

2007

Kurt BentonSnedeker v. Nannette Rolfe : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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

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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UTAH APPELLATE COURTS
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Addendum B: Utah Code Ann. § 41-12a-302. Operating motor vehicle without
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STATEMENT OF JURISDICTION

This Court has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2a-2 (2001).

STATEMENT OF THE ISSUE AND STANDARD OF REVIEW

Issue presented: Whether a police officer is without constitutional justification to stop the driver of a vehicle based on nothing more than a computer read-out of “no insurance found” on the vehicle and where no information is either known or available on who is driving the vehicle and where the vehicle is actually insured.

Standard of Review: The Utah Supreme Court established that it reviews trial courts’ conclusions of law based on a correctness of error standard, according no deference to the trial courts’ legal conclusions. State v. Pena, 869 P.2d 932, 936 (Utah 1994), accord State v. Deli, 861 P.2d 431, 433 (Utah 1993); State v. Ramirez, 817 P.2d 774, 782 (Utah 1991). This Court also has stated:

In reviewing a trial court's ruling on a motion to suppress evidence, we will not overturn [its] factual findings absent clear error. The trial court's legal conclusions, however, we review for correctness. State v. Navanick, 1999 UT App 265, ¶ 7, 987 P.2d 1276 (internal citations omitted); see also State v. Anderson, 910 P.2d 1229, 1232 (Utah 1996).

**RELEVANT PORTIONS OF TEXTS OF STATUTES, RULES AND
CONSTITUTIONAL PROVISIONS**

Utah Code Ann. § 41-12a-301. Definition--Requirement of owner's or operator's security--Exceptions [in pertinent part]

...

(2) Except as provided in Subsection (5):

(a) every resident owner of a motor vehicle shall maintain owner's or operator's security in effect at any time that the motor vehicle is operated on a highway or on a quasi-public road or parking area within the state;

Utah Code Ann. § 41-12a-302. Operating motor vehicle without owner's or operator's security--Penalty

(1) Any owner of a motor vehicle on which owner's or operator's security is required under Section 41-12a-301, who operates his vehicle or permits it to be operated on a highway in this state without owner's security being in effect is guilty of a class B misdemeanor, and the fine shall be not less than:

(a) \$400 for a first offense; and

(b) \$1,000 for a second and subsequent offense within three years of a previous conviction or bail forfeiture.

(2)(a) Except as provided under Subsection (2)(b), any other person who operates a motor vehicle upon a highway in Utah with the knowledge that the owner does not have owner's security in effect for the motor vehicle is also guilty of a class B misdemeanor, and the fine shall be not less than:

(i) \$400 for a first offense; and

(ii) \$1,000 for a second and subsequent offense within three years of a previous conviction or bail forfeiture.

(b) A person that has in effect owner's security on a Utah-registered motor vehicle or its equivalent that covers the operation, by the person, of the motor vehicle in question is exempt from this Subsection (2).

Utah Code Ann. § 77-7-15. Authority of peace officer to stop and question suspect--Grounds

A peace officer may stop any person in a public place when he has a reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

Amendment IV, Constitution of the United States

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV, Constitution of the United States (in pertinent part)

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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vs.)	
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NANNETTE ROLFE,)	Case No. 2007078-CA
)	
Appellee.)	

STATEMENT OF THE CASE

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 the officer committed an illegal stop of Mr. Snedeker. R. 1-3. (See Addendum A for the transcript of the hearing.) 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 brief argument the trial court disagreed with counsel for Appellee and heard the evidence. R. 22 at 4. Also prior to hearing testimony the parties stipulated that if the stop was found to be constitutionally valid, the elements of the crime of Driving Under the Influence in violation of Utah Code Ann. § 41-6a-502, were satisfied. After hearing the testimony of the police officer and the arguments of both counsel, the trial court ruled that the stop was valid under the Fourth Amendment.

R. 22 at 17. The driver' license revocation was upheld and this appeal followed. R. 17-19.

STATEMENT OF THE FACTS

On August 20, 2006, at approximately 11:30 p.m., a trooper from the Utah Highway Patrol observed a vehicle stopped at a traffic light. The officer performed a random computer based license plate check for the existence of insurance on that vehicle. R. 22 at 5. The officer received a read-out of "no insurance found" on the vehicle and stopped the driver of the vehicle, Mr. Kurt Snedeker. R. 22 at 6. Prior to the stop the trooper knew from his computer read-out that the vehicle was registered to a business. R. 22 at 9. After the stop was made the trooper learned that the vehicle was properly insured. R. 6-7.

The trooper acknowledged that he did not know who was driving the vehicle, and that he observed the driver for almost two blocks prior to stopping the vehicle. R. 22 at 7. During that time the officer did not observe any violation of the law and testified he stopped the vehicle only because of the computer read-out of no insurance on the vehicle. R. 22 at 7. The trooper agreed that he had no knowledge of whether the driver had a personal insurance policy which covered driving the vehicle. R.22 at 8-9. The trooper knew of no crime the driver had committed and the trooper conceded that he had to stop the vehicle before he could determine whether a crime was in progress. R.22 at 8-9.

SUMMARY OF THE ARGUMENT

The trooper in question violated Appellant's constitutionally protected rights against unreasonable search and seizure when he erroneously stopped him for a violation of state insurance laws without a reasonable articulable suspicion to do so. The trooper only knew that his computer read-out indicated no insurance was found on the vehicle. However, 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 knowledge that the vehicle was not insured or whether the driver had an "operator's policy" thereby exempting him from a criminal offense. 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 unsupported by reasonable suspicion and is therefore unconstitutional.

ARGUMENT

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.

Utah law states that an owner of a vehicle commits a crime if he either operates or he permits that vehicle to be operated on the highway without insurance on the vehicle. Utah Code Ann. § 41-12a-302(1)(See Addendum B). That same law further indicates

that it is also a crime to operate a motor vehicle knowing that the vehicle is not insured.

Id. at -302(2)(a). However, that same statute exempts from criminal responsibility any person who has his own insurance that covers the operation of any such vehicle where insurance is not provided by the owner, to wit:

A person that has in effect owner's security on a Utah-registered motor vehicle or its equivalent that covers the operation, by the person, of the motor vehicle in question [where known to be uninsured] is exempt from this Subsection (2).

Id. at -302(2)(b).

Before an officer may legally stop and detain an individual, the United States Supreme Court has held that the officer must have reasonable suspicion based on specific and articulable facts "that criminal activity is afoot." Terry v. Ohio, 392 U.S. 1 (1968).

In State v. Sykes, 840 P.2d 825 (Utah App. 1992), the Utah Court of Appeals articulated the legal standard for reasonable suspicion to stop a vehicle.

When a police officer stops a vehicle, a "seizure" occurs, giving rise to Fourth Amendment protections. ... To pass muster under the Fourth Amendment, the seizure must be based on articulable facts which, together with rational inferences drawn from them, would lead a reasonable person to conclude defendant had committed or was about to commit a crime.

Id. at 827 (citations and quotations omitted).

The Terry Court described the practicality of this standard as follows:

[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant that intrusion.... [I]n making that assessment it is imperative that the facts be judged against an objective standard.... Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction.

392 U.S. at 21-22.

This reasonable suspicion requirement also has been articulated plainly and simply in our code.

A peace officer may stop any person in a public place when he has reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

Utah Code Ann. § 77-7-15 (1990).

In this case the trooper violated the above standards 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. First, the Utah law on insurance imposes on the vehicle owner an obligation to insure his vehicle being operated on the highway. Utah Code Ann. § -302(1). The trooper did not know, nor did he have any objective data or suspicion, that this driver was the vehicle owner. He did not know who the driver was. Moreover, he knew the owner of the vehicle to be a business, not an individual. No reasonable suspicion of a crime occurred under this theory of the statute.

Second, the insurance requirement statute insists that a driver of an uninsured vehicle possess knowledge that the vehicle is, in fact, uninsured. Utah Code Ann. § -302(2)(a). The trooper again possessed no information about the driver’s identity, let

alone what he may or may not have known about the vehicle's insurance coverage.

Again, no reasonable suspicion of a crime could have occurred under this prong of the statute.

Third, the Utah insurance requirement laws contain an exception clearly articulated that exempts from criminal activity a driver who may be self-insured for driving a vehicle otherwise uninsured. Utah Code Ann. § -302(2)(b); see also -301(2)(a) (attached at Addendum C)(explaining the option resident owners have of maintaining *either owner's or operator's* security on a vehicle). This trooper had no information that this driver, unknown to him, was driving without his own policy covering his acts and exempting him from criminal behavior. This prong also supports that no reasonable articulable suspicion of a crime could have existed here under this theory.

These statutes are not ambiguous nor are they susceptible to an interpretation that allows the trooper to find suspicion of criminal activity given the simple fact known to him at the time of the stop. In Utah when "statutory language is plain and unambiguous, [the courts] will not look beyond the same to divine legislative intent, rather, [the courts] are guided by the rule that a statute should generally be construed according to its plain language." Brinkerhoff v. Forsyth, 779 P.2d 685, 686 (Utah 1989).

In Delaware v. Prouse, 440 U.S. 648, 650 (1979), the Supreme Court held that it violated the Fourth Amendment to stop an automobile for the purpose of checking the license and registration where there is neither probable cause to believe nor reasonable suspicion that the car is being driven contrary to the laws governing the operation of

motor vehicles or that either the car or any of its occupants is subject to seizure or detention in connection with the violation of any other applicable laws. The Court clarified that

[t]he essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of “reasonableness” upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions.

Id. at 653-54 (citations and footnote omitted). In a similar analysis, the Second Circuit Court of Appeals noted:

The fact that Vermont may order citizens to provide proof of insurance ... does not, however, mean that the state police may pull motorists over ... for the sole purpose of asking them to provide proof of insurance.

Diamondstone v. Macaluso, 148 F.3d 113, 123 (2nd Cir. 1998).

The only fact known to the trooper was that no insurance was found by the computer in his search. Importantly, that information turned out to be false as the driver produced insurance on the vehicle. Notably, even if somehow the Court construes sufficient suspicion of a crime where none exists, the fact that the information relied on by the trooper was erroneous dictates a finding that constitutional protections were violated.

In Hensley v. United States, 469 U.S. 221 (1985), the Court found that police departments permissibly may rely on bulletins or flyers from other departments where that bulletin has been issued based on either probable cause or reasonable suspicion to stop. However, the Court noted that “[i]f the flyer has been issued in the absence of a

reasonable suspicion, then a stop in the objective reliance upon it violates the Fourth Amendment.” 469 U.S. at 232.

Similarly, the Court, in an earlier matter, again explained that while reliance on police bulletins or dispatch is permissible, the underlying basis of the dispatch is subject to judicial review and must independently provide a constitutional basis. Whiteley v. Warden, Wyoming State Penitentiary, 401 U.S. 560, 566 (1971)(ruling that an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make an arrest where the initial information is without the sufficient supporting detail and the arresting officer supplies no corroborative details). The Whiteley Court concluded that petitioner Whiteley’s arrest “violated his constitutional rights under the Fourth and Fourteenth Amendments; the evidence secured as an incident thereto should have been excluded from his trial.” Id. at 569. (quoting Mapp v. Ohio, 367 U.S. 643 (1961)).

Our own Tenth Circuit has followed that instruction from Whiteley and Hensley applying the principle where a dispatcher was in error. In the case of United States v. Shareef, 100 F. 3d 1491, 1503 (10th Cir, 1996), the court upheld the lower court’s determination that the “exclusionary rule applies when an error by a dispatcher...leads to a Fourth Amendment violation.” Id. (citing State v. White, 660 So. 2d 664 (Fla. 1995) (applying exclusionary rule where failure of police personnel to maintain accurate computer records leads to violation of the Fourth Amendment)).

The White court found that while “a dispatcher is not a law enforcement officer, she is clearly an ‘adjunct[] to the law enforcement team engaged in the often competitive enterprise of ferreting out crime.’” Id. at 1502-1503 (quoting Arizona v. Evans, 514 U.S. 1 (1995)). The court further found that the dispatcher “is in a position of extreme importance to the police since she is responsible for obtaining, relaying and recording information to and from the officers in the field...” Id.

Neither a dispatcher, nor a fellow officer nor a bulletin or flyer can survive constitutional scrutiny if, itself, is in error on the underlying justification providing the probable cause or reasonable suspicion relied on by the officer. Similarly, this Court cannot countenance as constitutionally acceptable a computer read-out which provided false information as the only justification supporting the stop of the Appellant. As in the cases cited, this Court must also follow the constructs of Mapp and order the resulting arrest and the suspension of the driver’s license flowing from that constitutional error prohibited from use against the Appellant. Wong Sun v. United States, 371 U.S. 471 (1963).

CONCLUSION

Based on what the officer observed from his computer read-out, he lacked a reasonable suspicion that a crime was being committed. There are no facts that the officer could articulate at the time of the stop that the operator 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 unsupported by reasonable suspicion and is therefore unconstitutional.

This Court should reverse the district court order denying Appellant’s request to exclude the improperly acquired evidence which supported the improper suspension of his license.

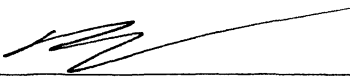
DATED this 12th day of April, 2007.



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 84114-0230, and two copies to be mailed, postage prepaid to Rebecca D. Waldron, Assistant Attorney General, 160 East 300 South, P.O. Box 140857, Salt Lake City, Utah, 84114-0857, this 12th day of April, 2007.



Benjamin A. Hamilton
Attorney for Appellant

I delivered copies to the Utah Court of Appeals and the Assistant Attorney General Rebecca D. Waldron as indicated above this _____ day of April, 2007.

ADDENDA

ADDENDUM A

IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

* * * * *

KURT BENTON SNEDEKER,

PLAINTIFF,

VS.

NANETTE ROLFE, DIRECTOR,
UTAH STATE DRIVER'S
LICENSE DIVISION,

DEFENDANT.

VIDEO TRANSCRIPT

CASE NO. 060906127

* * * * *

TRIAL DE NOVO

DECEMBER 20, 2006

HONORABLE PAMELA G. HEFFERNAN

* * * * *

APPEARANCES:

FOR THE PLAINTIFF: REBECCA D. WALDRON

FOR THE DEFENDANT: BENJAMIN A. HAMILTON

* * * * *

REPORTED/TRANSCRIBED BY DEAN OLSEN, CSR
2525 GRANT AVENUE
OGDEN, UTAH 84401
(801) 395-1056

COPY

2 **THE CLERK:** THIS IS THE CASE OF KURT SNEDEKER VERSUS
3 DRIVER'S LICENSE DIVISION, 060906127, TIME SET FOR TRIAL DE
4 NOVO.

5 **THE COURT:** THIS IS TIME SET FOR TRIAL. THE PETITIONER
6 IS REPRESENTED HERE BY MR. HAMILTON WHO IS PRESENT. AND THE
7 RESPONDENT, MS. WALDRON. ARE WE READY TO PROCEED?

8 **MS. WALDRON:** YES, YOUR HONOR.

9 **MR. HAMILTON:** YES, YOUR HONOR.

10 **THE COURT:** ARE YOU GONNA PUT THE EVIDENCE ON FIRST?

11 **MS. WALDRON:** YES. YEAH, JUST BRIEFLY, YOUR HONOR,
12 COUNSEL AND I HAVE SPOKEN AND HIS ONLY ISSUE IN THIS CASE IS
13 THE LEGALITY OF THE STOP.

14 **THE COURT:** UH-HUH.

15 **MS. WALDRON:** AND SO P.C. TO ARREST OR THE B.A. OVER AN
16 .08'S NOT AT ISSUE, SO WE'RE JUST GONNA BE ADDRESSING THAT.
17 AND JUST FOR THE RECORD BEFORE I PUT ON MY WITNESS, I WOULD
18 LIKE TO OBJECT TO HEARING THAT -- ANYTHING REGARDING THE STOP
19 BECAUSE IT'S NOT RELEVANT IN THIS CASE BECAUSE 53-3-223
20 ADDRESSES WHAT'S AT ISSUE WITH THESE DRIVER'S LICENSE
21 HEARINGS, AND IT'S PROBABLE CAUSE TO ARREST A B.A. OVER AN
22 .08 AND SERVICE OF NOTICE OF INTENT TO SUSPEND OR REVOKE.

23 AND ADDITIONALLY, SINCE THIS IS CIVIL, NOT CRIMINAL, THE
24 EXCLUSIONARY RULE DOESN'T APPLY. SO I JUST WANTED THAT ON
25 THE RECORD BEFORE I CALL MY OFFICER TO THE STAND.

1 **THE COURT:** THANK YOU.

2 **MR. HAMILTON:** WOULD YOU LIKE ME TO RESPOND TO THAT?

3 **THE COURT:** YES, I WOULD. THANK YOU.

4 **MR. HAMILTON:** THANK YOU, YOUR HONOR. SIMMS VERSUS THE
5 UTAH STATE TAX COMMISSION DEALS WITH WHETHER THE EXCLUSION OF
6 EVIDENCE RULE OR THE EXCLUSIONARY RULE APPLIES IN CASES THAT
7 ARE NOT TRADITIONALLY REFERRED TO AS STRICTLY CRIMINAL CASES.
8 THIS IS A CIVIL OR ADMINISTRATIVE TYPE OF ISSUE. HOWEVER, IN
9 SIMMS, IT TALKS ABOUT HOW THE EVIDENCE OF THE DRUG POSSESSION
10 AND THE DRUG STAMP TAX, THE FACTS OF THE CRIMINAL ACTIVITY
11 ARE SO INEXTRICABLY INTERTWINED WITH WHAT THEY WERE DEALING
12 WITH IN THE CIVIL ISSUE AS TO THAT IT'S IMPOSSIBLE TO
13 SEPARATE THE TWO. SO BECAUSE OF THAT REASON AND BECAUSE IT
14 WAS CONSIDERED QUASI-CRIMINAL BECAUSE OF THE PUNITIVE ASPECT
15 OR THE CONSEQUENCES OF THE CIVIL REPERCUSSIONS THAT THE
16 COURT -- SUPREME COURT OF UTAH HELD THAT IT IS APPLICABLE,
17 THE EXCLUSIONARY RULE DOES APPLY. AND EVEN IF IT WEREN'T
18 CONSIDERED QUASI-CRIMINAL, IF IT HAS THE EFFECT OF DETERRING
19 POLICE MISCONDUCT, THEN IT SHOULD BE APPLIED AS WELL. AND
20 FOR ALL OF THOSE REASONS, THIS CASE, D.U.I.'S ARE
21 INEXTRICABLY -- THE PROOF OF THE CRIMINAL ACTIVITY IS WHAT
22 HAS TO BE RELIED ON IN ORDER TO JUSTIFY THE SUSPENSION OR
23 REVOCATION OF A DRIVING PRIVILEGE. IF THERE IS NO PROOF OF
24 THE CRIMINAL ACTIVITY, THEN THERE'S NOTHING TO GO FORWARD ON
25 WITH REGARDS TO THE ADMINISTRATIVE CONSEQUENCES THAT WOULD BE

1 METED OUT TO MY CLIENT. AND SO YOU CAN'T HAVE THE ONE
2 WITHOUT THE OTHER.

3 COUNSEL FOR THE DRIVER'S LICENSE DIVISION MAY ARGUE,
4 WELL, THAT IT IS NOT A PENALTY. BUT YOU LOOK AT IT AND IF
5 YOU HAVE YOUR LICENSE SUSPENDED FOR POINTS AND YOU GO TO GET
6 YOUR LICENSE REINSTATED, THERE'S A 15- OR 25-DOLLAR
7 REINSTATEMENT FEE. IF YOU HAVE YOUR LICENSE TAKEN AWAY FOR A
8 D.U.I., IT'S A \$200 REINSTATEMENT FEE. THE SUSPENSION IS FOR
9 A SIGNIFICANT PERIOD OF TIME; FOR A YEAR IN THIS CASE. AND
10 SO THERE ARE PUNITIVE ASPECTS THAT COME INTO PLAY. AND
11 BECAUSE THE CONDUCT OF LAW ENFORCEMENT IN MAKING A STOP AND
12 WHETHER THAT'S STOP BE LEGAL OR NOT UNDER THE FOURTH
13 AMENDMENT, THIS WILL DETER OTHER ILLEGAL CONDUCT. AND THAT'S
14 EXACTLY WHAT SIMMS GOES TO AS WELL.

15 IN SIMMS IT EVEN CITES TO AN ALASKA CASE WHERE IT WAS
16 HELD THAT THE EXCLUSIONARY RULE DOES APPLY IN A DRIVER'S
17 LICENSE PROCEEDING. AND SO --

18 **THE COURT:** WELL, I'M GONNA HEAR THE EVIDENCE. YOU MAY
19 CALL YOUR FIRST WITNESS.

20 **MR. HAMILTON:** THANK YOU, YOUR HONOR.

21 **MS. WALDRON:** THANK YOU, YOUR HONOR. THE RESPONDENT
22 CALLS OFFICER GURNEY.

23 **THE COURT:** IF YOU'D LIKE TO COME OVER, RAISE YOUR RIGHT
24 HAND.

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RYAN GURNEY,
BEING FIRST DULY SWORN, WAS EXAMINED
AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. WALDRON:

Q. WOULD YOU PLEASE STATE YOUR NAME AND OCCUPATION?

A. RYAN GURNEY, TROOPER FOR THE UTAH HIGHWAY PATROL.

THE COURT: SPELL YOUR LAST NAME FOR US PLEASE.

THE WITNESS: G-U-R-N-E-Y.

Q. (BY MS. WALDRON) HOW LONG HAVE YOU BEEN A TROOPER WITH
THE UTAH HIGHWAY PATROL?

A. FIVE YEARS.

Q. WERE YOU ON DUTY ON AUGUST 20TH, 2006, AT APPROXIMATELY
11:30 P.M.?

A. YES, I WAS.

Q. WERE YOU IN THE LOCATION OF 2500 LINCOLN?

A. YES, I WAS.

Q. AND WHAT DID YOU OBSERVE AT THAT TIME AT THAT LOCATION?

A. THERE WAS A CAR -- WE WERE STOPPED AT A LIGHT. CAR WAS
IN FRONT OF ME. DID A RANDOM LICENSE PLATE CHECK. CHECKED
FOR INSURANCE ON THE VEHICLE. AND IT CAME BACK AS INSURANCE
NOT FOUND.

Q. AND DOES A VEHICLE HAVE TO BE INSURED TO BE DRIVEN?

A. YES.

MR. HAMILTON: I'M GONNA OBJECT TO THAT, YOUR HONOR.

1 THAT'S A LEGAL CONCLUSION WHICH IS FOR THE COURT TO
2 DETERMINE. AND THAT'S WHAT WE'RE DEALING WITH TODAY, SO I
3 WOULD ASK THE COURT TO STRIKE THAT FROM CONSIDERATION IN
4 (UNINTELLIGIBLE).

5 **THE COURT:** GRANTED.

6 **Q. (BY MS. WALDRON)** SO WHAT DID YOU DO UPON FINDING OUT
7 THIS INFORMATION?

8 **A.** AS SOON AS THE LIGHT TURNED GREEN, WENT THROUGH THE
9 INTERSECTION AND STOPPED THE VEHICLE.

10 **Q.** AND DID -- DID YOU CONTACT THE DRIVER OF THAT VEHICLE?

11 **A.** YES, I DID.

12 **Q.** CAN YOU POINT OUT WHERE HE'S SITTING AND WHAT HE'S
13 WEARING?

14 **A.** HE'S SITTING THERE WITH BLUE SHIRT WITHOUT THE TIE.

15 **MS. WALDRON:** MAY THE RECORD REFLECT THE WITNESS HAS
16 IDENTIFIED THE PETITIONER IN THIS CASE?

17 **THE COURT:** IT'LL SO REFLECT.

18 **MS. WALDRON:** THANK YOU. I THINK THAT'S ALL.

19 **THE COURT:** THANK YOU.

20 **MS. WALDRON:** OH, ONE MOMENT.

21 **Q. (BY MS. WALDRON)** WHEN YOU STOPPED THE PETITIONER, DID
22 YOU ASK HIM FOR HIS DRIVER'S LICENSE AND REGISTRATION --

23 **A.** YES, I DID.

24 **Q.** -- PROOF OF INSURANCE?

25 **A.** YES.

1 Q. AND DID HE SHOW YOU THAT?

2 A. YES, HE DID.

3 Q. WAS HE THE REGISTERED OWNER OF THE VEHICLE?

4 A. NO, HE WAS NOT.

5 MS. WALDRON: NO FURTHER QUESTIONS.

6 CROSS-EXAMINATION

7 BY MR. HAMILTON:

8 Q. IN FACT, THE VEHICLE WAS REGISTERED TO A BUSINESS.

9 A. CORRECT.

10 Q. OKAY. AND YOU SAY YOU STOPPED HIM AS SOON AS THE LIGHT
11 TURNED GREEN. DO YOU HAVE YOUR REPORT IN FRONT OF YOU?

12 A. YEAH.

13 Q. CAN YOU PLEASE REFER TO THE PLACE OF THE ARREST ON THE
14 D.U.I. REPORT FORM, WHICH IS ABOUT SIX LINES DOWN FROM THE
15 TOP? YOU IN FACT STOPPED HIM AT 2650 LINCOLN?

16 A. YES.

17 Q. WHICH IS ALMOST TWO BLOCKS AFTER THE 2500 WHERE YOU SAW
18 HIM?

19 A. OKAY.

20 Q. SO YOU HAD A CHANCE TO WATCH HIM FOR TWO -- DRIVING FOR
21 AT LEAST TWO BLOCKS BECAUSE YOU PROBABLY SAW HIM DRIVING
22 BEFORE HE CAME UP TO THAT STOP LIGHT; IS THAT RIGHT?

23 A. NO. HE WAS PARKED AT THE STOP LIGHT.

24 Q. OKAY. AND YOU HAD NO INDICATION OF HIS INABILITY TO
25 OPERATE THE VEHICLE BEFORE THE STOP; IS THAT SAFE TO SAY?

1 **A.** TRUE.

2 **Q.** NO DRIVING PATTERN INDICATING ANY TRAFFIC VIOLATION AT
3 ALL.

4 **A.** NO.

5 **Q.** SO YOUR ENTIRE BASIS FOR THE STOP WAS WHAT YOU READ ON
6 THE COMPUTER SCREEN.

7 **A.** CORRECT.

8 **Q.** AND THAT SHOWED UP BASED ON YOU PUNCHING IN THE LICENSE
9 PLATE OF THE VEHICLE; IS THAT RIGHT?

10 **A.** CORRECT.

11 **Q.** AND THE LICENSE PLATE OF THE VEHICLE CAME BACK TO
12 MATCHING THE VEHICLE THAT WAS INDICATED, RIGHT?

13 **A.** CORRECT.

14 **Q.** NO INDICATION OF REGISTRATION PROBLEMS OR ANY OTHER
15 PROBLEMS; JUST THAT IT SAID INSURANCE NOT FOUND.

16 **A.** THAT'S RIGHT.

17 **Q.** OKAY. AND AGAIN, YOU DIDN'T KNOW WHO THE OPERATOR OF
18 THE VEHICLE WAS.

19 **A.** NO, I DID NOT.

20 **Q.** AND YOU REMEMBER TESTIFYING AT THE DRIVER'S LICENSE
21 HEARING IN THIS ISSUE. IS THAT YES?

22 **A.** YES.

23 **Q.** OKAY. AND YOU REMEMBER TESTIFYING THAT YOU HAD NO WAY
24 WITH THE -- WHAT WAS AVAILABLE TO YOU IN YOUR CAR OF
25 ASSESSING OR DETERMINING WHETHER THE DRIVER OF THE VEHICLE

1 HAD A PERSONAL INSURANCE POLICY; IS THAT RIGHT?

2 **A.** CORRECT, BECAUSE IT WAS -- CAME BACK TO A BUSINESS.

3 **Q.** OKAY. AND AN INDIVIDUAL, BASED ON YOUR UNDERSTANDING,
4 CAN HAVE A PERSONAL INSURANCE POLICY AND OPERATE ANY VEHICLE
5 THAT HE WANTS TO WHETHER THAT VEHICLE IS INSURED OR NOT; IS
6 THAT RIGHT?

7 **MS. WALDRON:** OBJECTION, FOR THE SAME -- THAT'S A LEGAL
8 ARGUMENT.

9 **THE COURT:** THANK YOU. I'M NOT SURE THAT THIS WITNESS
10 CAN TESTIFY TO THAT --

11 **MR. HAMILTON:** VERY WELL.

12 **THE COURT:** -- OBJECTION SUSTAINED.

13 **Q. (BY MR. HAMILTON)** BUT AGAIN, YOU DIDN'T KNOW WHO THE
14 DRIVER WAS, CORRECT?

15 **A.** CORRECT.

16 **Q.** AND YOU DIDN'T KNOW WHETHER THAT DRIVER BEFORE YOU
17 STOPPED HIM HAD A PERSONAL INSURANCE POLICY THAT COULD HAVE
18 COVERED HIM IN DRIVING THAT CAR OR ANY OTHER FOR THAT MATTER;
19 IS THAT RIGHT?

20 **A.** NOT UNTIL I STOPPED THE VEHICLE AND FIND OUT WHO'S
21 DRIVING IT.

22 **Q.** OKAY. SO YOU HAD TO STOP THE VEHICLE IN ORDER TO FIND
23 OUT WHETHER THERE MIGHT BE A CRIME OCCURRING; IS THAT RIGHT?

24 **A.** CORRECT.

25 **Q.** AND YOU DIDN'T HAVE ANY INFORMATION THAT THE CRIME OF NO

1 INSURANCE WAS OCCURRING BASED ON THE FACT YOU DIDN'T KNOW
2 WHETHER HE WAS INSURED OR WHO THE DRIVER EVEN WAS; IS THAT
3 RIGHT?

4 **A.** CORRECT.

5 **Q.** OKAY.

6 **MS. WALDRON:** NOTHING FURTHER.

7 **THE COURT:** THANK YOU. YOU MAY STAND DOWN.

8 **THE WITNESS:** THANK YOU.

9 **THE COURT:** ANY FURTHER TESTIMONY?

10 **MS. WALDRON:** NO, YOUR HONOR.

11 **THE COURT:** THANK YOU. MR. HAMILTON.

12 **MR. HAMILTON:** NOTHING IN TERMS OF TESTIMONY FROM THE
13 PETITIONER.

14 **THE COURT:** THANK YOU. DO YOU WANT TO CLOSE?

15 **MS. WALDRON:** YES, YOUR HONOR. FIRST ADDRESSING THE
16 LEGALITY OF THE STOP, THE STANDARD IS WHETHER OR NOT -- FOR
17 IT TO BE A LEGAL STOP IS WHETHER OR NOT THE OFFICER HAD
18 REASONABLE SUSPICION THAT A CRIME WAS OCCURRING. HE DIDN'T
19 HAVE TO HAVE ACTUAL PROOF THAT A CRIME WAS OCCURRING, BUT
20 REASONABLE SUSPICION. SO THE ISSUE IS WHEN THE OFFICER FOUND
21 OUT THAT A VEHICLE -- THERE -- NO INSURANCE WAS FOUND ON THE
22 VEHICLE, WAS IT REASONABLE FOR HIM TO STOP THE VEHICLE TO
23 FIND OUT IF THE DRIVER WAS IN FACT INSURED. AND IT IS OUR
24 ARGUMENT HERE TODAY, YEAH, IT IS REASONABLE. THE OFFICER
25 RECEIVED INFORMATION THAT THE VEHICLE ITSELF WASN'T INSURED,

1 SO IT WAS REASONABLE FOR HIM TO THINK, WELL, MAYBE, YOU KNOW,
2 WE'D BETTER FIND OUT IF THE DRIVER'S INSURED. OTHERWISE, A
3 CRIME WOULD BE COMMITTED. BECAUSE OF THAT, HE STOPPED THE
4 VEHICLE, APPROACHED THE DRIVER, AND ASKED FOR PROOF OF
5 INSURANCE AND REGISTRATION, AND THE DRIVER WAS ABLE TO
6 PRODUCE INSURANCE. HOWEVER, PRIOR TO THE STOP, THE OFFICER
7 DIDN'T KNOW THAT. I MEAN THE STANDARD ISN'T PROBABLE CAUSE.
8 STANDARD ISN'T ENOUGH FACTS TO KNOW A CRIME WAS IN FACT BEING
9 COMMITTED. THE STANDARD IS REASONABLE SUSPICION. AND I
10 THINK IT WAS REASONABLE FOR THE OFFICER TO BELIEVE THAT THERE
11 MAY BE A CRIME BEING COMMITTED BECAUSE THE CAR WAS NOT
12 INSURED. I THINK IT WAS REASONABLE. I THINK THE STOP WAS
13 FULLY CONSTITUTIONAL. AND BUT FOR THE ADDITIONAL INDICATORS
14 OF THE DRIVE -- PETITIONER BEING UNDER THE INFLUENCE, HE
15 WOULD HAVE BEEN LET GO. AND THAT'S THE -- SO THE FACT THAT
16 THE OFFICER DIDN'T KNOW FOR SURE PRIOR TO THE STOP, I DON'T
17 THINK THAT MAKES THE STOP ILLEGAL OR UNCONSTITUTIONAL.

18 AND JUST BRIEFLY TO ADDRESS COUNSEL'S SIMMS ARGUMENT,
19 THESE DRIVER'S LICENSE DIVISION CASES CAN BE DISTINGUISHED
20 FROM THAT. SIMMS WAS A CASE REGARDING THE UTAH STATE ILLEGAL
21 DRUG STAMP ACT, WHEREAS IF SOMEONE'S ARRESTED WITH ILLEGAL
22 DRUGS, THAT THEY'RE POSSESSION FOR SALE AND THEY DON'T HAVE
23 THESE -- THESE TAX STAMPS ON IT, THEN THEY CAN BE FINED. AND
24 WHAT THE COURTS FOUND IN SIMMS WAS THAT FINE AND PENALTY,
25 IT'S LIKE, YOU KNOW, A HUNDRED OR TWO HUNDRED PERCENT OF THE

1 VALUE OF THE DRUGS, WAS SO OUTRAGEOUS THAT IT COULD ONLY BE
2 VIEWED AS A PENALTY. AND BECAUSE IT WAS VIEWED AS A PENALTY,
3 THEY CLASSIFIED THE ACTION AS QUASI-CRIMINAL AND NOT CIVIL.
4 WHEREAS IN THESE CASES IN BALLARD VERSUS STATE, IT
5 SPECIFICALLY SAID THAT THESE DRIVER'S LICENSE DIVISION CASES
6 ARE CIVIL, THEY'RE NOT A PENALTY, THEY'RE FOR THE PROTECTION
7 OF THE PUBLIC, AND AT NO -- THERE'S BEEN NO CASE THAT
8 CLASSIFIES THESE CASES AS QUASI-CRIMINAL.

9 WITH RESPECT TO -- SIMMS DID LOOK AT, YOU KNOW, THE
10 EXCLUSIONARY RULE IS APPLIED AS A DETERRENT FACTOR FOR THE
11 POLICE OFFICERS, WHERE IN THIS CASE, THE DRIVER'S LICENSE
12 DIVISION HAS NO CONTROL OVER THE POLICE OFFICERS, THERE'S NOT
13 GONNA BE ANY DETERRENT EFFECT ON THE DRIVER'S LICENSE
14 DIVISION IF THE EXCLUSIONARY RULE APPLIES. AND IN THE
15 HISTORY OF THIS COUNTRY, EXCLUSIONARY RULES HAVE NOT BEEN
16 APPLIED TO CIVIL CASES. THEY -- IF A CASE HAS BEEN
17 CLASSIFIED AS QUASI-CRIMINAL, THEY MAY APPLY IT, BUT -- SO
18 IT'S STILL OUR POSITION THAT, NUMBER ONE, THE STOP IS NOT THE
19 ISSUE. NUMBER TWO, EVEN IF IT IS, IT'S A LEGAL STOP.

20 **THE COURT:** THANK YOU.

21 **MR. HAMILTON:** YOUR HONOR, I WOULD JUST ASK THE COURT TO
22 READ SIMMS, ESPECIALLY ON PAGE 14, AND I'M QUOTING, THE
23 QUASI-CRIMINAL NATURE OF THE TAX PROCEEDING IN THIS CASE IS
24 FURTHER EVIDENCED BY THE FACT THAT ENFORCEMENT OF THE ACT IS
25 INEXTRICABLY CONNECTED WITH PROOF OF CRIMINAL ACTIVITY. IT

1 SAYS, SEE KROOTS V. STATE HIGHWAY COMMISSIONER, WHICH IS A
2 NORTH DAKOTA 1987 CASE WHERE IT WAS HELD THAT THE CIVIL AND
3 CRIMINAL CONSEQUENCES OF A REFUSAL -- WHICH IS A DRIVER'S
4 LICENSE ISSUE -- TO TAKE AN INTOXYLIZER TEST ARE SO
5 INTERMINGLED THAT THEY ARE NOT PERCEPTIVELY DIFFERENT TO A
6 LAY PERSON. SO EVEN IN SIMMS ITSELF, IT'S CITING CASE LAW
7 DEALING WITH DRIVER'S LICENSE ISSUES IN MAKING A
8 DETERMINATION THAT THE EXCLUSIONARY RULE FOR A VIOLATION OF A
9 FOURTH AMENDMENT RIGHT DOES APPLY TO THESE TYPES OF
10 SITUATIONS.

11 NOW, GOING TO THE THRUST OF WHAT WE'RE HERE FOR; THAT
12 IS, TITLE 41-12A-301(2), STATES THAT EVERY RESIDENT OWNER OF
13 A MOTOR VEHICLE SHALL MAINTAIN OWNER'S OR OPERATOR'S SECURITY
14 IN EFFECT AT ANY TIME THAT THE VEHICLE IS OPERATED. SO IN
15 OTHER WORDS, YOU DON'T HAVE TO INSURE THE VEHICLE; YOU CAN
16 INSURE YOURSELF. YOU CAN -- I CAN GET A PERSONAL INSURANCE
17 POLICY THAT WILL LET ME DRIVE ANY VEHICLE I WANT. I CAN HAVE
18 A POLICY FOR MYSELF THAT WILL ALLOW ME TO DRIVE MY FRIENDS'
19 VEHICLES WHETHER THEY'RE INSURED OR NOT, WHETHER I CAN DRIVE
20 A RENTAL VEHICLE WHETHER IT'S INSURED OR NOT. THAT DOES NOT
21 MAKE ME IN VIOLATION OF THE LAW JUST BECAUSE THE VEHICLE I'M
22 DRIVING DOES NOT CARRY INSURANCE SPECIFICALLY RELATED TO IT
23 OR LINKED TO IT. I CAN BE IN COMPLIANCE WITH THE LAW BY
24 MAKING SURE THAT ANYBODY THAT I MIGHT HAVE AN ACCIDENT WITH
25 WOULD BE COVERED UNDER A PERSONAL INSURANCE POLICY THAT I

1 HAVE FOR MYSELF. THAT'S WHAT THE CODE SAYS.

2 NOW, IF THAT'S WHAT THE CODE SAYS, AND THE OFFICER DOES
3 A RANDOM CHECK WITHOUT ANY INDICATION OF ANY OTHER CRIMINAL
4 ACTIVITY, THAT THE VEHICLE THAT MY CLIENT HAPPENED TO BE
5 DRIVING DID NOT HAVE INSURANCE THAT WAS FOUND -- IT DIDN'T
6 SAY THAT IT DIDN'T HAVE INSURANCE, IT SAID IT WASN'T FOUND,
7 AND ULTIMATELY THE VEHICLE WAS INSURED, WHICH I THINK
8 PRESENTS ANOTHER LITTLE PROBLEM. BUT EVEN IF IT DID NOT COME
9 BACK AS BEING INSURED ITSELF AND THERE -- AND IT EXPIRED,
10 HADN'T BEEN INSURED FOR SOME TIME, EVEN IF ALL THAT WAS THE
11 CASE, THAT'S STILL NOT A REASON TO BELIEVE THAT A CRIME HAS
12 BEEN COMMITTED. IN ORDER TO JUSTIFY A LEGAL STOP, A TRAFFIC
13 STOP, THERE HAS TO BE REASON TO BELIEVE A CRIME HAS BEEN OR
14 IS ABOUT TO BE COMMITTED.

15 WELL, BECAUSE THE LAW ON INSURANCE IS IN THE
16 ALTERNATIVE, EITHER ON THE CAR OR FOR THE PERSON, AND HE
17 DOESN'T KNOW WHO THE PERSON IS AND HE DOESN'T HAVE ANY
18 INDICATION THAT THIS PERSON DOESN'T HAVE INSURANCE, NOR IS
19 THERE ANY WAY FOR HIM TO CHECK IT, THERE IS NO WAY TO DRAW A
20 CONCLUSION THAT THERE'S A VIOLATION OF THE INSURANCE STATUTE.
21 OR EVEN A REASON TO BELIEVE THAT THERE'S A VIOLATION OF THE
22 INSURANCE STATUTE. THERE MIGHT BE A HUNCH WHEN IT SAYS THAT
23 I'M NOT FINDING INSURANCE IN THE COMPUTER THAT THE VEHICLE
24 ITSELF MIGHT NOT BE INSURED, BUT THERE IS NOTHING, A COMPLETE
25 ABSENCE OF ANY EVIDENCE THAT THE STATE HAS PUT ON TO SHOW

1 THAT THERE WAS ANY INDICATION THAT HE WAS NOT INSURED OR THAT
2 THERE WAS A VIOLATION OF A CRIMINAL STATUTE, THE INSURANCE
3 STATUTE SPECIFICALLY. AND BECAUSE OF THAT, IF WE ALLOW THIS
4 TO GO ON, THEN WHAT WE'RE DOING IS WE'RE OPENING A DOOR TO
5 SAY, WELL, YOU DON'T HAVE ANY INFORMATION THAT THERE MIGHT BE
6 DRUGS IN THE VEHICLE, EXCEPT THAT YOU KNOW WHO THE DRIVER IS
7 MAYBE ON THAT SITUATION AND YOU KNOW THAT HE'S HAD DRUGS IN
8 THE PAST. WELL, HE HAD THEM LAST WEEK. PROBABLY HAS THEM
9 NOW. LET'S STOP AND FIND OUT. THAT'S BASICALLY WHAT THE
10 OFFICER SAID. I HAD TO STOP TO FIND OUT IF THERE WAS A
11 PROBLEM WITH THE INSURANCE ISSUE. NOT THAT HE HAD
12 INFORMATION THAT THERE WAS PROBLEM WITH HIS -- WITH THE
13 PERSONAL INSURANCE POLICY, BUT THAT HE HAD TO STOP HIM TO
14 FIND OUT IF THERE WAS A PROBLEM. THAT KIND OF CONDUCT IS
15 EXACTLY WHAT THE FOURTH AMENDMENT GOES AT PREVENTING, FROM
16 MAKING RANDOM STOPS ON NOTHING MORE THAN A HUNCH. MIGHT BE A
17 GOOD HUNCH, BUT IT'S STILL A HUNCH, AND THAT'S NEVER BEEN
18 ENOUGH UNDER THE FOURTH AMENDMENT ANALYSIS.

19 AND WE'LL SUBMIT IT ON THAT.

20 **THE COURT:** THANK YOU. MS. WALDRON.

21 **MS. WALDRON:** JUST BRIEFLY, YOUR HONOR. YOUR HONOR,
22 THIS IS MORE THAN A HUNCH. I MEAN WHAT WAS THE OFFICER -- HE
23 FOUND A VEHICLE THAT HE -- HE DIDN'T KNOW WHETHER OR NOT IT
24 WAS INSURED. WELL, HE WAS SUPPOSED TO JUST LET IT GO? I
25 MEAN IT WAS REASONABLE FOR HIM TO CHECK IT OUT. IT'S NO

1 DIFFERENT THAN LET'S SAY THERE'S A LICENSE PLATE AND THE
2 REGISTRATION'S NOT VISIBLE OR THEY DON'T -- IT'S -- THE
3 REGISTRATION APPEARS TO BE EXPIRED. THE OFFICER STOPS THE
4 VEHICLE, AND FINDS OUT THERE -- IT IS REGISTERED LAWFULLY.
5 THERE MAY BE A STICKER THAT HE DIDN'T SEE OR WHATEVER.
6 THERE'S NO DIFFERENCE. WHERE IT WAS REASONABLE OR LET'S SAY
7 A LICENSE PLATE LIGHT IS OUT, HE STOPS THE VEHICLE, DISCOVERS
8 IT'S WORKING. I MEAN IT'S THE SAME TYPE OF THING. HE -- THE
9 OFFICER RAN THE PLATES. IT CAME BACK NO INSURANCE FOUND. IT
10 WAS REASONABLE FOR HIM TO STOP THE VEHICLE TO FIND OUT IF THE
11 DRIVER WAS INSURED. IF THE DRIVER WAS INSURED, HE COULD LET
12 HIM GO ON HIS WAY. MINIMAL INTRUSION INTO SOMEONE'S PRIVACY.
13 IT'S MINIMAL INTRUSION. THAT DOESN'T RISE TO THE LEVEL OF AN
14 UNCONSTITUTIONAL STOP. AND IT'S MORE THAN A HUNCH. IT'S
15 REASONABLE. THE OFFICER WOULD BE DERELICT IN HIS DUTIES IF
16 HE DIDN'T STOP A VEHICLE THAT SHOWED THAT THERE WAS NO
17 INSURANCE ON IT BECAUSE IT IS THE LAW OF THE STATE THAT
18 EITHER A VEHICLE'S INSURED OR THE DRIVER'S INSURED. AND THAT
19 HE WOULDN'T BE ABLE TO FIND OUT IF THE DRIVER WAS INSURED
20 UNLESS HE STOPPED IT.

21 I THINK IT'S WELL WITHIN A CONSTITUTIONAL STOP. AND
22 IT'S MINIMAL INTRUSION INTO AN INDIVIDUAL'S LIFE.

23 **MR. HAMILTON:** CAN I HAVE JUST TWO MINUTES TO RESPOND TO
24 THAT?

25 **THE COURT:** YES.

1 **MR. HAMILTON:** THANK YOU. EVERY EXAMINE THAT COUNSEL
2 JUST CAME UP WITH WITH REGARDS TO A LICENSE PLATE STICKER, A
3 LICENSE PLATE LIGHT, NONE OF THOSE STATUTES THAT PREVENT
4 SOMEBODY FROM HAVING AN EXPIRED STICKER OR THAT PREVENTS
5 SOMEBODY FROM OPERATING A VEHICLE WITH AN EQUIPMENT VIOLATION
6 LIKE A LICENSE PLATE LIGHT, NONE OF THOSE HAVE AN ALTERNATIVE
7 TO THEIR STATUTE SAYING, BUT IF YOU HAVE ANOTHER LIGHT, A
8 BACKUP LIGHT, YOU'RE OKAY. BUT IF YOU HAVE YOUR REGISTRATION
9 IN YOUR GLOVE COMPARTMENT WHERE YOU JUST DIDN'T PUT THE
10 STICKER ON, THEN YOU'RE OKAY AND IT DOESN'T MATTER THAT YOU
11 DIDN'T PUT THE STICKER ON. OR THAT IT MIGHT APPEAR EXPIRED.
12 NONE OF THOSE HAVE THAT WITH THE STATUTE WE HAVE IN PLACE.
13 THE INSURANCE STATUTE SAYS YOU CAN HAVE THIS OR YOU CAN HAVE
14 THIS. EITHER ONE IS LAWFUL. AND BECAUSE THERE IS NO
15 INDICATION THAT HIS CONDUCT VIOLATED BOTH PRONGS, THERE IS NO
16 EVIDENCE TO SUPPORT OR JUSTIFY AN INTRUSION OF ANY SORT.

17 **THE COURT:** THANK YOU. MR. HAMILTON, DRIVING WITHOUT
18 INSURANCE IS A SERIOUS MATTER IN OUR SOCIETY AND ON OUR
19 ROADS. THE -- I THINK IT'S INCUMBENT UPON A POLICE OFFICER
20 IF THEY NOTICE THAT THERE IS A VEHICLE, THAT THEY USE THE
21 TECHNOLOGY THAT'S NOW AVAILABLE TO LOOK WITH REGARD TO
22 INSURANCE. THERE IS -- AND IF IT COMES BACK NOT FOUND, IT'S
23 REASONABLE SUSPICION. AND I THINK THE STOP WAS APPROPRIATE,
24 AND FIND SO. YOU'LL PREPARE THE FINDINGS, MS. WALDRON?

25 **MS. WALDRON:** YES, YOUR HONOR.

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THE COURT: THANK YOU.

MR. HAMILTON: THANK YOU, YOUR HONOR. YOUR HONOR, MAY I
JUST HAVE A MINUTE BEFORE YOU LEAVE THE BENCH?

THE COURT: SURELY.

MR. HAMILTON: THANK YOU, YOUR HONOR.

CERTIFICATE

STATE OF UTAH)
) SS
COUNTY OF WEBER)

THIS IS TO CERTIFY THAT THE FOREGOING 18 PAGES OF
TRANSCRIPT CONSTITUTE A TRUE AND ACCURATE RECORD OF THE
PROCEEDINGS TO THE BEST OF MY KNOWLEDGE AND ABILITY AS A
CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE OF UTAH.

DATED AT OGDEN, UTAH THIS 29TH DAY OF JANUARY, 2007.



DEAN OLSEN, CSR

ADDENDUM B

Utah Code Ann. § 41-12a-302. Operating motor vehicle without owner's or operator's security--Penalty

(1) Any owner of a motor vehicle on which owner's or operator's security is required under Section 41-12a-301, who operates his vehicle or permits it to be operated on a highway in this state without owner's security being in effect is guilty of a class B misdemeanor, and the fine shall be not less than:

- (a) \$400 for a first offense; and
- (b) \$1,000 for a second and subsequent offense within three years of a previous conviction or bail forfeiture.

(2)(a) Except as provided under Subsection (2)(b), any other person who operates a motor vehicle upon a highway in Utah with the knowledge that the owner does not have owner's security in effect for the motor vehicle is also guilty of a class B misdemeanor, and the fine shall be not less than:

- (i) \$400 for a first offense; and
- (ii) \$1,000 for a second and subsequent offense within three years of a previous conviction or bail forfeiture.

(b) A person that has in effect owner's security on a Utah-registered motor vehicle or its equivalent that covers the operation, by the person, of the motor vehicle in question is exempt from this Subsection (2).

Laws 1985, c. 242, § 48; Laws 1987, c. 92, § 56; Laws 1993, c. 189, § 2; Laws 1998, c. 35, § 3, eff. May 4, 1998.

ADDENDUM C

§ 41-12a-301. Definition--Requirement of owner's or operator's security-- Exceptions

(1) As used in this section:

- (a) "highway" has the same meaning as provided in Section 41-1a-102; and
- (b) "quasi-public road or parking area" has the same meaning as provided in Section 41-6a-214.

(2) Except as provided in Subsection (5):

- (a) every resident owner of a motor vehicle shall maintain owner's or operator's security in effect at any time that the motor vehicle is operated on a highway or on a quasi-public road or parking area within the state; and
- (b) every nonresident owner of a motor vehicle that has been physically present in this state for:
 - (i) 90 or fewer days during the preceding 365 days shall maintain the type and amount of owner's or operator's security required in his place of residence, in effect continuously throughout the period the motor vehicle remains within Utah; or
 - (ii) more than 90 days during the preceding 365 days shall thereafter maintain owner's or operator's security in effect continuously throughout the period the motor vehicle remains within Utah.

(3)(a) Except as provided in Subsection (5), the state and all of its political subdivisions and their respective departments, institutions, or agencies shall maintain owner's or operator's security in effect continuously for their motor vehicles.

(b) Any other state is considered a nonresident owner of its motor vehicles and is subject to Subsection (2)(b).

(4) The United States, any political subdivision of it, or any of its agencies may maintain owner's or operator's security in effect for their motor vehicles.

(5) Owner's or operator's security is not required for any of the following:

- (a) off-highway vehicles registered under Section 41-22-3 when operated either:
 - (i) on a highway designated as open for off-highway vehicle use; or
 - (ii) in the manner prescribed by Section 41-22-10.3;

- (b) off-highway implements of husbandry operated in the manner prescribed by Subsections 41-22-5.5(3) through (5);
- (c) electric assisted bicycles as defined under Section 41-6a-102;
- (d) motor assisted scooters as defined under Section 41-6a-102; or
- (e) personal motorized mobility device as defined under Section 41-6a-102.

Laws 1985, c. 242, § 48; Laws 1987, c. 162, § 29; Laws 1993, c. 189, § 1; Laws 1993, c. 202, § 2; Laws 1994, c. 179, § 1; Laws 1996, c. 128, § 1, eff. April 29, 1996; Laws 1996, c. 208, § 3, eff. April 29, 1996; Laws 1998, c. 245, § 5, eff. May 4, 1998; Laws 1999, c. 350, § 2, eff. May 3, 1999; Laws 2002, c. 165, § 5, eff. May 6, 2002; Laws 2005, c. 2, § 240, eff. Feb. 2, 2005.