

1989

# West Valley City v. Lyle Olsen : Brief of Respondent

Utah Court of Appeals

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Lyle Olsen; Pro Se.

Paula J. Houston; West Valley City Prosecutor; Attorney for Respondent.

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UTAH COURT OF APPEALS  
BRIEF

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890113

IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY

Plaintiff/Respondent

vs.

LYLE OLSEN,

Defendant/Appellant

BRIEF OF RESPONDENT

Case No. 890113-CA

BRIEF OF RESPONDENT

Appeal from Third Circuit Court,  
State of Utah, Salt Lake County,  
West Valley Department.  
Judge: Judge Robert Gibson

Lyle Olsen  
Box 193  
Riverton, UT 84065

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**FILED**

SEP 22 1989

COURT OF APPEALS

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### JURISDICTION OF THE COURT

This is an appeal from a conviction of Operating a Motor Vehicle Without Having Been Granted Driving Privileges in the State of Utah, a class B misdemeanor, following a jury trial in the Third Circuit Court, West Valley Department. This Court has jurisdiction to hear the appeal under 78-2a-3(2)(c), Utah Code Annotated (1953).

### STATEMENT OF THE CASE

The defendant, Lyle Olsen, was charged with one count of failure to possess a valid driver's license and one count of improper vehicle registration. This case was heard on the 31st day of January 1989, in the Third Circuit Court, West Valley Department, in and for Salt Lake County, State of Utah before the Honorable Robert Gibson. The improper vehicle registration charge was dismissed for insufficient evidence on the Court's motion at the conclusion of the City's case.

Following the presentation of the Defense, the jury deliberated and found Mr. Olsen guilty of one count of failure to possess a valid driver's license while operating a motor vehicle. Judge Gibson sentenced the Defendant on the 31st day of January 1989 to 90 days in jail and a fine of \$500.00. The Judge suspended all the jail time and \$200.00 of the fine, upon the defendant obtaining a driver's license and providing proof of it to the Court within two weeks.

On the 1st day of March 1989, the Defendant filed a Notice of Appeal with this Court. The Defendant also filed a Stay of Execution of Sentence, which was denied by this Court on the 9th day of March 1989. A Docketing Statement was filed with this Court on the 21st day of April 1989 which indicated the central issue on appeal was whether or not the Defendant was tried for a different charge than that on the Citation and/or the information. Appellant filed a brief on the 4th day of August, 1989.

### STATEMENT OF THE FACTS

This case was set before the bail commissioner on the 22nd day of November 1988. It was then scheduled for a Pre-trial Conference for the 13th day of December 1988. The Defendant appeared before the Honorable Edward A. Watson in the West Valley Department of the Third Circuit Court for Pre-trial, at which time the Judge determined that Mr. Olsen had not been formally arraigned and Mr. Olsen was then arraigned on the charges of Failure to Possess a Valid Driver's License and Improper Registration. According to the docket sheet, Defendant was present without counsel, was advised of his rights and read the information. The Defendant remained mute and the Judge entered a not guilty plea for him. A Pre-trial Conference was then held in the Judge's Chambers. A jury trial was scheduled for the 31st day of January 1989.

The jury trial was held on the 31st day of January 1989. At the trial Officer Jarvis testified that he observed Lyle Olsen driving a vehicle which he believed was improperly registered. Officer Jarvis indicated that he asked Mr. Olsen for identification and Mr. Olsen told him that he did not have any. The officer further testified that he checked Mr. Olsen for a valid driver's license and found that his license expired in 1984. A certified driving record was admitted into evidence which confirmed the officer's information that Mr. Olsen's license had expired and had not been renewed in Utah. The officer cited Lyle Olsen for driving without a valid Utah license under 41-2-2 U.C.A. This section

states "A person . . . shall not drive a motor vehicle upon a highway in this state unless the person upon application has been licensed as an operator by the department under the provisions of this chapter." The city prepared a formal information for the case alleging that the "Defendant operated a motor vehicle without having been granted driving privileges from the state of Utah" under section 41-2-125 U.C.A. which specifically informs a person of the expiration period of a driver's license and the requirement that the person pay renewal fees and pass the examination to obtain a valid license. The facts given to the jury by the officer clearly indicated that Lyle Olsen operated a motor vehicle and did not have a valid license as a result of his failing to renew his license.

Additional information was testified to concerning the improper registration but as that matter is not a central issue in this appeal, those facts will not be mentioned at this time.

At the completion of the City's case, the improper registration charge was dismissed on the Court's motion. The Defendant did not present any evidence in his own behalf. Jury instructions were read to the jury by the Court. The case was then submitted to the jury, who found the Defendant guilty of one count of failure to possess a valid driver's license.

#### SUMMARY OF THE ARGUMENT

Defendant was properly charged and convicted of driving without a valid driver's license. Defendant, at all stages, was put on the requisite notice of the nature of the charges against him. Defendant failed to timely object to any alleged defects and has failed to make any showing of prejudice.

## ARGUMENT

The Defendant was put on notice as to the charge being brought against him when the officer issued him Citation 94701 for violating West Valley City Ordinance 41-2-2, No Driver's License. The numbering system for the Utah Code Annotated was changed in July of 1987. West Valley City attempts to maintain its ordinances in a manner consistent with the State statutes and changed its numbering system at the end of 1987. 41-2-2 was changed to 41-2-104 in both the Utah Code Annotated and the West Valley City Ordinances. The violation for which Mr. Olsen was charged was not changed by the numbering revision. No driver's license under 41-2-2, as quoted above, is clearly what the Defendant was originally charged with. No request was ever made for discovery concerning this code section. The information amended the charge to section 41-2-125 but alleged the same facts, that the "Defendant operated a motor vehicle without having been granted driving privileges from the State of Utah." The facts as testified to by the officer and the admission of the certified driving record from the Department of Motor Vehicles, showed that the defendant did not have a valid driver's license because he had let it expire and had not renewed it as required in 41-2-125 for him to have a valid driver's license. Charging for an expired license distinguishes the situation from a driving on suspension or simply having no driver's license making this section more specific for this situation. The defendant, Mr. Lyle Olsen, was tried and convicted for operating


a motor vehicle without having been granted driving privileges from the State of Utah because he had failed to renew his driver's license. A copy of section 41-2-125 was given to the jury in a jury instruction. An element instruction was also given. No objections as to the elements outlined in the instructions were made at the time of trial which would preclude the Defendant from raising such objections at this time.

Defendant's rights were not prejudiced in any manner due to the use of the old numbering on the citation or the clarification on the information as he in every instance was put on notice of the offense charged. The language used in the citation and the information informed the defendant of the nature of the offense charged. The information charged the offense for which he was prosecuted by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge as required by Rule 4, Utah Rules of Criminal Procedure, UCA 77-35-4. In a similar situation, the Utah Supreme Court held that an amendment of information to correct a statute citation was proper because only the statutory reference was changed, the language apprised the defendant of nature of charge against him and no prejudice was shown. State v. Lancaster, 765 P.2d 872 (Utah 1988). Defendant's allegations are without merit and also not timely made.

### CONCLUSION

Based on the foregoing, the City respectfully suggests the jury properly found the Defendant guilty of driving without a valid driver's license and asks this Court to affirm that decision. The Defendant was clearly put on notice as to the offense he was being charged with, driving without a valid driver's license and he was convicted of driving without a valid driver's license as a result of its expiration. He had numerous opportunities to make specific requests for discovery concerning all of these code sections. He also had the opportunity of submitting his own jury instructions and making specific objections to the instructions given but he choose not to exercise these options. The Defendant has made no showing of any prejudice caused by the misnumbering. The City submits that the misnumbering was a harmless error and that the Defendant was properly charged and convicted of driving without a valid driver's license. For these reasons, the Respondent respectfully requests that this Court affirm the conviction.

DATED this 18<sup>th</sup> day of September, 1989.

  
\_\_\_\_\_  
PAULA J. HOUSTON  
Assistant City Prosecutor

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and accurate copy of the foregoing instrument, postage prepaid, to Lyle Olsen, Box 193, Riverton, Utah 84065, this 18 day of September, 1989.

Paula J. Houston

A D D E N D U M

- (4) (a) License reinstatement application under subsection 41-2-112(6), U.C.A., \$25; and
- (b) ~~License reinstatement application under subsection 41-2-112(6), U.C.A., if for an alcohol-related offense, an additional fee of \$25 in addition to the fee under subsection (a);~~
- (5) Duplicate license certificate under subsection 41-2-123(1), U.C.A., \$5;
- (6) Renewal of operator Class A, B, C, D, or E license under subsection 41-2-125(5), \$10;
- (7) Renewal of operator Class M license under subsection 41-2-125(5), \$5;
- (8) Renewal of license - 65 and older under subsection 41-2-125(5), \$3;
- (9) Extension of Class A, B, C, D, or E license under subsection 41-2-125(5), \$10;
- (10) Extension of Class M license under subsection 41-2-125(5), \$5;
- (11) Extension of license - 65 and older under subsection 41-2-125(5), \$3;
- (12) Administrative fee for license reinstatement after alcohol offense under subsection 41-2-130(5)(e), Utah Code Annotated, or subsection 41-6-44.10(2)(b), \$25;
- (13) Administrative fee for license reinstatement after confiscation under subsection 41-2-134(3), \$25;
- (14) Identification card application under subsection 41-2-407, Utah Code Annotated, \$5.

SECTION 41-2-104. OPERATORS MUST BE LICENSED.

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(1) No person, except one expressly exempted under Sections 41-2-107, 41-2-108, or 41-2-111, or subsection 41-2-121(4), or Chapter 22, Title 41, may operate a motor vehicle on a highway in this State unless the person is licensed as an operator by the division under this Chapter.

(2) No person, except those exempted under Section 41-2-107, may operate or, while within the passenger compartment of a vehicle, exercise any degree or form of physical control of a vehicle being towed by a motor vehicle upon a highway unless the person holds a valid license issued under this Chapter for the type or class of vehicle being towed.

except in those instances where the context clearly indicates a different meaning:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Farm Tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

(d) "Person" means every natural person, firm, copartnership, association or corporation.

(e) "Owner" means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event of mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this act.

(f) "Operator" means a person who is in actual physical control of a motor vehicle upon a highway.

(g) "Nonresident" means every person who is not a resident of this state and who has not sojourned or engaged in any gainful occupation in this state for an aggregate period of 60 days in the preceding 12 months.

(h) "Street or Highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(i) "Department" means the division of drivers' licenses and accident records of the department of public safety.

(j) "School Bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(k) "Suspension" means that the licensee's privilege to drive a vehicle is temporarily withdrawn.

(l) "Revocation" means that the licensee's privilege to drive a vehicle is terminated. A new license may be obtained only as permitted by law.

(m) "Cancellation" means that a license which was issued through error or fraud or for which necessary consent has been withdrawn is terminated. A new license may be obtained only as permitted by law.

(n) "License" means the privilege to operate a motor vehicle over the highways of this state.

(o) "License Certificate" means the evidence of the privilege to operate a motor vehicle over the highways of this state.

(p) "Motorcycle" means every motor vehicle, except farm tractors, designed to travel on not more than three wheels in contact with the ground.

(q) "Common carrier" means any person who holds himself out to the public as willing to transport the property of others or persons from place to place by motor vehicle for compensation.

(r) "Contract carrier" means any person engaged in the transportation of property or persons

by motor vehicle for compensation, including the transportation of persons or property under a continuing agreement with a person or persons.

(s) "Private carrier" means any person or company not included in the terms "common carrier" or "contract carrier" which transports property, by motor vehicle, of which the person or company is the bona fide owner, lessee, or bailee and when the transportation of such property is for the purpose of its sale, lease, or bailment or furtherance of any commercial enterprise, or who transports persons not for compensation.

(t) "Class A license" means the class of license issued for vehicles with a gross vehicle weight of 27,000 pounds or less when the vehicle is not operated as a contract carrier, common carrier, hazardous materials carrier or school bus. 1983

#### 41-2-2. Operators must be licensed.

A person, except one expressly exempted under Section 41-2-3, Section 41-2-4, Section 41-2-7, or Subsection 41-2-13(4), shall not drive a motor vehicle upon a highway in this state unless the person upon application has been licensed as an operator by the department under the provisions of this chapter. 1985

#### 41-2-3. Persons not required to obtain license

##### Regulations - Owner-operators.

(a) No person shall be required to obtain an operator's license for the purpose of driving or operating a road roller, road machinery, or any farm tractor or implement of husbandry temporarily drawn, moved or propelled on the highways.

(b) Every person in the service of the army, navy, or marine corps of the United States and when furnished with a driver's permit and when operating an official motor vehicle in such service shall be exempt from license under this act.

(c) The commissioner may adopt such regulations concerning exemptions from operator licensing requirements as are necessary to carry out the intent of this section.

(d) An owner-operator shall be issued a license of a class that permits operation of any vehicle which the owner-operator was previously allowed to operate under chauffeur provisions, and, upon application for the license within one year of the effective date of this act of the 1983 general session and upon proof of ownership of a company or enterprise to which the operation of the vehicle is related and upon payment of appropriate fees, shall be exempted from all examinations. 1983

#### 41-2-4. Nonresidents - When exempt from

##### license - Effect of Driver's License Compact.

(1) A nonresident who is at least 16 years of age and who has in his immediate possession a valid operator's license certificate issued to him in his home state or country may operate a motor vehicle in this state only as a class A operator.

(2) A nonresident who is at least 18 years of age and who has in his immediate possession a valid operator's license certificate issued to him in his home state or country may operate a motor vehicle in this state as an operator in the class or classes identified on the home state license certificate, except such persons as referred to by subsection (4) herein.

(3) Any nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as a class A operator for a period of not more than 60 days in any calendar year, if the

issued to him in his home state or country may operate a motor vehicle in this State only as a Class A operator.

(2) A nonresident who is at least 18 years of age and who has in his immediate possession a valid license certificate issued to him in his home state or country may operate a motor vehicle in this State as an operator in the class or classes identified on the home state license certificate, except those persons referred to in Sections 41-2-501 through 41-2-506, U.C.A.

SECTIONS 41-2-109 THROUGH 41-2-110. RESERVED.

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SECTION 41-2-111. ~~TEMPORARY LEARNER PERMIT AFTER PASSING WRITTEN EXAM - INSTRUCTION PERMIT IF ENROLLED IN DRIVER EDUCATION PROGRAM.~~

#87-95  
11/2/87

(1) The division, upon receiving an application for a license from a person 16 years of age or older, may in its discretion, issue a temporary learner permit after the person has successfully passed all parts of the examination not involving the actual operation of a motor vehicle. The temporary learner permit allows the applicant, while having the permit in his immediate possession, to operate a motor vehicle upon the highways for a period of six months from the date of the application in conformance with the restrictions indicated on the permit as determined by rules of the division.

SECTION 41-2-112. RESERVED.

#87-95  
11/2/87

SECTION 41-2-113. ~~DEPARTMENT MAY IMPOSE RESTRICTIONS BASED ON DRIVING ABILITY - VIOLATION OF RESTRICTIONS.\*~~

#87-95  
11/2/87

It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license granted to him pursuant to Utah Code Annotated, Section 41-2-113.

SECTIONS 41-2-114 THROUGH 41-2-123. RESERVED.

#87-95  
11/2/87

SECTION 41-2-124. ~~LICENSE TO BE CARRIED WHEN DRIVING - PRODUCTION IN COURT.~~

#87-95  
11/2/87

(1) The licensee shall have his license in his immediate possession at all times when operating a motor vehicle and shall display it upon demand of a justice of peace, a peace officer, or a field deputy or inspector of the division.

(2) It is a defense to a charge under this section that the person charged produces in court a license issued to him and valid at the time of his citation or arrest.

SECTION 41-2-125. ~~EXPIRATION DATES OF LICENSES - RENEWAL - EXTENSION WITHOUT EXAMINATION - LICENSEES IN ARMED FORCES - FEES REQUIRED.\*~~

#87-95  
11/2/87

(1) Every renewed license expires on the licensee's birth date in the fourth year following the year of issuance of the license. A new license may not be issued to a person after the expiration of his license until he has

again passed the examinations under Section 41-2-117, U.C.A., and has paid the required fee.

(2) (a) The holder of a valid license may secure a renewal by making application at any time within six months before the license expires. Except under subsection (3), upon application for renewal of a license, the division shall re-examine each applicant as if for an original license. The division may, in its discretion, waive that portion of the test designed to demonstrate the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

(b) The commissioner may allow the holder of a valid license to renew the license more than six months prior to its expiration date if the applicant furnishes proof that he will be absent from the State during the six-month period prior to the expiration of the license.

(3) At the discretion of the commissioner and under standards established by the division, licenses may be extended for four years without examination for licensees whose driving records for the four years immediately preceding the determination of eligibility for extension show driving violation penalty points not exceeding 50, no suspensions or revocations, and no outstanding warrants for traffic violations. However, a person 65 years of age or older shall take and pass the eye examination specified in Section 41-2-117, U.C.A. An extension may not be granted to any person who is identified by the division as having a medical impairment which may represent a hazard to public safety.

(4) Utah licenses held by persons ordered to active duty in any of the armed forces of the United States shall be honored as valid until 90 days after the person has been discharged or has left the service, unless the license is suspended or revoked by the division, or the licensee updates the information or photograph on the license certificate. If changes are made, the licensee shall renew his license under subsection (2).

(5) The application for renewal or extension of a license shall be accompanied by a fee under Section 41-2-103.

SECTIONS 41-2-126 THROUGH 41-2-132. RESERVED.

#87-95  
11/2/87

SECTION 41-2-133. VIOLATION OF LICENSE PROVISIONS.

#87-95  
11/2/87

It is a class "B" misdemeanor ~~for a person to:~~

(1) Display or cause or ~~permit to be displayed~~ or to have in possession any license knowing it is fictitious or ~~has been~~ cancelled, revoked, suspended, or altered;

(2) Lend, or ~~knowingly permit the use of a license issued to him, by a person not entitled to it;~~