

2008

# State of Utah v. Milo Simons : Brief of Appellant

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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STATE OF UTAH,

Plaintiff / Appellee,

vs.

MILO SIMONS,

Defendant / Appellant.

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Case No: 20080109-CA

**BRIEF OF APPELLANT**

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APPEAL FROM THE FOURTH DISTRICT COURT, UTAH COUNTY, STATE OF UTAH, FROM THE JUDGMENT, SENTENCE AND COMMITMENT ON ONE COUNT OF POSSESSION OF A CONTROLLED SUBSTANCE BEFORE THE HONORABLE JUDGE JAMES R. TAYLOR

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**BRIEF OF APPELLANT**

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**STATEMENT OF JURISDICTION**

This Court has appellate jurisdiction in this matter pursuant to the provisions of Utah Code Annotated § 78-2a-3(2)(e).

**ISSUES PRESENTED AND STANDARDS OF REVIEW**

Whether the trial court erred in denying Simon's motion to suppress evidence obtained as a result of an illegal detention. Generally, when reviewing a district court's denial of a motion to suppress, an appellate court disturbs the district court's finding of fact only when they are clearly erroneous, however, "[w]hen a case involves the reasonableness of a search and seizure, [an appellate court] afford[s] little discretion to the district court because there must be state-wide standards that guide law enforcement and prosecutorial officials." *State v. Baker*, 2010 UT 18, ¶ 7, 229 P.3d 650 (*citing State v.*

*Warren*, 2003 UT 36, ¶ 12, 78 P.3d 590). An appellate court reviews the district court's legal conclusions for correctness. *Baker*, 2010 UT 18, ¶ 7. "Utah case law teaches that 'correctness' means the appellate court decides the matter for itself and does not defer in any degree to the trial judge's determination of law." *Pena*, 869 P.2d 932, 935 (1994).

This issue was preserved by Simons' motion to suppress. R. 35-24.

## CONTROLLING STATUTORY PROVISIONS

The text of all relevant statutory and constitutional provisions is set forth in the Addenda.

## STATEMENT OF THE CASE

### A. Nature of the Case

Milo Simons appeals from the judgment, sentence, and conviction by conditional plea to possession of a controlled substance, a third degree felony, by the Honorable James R. Taylor, Fourth District Court, after the denial of Simons' motion to suppress.

### B. Trial Court Proceedings and Disposition

Milo Simons was charged by information filed in Fourth District Court on October 27, 2008 with possession of drug paraphernalia, a class B misdemeanor, in violation of Utah Code Annotated § 58-37a-5(1), and possession of a controlled substance, a third degree felony, in violation of Utah Code Annotated § 58-37-8(2)(a)(i). R. 6-5. A preliminary hearing was held before the Honorable James R. Taylor on December 7,

2006 and Simons was bound over for trial. R. 18, 92: 29-30. Simon entered not guilty pleas following the preliminary hearing. R. 92: 30.

On March 8, 2007 Simons filed a motion to suppress the evidence asserting it was obtained in violation of the Fourth Amendment to the United States Constitution and Article I, § 7 of the Utah Constitution. R. 35-24. On April 30, 2007 Judge Taylor denied the motion by written ruling. R. 49-46.

On September 20, 2007 Simons entered a conditional pleas of guilty to possession of a controlled substance, a third degree felony. R. 69-67, 94: 3-8. On January 3, 2008 Simons was sentenced to 36 months probation with 90 days in jail with credit for time served and a \$950.00 fine. R. 90-88, 96: 6-8.

A notice of appeal was filed on January 31, 2008 in Fourth District Court.

## STATEMENT OF RELEVANT FACTS

### Testimony from the December 7, 2006 preliminary hearing.<sup>1</sup>

#### Deputy John Luke

Deputy Luke is a Deputy Sheriff who was on patrol on October 21, 2006 when he observed a vehicle speeding. He ran the license plate and found the vehicle was noted to be uninsured. R. 92: 3-4. Deputy Luke, and another officer he was training, made a traffic stop and made contact with the driver and passenger. R. 92: 5. No video of the stop was recorded because, although Luke's patrol vehicle is equipped with a video

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<sup>1</sup> On December 7, 2006 the trial court held a joint preliminary hearing for both Appellant, Milo Simons, and his co-defendant, Kevin Sorenson.



camera, it was broken at the time. R. 92: 18. Simons was in the front passenger seat. R. 92: 5. The other officer approached the driver's side and Luke observed from the passenger side, however, he could not hear what the other officer was saying or what questions were asked. R. 92: 20, 27. At that time Luke made no observations about the state of the driver or anything else suspicious. R. 92: 20.

Luke and the other officer went behind the suspect's vehicle but in front of Luke's vehicle and had a conversation. R. 92: 21, 28. The other officer made no mention of anything suspicious about Sorenson's condition, he merely handed Luke Sorenson's ID. R. 92: 21.<sup>2</sup> Then Luke approached Sorenson on the driver's side to issue a citation. R. 92: 22. Luke "reapproached" and requested all of the relevant information. R. 92: 22. Luke asked for proof of insurance and registration to which Sorenson replied the car was borrowed and he could not produce insurance information. R. 92: 5.<sup>3</sup> Luke did not inquire about the speeding violation or about the insurance request on his computer. R. 92: 19.

Deputy Luke noted signs of impairment in the driver including watery bloodshot eyes, rapid speech and movement, and unidentified yet suspicious body language. R. 92: 6, 22. While Luke ran a records check he observed Sorenson moving in an agitated manner, touching his mirror several times and moving his head. R. 92: 6, 23. Luke

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<sup>2</sup> Luke later admitted he did not remember if Sorenson provided license, identification, or just a name and date of birth. R. 92: 22.

<sup>3</sup> Although Luke originally testified to asking these questions upon approach of the vehicle, on cross-examination he admitted that he did not ask any questions but that it was the other officer who was being trained. R. 92: 20. Luke could not hear the conversation between Thomas and Sorenson

described this behavior as unusual and possibly a sign of impairment. R. 92: 6.

After Luke returned to the vehicle Sorenson said without prompting "I'm not drunk," at which time Luke decided to remove Sorenson from the vehicle to check for impairment by conducting the field sobriety tests (FSTs). R. 92: 6, 22.<sup>4</sup> Luke did not smell any odor of alcohol. R. 92: 22. His decision to take Sorenson from the vehicle to check for impairment was based upon the watery bloodshot eyes and his rapid movements. R. 92: 23. As the driver's door opened Luke "could see inside the door side compartment in plain view there were several baggies that had been chewed on." R. 92: 6-7, 23. The baggies were down in the bottom of the door compartment. R. 92: 24. Luke could not see anything in the baggies until he retrieved them from the door. R. 92: 25. According to Deputy Luke, he has only seen these types of baggies used to carry drugs. R. 92: 8. Luke noted that there appeared to be a white powder residue inside the baggies which Luke suspected was methamphetamine. R. 92: 8. At that point Luke ended his DUI investigation and made contact with Simons at the passenger seat. R. 92: 25, 26.

Luke left Sorenson with the other officer and approached Simons and explained that he found paraphernalia in the car and asked if he had anything on his person. R. 92: 9. Simons answered that he had a pipe in his underwear. R. 92: 9. When Simons stepped out of the vehicle Luke made him shake the pipe out of his pants and it fell to the ground. R. 92: 9. According to Luke the glass pipe taken from Simons was a methamphetamine pipe. R. 92: 9.

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<sup>4</sup> It is unclear from Luke's testimony whether this statement came after Luke returned the first time from speaking with the other officer in front of the patrol car or when Luke returned the second time after having run a records check.

Deputy Thomas, the officer in training, searched Sorenson's jacket pocket and found a small sack containing \$561 in cash and a bag of methamphetamine. R. 92: 10. After placing Sorenson under arrest Luke approached Simons. Simons then told Luke that he had some meth in his pocket and then removed a bag containing methamphetamine from a small pocket in his pants. R. 92: 12.

### SUMMARY OF THE ARGUMENT

Simons asks this Court to reverse the denial of his motion to suppress. Simons was unreasonably seized within the meaning of the Fourth Amendment because he was detained without reasonable suspicion that he had committed a crime. Furthermore, Simon's detention was an unlawful extension of the scope of the initial traffic stop, which was unlawfully extended once the police suspended their investigation or arrest of the driver and began questioning Simons. Pursuant to *State v. Baker*, 2010 UT 18, ¶ 13, 229 P.3d 650, the police may not continue to detain a passenger of a vehicle after the purpose of the justified detention has concluded, and there is no de minimus exception to this rule. (Citing *State v. Hansen*, 2002 UT 125, ¶ 32, 63 P.3d 650). Even with evidence that the co-defendant driver may have been involved with impaired driving or drug paraphernalia, the police did not have reasonable suspicion to prolong Simons' detention beyond the facilitation of the original stop to question Simons about contraband. Accordingly, all evidence discovered after that unlawful detention should have been excluded as fruit of the poisonous tree.

## ARGUMENT

### I. SIMONS' CONTINUED DETENTION AND QUESTIONING WAS NOT JUSTIFIED BY EVIDENCE AND THUS EXCEEDED THE SCOPE

Deputy John Luke of the Utah County Sheriff's Office testified that on October 21, 2006 he observed a vehicle speeding on SR-77. R. 92: 3-4. He ran a records check on the license plate and it showed the status of the vehicle to be "uninsured". R. 92: 4, 18-19. Eventually, Luke suspected Sorenson was impaired and he discovered several small baggies in the driver's door compartment that Luke believed to be paraphernalia. R. 92: 7, 23-25. Luke then, rather than performing FSTs upon Sorenson or arresting him for the paraphernalia, approached Simons, the passenger. R. 92: 8. Luke explained to Simons that he had "found paraphernalia in the car and asked him if he had anything on his person that [he] needed to know about. That deviation changed Simons' detention from one based on evidence and justified by reasonable suspicion to an illegal seizure for Fourth Amendment purposes.

#### A. The Constitution Protects Individuals From Unreasonable Seizures

The Fourth Amendment to the United States Constitution and Article I, § 14 of the Utah Constitution protect individuals from unreasonable searches and seizures. In this case, Simons filed a motion to suppress alleging that all evidence against him should be suppressed because it was obtained as a result of such an unlawful search and seizure. R. 35-24. The trial court denied the motion and authorized the admission of Simons'

statements and the physical evidence discovered at the scene. In denying Simons' motion to suppress<sup>5</sup> Judge Taylor concluded:

It is well established in Utah that an officer may stop a vehicle for an offense committed in his presence. Indeed, in this case neither defendant challenges the propriety of the initial traffic stop. A traffic stop is a level two encounter, which may be based upon reasonable suspicion. Officers may conduct a reasonable investigation suggested by such a suspicion.

In this case Deputy Luke's initial suspicion of driving while impaired was quickly supplemented by his observation of drug paraphernalia in plain sight when the car door was properly opened to remove Mr. Sorensen to investigate the possible DUI charge. The baggies were not only strongly likely to be paraphernalia, the used condition implied use of the drugs they might have contained. That suspicion coupled with the signs of possible impairment lead to a reasonable suspicion and concern about both occupants of the car. The tactics including a quick search of Mr. Sorenson's person and questioning Mr. Simons about drug possession or use, followed by a search of his person (perhaps a bit of an overstatement since the search consisted of having him step and literally shake a leg so the paraphernalia slipped down his pant leg to be recovered by the officer) were reasonably suggested by his concerns. Once it was confirmed that Mr. Simons was in possession of drug paraphernalia, arrest and a further concurrent search of his person was justified. Consent of either Defendant to the search was irrelevant and this Court makes no finding on that point.

R. 47-46. Put simply, Judge Taylor concluded there was reasonable suspicion to question and further detain Simons because Sorenson showed signs of impairment and paraphernalia was found in the car door where he was sitting. Simons argues, however,

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<sup>5</sup> Simon's co-defendant, Kevin Sorensen, also filed a motion to suppress. Judge Taylor issued a single ruling on these motions which applied to both Simons and Sorensen.

that the trial court erred in this conclusion because evidence supporting the detention and investigation of Sorenson did not likewise support the detention and investigation of Simons outside the scope of the investigation and arrest of Sorenson. The fact that there was reasonable suspicion of drug paraphernalia as to Sorensen (or even probable cause) does not, without more, support a conclusion of reasonable suspicion for the independent detention and questioning of Simons.

Over forty years ago the United States Supreme Court ruled that the length and scope of any detention must be “strictly tied to and justified by the circumstances which rendered its initiation permissible.” *Terry v. Ohio*, 392 U.S. 1, 19-20, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). That requirement is still true today and operates as a limit on police conduct when their investigations include the detention of members of the public. The police must be cognizant that every moment of detention must be justified by evidence that relates to the detention. More specifically, the police must be constrained to not detain and investigate those whom they have no reason to detain and investigate.

In automobile cases when an automobile is stopped for a valid reason “[t]he temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop.” *Arizona v. Johnson*, --- U.S. ----, 129 S.Ct. 781, 788, 172 L.Ed.2d 694 (2009). That means, so long as the police are justified in detaining the driver of a vehicle, whether it be for a traffic citation or records check, the incidental detention of the passengers continues to be justified until the purpose of the stop has concluded. “If, during the scope of the traffic stop, the officer forms new reasonable articulable suspicion of criminal activity, the officer may also expediently investigate his

new suspicion. But without additional reasonable suspicion, the officer must allow the seized person to depart once the purpose of the stop has concluded.” *State v. Baker*, 2010 UT 18, ¶ 13. “Even a small intrusion beyond the legitimate scope of an initially lawful search is unlawful under the Fourth Amendment.” *State v. Gettling*, 2010 UT 17, ¶ 5, 229 P.3d 647 (quoting *State v. Schlosser*, 774 P.2d 1132, 1135 (Utah 1989) (internal citation omitted)).

This is where Deputy Luke went wrong. He did not expediently investigate his new suspicion about Sorenson’s impairment or quickly resolve the matters of speeding or lack of proof of insurance. Instead he began to investigate and question Simons of whom he had not reasonable articulable suspicion of criminal activity and he intruded beyond the legitimate scope of the otherwise lawful detention.

In *Baker* the defendant was a backseat passenger in a vehicle stopped because there was no light illuminating the back license plate. *Baker* at ¶ 3. The officer then discovered that the driver’s license was suspended for a drug violation so he called the K9 unit and arrested the driver.<sup>6</sup> Two other officers arrived while the driver was being arrested and they made contact with the passengers. One passenger advised the officers he had a knife and gave it to them for the duration of the stop. Then the other passengers proceeded to hand over other knives to the officers which where taken. The passengers were left in the vehicle while they waited for the K9 unit to arrive. *Id.* at ¶ 4. Twelve

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<sup>6</sup> So long as a dog sniff does not extend the length of a justified traffic stop it does not constitute an unlawful search or seizure. *See United States v. Place*, 462 U.S. 696, 707, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983); *Illinois v. Caballes*, 543 U.S. 405, 408, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005).

minutes passed between the driver's arrest and the arrival of the K9. The dog then alerted on the rear driver's side door and on the trunk. The police ordered the passengers to exit the vehicle and each passenger was frisked. During that frisk the police found paraphernalia on the defendant and later found methamphetamine during a search of his person after his arrest. *Id.* at ¶ 5.

The Court held that detaining the occupants of the vehicle beyond the lawful purpose of the stop (investigating the traffic matter and arresting the driver for driving on suspension) was unconstitutional. *Id.* at ¶ 33. "Both a dog sniff and a consent search are legal under the Fourth Amendment only when they are performed during the course of a lawful stop." *Id.* Thus, occupants of a vehicle cannot be detained beyond the conclusion of the purpose of the original stop without reasonable suspicion supporting detention of the passengers.

**B. The initial traffic stop and detention was valid**

Courts reviewing the reasonableness of a traffic stop apply a two-step test. *State v. Baker*, 2010 UT 18, ¶ 12, 229 P.3d 650. "The first step is to determine whether the police officer's action was justified at its inception." *State v. Lopez*, 873 P.2d 1127, 1131 (internal citations omitted). As noted in Simons' Motion to Suppress, the police were justified in stopping and detaining both Sorenson and Simons for the purpose of citation for speeding and investigation upon the proof of insurance issue. R. 31. According to *Hansen*, this justification allows the police to detain driver and passenger no longer than it takes to resolve the purpose of the initial stop. The "incidental detention of a vehicle passenger 'ordinarily continues, and remains reasonable, for the duration of the stop.'"



*State v. Hurt*, 2010 UT App 33, ¶ 10, 227 P.3d 271 (citing *Arizona v. Johnson*, --- U.S. ---, 129 S.Ct. 781, 788, 172 L.Ed.2d 694 (2009)). And, as noted above, when the police find evidence of further criminal activity “the officer may also expediently investigate his new suspicion.” *Baker*, at ¶ 13. But, when the police engage in conduct outside that of the ordinary traffic stop, and outside the scope of any newly discovered suspicion, the detention of the passengers may become an unlawful and “indefinite detention.” *Baker*, 2008 UT App 115, ¶ 25 (Thorne, J., concurring).

C. Facts observed by the police did not justify extending Simons’ detention to investigate Simons

The next step is to determine whether “the resulting detention [was] reasonably related in scope to the circumstances that justified the interference in the first place.” *Lopez*, 873 P.2d 1127, 1131 (internal citations omitted). As noted in *Baker*, after making an arrest on the driver the police can “still detain the passengers while [they] complete[] any tasks incident to arrest, including paperwork that is customarily performed at the scene” but “once the lawful purpose of the stop has concluded, the occupants of the vehicle must be released from their temporary seizure.” *Baker*, 2010 UT 18, ¶ 17 (citing *Hansen*, 2002 UT 125, ¶ 31). Once the lawful purpose has ended “each passenger’s detention must be justified by individualized suspicion of the criminal behavior being investigated...” *Baker*, 2008 UT App 115, ¶ 27. This means that passengers are not unlawfully detained while the police investigate, cite, or arrest the driver for any conduct for which the police have reasonable suspicion or probable cause. What the police must not do is abuse this principle and delay concluding the lawful purpose of the stop in order

to investigate crimes they have no reasonable suspicion to support. That is exactly what Sheriff Luke did in this case.

Here, Luke did not have reasonable suspicion supporting the investigation of Simons based on facts related to Sorenson. As succinctly and adequately argued in Simons' Motion to Suppress, although Sheriff Luke may have "legitimately developed additional information that Sorenson may have been driving impaired and that Sorenson may have been in illegal possession of drug paraphernalia" which would justify prolonging the detention of Sorenson beyond the purpose of the initial stop, Luke did not have any reason to extend Simons' detention beyond facilitating the citation, investigation, or arrest of Sorenson. R. 30. "But, rather than further pursue a DUI investigation or issue Sorenson a citation for the speeding or paraphernalia, and without any information specific to Simons, Luke stopped dealing with Sorenson and immediately turned to question Simons about 'anything on his person [Luke] need[ed] to know about.'" *Id.* (citing R. 92: 8-9, 25). This extended the scope of the detention beyond that which the police had reasonable suspicion to support.

Had Luke continued to investigate Sorenson's sobriety, effectuated his arrest, or issued a citation, Simons' continued detention would have been justified. But when Luke abandoned or suspended his work with Sorenson and began investigating Simons without reasonable suspicion Luke stepped over the line and violated Simons' right to be free from unreasonable seizure.

The trial court, in its ruling, found that the suspicion raised by discovery of the baggies "coupled with the signs of [Sorenson's] possible impairment lead to reasonable

suspicion and concern about both occupants of the car.” R. 47. On this point the trial court was simply wrong and this Court need not give that finding any deference. The evidence related to Sorenson did not give Luke reason to suspect Simons was involved with criminal activity because there was no reason to relate the evidence to Simons and neither the trial court nor the State gave any identifiable reason for Luke to have suspected Simons was involved.

“A passenger’s mere presence in a vehicle driven by one whose driver license has been suspended because of drugs does not equate to reasonable suspicion that the passenger is involved with drugs.” *State v. Baker*, 2008 UT App 115, ¶ 27 (Thorne, J., concurring), *affd. State v. Baker*, 2010 UT 18; *Cf. State v. Potter*, 860 P.2d 952, 956 (Utah App. 1993). *See also Sibron v. New York*, 392 U.S. 40, 62-63, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968) (no probable cause to search someone merely seen talking to and spending a lengthy amount of time with known narcotics addicts); *Ybarra v. Illinois*, 444 U.S. 85, 91, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979) (defendant’s presence near a bartender known to be selling heroin was not evidence to support the search of defendant upon execution of warrant).

Likewise, Simons’ mere presence in the passenger seat of a vehicle where the police discovered drug paraphernalia in the driver’s door compartment does not equate to reasonable suspicion that Simons was involved with drugs or would have contraband upon his person. Nothing more than Simons’ presence in Sorenson’ car can be attributed to Luke’s suspicion of Simons and that should not have been enough to justify an investigation and detention. On this point the trial court was wrong.

Sheriff Luke's transfer of his investigation from Sorenson to Simons, "without a rational basis to suspect Simons was in possession of contraband, exceeded the legitimate scope of the initial automobile stop" as well as any scope provided by evidence of Sorenson's impairment or paraphernalia because Luke had suspended that investigation or arrest. R. 30 (*citing Hansen*, ¶ 32). Because Luke did not have reasonable suspicion to justify detaining Simons on his own, as soon as Luke suspended the justified detention based on Sorenson Simons was detained unlawfully and any further police investigation, including the questioning that led to the discovery of paraphernalia and methamphetamine was a violation of Simons' constitutional rights.

"[E]ven a small intrusion beyond the legitimate scope of an initially lawful search is unlawful under the Fourth Amendment." *State v. Schlosser*, 774 P.2d 1132, 1135 (1989) (officer's opening of passenger door to went beyond the scope of the traffic stop) (*citing Arizona v. Hicks*, 480 U.S. 106, 114-15, 106 S.Ct. 960, 89 L.Ed.2d 81 (1986)). Even though that unjustified extension may have been brief, because there is no de minimus exception to the rule requiring reasonable suspicion to justify a level two detention, Luke's questioning of Simons was illegal.

Just as the defendant in *Ybarra* was entitled to protection from search and seizure that was not supported by probable cause particular to him, so too should Simons have been afforded protection from the extension of his detention not supported by any reason to suspect the he had committed, was committing, or was about to commit any offense. The trial court's finding that the evidence supporting Sorenson's continued detention also supported the continued detention and investigation of Simons was erroneous. Because

Luke stopped investigating Sorenson and directed his attention and suspicion to Simons, the detention of Simons was no longer justified by reasonable suspicion as to him nor by the probable cause as to Sorenson.

D. The exclusionary rule should apply in this case

“The fact that a Fourth Amendment violation occurred... does not necessarily mean that the exclusionary rule applies.” *Herring v. United States*, --- U.S. ----, 129 S.Ct. 695, 700, 172 L.Ed.2d 496 (2009). “Evidence should not be excluded when the application of the exclusionary rule does not deter improper police conduct or when the benefits of deterrence do not outweigh the cost.” *Baker*, 2010 UT 18, ¶ 35 (*citing Herring*, at 700). But where application of the exclusionary rule, which was “designed to deter police misconduct”, will act to prevent the police from abusing the Constitutional rights of the public by exceeding the scope of a justified detention the rule should apply. *United States v. Leon*, 468 U.S. 897, 916, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).

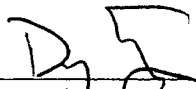
The exclusionary rule should apply in this case because it will server to prevent the police from delaying the conclusion of a legitimate stop in order to take advantage of an otherwise legal detention of passengers. Otherwise the police may, in subversion of the rule in *Hansen*, continue to detain and investigate passengers under the auspices of having not concluded the legitimate traffic stop. As was the case here, because Luke still needed to either arrest, cite, or perform FSTs upon Sorenson, the legitimate detention and unjustified investigation of Simons could have conceivably continued until such time that Luke returned to Sorenson and completed the original stop. Such a result is both illogical and contrary to the spirit of the ruling in *Hansen*. Thus, it is appropriate to apply the

exclusionary rule in this case to encourage the police to quickly and efficiently resolve traffic stops and make the incidental detention of vehicle passengers as minimal as possible.

### CONCLUSION AND RELIEF SOUGHT

For the foregoing reasons, the defendant respectfully requests this court to reverse the denial of his motion to suppress, and remand this case to the Fourth District Court with instructions that his plea may be withdrawn.

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of October, 2010.

  
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Douglas J. Thompson  
Counsel for Appellant

### CERTIFICATE OF MAILING

I hereby certify that I delivered two (2) true and correct copies of the foregoing Brief of Appellant to the Appeals Division, Utah Attorney General, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this ~~13<sup>th</sup>~~ <sup>11<sup>th</sup></sup> day of ~~September~~ <sup>OCTOBER</sup>, 2010.  
~~2010~~

  
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Douglas J. Thompson