

2007

Kurt Benton Snedeker v. Nannette Rolfe : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

KURT BENTON SNEDEKER,)	
)	
Appellant,)	REPLY BRIEF OF APPELLANT
)	
vs.)	
)	Case No. 20070078-CA
NANNETTE ROLFE,)	
)	
Appellee.)	

REPLY BRIEF OF APPELLANT

Appeal from a trial de novo judgment denying Appellant's challenge to the vehicle stop and upholding the revocation of his driver's license in the Second Judicial District Court in and for Weber County, Ogden Department, State of Utah, the Honorable Parley R. Baldwin, presiding.

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ORAL ARGUMENT REQUESTED

**FILED
UTAH APPELLATE COURTS
JUN 04 2007**

IN THE UTAH COURT OF APPEALS

FILED
UTAH APPELLATE COURTS
AUG 02 2007

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Kurt Benton Snedeker,)	
)	ORDER
Petitioner and Appellant,)	
)	Case No. 20070078-CA
v.)	
)	
Nanette Rolfe, Director, Utah)	
State Driver License Division,)	
)	
Defendant and Appellee.)	

Before Judges Bench, Davis, and McHugh.

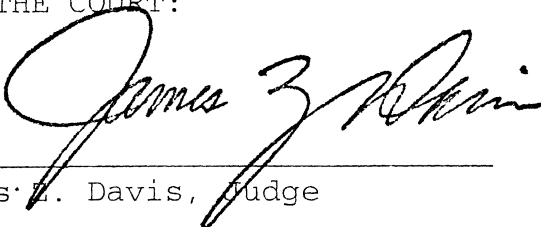
This matter is before the court on Appellee's motion to strike a portion of Appellant's reply brief. Appellee contends that the argument section identified as "II.B" does not comply with rule 24(c) of the Utah Rules of Appellate Procedure.

This court generally declines to consider matters raised for the first time in the reply brief. Beacham v. Fritzi Realty Corp., 2006 UT App 35, ¶6, n.1, 131 P.3d 271. Because the argument at issue here was not raised in the opening brief or in response to a "new matter set forth in the opposing brief," this court declines to address it. See Mi Vida Enters. v. Steen-Adams, 2005 UT App 400, ¶13, n.3, 122 P.3d 144 (quoting Utah R. App. P. 24(c)).

Accordingly, IT IS HEREBY ORDERED that motion to strike is granted.

Dated this 2 day of August, 2007.

FOR THE COURT:



James L. Davis, Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2007, a true and correct copy of the foregoing ORDER was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

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Dated this August 2, 2007.

By 
Deputy Clerk

Case No. 20070078
District Court No. 060906127

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ORAL ARGUMENT REQUESTED

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IN THE UTAH COURT OF APPEALS

KURT BENTON SNEDEKER,)	
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Appellant,)	REPLY BRIEF OF APPELLANT
)	
vs.)	
)	
NANNETTE ROLFE,)	Case No. 2007078-CA
)	
Appellee.)	

SUMMARY OF THE ARGUMENT

The Appellee misstates and misconstrues Appellant's argument to support affirmance of the district court's ruling. The trooper in question violated Appellant's constitutionally protected rights against unreasonable search and seizure when he erroneously stopped Mr. Snedeker for a violation of state insurance laws without a reasonable articulable suspicion that he was committing a crime. At the time of the seizure the trooper only knew that his computer read-out indicated the vehicle was owned by a business and that his data base indicated no insurance was found on the vehicle.

The Appellee's second argument should be stricken as appellee misstates the factual history of the case and failed to cross-appeal on this separate issue, which is substantively in error and does not support the position urged by her. Fourth

Amendment jurisprudence and the accompanying exclusionary rule apply to these district court proceedings.

ARGUMENT

I. A POLICE OFFICER IS WITHOUT CONSTITUTIONAL JUSTIFICATION TO STOP A VEHICLE BASED ON NOTHING MORE THAN A COMPUTER READ-OUT OF “NO INSURANCE FOUND” WHERE NO INFORMATION IS AVAILABLE ON WHO IS DRIVING THE VEHICLE AND THE VEHICLE IS INSURED.

Appellee misconstrues Mr. Snedeker’s argument before this Court. Appellee states, without reference or citation, that “Petitioner [Appellant] argues that Trooper Gurley lacked reasonable suspicion to stop his vehicle because there were possible innocent explanations for the indication that no insurance was found for the vehicle.” Brief of Appellee at p. 6. This statement and the Appellee’s argument that follows the statement distort the position of Appellant. Appellant’s position is clear:

In this case the trooper violated the above standards [requiring reasonable articulable suspicion of criminal activity prior to seizure] articulated by the Supreme Court, this Court and our legislature. The information available to the trooper did not disclose “that criminal activity was afoot.” All that the information possessed by the trooper disclosed was that his computer indicated no insurance was found on the vehicle in the database relied on by the trooper. That simple fact fails to disclose any suspicion that a crime was in progress for several reasons.

Brief of Appellant at p. 5. Following that introduction Appellant expounded three reasons why no crime was observed by the officer, not that other innocent behavior could

explain the actions. The officer lacked sufficient reasonable articulable suspicion to seize Mr. Snedeker.

The three arguments urged by Mr. Snedeker in his opening brief are summarized as follows:

(1) The officer knew the vehicle was registered to a business but did not know the identity of who was driving the vehicle and was without any reasonable articulable suspicion that this driver, Mr. Snedeker, was committing a crime because (2) Utah law requires a driver to have knowledge that he is driving the uninsured vehicle and the trooper had no knowledge supporting that element of the crime given he did not know the driver; and (3) Utah law exempts from being a crime the circumstance where an uninsured vehicle is driven by an otherwise insured driver.

Brief of Appellant at pp 5-7.

These arguments do not claim otherwise innocent explanations for the insurance on the vehicle. Rather, these arguments reveal the lack of a reasonable articulable suspicion that the trooper needed prior to making a seizure of the driver Mr. Snedeker. Accordingly, Appellee's reliance on State v. Markland, 2005 UT 26, 112 P.3d at ¶ 17, regarding other innocent explanations is both misplaced and unhelpful. That case is inapposite to our case at Bar.

The bottom line here is that in stopping the vehicle, Trooper Gurley seized Mr. Snedeker without any information or suspicion that Mr. Snedeker was involved in criminal activity. This violation is visible when considering that the only information the trooper possessed was that his data base revealed the vehicle to belong to a business and that his data base erroneously indicated the vehicle was uninsured. Elements of the

offense as delineated by statute requires more than is suggested by Appellee. Appellee's claim that the trooper need only "suspect" that "the driver is violating" a traffic or equipment regulation before making a legal stop (Brief of Appellee at p. 7.), is overstated. The full statement preceding this quote used by Appellee from State v. Lopez, 873 P.2d 1127, 1132 (Utah 1994), when more closely examined and reviewed in the full context, supports Mr. Snedeker's appeal and is as follows:

Stopping a vehicle may also be justified when the officer has "reasonable articulable suspicion that the driver is committing a traffic offense, such as driving under the influence of alcohol or driving without a license ... [or that] the driver is engaged in more serious criminal activity, such as transporting drugs." *State v. Lopez*, 831 P.2d 1040, 1043 (Utah Ct.App.1992); *see State v. Deitman*, 739 P.2d 616, 617-18 (Utah 1987). In the words of the United States Supreme Court, as long as an officer suspects that the "driver is violating any one of the multitude of applicable traffic and equipment regulations," the police officer may legally stop the vehicle. *Prouse*, 440 U.S. at 661, 99 S.Ct. at 1400.

Similarly, the Appellee's reliance on the Pennsylvania case is also misplaced and again supports Mr. Snedeker's insistence that a violation of his constitutional rights have occurred. In Commonwealth v. Bolton, 2003 PA Super 314, 831 A.2d 734, a single issue was presented for review, to wit: Whether the trial court erred in holding that the charging officer had probable cause to effectuate a traffic stop where he had not observed [that] Defendant had committed any violation of the traffic laws and was not engaged in a systematic program of checking vehicles for compliance with motor vehicle registration and financial responsibility of the laws? *Id.* at ¶ 4. The holding of the court, accordingly, does not address the premise claimed by Appellee. Rather, to the extent the case addresses the propriety of a computer readout, it does so through its detailed state statutes

which expressly authorize the police behavior in Pennsylvania.

The case identifies the statutes being examined to be very different from Utah's controlling statutes. Pennsylvania's statutes are as follows:

The Motor Vehicle Code authorizes police officers to stop vehicles pursuant to the following statute:

Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has articulable and reasonable grounds to suspect a violation of this title, he may stop a vehicle upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title. 75 Pa.C.S.A. § 6308(b).

The Pennsylvania Motor Vehicle Code further provides that,

[n]o person shall drive or move and no owner shall knowingly permit to be driven or moved upon any highway any vehicle which is not registered in this Commonwealth..." 75 Pa.C.S.A. § 1301(a). Additionally, "[e]very motor vehicle of the type required to be registered under this title which is operated or currently registered shall be covered by financial responsibility. 75 Pa.C.S.A. § 1786(a).

Bolton, 831 A.2d at ¶¶ 9-11 (citations omitted).

Utah's statutes are significantly different from Pennsylvania's code such that Bolton offers no help to Appellee but demonstrates Mr. Snedeker's point. Pennsylvania defines its law to provide a violation for anyone driving an unregistered or uninsured vehicle. Utah, on the other hand, contains the additional elements discussed in the opening brief requiring knowledge of the lack of insurance and the exception to the criminal violation which permits a driver to drive an uninsured vehicle if the driver himself is insured. These two distinctions illustrate that a trooper without any

information of these two elements can not support a stop with the requisite reasonable articulable suspicion.

This Court should reverse the district order sustaining the drivers license suspension finding that no reasonable articulable suspicion existed for the trooper to seize Mr. Snedeker.

II. THIS COURT SHOULD STRIKE AND REJECT THE APPELLEE'S ALTERNATIVE ARGUMENT THAT THE EXCLUSIONARY RULE DOES NOT APPLY FOR BOTH PROCEDURAL AND SUBSTANTIVE REASONS.

A. FAILURE TO CROSS-APPEAL

This case came before the trial court for a trial de novo on an administrative appeal from the Drivers License Division on December 20, 2006. At the trial de novo Mr. Snedeker moved the court to find that the trooper committed an illegal stop of Mr. Snedeker. R. 1-3. Counsel for Appellee objected to the motion claiming that the exclusionary rule did not apply to the de novo trial. R. 22 at 2. Following argument on that issue the trial court disagreed with counsel for Appellee and heard the evidence. R. 22 at 4. Appellee did not object, did not request findings or conclusions on that decision and simply proceeded with the testimony from the trooper regarding the substance of Appellant's motion. R. 22 at 4.

In State v. South, 924 P.2d 354 (Utah 1996), the Court discussed the requirement of when a cross-appeal is required from the Appellee to raise a different issue than the

basis for affirming the decision below. In doing so, the Supreme Court approved of the federal approach identified as the Langnes doctrine. In Langnes v. Green, 282 U.S. 531 (1931), the litigants are required to cross-appeal if they wish to attack a judgment of a lower court for the purpose of enlarging their own rights or lessening the rights of their opponent. South, 924 P.2d at 355, (citing Langnes, 282 U.S. at 538-39). By contrast the Appellee needs not cross-appeal if it merely desires the affirmance of the lower court's judgment. Id. at 356.

Applying these guidelines to our case demonstrates that the Appellee's second point claiming to affirm the lower court's decision would require a cross-appeal. This is not a case as in South where the State argued for application of another similar theory to defeat a suppression motion. South, 924 P.2d at 357. Rather, this argument by Appellee would defeat the ability for any appellant to challenge a Fourth Amendment application to the de novo trial in district court. Such a ruling would have a very different outcome. While the decision would still be affirmed in that narrower sense, the Langnes doctrine prohibits appellees from enlarging their own rights and/or lessening the rights of appellants with an issue argued in its answer rather than filing its own cross-appeal. Id. at 355-56. See Terry v. Zions Coop. Mercantile Inst ("ZCMI"), 617 P.2d 700, 701 (Utah 1980)(ruling that if the appellee wishes to argue for alteration of the judgment to enlarge his rights, he must file his own notice of appeal or petition within the time provided in the rules; the Supreme Court clarified that a cross-appeal is required particularly when he seeks to revive a separate claim rejected by the court below).

Terry v. ZCMI relied in part on old rule 75 of the Utah Rules of Civil Procedure, which Rule was repealed in 1990 at the same time the Rules of Appellate Procedure were adopted combining the separate appellate court rules. The Rules of Appellate Procedure require the same substance indicated in Terry v. ZCMI as the rationale requisite for the cross-appeal. Cf. Rule 4, Utah Rules of Appellate procedure with Rule 75(d) of the old civil procedure rules as cited in Terry v. ZCMI.

Appellee should not be permitted to make a cross-appeal disguised in the context of a second argument to affirm the lower court when that ruling has not itself been appealed as required by the rules, has not been preserved by the appellee and would reduce or lessen the rights of appellants as prohibited by the Langnes doctrine.

Stricken

B. APPELLEE'S ARGUMENT IS WITHOUT MERIT

The right of Appellant to insist on constitutional protections against unlawful search and seizure, including the exclusionary rule, at a de novo trial from the administrative hearing at the Driver's License Division is well supported. Prior to the district court de novo trial in this matter, the motion to find an illegal stop was filed and the matter scheduled. At the hearing the Appellee orally objected to the motion and argument pursued on her objection. The trial court indicated it would hear the argument, following which the court required Appellee to put on her witness necessarily rejecting her objection. R. 22 at 4. The trial court's ruling is supported by statute and case authority.

Utah Code Ann. § 63-46b-15, entitled “Judicial review--Informal adjudicative proceedings” states, in pertinent part:

(3)(a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

The section identifies the application of constitutional issues to the de novo appeal from the Driver’s License Division.

In State v. Larocco, 794 P.2d 460 (Utah 1990), the Utah Supreme Court held that “the exclusion of illegally obtained evidence is a necessary consequence of police violations of article I, section 14, of the Utah Constitution.” In so holding, the Utah Supreme Court established a state exclusionary rule separate and distinct from the federal exclusionary rule and allowed for the expansion and separate analysis of the exclusionary rule under the Utah State Constitution.

Under the exclusionary rule, evidence is inadmissible in some proceedings if it is seized in violation of constitutional protection against unreasonable searches and seizures. Although the rule has been developed primarily in federal law, it also has application under the state constitution. As we observed in Larocco, a number of states have used their own constitutions to develop independent state search and seizure law. Our treatment of a separate state exclusionary rule permits us to benefit from federal analysis without being bound by it in our construction of the Utah Constitution.

Sims v. Collection Div. of Utah State Tax Com’n, 841 P.2d 6, 11 (Utah 1992)

(citing Larocco, 794 P.2d at 465).

In Sims, the Utah Supreme Court extended the application of the state exclusionary rule beyond the traditional federal application. The Utah Supreme Court applied the state exclusionary rule to a civil forfeiture proceeding under the Illegal Drug Stamp Tax Act and held “that illegally seized evidence must be excluded under Article I, section 14 of the Utah Constitution where the proceeding in which exclusion is sought is quasi-criminal in nature or where there is a particularized need for deterrence to restrain improper law enforcement activities. *This result shall ensue whether the proceeding in question is labeled "civil" or "criminal."* Id. at 14-15 (emphasis added). Additionally, in Sims the Utah Supreme Court found that a forfeiture proceeding under the Illegal Drug Stamp Tax Act was a quasi-criminal proceeding requiring the application of the exclusionary rule because the statute seeks to punish and deter those in possession of illegal drugs, enforcement is inextricably connected with proof of criminal activity by requiring possessors of illegal drugs to purchase drug stamps and affix them to drugs, and application of exclusionary rule should provide deterrent to unconstitutional seizures by law enforcement entities who receive money collected under statute.

In its ruling in Sims, the Utah Supreme Court included a list of other types of civil proceedings which other state’s courts have characterized as quasi-criminal. Among those types of matters on the list were proceedings such as employee discharge hearings, antitrust proceedings, and administrative proceedings to suspend or cancel liquor licenses. Sims, 841 P.2d at 13. The Utah Supreme Court concluded that civil tax

proceedings should also be included in that group of quasi-criminal proceedings. In that opinion the Court cited with approval to a case involving drivers license hearings. The Court cited to Kuntz v. State Highway Comm'r, 405 N.W.2d 285, 289 (N.D. 1987), where the court ruled that a drivers license revocation proceeding for refusing to submit to an intoxilyzer test is a quasi-criminal proceeding. The Utah Supreme Court opined:

The quasi-criminal nature of the tax proceeding in this case is further evidenced by the fact that enforcement of the Act is inextricably connected with proof of criminal activity. *See Kuntz v. State Highway Comm'r*, 405 N.W.2d 285, 289 (N.D.1987) ("**[T]he civil and criminal consequences [of a refusal to take an intoxilyzer test] are so intermingled that they are not perceptibly different to a lay person.**"). Violation of the Act necessarily involves criminal conduct and a violation of criminal law. Compliance with the Act presupposes the possessor's knowledge of the possession of illegal drugs and therefore requires a violation of criminal law. It would be anomalous indeed, under these circumstances, to hold that in the criminal proceeding the illegally seized evidence is excludable, while in the [civil] proceeding, requiring the determination that the criminal law has been violated, the same evidence would be admissible.

Sims, 841 P.2d at 14 (emphasis added, citation omitted).

Under the same analysis set forth in Sims, an administrative hearing regarding the suspension of a driver's driving privileges as a result of an arrest for driving under the influence should also be considered a quasi-criminal proceeding. First, an administrative drivers license hearing should be considered quasi-criminal because despite the legislative purpose of "protecting persons on highways" as set forth in U.C.A. § 53-3-222 it is clear that the suspension is another form of punishment suffered by the driver as a result of his committing the crime of Driving Under the Influence and is intended as a

deterrent to future offenses. Secondly, an administrative drivers license hearing is so “inextricably connected” with the criminal case for DUI since it is based on the same exact set of facts and circumstances and in order to impose a suspension the drivers license division must find by a preponderance of the evidence (versus proof beyond a reasonable doubt necessary in the criminal case) that the driver violated one of Utah’s DUI laws. (U.C.A. 41-6a.520(3)(a)) Furthermore, absent an actual “arrest” for DUI there would never be an administrative hearing. Absent an arrest the arresting officer would not request that the driver submit to a chemical test and every administrative hearing is predicated on the fact that the driver was arrested for DUI and served notice of the Drivers License Division’s intent to deny, suspend, revoke, or disqualify the driver’s license. (U.C.A. 41-6a-520 & U.C.A. 41-6a-521).

The suspension of a driver’s license to operate a motor vehicle clearly acts as a punishment to the driver as it takes away an essential privilege necessary to function in everyday life. The Fourteenth Amendment to the United States Constitution and Article I, Section 7 of the Utah Constitution guarantee that “No person shall be deprived of life, liberty, or property, without due process of law.” Although it is not considered a “right” similar to that of the right to vote or the right to privacy, the privilege to drive extended by the State of Utah to its citizens is an important privilege that cannot simply be taken away without granting the driver certain constitutional protections and due process.

“The loss of driving privileges is a severe deprivation that may have serious consequences for an individual, not the least of which is the possible loss of employment.

Beck v. Cox, 597 P.2d 1335, 1339 (Utah 1979)(emphasis added).

The loss of one’s drivers license is a very severe consequence as in our area the ability to drive a car is an essential part of every day life for most citizens. In many circumstances the loss of one’s driving privileges has very far reaching consequences such as loss of employment and the inability to transport children to school and other activities, while in all reality suspending a person’s drivers license certainly does not prevent them from driving it just prevents them from driving legally. Utah law specifically excludes drivers whose licenses are suspended for DUI, or drug related suspensions from eligibility for a hardship license under which a driver could drive to essential activities such as work or school, again singling out DUI offenders for special punishment. (U.C.A. 53-3-220(4)(a)).

In addition to the punishment suffered as a result of the inability to drive a vehicle during the suspension period, there is a substantial financial penalty that results from a loss of one’s driver’s license as a result of an administrative DUI suspension. First, when the driver is eligible for reinstatement after the suspension period is over, he or she is required to pay an increased reinstatement fee of \$50.00. Reinstatement after a suspension for DUI is the only type of reinstatement which requires a \$50.00 fee. All other types of suspension, whether for exceeding the limit on points or failure to pay a

ticket, only require a \$25.00 reinstatement fee. Therefore the DUI administrative suspensions have been singled out for additional reinstatement fees. On top of the \$50.00 reinstatement fee, a driver must also pay a \$150.00 administrative fee in order to have his license reinstated following a suspension as a result of a DUI arrest. Only DUI suspensions are required to pay the special \$150.00 DUI administrative fee. No other type of suspension is required to pay a special administrative fee. These requirements are termed by the Drivers License Division as reinstatement or administrative fees but they are only assessed against drivers whose licenses are suspended as a result of a DUI. Therefore, these increased punishments are unique only to DUI charges and would more properly be termed as fines or penalties for having committed a DUI specific offense serving to punish DUI offenders as well as deterring future DUI offenses. In addition to the reinstatement and administrative fees listed above, DUI drivers are also required to pay a separate \$230.00 impound release fee in order to have their vehicle released from impound. Like the other fees listed above, the impound release fee is also unique to DUI offenses only.

The costs as a result of a DUI suspension do not stop there. Regardless of whether the driver is actually convicted of the criminal charge of DUI, if an administrative suspension is imposed by the Drivers License Division, a notation is placed on the driver's driver history indicating that the driver's license was suspended for a DUI related offense. This information is available and provided to the driver's auto insurance carrier

upon request and the driver's auto insurance rates are increased dramatically based on the administrative suspension regardless of whether the driver is actually convicted on the criminal charge of DUI.

Finally, the Utah Legislature has recently created two new categories of drivers: first, the Alcohol Restricted Driver and second, the Interlock Restricted Driver. An Alcohol Restricted Driver is prohibited from driving a motor vehicle with any measurable or detectable amount of alcohol in the drivers body (U.C.A. 41-6a-530) while an Interlock Restricted Driver (U.C.A. 41-6a-518.2) requires certain drivers to install an ignition interlock device on any vehicle they operate in order to lawfully operate a vehicle. A violation of either restriction not only results in additional suspension of the driver's driving privileges but also constitutes additional crimes separate and distinct from a DUI. The criteria for classification as an Alcohol Restricted Driver or an Interlock Restricted Driver is not determined based on whether or not the driver is actually convicted of the crime of DUI but rather can be based solely on whether or not an administrative suspension has been imposed for certain alcohol related driving offenses. A subsequent dismissal of the criminal charge of DUI does not alter or affect the administrative suspension and likewise has no effect on the driver's classification as an Alcohol Restricted or Interlock Restricted Driver. The potential cost for an Interlock device is approximately \$100-\$150 for installation and an additional \$75-85 per month to lease and insure the device while it is required to be maintained in the vehicle. Thus the

requirement of an Ignition Interlock device as a result of an administrative suspension could cost the driver thousands of dollars in order to legally operate a vehicle even after the suspension period has expired.

Aside from the position that the administrative suspension acts as a penalty or punishment to the driver, Mr. Snedeker posits that an administrative hearing is quasi-criminal based on the fact that the enforcement of the suspension laws is “inextricably connected with proof of criminal activity.” As the Supreme Court stated in Sims, “Violation of the Act necessarily involves criminal conduct and a violation of criminal law.” Utah’s traffic code states that:

(3) The hearing shall be documented and shall cover the issues of :

(a) whether a peace officer has reasonable grounds to believe that a person was operating a motor vehicle in violation of Section 41-6a-502, 41-6a-517, 41-6a-530, 53-3-231, or 53-3-232; and

(b) whether the person refused to submit to the test or tests under Section 41-6a-520.

U.C.A. 41-6a-521(3).

To impose a suspension following an administrative hearing, the Drivers License Division must find that the driver violated one of several criminal statutes pertaining to drunk driving. Thus, the language of U.C.A 41-6a-521 requires that in order to impose a suspension the Drivers License Division must find that the arresting officer had not only

reasonable suspicion to initiate a traffic stop but also probable cause to arrest the driver for DUI, and absent such a finding, cannot impose a suspension.

Finally, the application of exclusionary rule at DUI Administrative Hearings clearly would provide an additional deterrent to unconstitutional seizures by law enforcement seeking to arrest individuals for DUI. Although the suppression of evidence in the criminal case already serves a deterrent to officers, it would be fundamentally unfair to allow officers to conduct illegal stops, detentions, and searches, and allow the illegally obtained evidence to form the basis for the serious sanctions to drivers such as the loss of driving privileges and those other sanctions and penalties listed above.

Accordingly, this Court should find that a DUI Administrative Hearing pursuant to U.C.A. § 53-3-223 is in fact a quasi-criminal proceeding and therefore the exclusionary rule preventing the introduction or consideration of illegally obtained evidence is applicable in hearings and at the trial de novo in district court. This Court should deny the alternative claim asserted by Appellee that the exclusionary rule does not apply to administrative actions.

CONCLUSION


Based on what the trooper observed from his computer read-out, he lacked a reasonable suspicion that a crime was being committed. There are no facts that the trooper could articulate at the time of the stop that the driver was in violation of the

insurance laws of this State. The officer lacked knowledge as to who the operator was at the time of effecting the stop: and even if he had known the driver, he was not able to ascertain whether the operator had an “operator’s policy.” Moreover, because proof of insurance on the vehicle actually was provided to the trooper once stopped, his read-out was in error and the stop based on that error was unsupported by reasonable suspicion and therefore is unconstitutional.

Appellee’s alternative argument should not be countenanced by this court for procedural reasons, although if considered should be rejected based on the compelling statutory and case authority cited above.

Therefore, for all or any of the foregoing reasons Mr. Snedeker respectfully requests that the Order of the District Court denying his Petition for Judicial Review and upholding the suspension order issued by the Drivers License Division be overturned and that his drivers license be reinstated immediately.


DATED this 4th day of June, 2007.



BENJAMIN A. HAMILTON
Attorney for Appellant

CERTIFICATE OF DELIVERY

I, Benjamin A. Hamilton, hereby certify that I have caused to be hand-delivered the original and seven copies of the foregoing Brief of Appellant to the Utah Court of Appeals, 450 South State, 5th Floor, P. O. Box 140230, Salt Lake City, Utah 84114-0858, and two copies to be mailed, postage prepaid to Nancy L. Kemp, Assistant Attorney General, 160 East 300 South, Fifth Floor, P.O. Box 140858, Salt Lake City, Utah, 84114-0858, this 4th day of June, 2007.



Benjamin A. Hamilton
Attorney for Appellant

I delivered copies to the Utah Court of Appeals and to Assistant Attorney General Nancy L. Kemp as indicated above this _____ day of June, 2007.
