintiff/Appellee,

v.

S. STEVEN MAESE,
Defendant/Appellant.

Brief of Appellee

STATEMENT OF JURISDICTION

Pursuant to Utah Code Ann. § 78A-4-103(2)(e) and §78A-7-118(8), the Court of Appeals has jurisdiction over this matter insofar as it relates to the constitutionality of Utah Code Ann. § 77-1-6(2)(e) because a district court ruling regarding the constitutionality of a statute on appeal from justice court is an appealable decision.

STATEMENT OF FACTS

On December 10, 2013, in the City of South Salt Lake, Utah Highway Patrolman Roger Griffis observed the appellant, Santiago Steven Maese, cross the double white lane of the HOV lane on I-15.¹ Trooper Griffis then observed Mr. Maese cross several lanes of traffic while failing to signal for at least 2 seconds.² Mr. Maese was subsequently charged with infractions

¹ R. at 32.

²*Id.*

and denied a jury trial on the charges.³ He was convicted of both charges at a bench trial on January 6, 2015.⁴ Mr. Maese filed an appeal for a trial de novo in district court where he again moved for a jury trial and was denied.⁵ He was again convicted of both charges at a bench trial in the District Court.⁶

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The constitutional provisions, statutes, and rules that are of central importance for the issues raised in this appeal include the following:

Constitutional Provisions

- UTAH CONST. art I, §10
- UTAH CONST. art I, §12

Statutes

- UTAH CODE ANN. § 77-1-6(2)(e): “No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, in case of an infraction, upon a judgment by a magistrate.”

Rules

³ R. at 2.

⁴ R. at 4.

⁵ R. at 38-39, 57, 61-63.

⁶ R. at 164-65.

- UTAH R. CRIM. P. 17(d): “...No jury shall be allowed in the trial of an infraction.”

SUMMARY OF ARGUMENT

UTAH CODE ANN. §77-1-6(2)(e) is valid under the Utah Constitution because the Utah Constitution does not guarantee the right to a trial by jury in all cases. Utah courts interpreting the right to trial by jury under the Utah Constitution have placed some limits on that right. The right to a trial by jury only extends to those actions that were cognizable at law at the time the Utah Constitution was adopted. Because neither infractions nor traffic violations existed at the time of the Utah Constitution’s adoption, those actions were not cognizable at law and fall outside of the purview of the right to trial by jury.

Additionally, statutes carry with them a presumption of constitutionality. Current Utah interpretations of the right to trial by jury provide a reasonable basis for a constitutional interpretation of Utah Code Ann. §77-1-6(2)(e).

ARGUMENT

I. The Court does not have jurisdiction over the separation of powers issue raised by Mr. Maese, as the Court has already ruled in this case.

Pursuant to the Utah Code, decisions by the district court on appeals from justice court are final unless the district court rules on the constitutionality of a statute.⁷

Here, Mr. Maese questions the constitutionality of a prosecutor’s ability to amend a misdemeanor charge to an infraction. According to the prior order issued by this court in this

⁷ UTAH CODE ANN. §78A-7-118(8).

case, the issue challenges a prosecutorial practice, not a statute.⁸ Relying on the court's ruling already made on the issue in this case, this court lacks jurisdiction on the issue and the need to further brief it is mute.

II. Utah Code Ann. § 77-1-6(2)(e) does not violate the Utah Constitution because the Utah Constitution makes no guarantee that defendants charged with infractions have the right to a trial by jury.

The Utah Supreme Court has limited the right to trial by jury in various instances. An analysis of historical context and traditions from the period of the adoption of the Constitution provide no insight into how infractions should be treated because no such classification of offense existed at the time. Current case law interpreting the right to trial by jury in this context has not been applied to criminal or infraction cases, but it has narrowed the right to trial by jury to actions cognizable at the time the Utah Constitution was adopted.

Furthermore, as applied to this case, Utah Code Ann. §77-1-6(2)(e) can be reasonably interpreted to be constitutional in light of modern Utah cases interpreting the relevant sections of the Utah Constitution , as well as under a due process analysis. Therefore, both Utah Code Ann. §§77-1-6(2)(e) and Rule 17(d) of the Utah rules of Criminal Procedure should be held to be constitutional.

A. The Utah Constitution does not preserve the right to trial by jury for infractions because prosecuting an infraction was not an action cognizable at law when the Utah Constitution was adopted.

The Utah Constitution merely preserves the right to a trial by jury as the right existed at the time of its adoption.⁹ In *International Harvester*, the Utah Supreme Court held that article I,

⁸ *South Salt Lake City v. Maese*, No. 20160646- CA (Utah Ct. App. Jan. 30, 2017)(order deferring judgment on motion to dismiss), attached as Exhibit B.

⁹ See *International Harvester Credit Corp. v. Pioneer Tractor and Implement, Inc.*, 626 P.2d 418, 419 (Utah 1981).

section 10 of the Utah Constitution guaranteed the right to trial by jury in civil cases.¹⁰

However, the court also reasoned that the language of article I, section 10, “discloses a virtually unanimous intention on the part of the framers of the Constitution to *preserve* a constitutional right to trial by jury....”¹¹

Because the right to trial by jury is only preserved by the Utah Constitution, the right must be extended only to actions that were so triable at the time of its adoption.¹² Several years after *International Harvester*, the Utah Supreme Court further expounded on this holding in *Hyatt v. Hill*, when it held that the “constitutional right to a trial by jury is preserved and currently exists only in actions so triable when the constitution was adopted.”¹³ *Hyatt* was a paternity case in which a putative father filed a jury demand which was denied by the trial court.¹⁴ The Utah Supreme Court affirmed, reasoning that there was no remedy under the common law at the time the Utah Constitution was adopted “to compel a putative father to contribute to the support his illegitimate offspring.”¹⁵

Actions were only triable by jury at the time the Utah Constitution was adopted if they were cognizable at law. The Utah Supreme Court further affirmed the *Hyatt* standard in *Zions First National Bank v. Rocky Mountain Irrigation, Inc.*,¹⁶ stating that, “we made it clear that this constitutional right to a jury trial in civil cases extends only to cases that would have been cognizable at law at the time the constitution was adopted.”¹⁷ Recently, in *Simler v. Chilel*,¹⁸ the

¹⁰ *Id.* at 421.

¹¹ *Id.* at 419 (Emphasis added).

¹² *Hyatt v. Hill*, 714 P.2d 299, 300-01 (Utah 1986).

¹³ *Id.*

¹⁴ *Id.* at 300.

¹⁵ *Id.* at 301.

¹⁶ 795 P.2d 658 (Utah 1990).

¹⁷ *Id.* at 661.

¹⁸ 379 2016 UT 23, 379 P.3d 1195.

Utah Supreme Court held that the Utah Constitution guarantees the right to a jury trial in a small claims trial de novo, because such claims were cognizable at law when the Utah Constitution was adopted.¹⁹ The court reasoned that Utah Revised Statutes of 1898 “contained numerous provisions discussing a defendant’s demand for a jury in justice courts.”²⁰

In the instant case, Mr. Maese attacks the constitutional validity of Utah Code Ann. §77-1-6(2)(e) on the grounds that he was denied a jury trial for two infractions. The classification of a violation of law as an infraction, however, did not exist at the time the Utah Constitution was adopted.

The 1898 Revised Statutes of Utah classify offenses as either felonies or misdemeanors.²¹ At the time, both of these classifications carried with them the possibility of jail time or imprisonment.²² The same remains true of misdemeanors and felonies to this day.²³ Lacking from the 1898 Statutes, however, is any mention of offenses classified as infractions.²⁴ Because no such classification for an infraction existed, a prosecutor would not have been able to bring a criminal action charged as an infraction at the time the Utah Constitution was adopted.

Mr. Maese wishes to frame this issue as merely one of semantics, but it is more than that. Admittedly, in the 1898 code some actions did prescribe a punishment for a fine only,²⁵ which on the surface may lead some to believe that such crimes were in essence what we now call infractions. However, Utah statutes at the time also provided that imprisonment at hard labor

¹⁹ *Id.* at ¶17.

²⁰ *Id.* at ¶16.

²¹ 1898 UTAH REV. STAT. §4062.

²² *Id.* at §§4063-4065.

²³ UTAH CODE ANN. §76-3-203 and §76-3-204 and §76-3-301.

²⁴ See 1898 UTAH REV. STAT. §4062.

²⁵ See *e.g. id.* at §4238. (Imposing a fine up to 25 dollars for performing unnecessary labor or business on Sunday.)

could be imposed until a fine was paid off at the rate of one dollar per day served.²⁶ This puts these offenses back squarely into our modern concept of a misdemeanor or felony, not an infraction. Misdemeanors today are often punished only with a fine, and in such cases jail time is only a possibility if necessary to enforce the terms of probation. For an infraction, however, there is no possibility of jail time. Not even in instances where a defendant fails to pay the sentenced fine.²⁷ Any attempt to substitute jail time for fine payment on an infraction would violate the Utah Code.

Mr. Maese attempts to broaden this issue beyond what is actually before the court by insisting that the statute in question here is invalid because the right to trial by jury for petty offenses is protected under the Utah Constitution. The issue here, however, is not whether all petty offenses have the right to trial by jury, but whether defendants charged with infractions have the right to such a trial. Under the statute and rule in question here, only infractions are barred from a right to trial by jury.²⁸

While Mr. Maese provides various examples of petty offenses being tried by a jury in ages past, none of those examples are completely analogous to those offenses for which Mr. Maese was denied a jury trial more recently. It is impossible to say that the framers of the Utah Constitution would have expected someone charged with infractions arising from traffic violations to be allowed an absolute right try such cases before a jury. Such actions were not cognizable to the framers of the constitution because those actions did not exist.

²⁶ *Id.* at §5155, attached as Exhibit A.

²⁷ See UTAH CODE ANN. §77-18-8.

²⁸ See UTAH CODE ANN. §77-1-6(2)(e); UTAH R. CRIM. P. 17(d).

The prohibition of jail time on an infraction marks a material difference between modern offenses classified as infractions, and misdemeanors as defined at the time of the Utah Constitution's adoption. Furthermore, violations of the traffic code did not exist at the time of the Utah Constitution's adoption. Because they did not exist, they were not cognizable at law. Infractions were not triable before a jury then, and no such right is preserved by the Utah Constitution now. Therefore, Utah Code Ann. § 77-1-6(2)(e) does not violate the Utah Constitution.

B. Utah Code Ann. §77-1-6(2)(e) and Utah Rule of Criminal Procedure 17(d) afford defendants due process.

Because infractions and traffic offenses did not exist at the time of the adoption of the Utah Constitution, the practical concerns surrounding their prosecution could not have been considered by the framers. This is best analyzed in the context of due process. The Utah Supreme Court has reasoned:

... "due process" is not a technical concept with a fixed content unrelated to time, place and circumstances which can be imprisoned within the treacherous limits of any formula. Rather the demands of due process rest on the concept of basic fairness of procedure and demand a procedure appropriate to the case and just to the parties involved.²⁹

The Utah Supreme Court has given the following three factors to be balanced in any given circumstances:

[F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the functions involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.³⁰

²⁹ *Rupp v. Grantsville City*, 610 P.2d 338, 341 (Utah 1980).

³⁰ *V-1 Oil Co. v. Dept. of Environmental Quality*, 939 P.2d 1192, 1196 (Utah 1997).

Here, the private interest at stake was relatively small. Mr. Maese was charged with two infractions. Infractions carry a maximum fine of \$750.³¹ Mr. Maese was ultimately fined a total of \$240 on the two infractions. Beyond the fine, there is no risk of jail time in infraction cases. While these amounts are not negligible to most, the imposition of such judgments can only come after the defendant is afforded a fair process of a bench trial.

The risk of erroneous deprivation here is low. Infraction cases typically involve relatively simple fact patterns. The elements of the offenses lack complexity as well. The risk of a mistaken verdict in an infraction case is substantially lower than that in serious crimes. Identity, and the act itself are relatively simple to establish. In the case of traffic offenses, the officer often witnesses the entire violation, and makes personal contact with the offender. Such was the case here.

In this case, the only additional safeguard that a jury trial would provide is a jury. All other safeguards remain available in a bench trial. This is not a case where hundreds of items of evidence along with hours of witness testimony must be analyzed to determine even the most fundamental issues of a crime such as the identity of the defendant. If there had been reasonable doubt that Mr. Maese was guilty of the offenses, it is unlikely that a jury would have been more capable of discovering it than the judge.

While a jury provides virtually no additional protection to a defendant in an infraction case, the burden it places on government and the public is significant. Jury trials require that the jurors be compensated. In the case of justice courts, it may involve also paying additional time for the judge, the court clerks, and prosecutors. There is significant additional cost because of the time required to hold a jury trial, due to the practical considerations that must be made to seat a jury.

³¹See UTAH CODE ANN. §§76-3-205(2) and 76-3-301(1)(e).

To entitle a defendant to a jury trial in even the most minor of cases, infractions, would be stepping well beyond the demands of due process and overly burdensome on the public. A bench trial is sufficient in meeting the demands of due process for defendants charged with infractions. In a bench trial, the burden remains on the prosecutor to prove all elements of the offense beyond a reasonable doubt.³² The prosecutor must still comply with the rules of criminal procedure, and the rules of evidence.³³ Additionally, the defendant maintains his ability to testify or not, to present witnesses and other evidence, and to confront and cross examine witnesses.³⁴ Compared to the relatively small stakes faced by a defendant in these cases, the requirements in place in a bench trial maintain a substantial burden on the part of the prosecutor to ensure that a defendant is afforded due process, while the defendant maintains all the other rights he would be afforded if the case were tried by a jury.

C. Utah Code Ann. §77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure are constitutional because they can be reasonably interpreted as such.

When statutes are challenged for constitutionality they carry a presumption of constitutionality.³⁵ Current precedent on the subject of the right to trial by jury for infractions only examines the issue in light of the United States Constitution.³⁶ Considering the current case law available regarding the right to trial by jury in criminal matters as guaranteed under the US Constitution, coupled with the rules set by the Utah Supreme Court with regard to the right to trial by jury in civil cases as argued above, Utah Code Ann. §77-1-6(2)(e) and Rule 17(d) of the

³² UTAH CODE ANN. §76-1-501(1).

³³ UTAH R. CRIM. P. 1(b); UTAH R. EVID. 1101(a).

³⁴ UTAH CONST. art. I, §12

³⁵ *In the Matter of Criminal Investigation, 7th District Court No. CS-1, 754 P.2d 633, 640 (Utah 1988).*

³⁶ *See e.g., West Valley City v. McDonald, 948 P.2d 371, 375 (Utah Ct. App. 1997).*

Utah Rules of Criminal Procedure can be reasonably interpreted as constitutional under the Utah Constitution.

When a statute is challenged based on constitutionality it is presumed to be valid and any reasonable doubts are resolved in favor of constitutionality.³⁷ In *Greaves v. State*³⁸, the Utah Supreme Court held that a challenged statute did not violate the constitution.³⁹ The court reasoned that statutes “should not be declared unconstitutional if there is any reasonable basis upon which they can be found to come within the constitutional frame work...”⁴⁰ The Utah Supreme Court later clarified this rule in *Society of Separationists v. Whitehead*, when it restated the standard as, “the act is presumed valid, and we resolve any reasonable doubts in favor of constitutionality.”⁴¹

The United State Supreme Court has interpreted the right to trial by jury to not to extend to petty offenses under the federal constitution.⁴² Petty offenses are defined federally to be those offenses that a legislature has determined to carry a maximum prison sentence of six months or less.⁴³ This court has followed this standard when reviewing Utah Code Ann. §77-1-6(2)(e) in *McDonald*.⁴⁴

The language of the Sixth Amendment of the US Constitution is as broad if not broader than the analogous provisions of the Utah Constitution. The Sixth Amendment states, “In *all* criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an

³⁷ *Society of Separationists v. Whitehead*, 870 P.2d 916, 920 (Utah 1993).

³⁸ 528 P.2d 805 (Utah 1974).

³⁹ *Id.* at 806-07.

⁴⁰ *Id.* at 807.

⁴¹ *Society of Separationists*, 870 P. 2d at 920.

⁴² See e.g., *Lewis v. United States*, 518 US 322, 325 (1996).

⁴³ *Id.* at 328.

⁴⁴ *West Valley City v. McDonald*, 948 P.2d 371, 375 (Utah Ct. App. 1997).

impartial jury...,”⁴⁵ whereas the Utah Constitution does not include “all.”⁴⁶ Despite plain language that may suggest that any accused is guaranteed the right to a trial by jury under the US Constitution in every circumstance, modern Sixth Amendment case law limits that right to offenses carrying at least six months of possible incarceration.⁴⁷

This court has already held that Utah Code Ann. §77-1-6(2)(e) does not violate the federal constitution.⁴⁸ This begs the question: What language in the Utah Constitution justifies a departure from that same reasoning with respect to the Utah Constitution? There is none.

The City does not contend that the Utah Constitution does not preserve the right to a jury trial for some petty offenses. But petty offenses cover a wide range of offenses, with a wide range of punishments. The only issue in this case is whether such a right should be extended to the extreme low end of the range: infractions. Infractions and their punishments are substantially less serious than other so called, “petty offenses.” Infractions cannot be punished with jail time. The recommended fine amounts for infractions tend to be significantly lower than those for Class B Misdemeanors (the other extreme end of the range).⁴⁹

As discussed above, the Utah Constitution preserves the right to a trial by jury only as it existed at the time it was adopted.⁵⁰ Infractions, especially traffic offenses, the sheer volume at which they are prosecuted in this state, and whether such offenses carry the right to trial by jury were not considerations that could have been made by the framers of the Utah Constitution. Because of this, historical context and the debates regarding the drafting of the Utah Constitution

⁴⁵ U.S. CONST. amend. VI (Emphasis added).

⁴⁶ UTAH CONST. art I, §§10, 12.

⁴⁷ *Lewis v. United States*, 518 US 322, 326 (1996)(citing *Codispoti v. Pennsylvania*, 418 U.S. 56, 512 (1974)).

⁴⁸ *McDonald*, 948 P.2d at 375.

⁴⁹ See generally, STATE OF UTAH ADMINISTRATIVE OFFICE OF THE COURTS, UNIFORM FINE/BAIL SCHEDULE (2016).

⁵⁰ See *Hyatt v. Hill*, 714 P.2d 299, 301 (Utah 1986).

lack direct application to the facts of this case. It is reasonable to interpret Utah Code Ann. §77-1-6(2)(e) as coming within the constitutional framework because it applies only to actions that were not cognizable at law at the time of adoption and because the standard is well within what has been followed when interpreting the US Constitution, which contains broader more inclusive language. Therefore, any reasonable doubt about the section's validity should be resolved in favor of constitutionality.

CONCLUSION

Utah Code Ann. §77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure are not unconstitutional under article I, sections 10 and 12 of the Utah Constitution. The City, therefore, respectfully asks that the decision below be affirmed.

Respectfully submitted this 10th day of May, 2017.

/s/ Stephen K. Aina

Stephen K. Aina (14579)
Marcus Gilson (15142)
Attorneys for Plaintiff/Appellee

CERTIFICATE OF COMPLIANCE

I certify that in compliance with Rule 24(f)(1), Utah R. App. P., this brief contains 3,539 words, excluding the table of contents, and table of authorities. I further certify that in compliance with Rule 27(b), Utah R. App. P., this brief has been prepared in a monospaced typeface using Microsoft Word in Times New Roman 12-point font.

/s/ Stephen K. Aina
Attorney for Respondent/Appellee

CERTIFICATE OF SERVICE

I certify that on May 10, 2017, in accordance with Utah Supreme Court Standing Order No. 11, an electronic copy of this brief was filed/served via email to:

1. The Utah Court of Appeals, at: **courtofappeals@utcourts.gov**, and
2. R. Shane Johnson, attorney for Defendant/Appellant, S. Steven Maese, at:
shane@utahdefense.com.

Paper copies will be delivered within 7 days, as per the Order, by May 17, 2017.

Also, in accordance with Utah Supreme Court Standing Order No. 8, a courtesy brief on CD in searchable portable document format (PDF) will be filed and served within 14 days.

Signed: /s/ Stephen K. Aina

EXHIBIT A:

days nor less than six hours after the verdict is rendered, unless the defendant waives the postponement, or the judgment is arrested, or a new trial granted. If postponed, the court may hold the defendant to bail to appear for judgment. Unless such postponement is demanded, it shall be deemed to be waived. [C. L. § 5348*.

Cal. Pen. C. § 1419^o.

Boy or girl under eighteen may be sent to industrial school, § 2142.

But total term of imprisonment under sentence by justice of peace cannot be made to exceed six months. Ex parte Lewis, 10 U. 47; 41 P. 1077.

5155. Judgment on plea of guilty. Fine. Imprisonment at labor. When a defendant pleads guilty or is convicted, the court must render judgment that he be punished by a fine or imprisonment, or by both, with or without costs. A judgment for the payment of a fine, or of a fine and costs, may also direct that the defendant be imprisoned at hard labor until such fine, or such fine and costs are paid, in the proportion of one day's imprisonment for every dollar of the fine and costs. [C. L. §§ 5343, 5344*.

Cal. Pen. C. § 1445, 1446^o.

Imprisonment at labor whether or not so designated, § 4930. Fine and imprisonment, § 691. Fees of justices of the peace, §§ 978, 979.

The legislature of the territory could confer on justices of the peace no jurisdiction in criminal cases except that usually exercised by such justices at the date of the passage of the Organic Act, and authority to impose a fine in any sum less than \$300, and an imprisonment for a term not exceeding six months, is in excess of the jurisdiction

which the legislature could confer on justices of the peace under the Organic Act. People, ex rel. Yearian, v. Spiers, 4 U. 385; 10 P. 609; 11 P. 509. Id., 4 U. 482; 11 P. 618. Overruled in People v. Douglass, 5 U. 283; 14 P. 801.

A justice of the peace exhausts his jurisdiction in sentencing the defendant to imprisonment for a period of six months, and has no valid authority to adjudge that he be further imprisoned in default of payment of the fine imposed. In re Lewis, 10 U. 47; 41 P. 1077.

5156. Acquittal. When complainant to pay costs. When the defendant is acquitted, he must be immediately discharged. If it appears to the court that the prosecution was malicious or without probable cause, it may render a judgment that the complainant pay the costs of the action, which judgment may be enforced in the same manner as a judgment in a civil action; and the complainant shall have the same right of appeal. [C. L. § 5346*.

Cal. Pen. C. § 1447^o.

5157. Fine without imprisonment. Execution. A judgment which imposes a fine without directing that the defendant be imprisoned until the same is satisfied, may be enforced in the same manner as a judgment in a civil action, and execution shall issue accordingly.

N. Dak. (1895) § 6767^o.

5158. Judgment of imprisonment, how executed. A judgment of imprisonment must be executed by delivering the defendant into the custody of the sheriff or other officer in charge of the county jail. A copy of the judgment, duly certified by the justice, is a sufficient warrant for the doing of every act necessary or proper in the due execution thereof. The officer shall, upon discharging the defendant, return such copy to the justice, with an account of his doings indorsed thereon, and must at the same time pay over to the justice all money which he may have received from the defendant in payment of the fine.

[C. L. § 5350*.

N. Dak. (1895) § 6768^o, 6769^o.

5159. Fines, etc., to be paid into county treasury. When a fine is paid or bail is forfeited, the justice must pay the same to the county treasurer within thirty days thereafter. [C. L. § 5352*.

Cal. Pen. C. § 1457^o.

APPEAL.

5160. Appeal must be taken within thirty days. Any defendant in a criminal action tried before a justice of the peace may appeal from the final judgment therein to the district court of the county where the court of such justice

EXHIBIT B

JAN 30 2017

THE UTAH COURT OF APPEALS

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SOUTH SALT LAKE CITY,)
Plaintiff and Appellee,)
 v.)
SANTIAGO STEVEN MAESE,)
Defendant and Appellant.)

ORDER

Case No. 20160646-CA

Before Judges Orme, Christiansen, and Pohlman.

This matter is before the court on South Salt Lake City’s motion to dismiss for lack of jurisdiction. The underlying case originated in justice court. Pursuant to Utah Code section 78A-7-118(8), appeals from justice court are limited to a trial de novo in district court unless the district court rules on the constitutionality of a statute or ordinance. The City argues that the district court did not rule on the constitutionality of a statute, and, accordingly, this court lacks jurisdiction over this appeal.

Appellant Maese argues that the district court ruled on the constitutionality of Utah Code section 77-1-6(2)(e), which provides that defendants charged with infractions are not entitled to a jury trial.¹ In his motion for a jury trial in the district court, Maese put the issue of the constitutionality of the statute squarely before the district court. However, there is nothing in the record that reflects the district court’s ruling on the matter. Maese failed to provide a transcript of the district court proceedings during which the trial court apparently made its ruling. Maese requests to supplement the

1. Maese also asserts that the prosecution’s practice of amending misdemeanor charges down to infractions violates a constitutional provision regarding separation of powers. Although framed as a constitutional issue, this challenge is to a prosecutorial practice and not a statute. Accordingly, this issue does not come within the further appellate jurisdiction provided in Utah Code § 78A-7-118(8). See *Provo City v. Orvis*, 2007 UT App 74, ¶ 16.

record with an audio recording of the trial. A ruling on the constitutionality of the statute would provide this court with appellate jurisdiction over the case.

IT IS HEREBY ORDERED that Maese's request to supplement the record with an audio recording is denied. IT IS FURTHER ORDERED that a ruling on the City's motion to dismiss the challenge to Utah Code section 77-1-6(2)(e) is deferred pending a transcript request and supplementation of the record with the transcript of the relevant proceeding. IT IS ALSO ORDERED that Maese must file a transcript request within five days of the date of this order to provide the necessary record for review, if he chooses to pursue this appeal. Absent an adequate record, this court may grant the City's motion to dismiss after thirty days.

Dated this 30th day of January, 2017.

FOR THE COURT:



Gregory K. Orme, Judge

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2017, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

R. SHANE JOHNSON
shane@utahdefense.com

STEPHEN K. AINA
stephen@cwutah.com

By 
Jeffrey Ricks
Judicial Assistant

Case No. 20160646
District Court No. 155900019