

1997

## Utah v. James : Brief of Appellee

Utah Court of Appeals

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Tony C. Baird; Deputy Cache County Attorney; Attorney for Appellee.

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UTAH COURT OF APPEALS  
BRIEF

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TO  
CKET NO. 970544-CA  
IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Case Type: APPEAL

Plaintiff/Appellee,

Priority No. 2

vs.

DOUGLAS B. JAMES,

Case No. 970544-CA

Defendants/Appellant.

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**BRIEF OF APPELLEE**

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AN APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT  
STATE OF UTAH, COUNTY OF CACHE  
THE HONORABLE BURTON H. HARRIS PRESIDING

---

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**FILED**

**JUN 30 1998**

**COURT OF APPEALS**

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## IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Case Type: APPEAL

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COMES NOW the Plaintiff, by its attorney, Tony C. Baird, Deputy Cache County Attorney, and tenders its Brief in this appeal pursuant to *Rule 24 U.R.A.P.* as follows:

### **JURISDICTION OF THE APPELLATE COURT**

The Utah Court of Appeals has jurisdiction of this matter pursuant to *U.C.A. §78-2a-3(2)(d) and (f), (1953 as amended)*. Pursuant to *Rule 4 U.R.A.P.* the Court has transferred this appeal to the Utah Court of Appeals.

### **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

First Issue: Whether Trooper Kendrick had reasonable suspicion to detain the Defendant.

Second Issue: Whether Trooper Kendrick lawfully opened the Defendant's car door to make contact with the Defendant.

Third Issue: Whether the Defendant was properly arrested by Trooper Kendrick.

### **STANDARD OF REVIEW**

This Court reviews the factual findings underlying a trial court's ruling on a motion to suppress under a clearly erroneous standard; *State v. Patefield*, 927 P.2d 655, 657 (Utah Ct. App. 1996); and reviews the trial court's conclusions based on the totality of those facts for correctness. *Id.*

A trial court's findings of fact in a criminal bench trial are reviewed under the clearly erroneous standard. *See State v. Goodman*, 763 P.2d 786, 787 n.2 (Utah 1988). A trial court's finding is clearly erroneous when it is against the clear weight of the evidence or,

although there is evidence to support it, the court reviewing all the record evidence is left with a definite and firm conviction that a mistake has been made. State v. Pena, 869 P.2d 932, 935 (Utah 1994).

A trial court's conclusions of law in criminal cases are reviewed for correctness. State v. Pena, 869 P.2d 932, 935, 939 (Utah 1994); State v. Thurman, 846 P.2d 1256, 1271 (Utah 1993). The appellate court decides the matter for itself and does not defer in any degree to the trial court's determination of law. Pena, 869 P.2d at 936.

### **GOVERNING STATUTES**

A copy of the following statute cited herein is included in the Addendum to this Brief:

Utah Code Annotated, §41-6-44, (1953 as amended)

### **STATEMENT OF RELEVANT FACTS**

1. While parked on the shoulder of the highway during the course of a traffic stop, Trooper Kendrick of the Utah Highway Patrol was approached by a concerned citizen. (R. at 13). The citizen pulled up behind the trooper's patrol car in a blue Dodge Caravan. He got out of his car, walked up to the Trooper and reported that he had just observed another car driving all over the roadway, and that this car had (either) struck (or) almost struck three vehicles. (R. at 32-33). The citizen identified the car's license plate number, make, color and direction of travel. (R. at 32).
- 2 With this information, Trooper Kendrick ran the license plate number with dispatch and obtained the registered address. (R. at 24, 35). He proceeded to this address and

while nearing the location observed the suspect vehicle, a pickup truck, pulling into the driveway. (R. at 35-36). He exited his patrol car, now parked behind the pickup, and approached on the driver's side.

3. Trooper Kendrick knocked on the driver's side window to try and make contact with the occupants, the Defendant and his significant other. (R. at 50). After a moment of no response, Trooper Kendrick opened the door to speak with the Defendant, the driver. (R. at 51). Trooper Kendrick immediately noticed the odor of alcohol and other signs of alcohol consumption on the Defendant. He also observed an open twelve pack of beer inside the pickup. (R. at 56).
4. The Defendant was invited out of the pickup. The passenger also exited the pickup and began to confront Trooper Kendrick. Trooper Kendrick decided to call for backup. He instructed the Defendant to remain and he would be right back. (R. at 60). After returning from calling for backup, Trooper Kendrick discovered that the Defendant had left the scene and gone inside the house. (R. at 63).
5. Momentarily, backup arrived, and Trooper Kendrick again initiated contact with the Defendant by approaching the door to the living area of the residence inside the garage. By speaking through the doorway, Trooper Kendrick told the Defendant he could either come out of the house or he was going to come in to continue his investigation. The Defendant then came out of the house on his own accord. (R. at 63-64).
6. The Defendant consented to one field sobriety test. Afterwards, he refused any further tests. He was arrested and subsequently convicted of driving under the influence.

## SUMMARY OF ARGUMENT

Trooper Kendrick properly acted on information he received by a citizen informant and upon his own observations when he approached and subsequently arrested the defendant. The approach and detention of the Defendant were firmly based on articulable reasonable suspicion that the defendant had violated traffic laws and was driving while under the influence. Further, Trooper Kendrick was justified in re-contacting the Defendant at his home in order to continue his investigation. The defendant's conviction should be upheld.

## ARGUMENT

First Issue: Whether Trooper Kendrick had reasonable suspicion to detain the Defendant.

The Defendant argues that Trooper Kendrick lacked reasonable suspicion to detain him. The State agrees that the Defendant was detained, that a level two stop occurred; however, the State believes, and the record supports, that Trooper Kendrick had reasonable suspicion sufficient to detain the Defendant for investigation.

“[R]easonable suspicion exists if the officer has a ‘reasonable suspicion based on objective facts, that the individual is involved in criminal activity.’ In determining the existence of reasonable suspicion, the court must look to the totality of the circumstances.” State v. Nguyen, 878 P.2d 1183, 1186 (Utah App. 1994). “[T]he conduct observed and/or *information relied upon* ... must suggest to the officer, in that officer’s experience, that criminal activity may be afoot.” *Id* (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)) (emphasis added).

With regard to vehicle stops, the Utah Supreme Court has said: “[A]s long as an officer suspects that the ‘driver is violating any one of the multitude of applicable traffic and

equipment regulations,' the police may legally stop the vehicle.'" State v. Lopez, 873 P.2d 1132, (Utah 1994)(citations omitted). The investigating officer may rely upon his own observations and/or other sources of information to form reasonable suspicion for a stop. In cases where reasonable suspicion is primarily based upon a citizen informant's tip the stop is proper if the information is (1) reliable, (2) provides sufficient detail of criminal activity and (3) is confirmed by the investigating officer. See Kaysville City v. Mulcahy, 943 P.2d 231 (Utah Ct. App. 1997). A tip from an identified citizen informant is extremely reliable. City of St. George v. Carter, 325 Utah Adv. Rep. 15, 17 (Utah Ct. App. 1997). The information provided by the citizen informant should provide enough detail about criminal activity to support reasonable suspicion (e.g. illegal activity observed, description of vehicle, license number, and location of incident). Id. To confirm a citizen informant's tip, the officer need not actually observe the reported behavior; it is sufficient, for example, that he verifies the suspect car's description and location within a reasonable time of the tip. Id.

In the present case, (1) Trooper Kendrick relied upon the eye witness report of a citizen informant, an extremely reliable source of information. The citizen appeared to be motivated out of community concern, going out of his way to stop and contact Trooper Kendrick while he was parked on the side of the highway.

(2) The citizen provided detailed information regarding the incident. One, he described the Defendant's driving pattern, how the car was driving all over the roadway and had (either) struck (or) almost struck three vehicles. Two, he provided a description of the vehicle, including the type and make. Three, he provided the license plate number to the Defendant's vehicle. And, four, he indicated the approximate location and direction of travel of the vehicle.

(3) Trooper Kendrick also confirmed the citizen's information by locating the Defendant's vehicle, as described by the citizen, shortly after the tip, just as it was pulling into the Defendant's driveway.

This information supports a reasonable basis to believe that the Defendant had committed or was in the process of committing a traffic offense (e.g., improper lane travel, reckless driving or driving while under the influence). Therefore, Trooper Kendrick had sufficient facts wherein he could conclude, and articulate, reasonable suspicion in order to stop and/or detain the Defendant for further investigation. The Defendant was properly approached and detained by Trooper Kendrick.

Second Issue: Whether Trooper Kendrick was justified in opening the Defendant's car door to make contact with the Defendant.

The Defendant also argues that Trooper Kendrick performed an illegal search by opening the driver's side door of the Defendant's pickup. Presumably, this would mean that the Defendant's arrest was improper as it flowed from the fruit of the poisonous tree. The State refutes this argument on two grounds. First, the State argues that Trooper Kendrick's actions were part of a legitimate investigative detention and need only be supported by reasonable suspicion. See Terry v. Ohio, 392 U.S. 1, 22-23 (1968)(police officer may, when supported by reasonable suspicion, approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest); United States v. Hensley, 469 U.S. 221, 227 (1985)(if police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was or is involved in criminal activity then a Terry stop may be made to investigate that suspicion). As discussed above,

Trooper Kendrick

had sufficient facts wherein he could conclude, and articulate, reasonable suspicion in order to approach and/or detain the Defendant for further investigation. With this, he approached the Defendant's pickup, knocked on the window, waited, received no response, and then opened the door with the sole purpose to contact the Defendant to investigate the citizen informant's complaint. (R. at 50, lines 18 through 25.) Trooper Kendrick's actions, therefore, were justified and should be upheld as part of a legitimate investigative detention.

Second, even if this Court finds that Trooper Kendrick's actions were a search and not part of a legitimate investigative detention, this Court should still uphold the Defendant's arrest and conviction, as any evidence that was obtained as a result of Trooper Kendrick opening the door would have been ultimately or inevitably discovered by lawful means. See Nix v. Williams, 467 U.S. 431, 444 (1984) (inevitable discovery rule allows the admission of evidence if the information ultimately and inevitably would have been discovered by lawful means). As aforementioned, Trooper Kendrick had reasonable suspicion to detain the Defendant for investigation. His intent was to speak with the Defendant about the complaint. Inevitably, Trooper Kendrick would have made personal contact with the Defendant and detected the odor of alcoholic beverage coming from his person and observed the other signs of alcohol consumption on the Defendant. The Defendant was at his residence and preparing to get out of the truck to enter the home -- presumably, the Defendant was not going to spend the night in the pickup and would have exited shortly. When the Defendant exited the pickup, Trooper Kendrick would be there to make the same observations as when he opened the door.

Under either of these grounds the State believes Trooper Kendrick's actions did not

taint the Defendant's arrest and believes this Court should uphold the same.

Third Issue: Whether Trooper Kendrick properly re-contacted the Defendant at his home.

The Defendant next asserts that Trooper Kendrick conducted an unreasonable warrantless search or seizure of the defendant in violation of Article I, section 14 of the Utah State Constitution when he re-contacted the defendant at his home. Presumably, this would mean that the Defendant's arrest was improper as it flowed from the fruit of the poisonous tree. The facts in this case do not support such a conclusion.

Firstly, there never was an entry into the home; the officers merely approached the home's entrance at the garage and spoke to the Defendant through the door. Granted, the Defendant was told by Trooper Kendrick that he would enter the home if the Defendant did not come out but, as the situation fleshed out, neither Trooper Kendrick nor any other officer entered the home. The Defendant came out on his own accord and subjected himself to further investigation by Trooper Kendrick. Therefore, there was not a warrantless entry into the Defendant's home and the Defendant's arrest was proper.

Secondly, even if this Court finds that Trooper Kendrick entered the Defendant's home when he stood in the garage at the door entering the living area, this Court should still uphold the Defendant's arrest. The actions of the officer were fully justified. Trooper Kendrick had the authority to detain the defendant based on the facts heretofore discussed. "[W]here a police officer observes unusual conduct which leads him to reasonably conclude in light of his experience that criminal activity may be afoot, a brief stop and detention is justified." Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct 1868, 1884, 20 L.Ed. 2d 889 (1968). The defendant disobeyed the officer's order to remain thereby creating the need for the officer to re-contact him. A suspect cannot openly thumb his nose at an investigating officer by

disobeying his order, entering his home and then feigning constitutional protections. To uphold such logic would frustrate legitimate law enforcement investigations and encourage dangerous conduct by detainees. See, e.g., U.C.A. § 44-6-13.5 (“Failure to respond to officer’s signal to stop”) and U.C.A. § 76-8-305 (“Interference with arresting officer”).

Thirdly, the officer’s entry was justified under the “exigent circumstances” exception to the warrant requirement. An officer may enter a home without a warrant when he has probable cause and an exigent circumstance exists. See State v. Beavers, 859 P.2d 9, 15-16 (Utah Ct. App. 1993). In the present case, Trooper Kendrick had probable cause to believe that the Defendant had committed the offense of driving while under the influence. (1) He had received reliable information from a citizen informant of the Defendant’s driving pattern -- swerving on the roadway and nearly striking three vehicles -- and confirmed that indeed the Defendant was driving the pickup. (2) In the Defendant’s pickup, he observed an open twelve pack of beer. (3) He also observed the strong odor of alcoholic beverage coming from the pickup and the Defendant’s person. (4) He noticed that the Defendant’s speech was slurred, face flaccid and ptosis of the eyes. (R. at 56-57). (5) The Defendant was somewhat clumsy and dropped his wallet and other papers. (R. at 57). (6) The Defendant admitted to drinking alcohol. (R. at 59). (7) The Defendant attempted to avoid any further questioning or investigation by Trooper Kendrick. (R. at 60-65). And, (8) the Defendant appeared unstable on his feet. (R. at 61).

Further, in the present case, an exigent circumstance existed. “Exigent circumstances are those ‘that would cause a reasonable person to believe that entry...was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law

enforcement efforts.’” Beavers, 859 P.2d at 18.

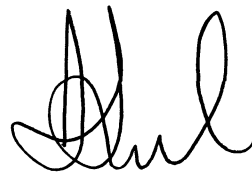
This case satisfies several of the factual scenario of exigent circumstances proposed by Beavers. 1) Preservation of Evidence: Alcohol dissipates from the body over time; it is crucial to perform relevant tests shortly after the stop. 2) Escape of Suspect: The defendant left the scene after being told by the officer to “stay put.” 3) Frustration of Law Enforcement Efforts: The defendant’s departure from the scene after being ordered to stay violates U.C.A § 76-8-305, (“Interference with an arresting officer”).

Therefore, because Trooper Kendrick entered the home under the exigent circumstances exception to the warrant requirement, the Defendant’s arrest was proper.

### CONCLUSION

Officer Kendrick properly acted on information he received by a citizen informant and upon his own observations when he approached and subsequently arrested the defendant. The approach and detention of the Defendant were firmly based on articulable reasonable suspicion that the defendant had violated traffic laws and was driving while under the influence. Further, Trooper Kendrick was justified in re-contacting the Defendant at his home in order to continue his investigation. The defendant’s conviction should be upheld.

DATED this 30 day of June, 1998.



---

Tony C. Baird

**CERTIFICATE OF MAILING**

I hereby certify that I mailed a true and correct original and eight copies of the foregoing BRIEF OF APPELLEES, to the Utah Court of Appeals and two copies postage prepaid, this 7<sup>th</sup> day of June, 1998, to the following:

D. BRUCE OLIVER, #5120  
Attorney for Appellant  
180 South 300 West, Suite 210  
Salt Lake City, UT 84101-1490

A handwritten signature in black ink, appearing to read 'Tony C. Baird', is written above a horizontal line.

Tony C. Baird

**ADDENDUM:**

A.

UT ST § 41-6-44, Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration--Measurement of blood or breath alcohol--Criminal punishment--Arrest without warrant--Penalties--Suspension or revocation of license

Utah Code § 41-6-44

WEST'S UTAH CODE  
TITLE 41. MOTOR VEHICLES  
CHAPTER 6. TRAFFIC RULES AND  
REGULATIONS  
ARTICLE 5. DRIVING WHILE  
INTOXICATED AND RECKLESS  
DRIVING

*Current through End of 1997 General and 1st and  
2nd Sp. Sess.*

§ 41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration--Measurement of blood or breath alcohol--Criminal punishment--Arrest without warrant--Penalties--Suspension or revocation of license

(1) As used in this section:

(a) "prior conviction" means any conviction for a violation of:

(i) this section;

(ii) alcohol-related reckless driving under Subsections (9) and (10);

(iii) local ordinances similar to this section or alcohol-related reckless driving adopted in compliance with Section 41-6-43;

(iv) automobile homicide under Section 76-5-207; or

(v) statutes or ordinances in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of this section or alcohol-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. 815;

(b) a violation of this section includes a violation under a local ordinance similar to this

section adopted in compliance with Section 41-6-43; and

(c) the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(2)(a) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test given within two hours after the alleged operation or physical control; or

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

**\*11516** (3) A person convicted the first or second time of a violation of Subsection (2) is guilty of a:

(a) class B misdemeanor; or

(b) class A misdemeanor if the person:

(i) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner; or

(ii) had a passenger under 16 years of age in the vehicle at the time of the offense.

(4)(a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to work in a community-service work program for not less than 24 hours.

(c) In addition to the jail sentence or community-service work program, the court shall:

(i) order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate; and

(ii) impose a fine of not less than \$700.

(d) For a violation committed after July 1, 1993, the court may order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility if the licensed alcohol or drug dependency rehabilitation facility determines that the person has a problem condition involving alcohol or drugs.

(5)(a) If a person is convicted under Subsection (2) within six years of a prior conviction under this section, the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to work in a community-service work program for not less than 80 hours.

(c) In addition to the jail sentence or community-service work program, the court shall:

(i) order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate; and

(ii) impose a fine of not less than \$800.

(d) The court may order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(6)(a) A third or subsequent conviction for a violation committed within six years of two or more prior convictions under this section is a:

(i) class A misdemeanor except as provided in Subsection (ii); and

(ii) third degree felony if at least:

(A) three prior convictions are for violations committed after April 23, 1990; or

**\*11517** (B) two prior convictions are for violations committed after July 1, 1996.

(b)(i) Under Subsection (a)(i) the court shall as part of any sentence impose a fine of not less than \$2,000 and impose a mandatory jail sentence of not less than 720 hours.

(ii) The court may, as an alternative to all or part of a jail sentence, require the person to work in a community-service work program for not less than 240 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence. Enrollment in and completion of an alcohol or drug dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow-through after the treatment.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(c) Under Subsection (a)(ii) if the court suspends the execution of a prison sentence and places the defendant on probation the court shall impose:

(i) a fine of not less than \$1,500;

(ii) a mandatory jail sentence of not less than 1,000 hours; and

(iii) an order requiring the person to obtain treatment at an alcohol or drug dependency rehabilitation program providing intensive care or inpatient treatment and long-term closely supervised follow-through after treatment.

(7)(a) The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(b) The department may not reinstate any license suspended or revoked as a result of the conviction under this section, until the convicted person has furnished evidence satisfactory to the department that:

(i) all required alcohol or drug dependency assessment, education, treatment, and rehabilitation ordered for a violation committed after July 1, 1993, have been completed;

(ii) all fines and fees including fees for restitution and rehabilitation costs assessed against the person have been paid, if the conviction is a second or subsequent conviction for a violation committed within six years of a prior violation; and

**\*11518** (iii) the person does not use drugs in any abusive or illegal manner as certified by a licensed alcohol or drug dependency rehabilitation facility, if the conviction is for a third or subsequent conviction for a violation committed within six years of two prior violations committed after July 1, 1993.

(8)(a)(i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to order a convicted person to: participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility; obtain, in the discretion of the court, treatment at an alcohol

or drug dependency rehabilitation facility; obtain, mandatorily, treatment at an alcohol or drug dependency rehabilitation facility; or do a combination of those things, apply to a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

(ii) The court shall render the same order regarding education or treatment at an alcohol or drug dependency rehabilitation facility, or both, in connection with a first, second, or subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and (6).

(b) Any alcohol or drug dependency rehabilitation program and any community-based or other education program provided for in this section shall be approved by the Department of Human Services.

(9)(a)(i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(b) The court shall advise the defendant before accepting the plea offered under this subsection of the consequences of a violation of Section 41-6-44.6 or of 41-6-45.

(c) The court shall notify the department of each conviction of Section 41-6-44.6 or 41-6-45 entered under this subsection.

(10) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

**\*11519** (11)(a) The Department of Public Safety shall:

(i) suspend for 90 days the operator's license of a person convicted for the first time under Subsection (2);

(ii) revoke for one year the license of a person convicted of any subsequent offense under Subsection (2) if the violation is committed within a period of six years from the date of the prior violation; and

(iii) suspend or revoke the license of a person as ordered by the court under Subsection (12).

(b) The department shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(12)(a) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Subsection (2) to be suspended or

revoked for an additional period of 90 days, 180 days, or one year to remove from the highways those persons who have shown they are safety hazards.

(b) If the court suspends or revokes the person's license under this subsection, the court shall prepare and send to the Driver License Division of the Department of Public Safety an order to suspend or revoke that person's driving privileges for a specified period of time.

*Amended by Laws 1994, c. 159; Laws 1994, c. 263; Laws 1996, c. 71, § 1, eff. July 1, 1996; Laws 1996, c. 220, § 1, eff. July 1, 1996; Laws 1996, c. 223, § 2, eff. July 1, 1996; Laws 1997, c. 68, § 1, eff. May 5, 1997.*

#### HISTORICAL NOTES

#### HISTORICAL AND STATUTORY NOTES

Section 3 of Laws 1996, c. 220, provides:

"If this bill and S.B. 4 [Laws 1996, c. 71], DUI Amendments, both pass, it is the intent of the Legislature that the amendments in Subsection 41-6-44(6) in this bill supersede the amendments to Subsections 41-6-44(6) and (7) in S.B. 4."

Section 5(1) of Laws 1996, c. 223, provides:

"If this bill and H.B. 3 [Laws 1996, c. 220], Driving Under the Influence Penalty Enhancement, both pass, it is the intent of the Legislature that the amendments to Subsection 41-6-44(6) in H.B. 3 supersede the amendments to Subsection 41-6-44(6)(a), (6)(b), and (7) in this bill."

Search this disc for cases citing this section.