

1940

State of Utah v. Sid K. Spencer : Abstract of Record

Utah Supreme Court

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Harley W. Gustin; Attorney for Defendant and Appellant;

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In
The Supreme Court
of the
State of Utah

STATE OF UTAH,
Plaintiff and Respondent.

vs.

SID K. SPENCER,
Defendant and Appellant.

Appeal From Third Judicial District State of Utah
Salt Lake County
Hon. Oscar W. McConkie, Judge

ABSTRACT OF RECORD

HARLEY W. GUSTIN,
Attorney for Defendant
and Appellant.

FILED
AUG 31 1940

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SID K. SPENCER,
Defendant and Appellant.

Appeal From Third Judicial District State of Utah
Salt Lake County
Hon. Oscar W. McConkie, Judge

ABSTRACT OF RECORD
INFORMATION

(TITLE OF COURT AND CAUSE)

- 6 The defendant, Sid K. Spencer, having been heretofore duly committed to this court by W. M. Burton, a committing magistrate of Salt Lake County, State of Utah, to answer to this charge is accused by Calvin W. Rawlings, District Attorney of the Third Judicial District, State of Utah, by this Information, of the crime of Perjury, committed as follows, to-wit:

That the said Sid K. Spencer, on the 31st day of May, A. D. 1939, at the County of Salt Lake,

State of Utah, committed perjury by testifying as follows:

“I have not driven a car at any time since my license was revoked for drunken driving ”

contrary to the provisions of the Statute of the State of Utah, in such case made and provided, and against the peace and dignity of the State of Utah.

CALVIN W. RAWLINGS,
District Attorney of the Third
Judicial District, in and for
Salt Lake County, State of
Utah.

By BRIGHAM E. ROBERTS,
Assistant.

Defendant duly arraigned on July 8, 1939.

Defendant entered plea of not guilty on September 16, 1939.

Filed July 8, 1939.

MOTION TO QUASH INFORMATION (TITLE OF COURT AND CAUSE).

- 9 Now comes the above named defendant, and without waiving the motion heretofore made, but expressly reserving the same, moves the court to quash the information in the above entitled cause upon the following grounds, towit:

1.

That said information does not state facts sufficient to constitute a public offense or to

charge this defendant with the commission of an offense.

That no facts are set forth in said information from which this defendant can determine with what he is charged, or the offense attempted to be alleged.

That the court has no jurisdiction of this defendant or the offense charged for the reason that there was no complaint before the committing magistrate charging this defendant with any offense whatever.

That said Information does not comply with the provisions of Article I, Section XII of the Constitution of Utah in sufficiently advising and informing the defendant of the nature and cause of the accusation, and is not in compliance with the statutes and laws of Utah requiring the information to be direct and certain as to the offense charged and as to the particular circumstances and facts of the alleged or of any offense, and that the information contains mere generic terms and allegations without alleging particular facts and circumstances or acts constituting the transgressions alleged to have been committed by the defendant.

10 WHEREFORE this defendant prays that said Information be quashed, that said case be dismissed and that he go hence without day.

HARRY GOLDBERG,
Attorney for Defendant.

Filed July 13, 1939

MOTION TO DISMISS

(TITLE OF COURT AND CAUSE).

- 11 Now comes the above named defendant, and moves to dismiss and quash the Information on file herein upon the grounds and for the reasons, towit:

1.

That the committing magistrate, W. M. Burton, did not have any jurisdiction whatever to conduct a preliminary hearing in said cause and did not have any jurisdiction of this defendant for the following reasons, to-wit:

(a) That there was no complaint filed before said committing magistrate, W. M. Burton, charging this defendant with any offense whatever.

(b) That the alleged complaint before the said committing magistrate did not state any fact or facts charging any offense whatever, and did not advise this defendant of any offense alleged to have been committed by him, and was wholly insufficient to give said committing magistrate any jurisdiction whatever to conduct or hold a preliminary examination.

HARRY GOLDBERG,

Attorney for Defendant.

Filed July 13, 1939.

MINUTE ORDER OVERRULING DEFENDANT'S MOTION TO QUASH AND MOTION TO DISMISS.

(TITLE OF COURT AND CAUSE).

- 13 Defendant's motion to quash and motion to dismiss were submitted to the court without argument and by the court denied.

Dated September 9, 1939.

DEMAND FOR BILL OF PARTICULARS
(TITLE OF COURT AND CAUSE).

- 14 To the State of Utah and to the Attorneys,
Calvin W. Rawlings and Brigham E.
Roberts:

Demand for a bill of particulars is hereby
made upon you for the following:

The date or dates and places or locations that
the defendant, Sid K. Spencer, is alleged to
have driven an automobile since his license was
revoked for drunken driving; the name of the
witness or witnesses alleged to have seen the
defendant driving an automobile since his
license was revoked; the questions asked the
defendant and the answers given by him upon
which questions and answers the defendant is
charged with having committed the crime of
perjury.

Dated this 13th day of September, 1939.

HARRY GOLDBERG,
Attorney for Defendant.

Filed September 13, 1939.

BILL OF PARTICULARS
(TITLE OF COURT AND CAUSE).

- 15 Comes now the State of Utah and pursuant to
Section 105-21-9, Chapter 118, Laws of Utah,
1935, and hereby makes the following Bill of
Particulars, towit:

That on the 23d day of April, 1939, the defend-
ant herein was charged with the crime of vio-

lating Section 29, Chapter 45, Laws of Utah, 1933, in that he had on the 21st day of April, 1939, in Salt Lake County, driven and operated a motor vehicle, towit, an automobile upon a highway within the County of Salt Lake, State of Utah, towit, in the 3500 block on Highland Drive; and that at said time that said defendant did not have a driver's license, the same having been revoked on the 14th day of June, 1938. Said charge was made against the defendant by a complaint sworn to by E. L. Jensen and filed before Arthur B. Bringhurst, the duly elected, qualified and acting Justice of the Peace within and for the Third Precinct, Salt Lake County, State of Utah.

That thereafter the said defendant pleaded Not Guilty to said charge, and on the 31st day of May, 1939, said case was being tried before the said Justice of the Peace, and the defendant was sworn on his oath, and on said day was called as a witness in said case, and at said time and place testified while so under oath, as follows:

“I have not driven a car at any time since my license was revoked for drunken driving ”

- 16 and said testimony was material to the issues of said case and said testimony was then and there untrue and not the fact; and the driver's license of said defendant had been revoked on the 14th day of June, A. D. 1938.

CALVIN W. RAWLINGS,
District Attorney.

Filed September 16, 1939.

EXHIBIT LIST

Plaintiff's Exhibit A: Complaint filed in case No. 11059. Received.

Defendant's Exhibit 1: District Court file No. 11054. Received.

25 Filed October 6, 1939.

INSTRUCTIONS TO THE JURY.

26 Ladies and Gentlemen of the Jury:

1.

The defendant, Sid K. Spencer, is charged by the Information of the District Attorney, with having committed the crime of perjury, as follows:

That the said Sid K. Spencer, on the 31st day of May, A. D. 1939, at the County of Salt Lake, State of Utah, committed perjury by testifying as follows:

"I have not driven a car at any time since my license was revoked for drunken driving "

contrary to the provisions of the Statute of the State of Utah, in such case made and provided, and against the peace and dignity of the State of Utah.

2.

27 To the charge contained in the Information, the defendant has entered a plea of not guilty, which plea puts in issue all of the material allegations of the Information, and casts upon the State the burden of proving, beyond a

reasonable doubt, every essential fact constituting the crime charged in the Information.

3.

Before you can convict the defendant, the evidence must establish to your satisfaction, beyond a reasonable doubt, each and every material fact charged in the Information, as follows, towit:

That the said Sid K. Spencer committed perjury by testifying as follows: "I have not driven a car at any time since my license was revoked for drunken driving;" that the offense was committed on or about the 31st day of May, 1939; and that it was committed in Salt Lake County, State of Utah.

4.

The fact that the defendant has been held by the magistrate to this court, or that an Information has been filed, does not constitute any evidence that defendant is guilty, and it cannot be regarded by you as evidence.

5.

- 28 A person is guilty of perjury who swears or affirms that he will truly testify in connection with any action, hearing or inquiry, or on any occasion in which an oath is required by law, and who in such action or proceeding, wilfully and knowingly testifies falsely.

6.

- a. A person is guilty of perjury in the first degree who commits perjury as to any material matter in or in connection with any action or special proceeding, civil or criminal, or any hearing or inquiry involving the ends of public justice, or on an occasion on which an oath

29 or affirmation is required or may lawfully be administered.

b. A person is guilty of perjury in the second degree who commits perjury under circumstances not amounting to perjury in the first degree.

7.

You are instructed that if you find from the evidence that the defendant was a witness in the court of Justice of the Peace Arthur B. Bringham, in Salt Lake County, State of Utah, on the 31st day of May, 1939, and was sworn on oath in the proceeding then before said court to testify to the truth, the whole truth and nothing but the truth; then before you can find the defendant guilty you must also find, beyond a reasonable doubt, that when so testifying he made the statement in language, effect and meaning substantially as alleged in the Information filed herein, that is to say: "I have not driven a car at any time since my license was revoked for drunken driving;" and you must further find that said statement was false. If, therefore, you find that the statement above quoted was not in substance or effect, the statement made by the defendant when so testifying, but that he stated in substance or effect: "I have not driven a car at
30 any time since I was arrested for driving without a driver's license," then you are instructed to find the defendant not guilty.

8.

You are instructed that before you can convict the defendant, you must be convinced beyond a reasonable doubt:

1. That while testifying as a witness in the Justice's Court of Salt Lake County

on the 31st day of May, 1939, defendant was asked the question substantially as follows: "Have you driven a car at any time since your license was revoked for drunken driving?" And the defendant answered substantially: "No, I have not driven a car at any time since my license was revoked for drunken driving."

2. That said answer was false because defendant did drive a car at Highland Drive and Maple Avenue on April 21, 1939.

If you are not convinced beyond a reasonable doubt as to either of these elements of the State's case, you are instructed to find the defendant not guilty.

9.

You are instructed that if you are not convinced beyond a reasonable doubt that defendant was driving his car at Highland Drive and Maple Avenue on the 21st day of April, 1939, then you are instructed to find the defendant not guilty.

10.

- 31 It is your duty to consider all of the evidence together, fairly, impartially, and conscientiously. You should arrive at your verdict solely upon the evidence introduced before you upon the trial. You should not consider, nor should you be influenced by any evidence offered but not admitted, or by any evidence stricken out by the court, or by any statement of counsel, as to what the evidence is, unless it is correctly stated, or by any statement of counsel of facts not shown in the evidence, if any such has been made, nor by any statement of the court in

ruling upon questions of law in your hearing, if any have been made that seem to indicate any opinion of the court's upon any question of fact.

11.

You are the sole judge of the weight of the evidence, the credibility of the witnesses and the facts. In weighing the testimony you may consider the bias of any witness, if any is shown, to testify in favor of or against either party; the interest if any is shown, which any witness has or may have in the result of the trial. You may consider the appearance of the witnesses on the witness stand, and any motive or probable motive which any witness may have to tell that which is not true, and from all the facts and circumstances given in evidence before you, determine what weight ought to be given to the testimony of any witness. You are not bound to believe all that the witnesses
 32 may have testified to, nor are you bound to believe any witness; you may believe one witness as against many, or many witnesses as against one. In case there is a conflict in the testimony of the witnesses, it is your duty to reconcile such conflict so far as you can, but it is still for you to determine where the ultimate truth of the case is. If you believe that any witness has wilfully testified falsely as to any material fact in the case, you are at liberty to disregard the whole of the testimony of such witness, except as he may have been corroborated by creditable witnesses or creditable evidence in the case.

12.

In every crime or public offense there must be a union or joint operation of act or intent. The

intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused.

13.

All presumptions of law, independent of evidence, are in favor of innocence, and a man is presumed to be innocent until he is proved guilty beyond a reasonable doubt. And in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to an acquittal. By a reasonable doubt is meant a doubt based on reason, and which is reasonable in view of all the evidence. If, after an impartial consideration and comparison of all the evidence in the case, you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt; but if, after such impartial consideration and comparison of all the evidence, you can truthfully say that you
 33 have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt. It must be a real, substantial doubt, and not one that is merely possible or imaginary. It should fairly, naturally and reasonably arise out of the evidence or lack of evidence in the case. Proof beyond a reasonable doubt is that degree of proof which satisfies the mind and convinces the understanding of those who are bound to act conscientiously upon it.

14.

To warrant you in convicting the defendant, the evidence must, to your minds, exclude every reasonable hypothesis other than that of

the guilt of the defendant. That is to say, if after an entire consideration and comparison of all the testimony in the case, you can reasonably explain the facts given in evidence on any reasonable ground other than the guilt of the defendant, you must acquit him.

15.

- 34 When you retire to deliberate you should appoint one of your number foreman. Your verdict must be in writing, signed by your foreman, and when found, must be returned by you into court. Your verdict must be guilty of perjury in the first degree as charged in the Information, or guilty of perjury in the second degree as charged in the Information, or not guilty, as your deliberations may result. It requires unanimous concurrence of all jurors to find a verdict.

OSCAR W. McCONKIE, Judge.

Filed October 6, 1939.

DEFENDANT'S REQUESTED INSTRUCTION NO. 1.

- 35 You are instructed that if you find from the evidence that the defendant was a witness in the court of Justice of the Peace Arthur B. Bringhurst, in Salt Lake County, State of Utah, on the 31st day of May, 1939, and was sworn on oath in the proceeding then before said court to testify to the truth, the whole truth and nothing but the truth; then before you can find the defendant guilty you must also find, beyond a reasonable doubt, that when so

testifying he made the statement in language, effect and meaning substantially as alleged in the information filed herein, that is to say: "I have not driven a car at any time since my license was revoked for drunken driving;" and you must further find that said statement was false. If, therefore, you find that the statement above quoted was not in substance or effect the statement made by the defendant when so testifying, but that he stated in substance or effect: "I have not driven a car at any time since I was arrested for driving without a driver's license," then you are instructed to find the defendant not guilty.

Given as amended with pen.

OSCAR W. McCONKIE, Judge.

DEFENDANT'S REQUESTED INSTRUCTION NO. 2.

- 36 You are instructed that if you believe from the evidence that the defendant was a witness in the court of Justice of the Peace Arthur B. Bringham, in Salt Lake County, State of Utah, on the 31st day of May, 1939, and was sworn on oath in the proceeding then before the court to testify to the truth, then, before you can find the defendant guilty of the charge in the Information, you must also be convinced beyond a reasonable doubt that at said time and place he was asked, in substance and effect:

"Have you driven a car at any time since your license was revoked for drunken driving?"

and you must further find that his answer to said question was:

“No, I have not driven a car at any time since my license was revoked for drunken driving.”

and that said answer was false. If, therefore, you find from the evidence that the defendant was not asked the question,

“Have you driven a car at any time since your license was revoked for drunken driving?”

but was asked another and different question, in substance and effect as follows:

“Have you driven a car at any time since you were arrested for driving without a driver’s license?”

then you are instructed to find the defendant not guilty.

Given in substance.

OSCAR W. McCONKIE, Judge.

DEFENDANT’S REQUESTED INSTRUCTION NO. 4.

- 38 You are instructed that if you believe from the evidence that when defendant was a witness in the Justice’s Court on May 31st, 1939, he was not asked the question:

“Have you driven a car at any time since your license was revoked for drunken driving?”

but that the question then propounded to him was, in substance and effect:

“Have you driven your car at any time since you were arrested for driving without a license?”

then you are instructed to find the defendant not guilty.

Refused.

OSCAR W. McCONKIE, Judge.

DEFENDANT'S REQUESTED INSTRUCTION NO. 5.

- 39 The defendant is charged with stating while testifying under oath in the court of Justice of the Peace on May 31st, 1939:

“I have never driven a car at any time since my license was revoked for drunken driving.”

and that said statement was false.

The court instructs you that to convict the defendant, you must be satisfied beyond reasonable doubt that defendant did make the particular statement in substance and effect as above quoted and that said statement was untrue. In other words, the State must prove the charge as stated in the Information. If, therefore, you believe from the evidence that defendant did not make said statement, but that his testimony was that he had not driven a car since his arrest for driving without a driver's license, then your verdict must be not guilty.

Given in substance.

OSCAR W. McCONKIE, Judge.

Filed October 6, 1939.

VERDICT

(TITLE OF COURT AND CAUSE).

- 41 We, the Jurors impaneled in the above case, find the defendant guilty of Perjury in the First Degree as charged in the Information.

EDW. B. BECKSTEAD, Foreman.

Dated October 6, 1939.

Filed October 6, 1939.

NOTICE OF MOTION FOR A NEW TRIAL
(TITLE OF COURT AND CAUSE).

- 44 To the State of Utah and to Calvin W. Rawlings, District Attorney of the Third Judicial District of the State of Utah, in and for Salt Lake County:

You and each of you will please take notice that the defendant will move the court to set aside the verdict and grant a new trial herein, upon the following grounds:

1.

Errors of law occurring during the course of the trial.

2.

That the rulings of the court: (a) In permitting the District Attorney to interrogate the defendant with reference to what occurred in Judge Bringham's court, at the time the defendant was taken to said court immediately after his arrest; (b) in permitting the District Attorney to interrogate the defendant as to

driving his car on other dates than April 21, 1939, after his license had been revoked, were prejudicial to the substantial rights of the defendant.

3.

That the verdict is contrary to law.

4.

That the verdict is contrary to the evidence.

Said motion will be made upon the records and files in said cause.

Dated this 9th day of October, 1939.

HARRY GOLDBERG,
JESSE R. S. BUDGE,
Attorneys for Defendant.

Filed October 10, 1940.

MINUTE ORDER OVERRULING MOTION
FOR NEW TRIAL, AND JUDGMENT
AND SENTENCE OF THE COURT.

(TITLE OF COURT AND CAUSE).

- 48 Defendant's motion for a new trial having been heretofore argued to the court by respective counsel and submitted and by the court taken under advisement and the court now after considering said matter and all of the authorities cited, orders that said motion be denied. This being the time heretofore fixed for passing of sentence, the defendant being present in person and represented by Jesse Budge and Harry Goldberg as counsel, and Calvin W. Rawlings, District Attorney and Brigham E. Roberts, Assistant District Attorney, appear-

ing in behalf of the State of Utah. Thereupon the court asks the defendant if he has any legal cause to show why judgment and sentence should not be passed upon him at this time, the defendant responding that he has none. Whereupon the court pronounces the following judgment and sentence:

It is the Judgment and Sentence of this court that you, Sidney K. Spencer, be confined and imprisoned in the Utah State Prison for the indeterminate term as provided by law for the crime of Perjury as charged in the complaint.

OSCAR W. McCONKIE, Judge.

Dated December 9, 1939.

CERTIFICATE OF PROBABLE CAUSE
(TITLE OF COURT AND CAUSE).

54 I, Oscar W. McConkie, the judge who tried the above entitled case, hereby certify that in my opinion there is probable cause for an appeal.

Dated this 8th day of January, 1940.

OSCAR W. McCONKIE, Judge.
(Seal).

Filed January 8, 1940.

NOTICE OF APPEAL

(TITLE OF COURT AND CAUSE).

55 To the Clerk of the Above Entitled Court, and
to Calvin W. Rawlings, District Attorney
of the Third Judicial District, in and for
Salt Lake County, State of Utah:

Please Take Notice, that the above named defendant, Sid K. Spencer, hereby appeals to the Supreme Court of the State of Utah from that certain order and judgment made and rendered in the above entitled court, wherein and whereby this defendant was found guilty of perjury in the first degree and on November 10, 1939 was sentenced to serve an indeterminate term in the Utah State Prison for the crime of perjury, and from that order and judgment made and rendered on or about the 10th day of November, 1939, wherein and whereby this defendant's motion for a new trial was, by the above entitled court, denied.

This appeal is taken upon questions of both law and fact and from the whole of said judgment.

HARLEY W. GUSTIN,
JESSE R. S. BUDGE,
Attorneys for Defendant.

Filed January 9, 1940.

CLERK'S CERTIFICATE

(TITLE OF COURT AND CAUSE).

6 I, William J. Korth, Clerk of the above entitled court, do hereby certify that the above and foregoing and hereto attached files contain all the original papers filed in this court in the above entitled case, including the original Bill of Exceptions and Notice of Appeal, together with true copies of original orders made by the court, the whole constituting the Judgment Roll therein. And that the same is a full, true and correct transcript of the record as it appears in my office.

I further certify that a Certificate of Probable Cause, duly signed by the Honorable Oscar W. McConkie, Judge, was filed on the 8th day of January, A. D. 1940.

And I further certify that an Undertaking on Appeal, in due form, has been properly filed and that the same was filed on the 8th day of January, A. D. 1940.

And I further certify that said Judgment Roll is this date transmitted to the Supreme Court of the State of Utah, pursuant to such appeal.

Witness my hand and the Seal of said court at Salt Lake City, Utah, this 24th day of January, A. D. 1940.

WILLIAM J. KORTH,
Clerk Third District Court.

By ALVIN KEDDINGTON,
Deputy Clerk.

(Seal).

BILL OF EXCEPTIONS

(TITLE OF COURT AND CAUSE).

57 The above entitled cause came on regularly for trial before the Honorable Oscar W. McConkie, one of the judges of said court, and a jury, on the 4th day of October, 1939, the State being represented by Calvin W. Rawlings and H. D. Lowry and the defendant being represented by Harry Goldberg and Jesse R. S. Budge. Whereupon, the following proceedings, in substance, were had:

60 It was conceded on the part of the defendant that his driver's license was revoked on the 14th day of June, 1938 for a period of one year and that the defendant was so notified, and that license had not been returned.

B. R. McDONALD, a witness called on behalf
of the State, testified substantially as
61 follows:

DIRECT EXAMINATION:

By Mr. Rawlings:

62 I am connected with the State Road Patrol and have been for the past nine years as Sergeant of the Salt Lake District. On the 21st day of April, I had occasion to be down near Maple Avenue and Highland Drive where we had a blockade, checking driver's licenses. This was about five o'clock in the afternoon.

ARTHUR B. BRINGHURST, a witness called
on behalf of the State, testified substan-
63 tially as follows:

DIRECT EXAMINATION

By Mr. Rawlings:

64 I am the Justice of the Peace of the Third Pre-
cinct and have been since the 1st day of Jan-
uary, 1939. Sid Spencer was in my court at
my home on the 21st day of April of this year.
65 Mr. Jensen, a highway patrolman, was with
him. In a file of the Third Judicial District
Court, in and for Salt Lake County, State of
Utah No. 11059, entitled State of Utah v. Sid
K. Spencer, filed June 27, 1939 there appears
a paper which is denominated "complaint" in
the case of State of Utah v. Sid K. Spencer and
there appears on this complaint the name of
E. L. Jensen, also Arthur B. Bringhurst, Jus-
tice of the Peace. This complaint was filed in
my court and bears my signature and the sig-
nature of Mr. Jensen.

MR. RAWLINGS: We offer the original com-
plaint.

Q. When was this complaint filed?

A. It was filed on the 21st day of April.

MR. BUDGE: I move to strike that answer
as not the best evidence.

66 THE COURT: I will deny the motion to
strike.

THE COURT: Any objection to the com-
plaint?

MR. BUDGE: Yes. Object to it upon the
ground it wasn't filed.

THE COURT: Objection is overruled. We
will admit the complaint in evidence. I pre-

sume it should be known as Exhibit A, but not marked perhaps?

MR. RAWLINGS: That is right.

- 67 The file date of April 25th appears on the complaint but it was filed on the 21st. There is an error somewhere that I did not notice. The case predicated and based on this complaint was tried in my court first on May 19th and then reopened for hearing on May 31st by stipulation. Spencer did not take the stand on the 19th but he did on the 31st of May. Prior to his testifying, I administered the oath to him. Mr. Spencer took the oath. J. Patton
- 68 Neeley represented the State of Utah in that trial and asked the defendant some questions on cross-examination.

Q. I will ask you to state whether or not Mr. Neeley asked Mr. Spencer, the defendant in this case and the defendant in that case, a question relative to whether or not he had driven his automobile since his driver's license had been revoked for drunken driving?

MR. BUDGE: Object to that as leading, suggestive.

THE COURT: Objection overruled.

- 69 A. He asked him that question, if he had driven since his license was revoked. He said, "I have not driven my car since my licence was revoked." This statement was made on the 31st day of May this year.

CROSS - EXAMINATION:

By Mr. Budge:

- 70 I am 41 years old. I remember in substance the question that was propounded to Spencer by Neeley. I cannot remember all the questions

that were asked. I remember that question and I remember in substance other questions. I cannot say that I remember the exact words of that question but I do not think they were worded differently from what counsel stated in any material aspect. The words used were the ones used to the best of my recollection. I do not think I am incorrect about the words.

- 70 I do not recall whether or not he merely answered "no." This was on May 31, 1939. I
 71 am sure that he didn't say merely "no." I do not recall the exact words of any other question that was propounded to him.
- 72 I remember the other questions only in substance. He was asked if his wife was driving the car and I remember his answer that it was a nice day and he thought he would take his wife out and learn her to drive the car that morning and that she was driving. I remember in the proceeding a witness by the name of Glen Hastings.

Q. And do you remember a question that was propounded to him by Mr. Hanson on that occasion?

- A. Well, now, I think he was the one that drove
 77 for Mr. Spencer for sometime. I recall that Willard Hanson, attorney for Mr. Spencer, upon that occasion on the 31st day of May, 1939, in my court asked Mr. Hastings in substance or effect, "How long have you been driving Spencer's car for him?" He asked him if he had been driving his car but I do not remember of his asking if he had been driving since his (Spencer's) license was revoked. I do not remember that that question was asked

him and that Mr. Neeley objected to it that it was immaterial nor sustained an objection to Mr. Hanson's question. I remember sustaining objections but not to those questions. I do not remember what questions I sustained objections to. There were quite a number of them.

- 78 Q. Do you now recall, Mr. Bringhurst, that Mr. Hanson asked him the question in substance or effect, "Have you been driving this car for Mr. Spencer since his license was revoked?"

A. I don't remember "since his license was revoked." I know he asked if he had been driving his car. I do not remember what question it was that I sustained Mr. Neeley's objection to.

- 79 Q. Now, isn't it true that after Mr. Hanson had propounded that question and you sustained the objection, that the witness (Hastings) was excused.

MR. RAWLINGS: Now, Your Honor, he stated his recollection was that Mr. Hanson did not propound that question and it wasn't answered; and now he is asked if after this happened, when he says it didn't happen, didn't he do something; and if he says, "Yes, he did something," then he would say not only that he did something but also answer in the affirmative the other question.

THE COURT: I am inclined to think that that objection ought to be sustained.

- 80 Mr. Hastings on that occasion was asked if he had been driving a car for Mr. Spencer and he was asked for how long he had been driving the car but I have forgotten the answer as to the exact time. I have no recollection of Mr.

Neeley's objection to a question. He stated the length of time that he had been driving the car for Mr. Spencer but I have forgotten how long he had been driving and what he said.

- 81 Q. Well, you don't seem to remember these questions that were asked him. You say you remember the material ones. Now, what ones do you remember?
- 82 Mr. Hastings was asked if he had driven for Mr. Spencer and how long he had driven for him. Those are the only two questions that I remember and that is all I remember about his testimony. I do not remember of Neeley making any objection. I remember that Mrs. Spencer was on the stand in my court. She said that she was driving the car and became panicky when the officers stopped them because she didn't have an operator's license and turned the car around and tried to get away from the officers. I did not issue a complaint against Mrs. Spencer but I signed a complaint in the City Court charging Mrs. Spencer with driving without a license based upon her statement in my court and at the request of Neeley, the assistant county attorney.
- 83 I do not recall Mr. Neeley having asked Mr. Spencer in substance or effect if he had driven his car since he had been arrested for driving without a license. I do not remember Mr. Neeley saying, "Why, we have got proof of your driving it in two instances since you were arrested for driving without a license." It is not true that Mrs. Spencer arose in the courtroom and said, "That is not true, Mr. Neeley, because he hasn't even backed it out of the

driveway.” None of that occurred in my courtroom.

- 84 I signed a complaint against Spencer for perjury at Neeley’s request. This was several days after the trial. He called me on the telephone at home and I went down to the City Court and swore out the complaint. It was
- 86 then stipulated that file No. 11054 in the District Court would be admitted in evidence as defendant’s Exhibit 1.
- 87 After all of the evidence had been introduced, I signed a complaint against Mrs. Spencer for operating a car without a license on the 21st day of April, 1939 before Judge Burton and swore to the complaint two or three days after the hearing. I signed the complaint against Mrs. Spencer for driving the car without a license on the 21st day of April, 1939 after I had found Sid Spencer guilty of driving that car on the 21st day of April. Mr. Spencer
- 88 wasn’t found guilty until two days after the hearing and I have forgotten whether I signed the complaint against Mrs. Spencer before I rendered judgment in the case or after, but it was a day or two after the hearing. In the
- 89 book entitled “Justice’s Docket” and on page 163 is the record of the case of State of Utah v. Sid Spencer that I have been referring to and on that page it says “Sentence, Found Guilty, May 31, 1939.” It was on the 31st day of May that I found him guilty.

RE-DIRECT EXAMINATION:

By Mr. Rawlings:

- 90 Mrs. Spencer testified in court that she was driving the car and that she didn’t have a

driver's license. I was present in court when the matter was called against Mrs. Spencer. I heard the court order the case dismissed.

RE-CROSS EXAMINATION:

By Mr. Budge:

- 91 I believe the case against Mrs. Spencer was called for trial. I know it was dismissed. I
92 don't remember of any evidence being introduced. I do not remember Officer Jensen testifying in the case against Mrs. Spencer.

RE-DIRECT EXAMINATION:

By Mr. Rawlings:

Q. And it was dismissed at the request of the County Attorney, wasn't it?

A. That is right.

MR. BUDGE: I move to strike that and object to it as not being the best evidence.

- 93 THE COURT: I am inclined to think that a strict observance of the rules would have restricted some of these matters from going in; but he is testifying as to what he heard, and I will let the record stand.

-
- 94 J. PATTON NEELEY, a witness called on behalf of the State, testified substantially as follows:

DIRECT EXAMINATION

By Mr. Rawlings:

- 95 I reside in Salt Lake City and have been connected with the County Attorney's office since the 1st of October, 1938. I appeared in Judge Bringham's court in the case of State of Utah

- v. Spencer as a representative of the County Attorney's office. The defendant took the witness stand. The case was not tried all in the same day. At the first hearing the State put on its evidence and rested and Mr. Hanson, Spencer's attorney, rested without putting on any evidence. Mr. Spencer was found guilty and then his attorney asked to re-open. On the date that the case was re-opened Mr. Spencer took the stand. Judge Bringham was presiding. Prior to taking the stand, Spencer was sworn. On cross-examination I asked Mr. Spencer if he had testified on direct examination if he had driven a car at any time since his license had been revoked for drunken driving; and Mr. Spencer answered no, that he had not. Then I asked him if he hadn't driven a car at any time, and he said, "No, I have not driven a car at any time since my license was revoked for drunken driving."

CROSS - EXAMINATION:

By Mr. Budge:

- 98 I did not ask the question, "Have you driven your car since you were arrested for driving without a license?" To my memory, Mr. Hanson did not ask Mr. Hastings if Mr. Spencer had driven his car since his license was revoked.

Q. Well, now, to refresh your recollection, didn't you then object to that question upon the ground that it was immaterial and that the only thing before the court was whether or not Mr. Spencer had driven the car on the 21st of April?

MR. RAWLINGS: Just a minute. I object to that question on the ground that it has

double-barrel answer. In the event he answers one way or another, the answer to the second part of the question —

THE COURT: Sustained.

- 99 As I remember Mr. Hastings' testimony, he testified simply to the effect that he had been hired by Mr. Spencer to drive his car. I do not recall making any objection to any questions propounded. At that time I did not ask for a complaint against Mrs. Spencer by reason
100 of her testimony. I think it was a day or two later. As an officer in the County Attorney's office, I instigated the proceedings against
101 Mrs. Spencer. I do not remember whether Mr. Bringhurst swore to the complaint or not, but whoever swore to it, I asked them to and if Bringhurst's name appears on the complaint, I asked him to swear to it. This was after Spencer had been found guilty by Judge Bringhurst. I stated in the courtroom that a
102 complaint should be issued against Mr. Spencer for perjury. I wasn't angry at him and I wasn't excited and I have had nothing to do with the case against Mr. Spencer since the preliminary hearing, and nothing to do with it in the way of assembling proof. I have talked
103 with the District Attorney's office, but with no witnesses.

RE-DIRECT EXAMINATION:

By Mr. Rawlings:

- 105 I was not in town when the preliminary hearing took place. I said that a perjury complaint should be issued. As County Attorney I felt some responsibility. I was responsible for the complaint being issued against Mrs. Spencer. She testified that on April 21st she did not have a driver's license.

106 B. R. McDONALD, a witness on behalf of the
State, was recalled and testified substantially as follows:

DIRECT EXAMINATION:

By Mr. Rawlings:

107 On the 21st day of April, I was in the vicinity
of Maple Avenue and Highland Drive. I was
there on a blockade. At that time, Mr. Jensen
of the State Road Patrol arrested Sidney
Spencer. I have known Spencer for about five
or six years. I saw a car in that vicinity that
attracted my attention. The car had just
stopped when I saw it. I heard the car skid-
ding in the gravel and turned around to see and
it had just stopped. I called to Mr. Jensen to
go down and check the automobile, and directed
108 him to make the arrest of the driver of the
car. The car backed up and went on east on
Maple Avenue. I saw Jensen get into his
automobile and follow the car east on Maple
Avenue. A few minutes afterwards he came
109 back in his car with Mr. Spencer. There was
a conversation. I spoke to Spencer and asked
him how he was. He said, "Oh, for hell's sake,
Mac, give me a break and forget it." I said,
"How are you, Sid?"

110 ELDEN JENSEN, a witness on behalf of the
State, testified substantially as follows:

DIRECT EXAMINATION

By Mr. Rawlings:

111 I live at Murray, Utah and am connected with
the State Road Patrol. I was near Maple
Avenue and Highland Drive on the 21st day of

April this year working a blockade for driver's licenses. Sergeant B. R. McDonald was in charge. I saw Sid Spencer there on that day in a car that was parked right at the entrance to Maple Avenue. The car was not in motion
 112 when I saw it. Immediately after I first saw it, it started to back up. It was headed north and slightly to the east of Highland Drive. Sergeant McDonald called my attention to it.
 113 Sid Spencer was driving the car. I followed the car and when I got out of my car and walked towards it, Mr. Spencer was walking around the front end of his car. I told him he was under arrest. He asked for a moment and walked back to his car and spoke to a lady
 114 that was in it. I heard Spencer say to McDonald, "Mac, can't you give me a break?"

Q. When you got down to Judge Bringhurst's court, was there any conversation between the judge and Spencer and you?

MR. BUDGE: Object to that upon the ground it is immaterial, Your Honor.

116 THE COURT: The court is of the opinion that the answer should be given.

117 While the judge was making out the complaint he asked Mr. Spencer for his first name. He stated that his first name was Lolo and I called the judge's attention to the fact that this man wasn't Lolo Spencer but Sid Spencer. He then admitted that he was Sid Spencer.

Q. And after that did he give another address when he said his name was Sid Spencer?

A. Yes, he did.

Q. Do you recall what the address was?

MR. BUDGE: If Your Honor please, I move to strike out all this testimony as not tending to show the commission of this offense. There isn't a word of it that has anything to do with admitting the offense, no admission on the part of Spencer as to what was done.

MR. RAWLINGS: Your Honor, the only way you can prove an act is by the intent, and the
118 only way you can prove an intent is to show admissions and acts of defendant at the time of arrest.

THE COURT: This doesn't go to his alleged perjury, does it?

MR. RAWLINGS: Yes. It does in this regard: It goes to the fact that he was driving a car unlawfully on April 21, 1939.

THE COURT: That part — we are past that. Now, Mr. Budge isn't raising that point.

MR. BUDGE: No.

THE COURT: As to whether he was driving the car.

MR. RAWLINGS: If Mr. Budge will stipulate he was driving the car —

MR. BUDGE: Why, no, but I say this testimony has nothing to do whether he was driving the car or not.

THE COURT: What I say is that Mr. Budge objected to that, but we are past that. The court permitted that. Now he is making a new objection that these statements relative to giving a false name haven't anything to do with this perjury charge.

MR. RAWLINGS: Yes they do, Your Honor, because it shows the intent or it shows whether

or not it gives the jury some evidence as to whether or not Spencer was driving the car on that day, on the 21st day of April of 1939.

MR. BUDGE: We say that it doesn't relate at all to whether he was driving or not.

119 MR. RAWLINGS: Here he is arrested for doing something that he shouldn't do; and when he is asked his name, he gives a fictitious name, which is evidence of the fact —

MR. BUDGE: That he was driving the car?

MR. RAWLINGS: Evidence of the fact that he would like to get away.

MR. BUDGE: Is that evidence that he was driving the car? That's what this question is supposed to relate to.

MR. RAWLINGS: No, its evidence — he tries to give it as evidence to shield him from his act and shows that he knows the minute he's arrested that he's violating the law and tries to avoid it by giving a fictitious name.

MR. BUDGE: That's just the imaginings of counsel's disordered mind. This has absolutely nothing to do whatever with the question as to whether he drove the car. Suppose he gave his name as John Brown or John Doe or any other name.

THE COURT: I rather think I ought to strike that part of the record; order it stricken.

MR. BUDGE: And I ask that the jury be instructed to disregard it.

THE COURT: Yes. The jury was so admonished.

MR. RAWLINGS: Now, I would like to know definitely what part is stricken.

THE COURT: The part referring to his giving a false name. I take it that that's the only part that there was a question raised upon.

MR. BUDGE: Will the court now, so that we will have it in the record, instruct the jury with respect to that?

MR. RAWLINGS: He just instructed them.

120 THE COURT: I did.

CROSS - EXAMINATION:

By Mr. Budge:

122 When Sergeant McDonald called my attention
to the car, I looked across and saw a man sitting
at the wheel. I did not see anyone else in
123 the car at the time. It was an Oldsmobile
coupe. I was about 100 feet away from the car
at the time. I did not see Spencer at the wheel
on any other occasion. The only time that I
124 saw Spencer was just as the car was ready to
start backing. I am not sure whether the car
was stopped or not. The car had not yet turned
into Maple Avenue when I first saw Spencer.

128 As near as I know the car only had one seat.
It might be possible that there were other people
in the car besides Mr. Spencer and the
lady.

RE-DIRECT EXAMINATION:

By Mr. Rawlings:

129 Maple Avenue is a blind street. The first time
I noticed a woman in the car was when I came
back with Mr. Spencer. The car was stopped

130 at the time. I did not look in the car. It was not a four-door sedan nor a two-door sedan.

RE-CROSS EXAMINATION:

By Mr. Budge:

131 When I got to the car I did not notice anyone sitting in it. Later on I saw a lady sitting in the car. She was sitting in the position under the wheel. I followed the car approximately three-quarters of a mile up Maple Avenue, from Highland Drive. I stopped my car at the end of Maple Avenue and walked over and talked to Mr. Spencer. My car was stopped directly
132 behind his. He walked around the car and the first I saw of him was in the position just about head of the left front fender. This was just as I got there. He met me at the back end
133 of the car. At that time I had not seen Mrs. Spencer. We walked back to the car and Mrs. Spencer was sitting under the wheel at that time.

RE-DIRECT EXAMINATION.

By Mr. Rawlings:

134 At the first time I saw the Spencer car turn on the intersection of Maple Avenue on Highland Drive, I only saw one person in the car. The 21st day of April was a clear day. The sun was shining bright. It was just a few minutes before 5:00 o'clock
143 It was stipulated that the Third Precinct, Judge Bringhurst's court and residence, are located in Salt Lake County. Whereupon the State rested.

Motion for dismissal.

MR. BUDGE: We at this time move that the case be dismissed against the defendant on the

ground that the evidence is insufficient to prove a public offense or that the defendant committed the public offense charged in the Information.

150 THE COURT: I will deny your motion for dismissal.

151 SID K. SPENCER, the defendant, was called as a witness in his own behalf and testified substantially as follows:

DIRECT EXAMINATION

By Mr. Budge:

152 I am forty-one years of age and reside at 1677 Princeton Avenue in Salt Lake City. I have resided in Salt Lake City all of my life. I was present and called as a witness in the court of Justice of the Peace Bringham on the 31st day of May, 1939 and was present on the same occasion when Glenn Hastings was called as a witness, and heard the questions propounded to Mr. Hastings.

Q. Do you recall a question that was propounded to Mr. Hastings by Willard Hanson, your counsel, in that case?

A. I do.

153 Q. What was that question?

A. Mr. Hanson had asked —

MR. RAWLINGS: Just a minute. I think, Your Honor, we will object on the ground that it's immaterial and irrelevant.

154 THE COURT: I think I will sustain the objection to the question as stated.

155 I was interrogated on cross examination in that hearing by Mr. Neeley. At the hearing

on May 31, 1939 I was not asked the question in substance or effect, "Have you driven a car at any time since your license was revoked for drunken driving?" The question that Mr. Neeley asked me was, "Have you driven your car at any time since you were arrested for driving without a driver's license?" My answer to that was "no."

Q. After you had made the answer, what occurred?

A. Mr. Neeley was very angry and jumped up —

MR. RAWLINGS: Object to it as being immaterial and irrelevant. No bearing upon the issues of the case at all.

THE COURT: *I don't see how Mr. Neeley's blood pressure can in any way throw any light upon what happened as far as his alleged offense is concerned.*

MR. BUDGE: Well because, if Your Honor please, we want to show the statement of Mr. Neeley to this witness when he made an answer to the question that was propounded to show, Your Honor, that that was the question before the court and not the other question at all. And this will develop the fact that the only question before the court was whether he had driven it since he had been arrested for driving without a license.

156 MR. RAWLINGS: Counsel couldn't expect to get a better answer than his witness saying he didn't answer that. May I call Your Honor's attention to the fact that Your Honor has already sustained an objection to the same type

of testimony.

MR. BUDGE: If Your Honor please, I don't like to do this, but I insist, if Your Honor will permit me, that I be permitted without interruption to address the court and not be interrupted by counsel. I am trying to show, if Your Honor please, that the question before the court at that time wasn't the question of whether he had driven his car since his license was revoked. That was not the question, and this testimony which I seek to develop will show that it wasn't that question with which the court was concerned, and that therefore the crime of perjury wasn't committed there because some other matter and some other issue was the one that was involved there, as stated by the County Attorney himself. If I am permitted to show what the County Attorney did state, I asked the County Attorney about it and he denied it. I want to show his denial is not right, is not correct.

MR. RAWLINGS: I call attention to the fact that exactly the same matter has been argued before Your Honor and Your Honor sustained the objection.

THE COURT: I am wondering if this isn't just a little different angle that the County Attorney was interrogated about, and the County Attorney, as I remember, did deny.

157 MR. RAWLINGS: I don't have any objection to him, if the County Attorney had been asked questions upon which he could be impeached on this thing. I wouldn't have any objection to this witness coming in endeavoring to impeach him properly, but to try and get this defense in in the manner counsel is endeavoring to is improper; is immaterial, irrelevant. He is bring-

ing hearsay into the case, is laying the foundation for a probability, as he says himself.

THE COURT: I think we will all be better satisfied if you have an opportunity to express yourselves with the freedom that you can't have in the presence of the jury, and so, ladies and gentlemen, I am going to excuse you until tomorrow morning.

THURSDAY, OCTOBER 5, 1939; 10:00 A. M.

158 (All Jurors and Defendant present).

THE COURT: We didn't get through. Request has been made for some further discussions this morning on questions of law, so *it will be necessary for you to meander out in the front hall without getting away from the building or without getting away anywhere.*

DIRECT EXAMINATION (Continued)

By Mr. Budge:

THE COURT: Now, let's see where we were at when we recessed last night. *Perhaps you had better interrogate the witness if you remember what your subject was.*

MR. BUDGE: I should like to have the reporter read the last question.

Q. After you had made that answer to Mr. Neeley's question, what occurred in the proceedings?

MR. RAWLINGS: And we objected to that on the ground it is immaterial, irrelevant, and has no bearing on the issues of the case. Indefinite and uncertain. All hearsay.

159 THE COURT: The court has had considerable trouble upon that question; and after thinking

about it and after listening to the arguments, I think the court ought to permit the witness to answer the question.

Q. Just state what occurred, Mr. Spencer.

A. After I made an answer to that question, Mr. Neeley said, "Why, Sid, you have been seen on two occasions driving your car since you were arrested."

Q. What else?

A. And at that time my wife, who was in the courtroom, jumped up and said, "Why, Mr. Neeley — "

MR. RAWLINGS: Your Honor, it seems to us —

A. "That isn't true."

MR. RAWLINGS: Just a minute.

A. Pardon me.

MR. RAWLINGS: You have been on the stand long enough to know. Object to it on the ground that it's a conclusion of that witness. It is hearsay, immaterial, irrelevant, what his wife might say in this particular proceeding, *and I assume it is his wife.*

MR. BUDGE: How could it be hearsay?

MR. RAWLINGS: In stating what she said?

MR. BUDGE: Why, yes. He was there and your representative was there. State's representative was there. It's part of this action.

160 MR. RAWLINGS: Why not put her on the stand and have her testify?

MR. BUDGE: I can't do it all at once.

MR. RAWLINGS: Then let's have her testify. I would rather have her testify.

MR. BUDGE: I know what you would rather have.

MR. RAWLINGS: I want justice and that's what you want.

MR. BUDGE: We are going to proceed in our own way, Mr. Rawlings.

THE COURT: I think I will let the answer stand.

A. My wife jumped up and said —

THE COURT: I think you completed that answer.

A. No.

THE COURT: Well, if you did not, you may complete it.

A. My wife jumped up and said, "Why, Mr. Neeley, that isn't true. My husband hasn't backed the car out of the alleyway since he was arrested."

Q. Now what else occurred at that time?

A. And Mr. Neeley said "I want a complaint filed against Mr. Spencer for perjury."

Q. Yes; and what else?

A. And Mr. Haas, who was present in the courtroom —

161 MR. RAWLINGS: Well now, may I ask a question on voir dire?

THE COURT: Well, I don't think that I ought to permit a general scene to develop here. *What people in the audience said* — I permitted this statement to be concluded as to what the wife said but if there is *somebody*

else among the spectators by the name of Mr. Haas —

MR. BUDGE: He was an attorney there in the case, if Your Honor please. He was an attorney representing, with Mr. Hanson, Mr. Spencer. He was interested in taking part in the proceedings.

THE COURT: Well, I will let him answer.

A. Mr. Haas jumped to his feet and he said, "I want to make an objection to the court because I don't feel that the prosecution should browbeat witnesses in this manner." My wife was driving the car on April 21, 1939.

CROSS - EXAMINATION:

By Mr. Rawlings:

Q. Have you driven your car since your
162 license was revoked for drunken driving on June 14, 1938?

MR. RAWLINGS: Well, now, Your Honor, he said he didn't drive it on this occasion, and I don't think we are limited entirely to that occasion, and I think we are entitled to test his credibility; and if he says no, it's a material fact that we can probably impeach him on.

MR. BUDGE: It isn't a material fact when you have limited yourself to the Bill of Particulars as the court has held, to one date, and you couldn't impeach any witness under those circumstances.

MR. RAWLINGS: And further, it would have a tendency probably to show, *at least in view of the fact you dramatized what happened in the courtroom at Bringham's court, and have*

a tendency to assist us a little here in regard to what happened there.

THE COURT: Now, the question is as to whether he drove his car at any time after —

MR. RAWLINGS: Since his license was revoked for drunken driving. It is our contention they asked that specific question.

THE COURT: I think I should permit you to have an answer.

163 All right, answer it.

A. Yes.

Q. And was that before April 21?

MR. BUDGE: Object to it, if Your Honor please, as incompetent, irrelevant, and immaterial, and not cross examination.

THE COURT: I will let him answer.

A. Before April 21.

Q. And what date was it?

MR. BUDGE: I object to it, if Your Honor please. Now I should like to say to Your Honor that here is an endeavor to open up the very field which Your Honor has ruled upon cannot be entered into. We are not trying this case, any other offense than the one they charge in the Bill of Particulars.

THE COURT: Of course, the contention of the State here is that one question and one answer was made, and the contention of the defendant is that another question and another answer was made. Now I take it that this goes to your contention that the first question and answer were made?

MR. RAWLINGS: Yes, and further than that.

This is evidence which we must establish in

this courtroom that this man drove his car on the 21st day of April of this year, and it certainly goes to show that; and it can be considered as logical by this jury that if he drove a car the day or two before this or a month before he probably would do as our witnesses said he did and drove it on this day in violation of the law.

MR. BUDGE: I say that doesn't follow at all.

MR. RAWLINGS: It is the most logical inference you can draw from the conduct.

164 MR. BUDGE: It may be counsel's inference, but it isn't logical and we are not being tried here except for the offense charged in the Information and according to the Bill of Particulars. Now, Your Honor has ruled on that. If we're going into the question of all other dates which Your Honor says cannot be gone into, and we haven't asked him about any other.

THE COURT: I wouldn't permit the State to offer any other dates than the one or, if they could, to prove any other dates than the one which they had stated in the Bill of Particulars, but this seems to the court to be a different situation than that. This defendant is here now before the court on cross examination, and the State has and the defendant and everybody have always had wide latitude in cross examination. Now the State is, as I understand them, *seeking to establish by cross examination the inference to the jury that — or the conclusion, whatever you might have in your minds — that the question which they say was asked and the answer which they say was given was the question and answer given.*

MR. RAWLINGS: Yes, and further than that, may I suggest that I have a right to go into

this line of examination *to prove that what our witnesses said was true and what he said was untrue* about him driving on the 21st, by testing his credibility and by calling attention to the actions which he now admits

THE COURT: I think I ought to permit this on cross examination, even though I wouldn't permit it on direct examination or on affirmative proof of the State.

165 Q. Now, how many times —

MR. BUDGE: Just a moment.

166 THE COURT: I don't think the court is prepared *at this time* to say to the jury you may consider this for one purpose and one purpose only. I think we'll hear the examination and the court will pass on the questions as they come; and if, when we get the whole picture before us, the cross examination, you think it ought to be limited to something, then I will hear you.

Q. You knew that when you drove your car when your license was revoked that you were doing it in violation of the law, didn't you?

MR. BUDGE: Object to that as immaterial, irrelevant and incompetent, and not cross examination and tending to prove a crime not charged in the Information.

THE COURT: I think I ought to permit the answer.

Q. You knew that, didn't you?

A. I did.

Q. How many times did you drive your car in violation of the law —

MR. BUDGE: Same objection.

Q. Realizing that you were driving it in contradiction to the law prior to April 21, 1939?

MR. BUDGE: Same objection, Your Honor, to the proposition —

MR. RAWLINGS: There may be some question about that

167 MR. BUDGE: Immaterial

Q. How many times did you drive it prior to April 21, 1938?

MR. BUDGE: Same objection.

Q. 1939?

THE COURT: I will overrule the objection.

A. I recollect two occasions: My wife was with me on one occasion.

Q. Now I will ask you to state, Mr. Spencer, whether you drove your car between April 21, when you were arrested, and May 31, when you testified.

MR. BUDGE: Object to that, if Your Honor please, upon the same ground that we insisted when we urged the question about the Bill of Particulars. It's an attempt to prove what the Court has already held is immaterial.

MR. RAWLINGS: No, it isn't.

THE COURT: I think it's admissible for other reasons than the ones that the court passed upon in the plaintiff's application, the State's application. I will overrule the objection.

A. No.

Q. Now, Mr. Spencer, your license was taken away from you for the reason that you had been convicted of driving a car while under the influence of liquor, hadn't it?

MR. BUDGE: Object to that upon the ground it's immaterial and attempt of counsel to prejudice the defendant. It's a matter that has been before the court, reiteration of conditions, unnecessary and improper.

168 THE COURT: Objection is overruled.

Q. That's true, isn't it?

A. That's true.

Q. *And you realized on the 21st of April and at the time that you drove your car as you say prior to that time, you realized your license had been revoked for that reason?*

A. I don't intend to answer that question.

Q. *Oh, you don't?*

A. *On the 21st of April I never drove any car.*

Q. *Well, I didn't mean to trick you. I would be unable to if I did, the experience you have had on the witness stand, and I say sincerely that I didn't mean to trick you.*

A. *You would.*

169 I admit that prior to April 21st I had driven the car on a couple of occasions in an emergency. My wife was in the car with me on April 21st, 1939 at the intersection of Maple Avenue and Highland Drive. The car turned into Maple Avenue at Highland Drive on that day.

170 Q. *And did you see the blockade on Highland*

Drive on that occasion when you turned in there or when the car turned in?

MR. BUDGE: I object to all this as immaterial, not cross examination. Doesn't tend to prove anything in this case.

MR. RAWLINGS: *It tends to disprove something.*

THE COURT: I will let him answer it.

A. I saw a number of cars. I didn't know what it was. I wasn't surprised when the car turned in there. We were going no place in particular, just driving. We had been out for
171 some plants and there are a number of places on Highland Drive where you can purchase plants. We did not buy any on Highland Drive. We were riding around looking over plants and deciding what we would rather have
172 to put in the rock garden. I wasn't sure whether we could buy some plants on Maple Avenue. I have never been on Maple Avenue before that I remember of.

Q. And your wife — did she have an automobile license at that time?

MR. BUDGE: Object to it, if Your Honor please, as immaterial, not cross examination.

THE COURT: He may answer.

A. My wife has never had a driver's license to my knowledge. I was with her when the car was started from home. We had gone up over the boulevard down into Holladay looking for
173 plants. I do not know how far. When I approached Maple Avenue, I noticed a number of cars, but I didn't know what they were.

There was nothing that came into my mind that I remember.

174 If anyone was hurt, I probably would be interested, if I could help in any way. I have never seen a blockade in my life and have never had my car stopped for examination by an officer. I saw cars stopped on both sides of the street and then the car turned in Maple Avenue. I do not know whether the car came to a stop or not, but it was slowing down. We were some distance back of the last car that was stopped on Highland Drive. I don't know just what distance.

175 I wouldn't remember what I was thinking about. I was not concerned about leaving the

176 main highway. We went east. Its always my wife that is driving with me. I did not give any particular thought to whether or not the car slowed up, maybe to stop and then turned into Maple Avenue. It's a long time ago and I do not remember. My memory is not vague. I said that my car went east on Maple Avenue. At the time I might have been concerned, but at this time I do not remember that particular.

177 Q. I think you were concerned. You say you may have been, and I think that is true. Now, if you may have been concerned, what were you concerned about?

MR. BUDGE: Just a moment, I object to counsel's arguing with the witness, stating what he believes; improper cross examination.

MR. RAWLINGS: I am not stating what he believes.

THE COURT: I will let the witness answer the question.

178 I remember testifying in the preliminary hearing, but I do not remember everything I testified to. I did testify in regards to the matter of the car turning into this avenue. I
 179 might have testified that the car was turned into Maple Avenue because of some reason that pertained to my wife, but I do not remember. It is a long time ago, but I do remember the question that was put to me by Mr. Neeley. I remember testifying in the case in Judge Bringham's court that my wife was very ex-
 180 cited or hysterical and that my wife was not used to driving and became excited when she saw
 181 the cars stopped there and that was the reason, I think, that she turned up into the court. That is the way I recollect my testimony.

Q. Yes; and before that I had asked you more than once, hadn't I, here in this court, if there was any reason why you turned in and you said you didn't even give it a thought?

A. I didn't remember.

Q. Yes. All right —

MR. BUDGE: Just a minute.

182 MR. RAWLINGS: He is taking care of himself.

Q. Now, Mr. Spencer —

MR. BUDGE: Just a minute. There is a rule. May I not make an objection?

MR. RAWLINGS: Certainly.

MR. BUDGE: Then let me.

MR. RAWLINGS: Proper thing to do is ask for it to be stricken.

MR. BUDGE: I want to make a motion if counsel will just give me an opportunity. I

object to counsel arguing with the witness. He has repeatedly argued with him, and it's not a proper way of examination, and I object to it as prejudicial.

THE COURT: Well, there is no question now before the court. Your objection is to what has taken place in the past, but there isn't anything now.

183 I met Mr. Jensen for the first time that day. He is the man that testified that he arrested me on the 21st day of April and took me to Judge Bringham's court. My business is that of an investigator. I also teach and do athletic work and referee basketball games and other activities.

Q. Now, Mr. Spencer, you say that or you said in this court that when Neeley said to the judge, "I want a complaint for perjury," Haas jumped up and said, "I want to make an objection to the court as I don't feel the court should browbeat a witness in this case?"

MR. BUDGE: He didn't make that statement.

MR. RAWLINGS: *Now, I would appreciate it if you would keep your remarks to yourself. This witness can take care of himself.*

MR. BUDGE: I am going to make my —

MR. RAWLINGS: *I want to call attention to the fact that Mr. Budge audibly, so I could hear it and certainly so the jury could hear it and so the witness could hear it, said "No, he didn't make such a statement." Now, this witness is perfectly capable of taking care of himself; and if there is any question about it, I am going to ask an adjournment now and have the*

MR. BUDGE: I object to this statement, if Your Honor please, to this question upon the ground that counsel has stated something that this witness did not testify to; and that the question is improper for that reason because the record will show that the witness did not make that statement. Now, that's my objection to that question.

MR. RAWLINGS: *I may be incorrect, but I wrote it down as I heard it, and in order that there might be* — Your Honor, I would like an opportunity if I could until 2:00 o'clock to get that record out.

THE COURT: Let me hear the question, and I think I can decide right now whether it's proper.

THE COURT: That the court should brow-beat the witness?

MR. RAWLINGS: Yes.

MR. BUDGE: Yes.

THE COURT: I will sustain that.

MR. RAWLINGS: *Well, Your Honor, I wonder if I could appeal to the record on that?*

THE COURT: *I will let you appeal to the record on it. I thought that that wasn't exactly what the witness said.*

MR. RAWLINGS: It may not be, and I may have written it down incorrectly. If I did, then I won't pursue it. If I didn't, I would like to ask that question of this witness after the noon recess.

185 MR. RAWLINGS: *Your Honor, during the recess I checked with the record, and I found*

out that Your Honor was correct and also counsel; so I apologize.

186 Mr. Haas was associated with Mr. Hanson. Mr. Hanson was my attorney, but I had nothing to do with Mr. Haas. He participated in the case as an associate of Mr. Hanson. I recognized Mr. Hanson as my attorney and I suppose I recognized Mr. Haas as my attorney. He was there assisting Mr. Hanson. He jumped up and said in substance or effect that he wanted to object to the prosecution browbeating witnesses. He made an objection to the court and said "I don't feel that the prosecution should be permitted to browbeat the witnesses."

188 Mr. Haas may have made objections or statements to Judge Bringham other than the ones I have indicated during the trial, but I do not remember them and to the best of my judgment I would say that he made no other statement.

189 Neeley had said something about perjury and that was immediately after he had made the remark and immediately after I had made my answer, but Haas, before that, had jumped up and said, "You can't browbeat our witnesses." Just about the time this was going on, there was a turmoil in the court and Mr. Neeley was waving his hands and throwing his hands in the air and Haas at that time intervened and said "I make an objection here to the court —" "That the prosecution shouldn't be permitted to browbeat and intimidate the witnesses." I

190 do not remember just exactly what he was saying. Everything was all in a turmoil down there and he had already made the statement "You had been seen on two occasions driving

your car since your were arrested." And also that, "I want a complaint for perjury against this man." That was all right in there and Mr. Haas at that time intervned and made this objection. When perjury was mentioned, I had
 191 nothing to say.

Q. If you had been innocent you would have said, "Go ahead and try it, Brother."

A. I don't conduct myself maybe like you do. I had nothing to say, either then or after. As far as Mr. Neeley was concerned there was plenty of confusion. He was plenty angry. Mr.
 192 Hanson said something in the turmoil, but I do not recall what he said. The judge sat there, didn't say very much of anything. He was so taken off his feet that he couldn't say anything.

Q. Just a moment, Spencer. You know enough to know to answer questions when I ask them, not to volunteer statements. I didn't ask what the judge was doing. I didn't ask whether the judge had been taken off his feet. I asked you what the judge said. Now answer.

MR. BUDGE: I object to counsel's attitude, yelling at the witness, and getting all het up and getting his blood pressure up to 210, when there is no occasion for it.

MR. RAWLINGS: You act kind of funny at times.

MR. BUDGE: I am not trying to act funny, but your counsel's conduct is amusing.

193 MR. RAWLINGS: I am sorry if I upset you.

MR. BUDGE: You don't upset me. I am afraid you will break a blood vessel.

Q. Well, then, you don't usually tell the truth?

A. I tell the truth a whole lot better than you do.

Q. Well, now, you say your blood pressure is up, what is causing it?

A. There may be two or three things. You are one of them, and a frame-up in this case is another, and you're back of it, if you want to know the reason.

Q. All right, now, I demand that you tell about that frame-up; I want you to tell the jury about the frame-up; and you not only can tell positive evidence *but any evidence that's hearsay which you think indicates a frame-up, and I want you to tell them and I demand it.*

MR. BUDGE: If Your Honor please, I object.

MR. RAWLINGS: No, I think you're getting high blood pressure.

MR. BUDGE: Counsel is very much excited. Counsel let himself into this thing and he asked for what he got, and its immaterial what he asked this witness to relate. It isn't cross examination. I object to it.

MR. RAWLINGS: Your Honor, I think I have some standing in this court.

THE COURT: I don't think it's a matter to which you can object. I think counsel is entitled to have his answer.

194 The frame-up that I mentioned was down in Judge Bringhurst's court around the 19th of May, sometime before the 31st. Mr. Hanson was my attorney and we went down and the State put their evidence on and after the evi-

dence was put on Mr. Hanson said, "We don't care to produce any evidence. We'll stand on the record." And the judge said, "I will take the case under advisement at this time." He said, "I won't pass any judgment on it," so the case was taken under advisement. In a few days Judge Bringhurst called Mr. Hanson and he said, "Mr. Hanson, I am not entirely satisfied — "

Q. Now, Spencer, I don't want any long dissertation.

MR. BUDGE: You said he could relate hearsay. Go ahead.

Q. *So far as it pertains to me, but I expect you to tie me into this thing.*

A. You are in the District Attorney's office. You also have something to do with the County Attorney.

195 Q. Nothing at all.

THE COURT: Now, just a moment. The court is permitting this to go on *because it felt a personal insinuation or statement had been made against a member of the bar*, but I am not going to permit any statement relative to these matters that doesn't substantiate the declaration which you made and which the District Attorney demanded an airing of. Now, anything that the Judge said or that the County Attorney said or did or anybody else, that doesn't have some relation to the District Attorney, just don't repeat it.

A. Then I will say right now, Your Honor, that if Mr. Rawlings hasn't anything to do with the County Attorney's office — my understanding was that he did because he is trying

this case — and that Judge Bringhurst works under the County Attorney. That's my understanding, and I made that statement because there was a statement made to me, a statement made to Mr. Hanson and also —

Q. Just a minute, Spencer.

A. A statement made to me.

Q. Just a minute. I asked you about your blood pressure and you said it was up because of me and because I was in the frame-up. Now you tell that jury how I was in the frame-up.

A. I am telling it.

Q. *All right, the judge has told you it doesn't make any difference what Bringhurst said.*

A. May I tell them?

Q. The judge says it doesn't make any difference what Bringhurst or your attorney said. You can tell them anything that pertains to me.

196 A. That is exactly what I want to do.

Q. Confine your remarks to that.

A. I don't want to say anything that you are not deserving, Mr. Rawlings, and if you aren't in on it, I will apologize.

Q. You had better.

A. And if there is anything else I am going to be held for in that statement I made, I am willing to stand for whatever is coming to me.

Q. You tell them how I am in this frame-up.

A. That is what I am going to do.

Q. All right.

A. So Mr. Hanson —

Q. *I am going to object. As Your Honor has indicated, it is immaterial, irrelevant, what went on between Hanson and Bringhurst. I want you to tell the jury —*

A. This is part of the circumstances that led up to it.

Q. Tell how I am involved in those circumstances.

A. But there is no sense in my going into it if I can't lead up to the circumstances that go into it.

Q. You can tell this jury any circumstances where I am involved in this creation in your mind.

A. *I would like to.*

MR. BUDGE: Just a moment. If Your Honor please, I object to this upon this ground: This witness said what he understood was a frame-up and that Mr. Rawlings was in on it. Now then counsel won't permit him to state what he considers to be the frame-up. Now I say that this is nothing more than just a badger-
197 ing of the witness. He offered that he was very willing to let him go into anything, hearsay and everything else, but now he doesn't want the witness to make any remark except what concerns him and uses his name.

MR. RAWLINGS: And anything he may have heard from anybody about me being connected at all with this case.

MR. BUDGE: You didn't say that.

THE COURT: I will tell you what the court thinks about this situation. *It now appears to the court that the witness has confessed that*

he doesn't know of any frame-up in which the District Attorney is involved; that he has stated that there was no frame-up so far as the District Attorney is concerned; that he has indicated substantially that he thinks there may be some injuries done him by somebody else; but if the District Attorney wasn't involved in that, then he doesn't claim he is involved in this. Now is that about what you mean?

A. That's it, Your Honor.

THE COURT: Well, I think we can pass this matter then.

MR. RAWLINGS: Satisfactory.

A. As far as Mr. Rawlings is concerned personally.

199 Q. You understand the sanctity of the oath. don't you?

A. I appreciate it very much Mr. Rawlings, and I want you to appreciate the same thing.

MR. RAWLINGS: Now, just a minute. I am not here to be lectured, and I am not on trial, and I am going to ask the court to instruct this witness to refrain from making his comments.

THE COURT: The court will have to insist that we proceed in a little more orderly manner, and just answer the questions as they are put. You don't need to make any explanations or any side remarks. *If there is anything that your counsel wants to clear up, he will do that. If there is anything he doesn't like about the examination, he'll make his record on it and make his objections to the court. We'll stop*

all of this discussion and just have questions and answers.

Q. Now, Mr. Spencer, do you remember anything else being said during this turmoil excepting what you have given us, by anyone?

A. I don't recollect any other right now, Mr. Rawlings.

Q. Do you remember anything else being said in the trial by any witness that you haven't given us, any testimony?

200 A. *Glenn Hastings* —

Q. Outside of your own witness?

A. Outside of any other witnesses?

Q. Yes.

A. I remember pretty well what happened in each instance, yes sir.

Mr. Jensen was the first witness that testified on behalf of the State and I remember the substance of his testimony.

Q. Do you recall any words that he gave.

A. Yes, I can almost tell you word for word his testimony, if I were permitted to tell what Mr. Jensen told in that court down there.

Q. Now, just a minute Mr. Spencer, *kindly remember the admonition of the court. Don't get too anxious.* Now I will ask you, Mr. Spencer, whether or not after Mr. Jensen arrested you he took you to Bringhurst's court.

A. He did.

201 I gave the name of my brother, Lolo. Bringhurst and Jensen were present. Bringhurst asked me my name. I gave him an address on Fifth East and later Jensen spoke up and said

that my name was Sidney Spencer and I said that's right, my name is Sidney Spencer and then I gave my own address.

RE-DIRECT EXAMINATION:

By Mr. Budge:

202 I said that I had used the car on two occasions after my license was revoked and before the 21st of April, 1939. On one occasion my wife had been informed by her mother, who lives in Boise, Idaho, that her boy was dying in California. She came down on the train to Salt Lake City. The boy was working on the WPA. She came to Salt Lake and I drove the car to California. I met her at the train. On
203 the other occasion, I think it was when my boy was ill, and I had to go down to the drugstore to get some paregoric or something to relieve him. I had no driver at that time and I jumped
204 into the car and went. I never knew Sergeant McDonald's name until after I was arrested. I did not say to Sergeant McDonald, at the time in substance or effect, "For Hell's sake,
205 Mac, give me a break."

RE-CROSS EXAMINATION:

By Mr. Rawlings:

Q. Now, Mr. Spencer, you said you were an investigator, and I assume you have investigated numerous automobile accidents, haven't you?

MR. BUDGE: Object to this as not re-cross
206 examination.

THE COURT: He may answer the question.

207 I investigate automobile accidents for myself and for anyone that chooses to use me for that

purpose. In some cases the State Road Patrolmen might have been the only witnesses in the case, but that I do not know. If I were investigating, it would be a part of my work to know who had been there at and after the scene of the accident. I never contacted Sergeant McDonald on any of my investigations. If I have ever talked with him at all it was on the telephone and I didn't know who I was talking to. I have never called for McDonald.

208 I have talked to him since this case. I have handled thousands of cases just like you have.

Q. *Oh, no, not just like I have, I hope.*

A. *Some of them.* If within the last five years, I have ever talked to McDonald personally, I did not know that his name was McDonald. That is all I can say, Mr. Rawlings.

Q. *Just a minute, Mr. Spencer. The argument we will expect your counsel to take care of. Just leave the argument out.* I asked you if you had ever in the last five years talked to

209 Sergeant McDonald in the State Road Patrol.

212 I don't remember that I have. I have never taken a trip to Kemmerer, Wyoming. I have never seen the city of Kemmerer in my life.

Q. You have told us that?

A. That's my brother again, I think.

Q. You know a lot about your brother, don't you?

A. I hope so. He's a peach of a brother.

Q. Yes, I know.

213 I know Lote Kinney very well. I did not state to Lote Kinney about a month ago in Salt Lake City that I had just returned from Kemmerer, Wyoming.

MRS. ANNIE D. CLAYTON, a witness called on behalf of the defendant, testified substantially as follows:

DIRECT EXAMINATION

By Mr. Budge:

214 I reside at 1750 Maple Avenue in Salt Lake County, and resided there on the 21st day of April, 1939. My residence is on the south side of Maple Avenue, about two blocks from Highland Drive and at the end of Maple Avenue.
215 About five o'clock in the afternoon of April 21st, I was across the road north. It is just a narrow street. I saw a car driving up Maple Avenue, east with a patrolman car following it, and the car ahead stopped in my yard. I
216 saw Mr. Spencer step out of the car just as soon as it stopped. He got out from the right-hand side of the car.

CROSS - EXAMINATION:

By Mr. Rawlings:

217 The car stopped where the bridge is in my back yard, facing south. After Mr. Spencer left, the car remained in the yard. I drove the car away with Mrs. Spencer and I took her home.

RE-DIRECT EXAMINATION:

By Mr. Budge:

I was not acquainted with the Spencers prior to April 21st and had never known them before. Mrs. Spencer was nervous and upset.

RE-CROSS EXAMINATION:

By Mr. Rawlings:

218 I have talked to Mr. and Mrs. Spencer since this case came up. I do not recall discussing the case any more than I have already stated.

I do not remember that they asked me or told me what I had seen.

WILLARD HANSON, a witness called on behalf of the defendant, testified substantially as follows:

DIRECT EXAMINATION:

By Mr. Budge:

219 I am sixty-five years of age and am practicing law. I know the defendant, Sid Spencer, and have known him by sight for a few years. I have known him since last December when I became well acquainted with him. I employed him at the time to get some evidence in some bus cases here and since then in another case. I have known him well enough since last December to do business with him, but not before that. I represented him in two hearings before Judge Bringhurst. The first was on May 19th and then the case was reopened and on the 31st we had another hearing. On the 31st, I recall a witness by the name of Glenn Hastings being called to the stand and I remember the questions and answers.

220 After a few preliminary questions, I asked Mr. Hastings if he had been driving the car for Mr. Spencer since a certain time and he said he had. As I recall, I asked him if he had either been driving all the time since Mr. Spencer's license had been revoked or else I said from June of last year, I think, one or the other at that period. Over the period anyway that the license had been revoked.

221 After he had answered that question, I asked him if to his knowledge Mr. Spencer had driven

the car since his license was revoked and then Mr. Neeley, the assistant county attorney, who was prosecuting the case, objected and stated to the court that we were only trying Mr. Spencer for driving on the 21st of April of this year and objected to his answering of the question and anything that had occurred before that or after that was wholly irrelevant and immaterial and the judge sustained the objection and Mr. Hastings was excused from the witness stand and left the court room.

222 Mr. Spencer was the next witness called after Mr. Hastings. I recall that Mr. Neeley propounded to Mr. Spencer a question with respect to driving the car. Mr. Neeley said to Mr. Spencer, "Haven't you been driving your car since you were arrested for driving without a license? ". And Mr. Spencer said, "No, sir." And then Mr. Neeley seemed to get quite angry and jumped up and said in a rather angry tone and pointing his finger at Spencer, "Why, we have witnesses that you have driven two or three times since you were arrested for driving since your license had been revoked or since this arrest." And Mrs. Spencer jumped up and said, "Why, Mr. Neeley, that is not so. He hasn't even backed it out of the driveway." And Neeley said, "Well, I'm going to have this man arrested for perjury."

223 And Mr. Haas, who was one of the attorneys in the case, got up and said, "I want to make an objection here to the prosecution trying to intimidate the defendant's witnesses." Mr. Neeley said that he wasn't trying to intimidate anybody but that he was going to have Mr. Spencer arrested for perjury. Mr. Neeley on

that occasion did not ask Mr. Spencer in substance or effect, "Have you at any time driven your car since your license was revoked?"

CROSS - EXAMINATION:

By Mr. Rawlings:

- 224 The hearing after May 19th was at my request. We requested that the case be reopened so that we could put in our defense after the judge had telephoned me. We stipulated with the county attorney that it could be reopened and it was reopened. I am still representing Mr. Spencer as counsel in the misdemeanor case; the case before Judge Bringhurst.
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- JOSEPH R. HAAS, a witness called on behalf of the defendant, testified substantially as follows:

DIRECT EXAMINATION

By Mr. Budge:

- 226 I am an attorney at law and live in Salt Lake City. I was one of the counsel in the case in Judge Bringhurst's court wherein the defendant, Sid Spencer, was charged with driving his automobile without a driver's license. Mr. Hanson was the counsel. I was in Mr. Hanson's office and I went down with him at his request on both occasions. I was present when Mr. Hastings was called as a witness. Mr. Hastings was asked a question by Mr. Hanson with respect to Spencer driving the car and while I do not pretend to give the exact words it was substantially as follows:

"At any time since you have been driv-

ing for Mr. Spencer has Mr. Spencer driven his car?"

227 Mr. Hanson asked the witness how long he had been driving for Mr. Spencer and I think he said, "Ever since Mr. Spencer's license was revoked." Then Mr. Neeley jumped to his feet and objected on the ground that nobody was concerned and said, "We are not concerned with anything that happened prior to April 21st." Then the judge sustained the objection. I think that this was the end of Hastings' testimony.

228 Spencer was called to the stand in his own behalf. He followed Mr. Hastings. On cross examination Mr. Neeley did not ask Mr. Spencer in substance or effect "Have you driven your car at any time since your license was revoked?" As well as I can remember the words that Neeley used were, "Have you driven your car at any time since you were arrested for this offense with which you are charged?" I think he referred to the date. Spencer's answer was "no." Neeley then got to his feet and said, "Now, Sid, I am going to charge you with perjury, because we have proof that at least on two occasions since you were arrested you have driven your car. Mrs. Spencer was seated a little bit north in the same room. She got up and said,

229 "Why, Mr. Spencer has never backed his car out of the yard or the driveway since he was arrested."

A little before this Mr. Neeley had shaken his finger at Mr. Spencer and I got up and said that I thought it was improper to intimidate a witness or something to that effect.

CROSS - EXAMINATION:

By Mr. Rawlings:

- 230 In a way there was an altercation when Neeley jumped to his feet and objected to the question asked Mr. Hastings and it wasn't a settled question after the Justice of the Peace had sustained the objection. Nevertheless, Mr. Hanson abided by the ruling of the court. I do not remember the details of Mr. Hastings' testimony because after he had been asked the preliminary question the only pertinent question remaining he wasn't allowed to answer.
- 232 The question asked Mr. Hastings by Mr. Hanson was, "At any time since you have been employed by Mr. Spencer, has Mr. Spencer driven his car?" At least that is the substance of the question. He might have said, "To your knowledge." I could not say.
- 233 That is what I refer to as a pertinent question and Neeley objected to it on the ground that the only date that he was interested in was April 21, 1939. He said that nothing prior to that would have any effect at all. Then Neeley asked the question of Spencer as to whether or not he had driven the car since April 21, 1939. I do not know his exact words. I did not go to Bringhurst's court for any particular purpose. I have been in Mr. Hanson's office for about three and one-half years and have been employed by him on various occasions to assist and to handle matters separately, but I am not employed by him except on occasions.
- 234 The day when the State's evidence was put in, he said, "Come on and ride down with me." About a week or two later, he asked if I would ride down with him. The only part I took in

the case was when I said something about intimidating the witness. I was assisting Mr. Hanson in any manner that I could. I have frequently been requested by Mr. Hanson to accompany him and have taken part in cases that have come on for trial and in which I was not employed.

235 GLENN HASTINGS, a witness called on behalf of the defendant, testified substantially as follows:

DIRECT EXAMINATION

By Mr. Budge:

236 I am thirty-eight years of age. I was present in Judge Bringham's court on the 31st of May, 1939 in the case in which Mr. Spencer was charged with driving an automobile without a driver's license. At that time I was interrogated by Willard Hanson. He asked me if to my knowledge Mr. Spencer had driven his car at any time since his license was revoked, and I did not answer. Then Mr. Neeley jumped up and objected to the question, said it had nothing whatever to do with the case. The court sustained the objection.

CROSS - EXAMINATION:

By Mr. Rawlings:

237 I have talked this matter over with Mr. Spencer. I am living at his house. Mrs. Spencer is my sister. I have not discussed with Mr. Spencer what I was going to testify about. Mr. Spencer asked me to come to court to testify. Mr. Hanson has asked me a few preliminary questions and likewise Spencer. The

questions asked were the ones that Mr. Budge just asked me.

- 238 As I recall it, Mr. Neeley, in Bringhurst court, said: "That's immaterial to this case. I am not interested in anything that happened prior to April 21st." My occupation is that of a glazier, but I have not worked since April of 1938. Since that time I have been living with Mr. Spencer who furnishes me board room and clothing.

MRS. SID SPENCER, a witness called on behalf of the defendant, testified substantially as follows:

DIRECT EXAMINATION:

By Mr. Budge:

I am the wife of the defendant. I was present in Judge Bringhurst's court on the 31st May, 1939 in the case where my husband was the defendant. I heard the question that was propounded by Mr. Neeley to my husband; also the question propounded by Mr. Hastings to my brother, Mr. Hastings. Mr. Hastings asked Mr. Hastings, "To your knowledge, any time since Mr. Spencer's license was revoked, has he driven his car?" The question was not answered because Mr. Neeley objected to it.

- 241 On cross examination Mr. Neeley asked my husband, "Mr. Spencer, have you driven your car at any time since you were arrested driving the car without a driver's license?" Mr. Neeley did not ask my husband if he had driven a car since his license was revoked.

When Mr. Neeley asked the question that I have first mentioned, Mr. Spencer answered "no." Mr. Neeley became very angry, jumped up from the table and said, "Sid, you have been seen driving your car on two occasions." I then became angry and jumped up from my chair and said,

"Mr. Neeley, that is not true. Sid has not backed his car out of the driveway since his arrest."

242 Mr. Neeley then turned to Judge Bringhurst and asked for a complaint against me for admitting driving the car without a license and also told Sid that he was going to get him for perjury. There was a complaint filed against me.

Q. I show you, Mrs. Spencer, the Defendant's Exhibit 2, so marked for identification, and ask you if that is the document or summons which was served on you in this case which was filed against you?

A. It is.

MR. BUDGE: We offer this in evidence.

MR. RAWLINGS: Object on the ground it's immaterial, irrelevant; has no bearing on the issues of the case.

243 THE COURT: I will sustain the objection.

I was driving the car on the 21st day of April, 1939 on Highland Drive near Maple Avenue. I drove the car up to the home of Mrs. Clayton, when the officer was following me.

CROSS - EXAMINATION:

By Mr. Rawlings:

244 The reason that I can recall word for word what was said in the courtroom was because of

the attitude of the attorney and the attitude
 246 of the judge. I think that we left home after I
 fed the baby. I usually feed the baby between
 twelve or one o'clock. I drove the car out of
 the yard. It was a lovely day. I drove out to
 Dave Keith's and we dropped in there a few
 minutes. I went there to look for some plants.
 We then stopped at the Woolley's.

247 I am not a very good driver. I haven't tried to
 drive very often. I had not applied for 'a
 248 driver's license because I didn't feel that I
 could drive the car well enough. This was not,
 however, the first time that I had driven the
 car. On this particular day, I wanted to take
 the car and I told Sid if he wouldn't go with
 me that I would go without him. My brother
 was not home that day.

VERN RASMUSSEN, a witness called on be-
 261 half of the defendant, testified substan-
 tially as follows.

DIRECT EXAMINATION

By Mr. Budge:

262 I am a salesman, thirty-seven years old and
 live in Salt Lake City. I am well acquainted
 with Sid K. Spencer and his wife, and have
 been for approximately twelve years. On the
 21st of April, 1939 I was driving at a point
 where Murphy Lane enters Highland Drive.
 Murphy Lane is about two blocks south of
 Maple Avenue and on the west side of the
 street. I entered Highland Drive on Murphy
 Lane. There is a stop sign there and I stopped
 for it. I noticed a blockade on Highland Drive
 north of Maple Avenue. I saw Mr. Spencer's

car. It was driving north on Highland Drive as I stopped at the stop sign on Murphy Lane. Sid and his wife were in the car. Mrs. Spencer was driving.

CROSS - EXAMINATION:

By Mr. Rawlings:

263 I have seen Mrs. Spencer driving the car several times before. I knew the car very well and I knew the people in it. I remember testifying in Judge Bringhurst's court about this matter. The Spencers and myself visit together occasionally. In the hearing in Judge Bringhurst's court I did not testify that the Spencer car was going south when I saw it.

Whereupon the defendant rested.

J. PATTON NEELEY was recalled as a witness on behalf of the State in rebuttal and testified substantially as follows:

DIRECT EXAMINATION

By Mr. Rawlings:

267 I was present in Judge Bringhurst's court when Mr. Spencer was being tried on the charge of having driven his automobile after his license had been revoked. I remember Mr. Rasmussen testifying. He testified that he saw the Spencer car driving south on Highland Drive.

269 Whereupon, both sides rested.

Incorporated in the Bill of Exceptions is the defendant's demand for a bill of particulars.

the demand being set forth in the Abstract at page 5.

Incorporated in the Bill of Exceptions is the bill of particulars furnished by the State, pursuant to the above demand and which bill of particulars is set forth in the Abstract at pages 5-6.

- 270 Incorporated in the Bill of Exceptions is the defendant's motion to set aside the verdict and grant a new trial and which notice and motion and demand is set forth in the Abstract at pages 17-18.

That by orders duly made and entered and within time, the time for the preparation, service and filing of the Bill of Exceptions herein was extended, to and including the 10th day of February, 1940.

TENDER OF BILL OF EXCEPTIONS.

(TITLE OF COURT AND CAUSE).

- 271 On the 16th day of January, 1940 comes Sid K. Spencer, the defendant above named, and serves upon Calvin W. Rawlings, District Attorney, Third Judicial District Court, State of Utah, the attorney for the plaintiff above named, the foregoing Bill of Exceptions for use on appeal herein consisting of one volume of 217 pages, numbered from 1 to 217, together with Exhibits A and 1, which were introduced in the case and are made a part hereof by reference thereto. The same is hereby tendered to and served upon counsel for the plaintiff as aforesaid that he may examine the same and propose any amendments thereto which he shall be advised ought to be made in order that

the said Bill of Exceptions be settled and allowed as a full, true and correct Bill of Exceptions.

JESSE R. BUDGE,
HARLEY W. GUSTIN,
Attorneys for Defendant.

Service of the foregoing proposed Bill of Exceptions acknowledged this 16th day of January, 1940.

CALVIN W. RAWLINGS,
District Attorney, Third Judicial District Court, State of Utah,
Attorney for Plaintiff.

STIPULATION TO SETTLE BILL OF EXCEPTIONS

(TITLE OF COURT AND CAUSE).

The undersigned, counsel for the plaintiff herein, hereby stipulates and agrees that he has examined the foregoing Bill of Exceptions in the above entitled cause of action; that he has no amendments to propose thereto and that the same may now be presented to the court and signed, settled and allowed by the judge who tried said cause, without notice and in his absence as the full, true and correct Bill of Exceptions in said cause.

Dated this 23rd day of January, 1940.

CALVIN W. RAWLINGS,
District Attorney, Third Judicial District Court, State of Utah,
Attorney for Plaintiff.

CERTIFICATE OF JUDGE SETTLING
BILL OF EXCEPTIONS

(TITLE OF COURT AND CAUSE).

272 I, Oscar W. McConkie, the District Judge who tried the foregoing cause, do hereby certify that the above and foregoing Bill of Exceptions consisting of 217 pages, numbered from 1 to 217, inclusive, contains all of the testimony and evidence offered, admitted or adduced upon the trial of said cause, together with all objections and exceptions taken and motions made, and all proceedings had on the trial, before and after judgment, in said cause and not otherwise of record; and contains sufficient reference to all exhibits therein referred to identify the same. There being no amendments thereto, said Bill of Exceptions is hereby approved, settled, signed and allowed within time as the full, true and correct Bill of Exceptions in the foregoing cause of State of Utah, Plaintiff, v. Sid K. Spencer, Defendant, and the clerk is hereby ordered to file the same.

Dated this 23rd day of January, 1940.

OSCAR W. McCONKIE, Judge.

Attest:

WILLIAM J. KORTH,
Clerk.

By RICHARD BOHLING,
Deputy Clerk.

Bill of Exceptions filed January 23, 1940.

ASSIGNMENTS OF ERROR

(TITLE OF COURT AND CAUSE).

Comes now Sid K. Spencer, the defendant and appellant above named, and assigns the following errors occurring in the trial of this cause before the Honorable Oscar W. McConkie, one of the judges of the District Court of the Third Judicial District, in and for Salt Lake County, State of Utah, and which errors he relies upon for a reversal of the judgment in this cause.

I.

That the information does not state facts sufficient to constitute a public offense. (Tr. 6; Ab. 1).

II.

That the court erred in denying defendant's motion to quash the information. (Tr. 9; Ab. 2).

III.

That the court erred in denying defendant's motion to dismiss the information. (Tr. 11; Ab. 4).

IV.

That the court erred in denying defendant's motion for dismissal at the close of State's evidence. (Tr. 143-151; Ab. 38).

V.

That the court erred in denying defendant's motion for a new trial. (Tr. 44, 48; Ab. 17).

VI.

That the court erred in refusing to give de-

fendant's requested instruction No. 1. (Tr. 35; Ab. 13).

VII.

That the court erred in giving defendant's requested instruction No. 1 as amended by the court. (Tr. 35; Ab. 13-14).

VIII.

That the court erred in refusing to give defendant's requested instruction No. 2. (Tr. 36; Ab. 14).

IX.

That the court erred in refusing to give defendant's requested instruction No. 4. (Tr. 38; Ab. 15).

X.

That the court erred in refusing to give defendant's requested instruction No. 5. (Tr. 39; Ab. 16).

XI.

That the court erred in denying defendant's motion to strike the answer of the State's witness Bringhurst on direct examination:

"Q. When was this Complaint filed?

A. It was filed on the 21st day of April."
(Tr. 65; Ab. 23).

XII.

That the court erred in admitting in evidence over defendant's objection State's Exhibit A, the same being the complaint before Judge Bringhurst. (Tr. 66; Ab. 23).

XIII.

That the court erred in overruling defendant's objection to the following question asked the

State's witness Bringhurst on direct examination:

"Q. I will ask you to state whether or not Mr. Neeley asked Mr. Spencer, the defendant in this case, and the defendant in that case, a question relative to whether or not he had driven his automobile since his driver's license had been revoked for drunken driving." (Tr. 68; Ab. 24).

XIV.

That the court erred in sustaining the State's objection to the following question asked the State's witness Bringhurst on cross examination:

"Q. Now, isn't it true that after Mr. Hanson had propounded that question and you sustained the objection, that the witness was excused?" (Tr. 78-79; Ab. 26).

XV.

That the court erred in denying defendant's motion to strike the following answer of the State's witness Bringhurst on re-direct examination:

"Q. And it was dismissed at the request of the County Attorney, wasn't it?

A. That's right." (Tr. 92; Ab. 29).

XVI.

That the court erred in sustaining the State's objection to the following question asked the State's witness Neeley on cross examination:

"Q. Well, now, to refresh your recollection, didn't you then object to that question upon the ground that it was im-

material and that the only thing before the court was whether or not Mr. Spencer had driven the car on the 21st of April?" (Tr. 98; Ab. 30).

XVII.

That the court erred in overruling defendant's objection to the following question asked the State's witness Jensen on direct examination:

"Q. When you got down to Judge Bringhurst's court, was there any conversation between the Judge and Spencer and you?" (Tr. 114; Ab. 33).

XVIII.

That the court erred in overruling defendant's objection to the following question and answer of State's witness Jensen on direct examination:

"Q. Tell us what was said between Spencer, the Judge and you to the best of your recollection when you got down there
A. I went in and told the Judge that I wanted a complaint and he started to make it out and he asked Mr. Spencer his name" (Tr. 115; Ab. 33)

XIX.

That the court erred in sustaining the State's objection to the following question asked the defendant Spencer on direct examination:

"Q. Do you recall a question that was propounded to Mr. Hastings by Willard Hanson, your counsel, in that case?

A. I do.

What was that question?" (Tr. 152-153; Ab. 38).

XX.

That the court erred in overruling defendant's objection to the following question asked the defendant Spencer on cross examination:

"Q. Have you driven your car since your license was revoked for drunken driving on June 14, 1938?" (Tr. 161-162; Ab. 44).

XXI.

That the court erred in overruling defendant's objection to the following question asked the defendant Spencer on cross examination:

"Q. And was that before April 21?" (Tr. 163; Ab. 45).

XXII.

That the court erred in overruling defendant's objection to the following question asked the defendant Spencer on cross examination:

"Q. You knew that when you drove your car when your license was revoked that you were doing it in violation of the law, didn't you?" (Tr. 166; Ab. 47).

XXIII.

That the court erred in overruling defendant's objection to the following question asked the defendant Spencer on cross examination:

"Q. How many times did you drive it prior to April 21, 1939?" (Tr. 166-167; Ab. 48).

XXIV.

That the court erred in overruling defendant's objection to the following question asked the defendant Spencer on cross examination:

“Q. Now, I will ask you to state, Mr. Spencer, whether you drove your car between the date of April 21, when you were arrested, and May 31, when you testified?” (Tr. 167; Ab. 48).

XXV.

That the court erred in overruling defendant's objection to the following question asked the defendant Spencer on cross examination:

“Q. Now, Mr. Spencer, your license was taken away from you for the reason that you had been convicted of driving a car while under the influence of liquor, hadn't it?” (Tr. 167; Ab. 49).

XXVI.

That the court erred in overruling defendant's objection to the following question asked the defendant Spencer on cross examination:

“Q. And did you see the blockade that — did you see a blockade on Highland Drive on that occasion when you turned in there or when the car turned in?” (Tr. 170; Ab. 49).

XXVII.

That the court erred in overruling defendant's objection to the following question asked the defendant Spencer on cross examination:

“Q. And your wife — did she have an automobile license at that time?” (Tr. 172; Ab. 50).

XXVIII.

That the court erred in overruling defendant's

objection to the following question asked the defendant Spencer on cross examination:

“Q. I think you were concerned. You say you may have been, and I think that is true. Now, if you may have been concerned, what were you concerned about?” (Tr. 177; Ab. 51).

XXIX.

That the court erred in overruling defendant's objection to the following question asked the defendant Spencer on re-cross examination:

“Q. Now, Mr. Spencer, you said you were an investigator, and I assume you have investigated numerous automobile accidents, haven't you?” (Tr. 205; Ab. 63).

XXX.

That the verdict of the jury is contrary to the law and to the evidence. (Tr. 41; Ab. 17).

XXXI.

That the judgment entered on the verdict is contrary to the law and evidence.

XXXII.

That the verdict of the jury and judgment entered thereon is contrary to the evidence and against law in the following particulars, towit:

(a) That the evidence affirmatively shows and without contradiction that the purported answer of the defendant as set forth in the information and bill of particulars on file herein was not a material, competent or relevant answer to any proceeding then pending in any court of competent jurisdiction and was not

material to any issue in any action in which defendant might have been called as a witness.

(b) That the information on file herein, together with the bill of particulars wholly fails to disclose, as does the evidence, the question propounded to defendant, if any, and its competency, relevancy or materiality to any issue then before any court of competent jurisdiction.

(c) That the evidence affirmatively and without contradiction shows that the defendant was not driving the automobile alleged to have been his on the 21st day of April, 1939 or at any time subsequent thereto to and including the 31st day of May, 1939.

(d) That the evidence conclusively shows and without contradiction that if the answer or testimony alleged to have been given by the defendant as set forth in the information and bill of particulars on file herein was in fact given that the same was a voluntary statement of the defendant and wholly immaterial to any issue in any cause then and there pending before a court of competent jurisdiction.

(e) That the purported complaint before Arthur B. Bringhurst, the alleged Justice of the Peace of the Third Precinct, Salt Lake County, State of Utah, purportedly charging this defendant with having driven an automobile on the 21st day of April, 1939 in Salt Lake County, without a driver's license was not filed nor does the same state facts sufficient to constitute a public offense and that the purported testimony of this defendant before the alleged Justice of the Peace, if given at all, was a nullity and not made or given in

any cause in any court of any competent jurisdiction.

WHEREFORE, defendant and appellant prays that the foregoing may be considered by this court as his assignments of error and that the judgment appealed from be reversed and remanded or that a judgment be entered according to law and the views of this Court.

HARLEY W. GUSTIN,
Attorney for Defendant
and Appellant.

Duly served.