

2007

# Kurt Snedeker v. Nannette Rolfe : Brief of Appellee

Utah Court of Appeals

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Mark L. Shurtleff; Attorney General; Nancy L. Kemp; Rebecca D. Waldron; Assistant Attorney General; Attorneys for Appellee.

Benjamin A. Hamilton; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

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KURT SNEDEKER,	:	
	:	
Petitioner/Appellant,	:	Case No. 20070078-CA
	:	
v.	:	
	:	
NANETTE ROLFE, Director, Utah	:	
State Driver License Division,	:	
	:	
Respondent/Appellee.	:	

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Appeal from the Final Judgment of the Second Judicial District Court in and for  
Weber County, State of Utah, Honorable Parley R. Baldwin, Presiding

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BRIEF OF APPELLEE

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NANCY L. KEMP (5498)  
REBECCA D. WALDRON (6148)  
Assistant Attorneys General  
MARK L. SHURTLEFF (4666)  
Attorney General  
160 East 300 South, Fifth Floor  
P. O. Box 140858  
Salt Lake City, Utah 84114-0858  
Telephone: (801) 366-0533  
Attorneys for Respondent/Appellee

Benjamin A. Hamilton (6238)  
10 West Broadway, Suite 800  
Salt Lake City, Utah 84101  
Telephone: (801) 433-0660  
Attorney for Petitioner/Appellant

FILED  
UTAH APPELLATE COURT  
ORAL ARGUMENT NOT REQUESTED BY RESPONDENT/APPELLEE  
MAY 02 2007

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NANCY L. KEMP (5498)  
REBECCA D. WALDRON (6148)  
Assistant Attorneys General  
MARK L. SHURTLEFF (4666)  
Attorney General  
160 East 300 South, Fifth Floor  
P. O. Box 140858  
Salt Lake City, Utah 84114-0858  
Telephone: (801) 366-0533  
Attorneys for Respondent/Appellee

Benjamin A. Hamilton (6238)  
10 West Broadway, Suite 800  
Salt Lake City, Utah 84101  
Telephone: (801) 433-0660  
Attorney for Petitioner/Appellant

**ORAL ARGUMENT NOT REQUESTED BY RESPONDENT/APPELLEE**

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Appeal from the Final Judgment of the Second Judicial District Court in and for  
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BRIEF OF APPELLEE

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is taken from the Findings of Fact, Conclusions of Law and Order of the Second Judicial District Court in and for Weber County, State of Utah, affirming the administrative suspension of petitioner's driver license for driving under the influence of alcohol (R. 23-26). The order was signed on February 13 and entered on the court's docket February 14, 2007, following trial *de novo*. Under Utah R. App. P. 4(c), petitioner's notice of appeal (R. 18-19), filed January 19, 2007, after the court announced its decision from the bench on December 20, 2007, is deemed filed on the date of entry of the court's final order and is therefore timely. Utah Code Ann. § 78-2a-3(2)(a) (West 2004) gives this Court appellate jurisdiction over the district court's review of the informal adjudicative proceedings before the Driver License Division.

## ISSUE PRESENTED UPON APPEAL

1. The traffic stop leading to petitioner's arrest for driving under the influence of alcohol was legally justified under the Fourth Amendment. This issue was preserved in both parties' arguments before the district court (R. 22 at 10-17).

Standard of Review: A trial court's determination of Fourth Amendment reasonableness is a question of law reviewed for correctness, with no deference to the trial court's application of this legal standard to the historical facts. *State v. Brake*, 2004 UT 95, ¶ 15, 103 P.3d 699, 703; *see also State v. Markland*, 2005 UT 26, ¶ 8, 112 P.3d 507, 509.

2. The district court did not need to reach the legality of the traffic stop in order to sustain the administrative suspension of petitioner's driver license. This issue was preserved in both parties' arguments before the district court (R. 22 at 2-4, 11-13).

Standard of Review: This issue arises for the first time on appeal as a result of the district court's rationale. Consequently, the decision on appeal is *de novo*.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

All relevant text of constitutional provisions, statutes, and rules pertinent to the issue before the Court is contained in the body of this brief.

## STATEMENT OF THE CASE

### A. Nature of the Case, Course of Proceedings, and Disposition Below

After petitioner's arrest for driving under the influence of alcohol on August 20, 2006, and an administrative hearing, the Driver License Division entered an order on

September 13, 2006 (R. 5), suspending his driver license for a period of one year, effective September 19, 2006. Following petitioner's request for administrative review, the Division sustained the hearing officer's findings of fact and conclusions of law in a letter dated October 16, 2006 (Add. A).<sup>1</sup> Petitioner then sought *de novo* review in the district court. The trial court noted the parties' stipulation that the sole issue for determination was the legality of the traffic stop that led to petitioner's arrest (R. 24), and ruled that the stop was reasonable (R. 25, Conclusions of Law at ¶ 1). Based on the parties' further stipulation that the arresting officer had probable cause to arrest petitioner for driving under the influence of alcohol (R. 25, Conclusions of Law at ¶ 2), that petitioner's breath alcohol level exceeded .08 (R. 25, Conclusions of Law at ¶ 3), and that petitioner was personally served with notice of intent to suspend or revoke his license (R. 25, Conclusions of Law at ¶ 4), the court affirmed the order of suspension (R. 25, Order at ¶ 2). This appeal ensued (R. 18-19).

B. Statement of Relevant Facts

On August 20, 2006, Utah Highway Patrol Trooper Ryan Gurney was on duty at approximately 11:30 p.m. when he pulled behind petitioner's car, which was stopped at a traffic light (R. 22 at 5:6-20). At that time, he performed a license plate check and

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<sup>1</sup>The letter was filed in the course of the administrative proceedings underlying this case. The Court can take judicial notice of the record of this administrative proceeding. *See Moore v. Utah Technical Coll.*, 727 P.2d 634, 638 n.17 (Utah 1986) (taking judicial notice of administrative rules and regulations as well as published accounts of administrative proceedings and actions).

determined that the database was unable to locate insurance for the vehicle (R. 22 at 5:20-22). Relying on this information, Trooper Gurney followed the vehicle through the intersection after the light turned green and stopped it less than two blocks later to determine whether the vehicle was, in fact, uninsured (R. 22 at 6:8-25). At that time petitioner, the driver, produced valid proof of insurance (R. 22 at 7:1-2). However, Trooper Gurney observed the strong odor of alcohol coming from petitioner and began an investigation for driving under the influence, which ultimately led to petitioner's arrest (R. 24, Findings of Fact at ¶ 2). Petitioner has stipulated that the Trooper had probable cause for the arrest, that his breath alcohol exceeded the legal limit, and that he was properly advised of the Division's intent to suspend or revoke his license (R. 25, Conclusions of Law at ¶¶ 2-4).

#### SUMMARY OF ARGUMENT

Utah law requires that all motor vehicles operated on Utah's highways or quasi-public roads or parking areas be insured. Operating a vehicle without security is a violation of law. When Trooper Gurley was notified that no insurance was found for petitioner's vehicle, he reasonably suspected that the vehicle was being operated in violation of law. Stopping the vehicle to verify or dispel that reasonable suspicion was warranted by the facts known to Trooper Gurley. Because the stop of the vehicle was supported by reasonable suspicion, the district court correctly concluded that the subsequent investigation and resulting suspension of petitioner's driver license were lawful.

In the alternative, this Court may affirm the district court's decision on the ground that, because the exclusionary rule does not apply to the administrative suspension of driver licenses, the lawfulness of the traffic stop is irrelevant to validity of the suspension, and the district court should not have reached the issue. Under either rationale, the decision affirming the suspension merits affirmance here.

### ARGUMENT

#### I. THE FACT THAT NO INSURANCE WAS FOUND FOR THE VEHICLE PETITIONER WAS DRIVING CONSTITUTES REASONABLE SUSPICION THAT IT WAS BEING DRIVEN IN VIOLATION OF LAW.

Utah Code Ann. § 41-12a-301(2) (West Supp. 2006) mandates that every owner or operator of a motor vehicle (other than a properly registered off-road vehicle) on Utah's highways or quasi-public roads or parking areas within the state shall maintain owner's or operator's security. Under Utah Code Ann. § 41-12a-103(9) (West 2004), "[o]wner's or operator's security" means an insurance policy or surety bond meeting statutory coverage limits and other requirements, a deposit with the state treasurer meeting statutorily specified criteria, a statutorily compliant certificate of self-funded coverage, or a policy issued by the statutory Risk Management Fund, which covers certain government-owned property. Violation of the surety requirement constitutes a class B misdemeanor. *See* Utah Code Ann. § 41-12a-302(1) (West 2004).

When Trooper Gurley performed a license plate check on the vehicle petitioner was operating, his computer showed that no insurance was found for the vehicle (R. 24,

Findings of Fact at ¶ 1). Based on this information, he had reasonable, individualized suspicion that the vehicle was being driven in violation of law. Under the Fourth Amendment, this reasonable, individualized suspicion was sufficient to justify Trooper Gurley's stop of the vehicle to determine whether it was, in fact, insured.

Petitioner 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. The Utah Supreme Court has rejected this proposition. In *State v. Markland*, the court observed that "it is settled law that an officer is not obligated to rule out innocent conduct prior to initiating an investigatory detention. This is because the public interest in investigating criminal activity is sufficiently important to justify the minimal intrusion into personal security that such investigatory detentions entail." *Markland*, 2005 UT 26, ¶ 17, 112 P.3d at 511 (citing *United States v. Arvizu*, 534 U.S. 266, 277 and 273 (2002)) (internal citations omitted). The court recognized that "[a]s long as the underlying facts, and reasonable inferences drawn from those facts, justify the conclusion that reasonable suspicion existed at the inception of the level-two stop, the Fourth Amendment is satisfied." *Id.* at ¶ 19, 112 P.3d at 511. The court further noted that "[i]ndeed, 'the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.'" *Id.* at ¶ 10, 112 P.3d at 510 (quoting *Arvizu*, 534 U.S. at 274).

The state's supreme court has also agreed with the United States Supreme Court that "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." *State v. Lopez*, 873 P.2d 1127, 1132 (Utah 1994) (quoting *Delaware v. Prouse*, 440 U.S. 648, 661 (1979)). Moreover, "[a]n observed violation . . . is not required." *Id.* See also *Commonwealth v. Bolton*, 2003 PA Super 314, 831 A.2d 734 (holding that a computer readout indicating lack of required insurance on vehicle provides articulable and reasonable grounds to stop vehicle "tantamount to probable cause[,]"; 2003 PA Super 314, ¶ 10). Under these standards, the fact known to Trooper Gurley when he initiated the stop--that no insurance was found in the database for the vehicle petitioner was driving--provided reasonable suspicion that the vehicle was being driven in violation of Utah law and justified the minimal intrusion of stopping the vehicle to verify or dispel the reasonable inference the trooper drew from that information.

The district court correctly concluded that because no insurance was found for the vehicle when Trooper Gurley entered the license plate number into the database, the stop of the vehicle was reasonable. Under the standards articulated in Utah precedents, the district court's conclusion warrants affirmance.

## II. IN THE ALTERNATIVE, THIS COURT CAN AFFIRM ON THE GROUND THAT THE EXCLUSIONARY RULE DOES NOT APPLY TO ADMINISTRATIVE ACTIONS.

Although both parties raised the applicability of the exclusionary rule in their arguments to the district court (R. 22 at 2:23-25, 3:4 - 4:17), the court did not address the

rule in its decision; instead, after concluding that the traffic stop was supported by reasonable suspicion, it relied on the parties' stipulation that, if the stop was lawful, Trooper Gurley had probable cause to arrest petitioner for driving under the influence of alcohol; that petitioner's breath alcohol level exceeded .08; and that petitioner was personally served with notice of the Division's intent to suspend or revoke his driver license. However, this Court may affirm the district court's decision on any ground supported by the record. *See First Sec. Bank of Utah v. Creech*, 858 P.2d 958, 963 (Utah 1993).

Because the exclusionary rule does not apply to civil proceedings, the district court did not need to reach the validity of the traffic stop in order to sustain the suspension of petitioner's driver license.<sup>2</sup> This Court, likewise, need not reach the validity of the stop,

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<sup>2</sup>The United States Supreme Court has repeatedly declined to extend the Fourth Amendment exclusionary rule to civil proceedings. *See Pa. Bd. of Probation and Parole v. Scott*, 524 U.S. 357, 353 (1998) (holding exclusionary rule inapplicable to adult parole proceedings); *United States v. Janis*, 428 U.S. 433, 454 (1976) (declining to extend exclusionary rule to civil tax proceedings); *United States v. Calandra*, 414 U.S. 338, 349-52 (1974) (declining to apply exclusionary rule to grand jury proceedings); *State ex rel. A.R.*, 1999 UT 43, ¶ 20, 982 P.2d 73, 78 (holding exclusionary rule does not apply in child protection proceedings); *State v. Jarman*, 1999 UT App 269, ¶ 7, 987 P.2d 1284, 1286 (holding exclusionary rule does not apply in adult probation revocation proceedings). The sole exception is *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965), in which the exclusionary rule was held applicable in a nominally civil forfeiture proceeding that was found to be quasi-criminal in nature because of its punitive purpose. The Utah Supreme Court has already held that license revocation proceedings are intended to protect the public, not to punish, and that they are not quasi-criminal. *Ballard v. State*, 595 P.2d 1302, 1304-05 (Utah 1979); *see generally* Michelle L. Hornish, Note, *Excluding the Exclusionary Rule*, 65 Mo. L. Rev. 533, 542 (2000) (concluding that a majority of states does not apply the exclusionary rule in administrative license hearings).

but can affirm on the ground that the evidence before the district court, in the form of the parties' stipulation, established all the statutory criteria necessary to sustain the suspension: "(i) whether a peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6-44 [driving under the influence of alcohol or drugs] or 41-6-44.6 [driving with any measurable controlled substance in the body]; (ii) whether the person refused to submit to the [chemical] test; and (iii) the test results, if any." Utah Code Ann. § 53-3-223(4)(c) (West 2004). Affirming on this ground avoids basing the decision on a determination that was, in fact, irrelevant to the suspension's legality.

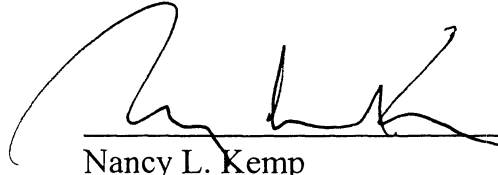
#### CONCLUSION

Petitioner has not shown error in the district court's conclusion that the traffic stop was supported by reasonable suspicion, as that term is interpreted by precedent. However, because the legality of the stop is irrelevant to the validity of the administrative suspension of petitioner's driver license, the Court may affirm without reaching its merits. For these reasons, as fully explained above, respondent respectfully requests the Court to affirm judgment in her favor.

STATEMENT REGARDING ORAL ARGUMENT

Respondent/appellee does not believe oral argument is necessary to the correct disposition of this case, but desires to participate if oral argument is ordered by the Court.

Dated this 2d day of May, 2007.

A handwritten signature in black ink, appearing to read 'N. Kemp', is written over a horizontal line.

Nancy L. Kemp  
Assistant Attorney General  
Attorney for Respondent/Appellee

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of May, 2007, I caused to be mailed, postage prepaid, two true and correct copies of the foregoing BRIEF OF APPELLEE to the following:

Benjamin A. Hamilton  
10 West Broadway, Suite 800  
Salt Lake City, Utah 84101

Shayle Supend

## **ADDENDUM A**

October 16, 2006

Benjamin A Hamilton  
Attorney at Law  
10 W Broadway, Ste 810  
Salt Lake City, UT 84101

RE: Kurt Benton Snedeker  
Utah File No. 150004330  
Arrest Date: 08-20-06  
Hearing Date: 09-18-06  
Birth Date: 05-10-72

Dear Mr. Hamilton:

The Administrative Reconsideration Board (ARB) has received your request for a review in behalf of Mr. Snedeker. They have reviewed the findings of the hearing officer regarding the above-mentioned arrest date. They sustain the findings of fact and conclusion of law made by the hearing officer.

You may consider this review to have exhausted all administrative avenues of relief available to you, and may appeal to the District Court.

Administrative Reconsideration Board  
Driver License Division