

1989

Logan City v. Michael Stacey Thatcher : Brief of Respondent

Utah Court of Appeals

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Cheryl A. Russell; Logan City Prosecutor. Attorney for Apellee.

David R. Daines; Attorney for Appellant.

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UTAH
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BRIEF

UTAH COURT OF APPEALS

.A10

DC LOGAN CITY, 890206)

Plaintiff/Respondent,)

Case No. 890206-CA

vs.)

CASE TYPE: APPEAL

MICHAEL STACEY THATCHER,)

PRIORITY NUMBER 2

Defendant/Appellant.)

ON APPEAL FROM THE FIRST CIRCUIT COURT CACHE COUNTY

JUDGE CLINT S. JUDKINS

BRIEF OF RESPONDENT

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UTAH COURT OF APPEALS

LOGAN CITY,)	
Plaintiff/Respondent,)	Case No. 890206-CA
vs.)	CASE TYPE: APPEAL
MICHAEL STACEY THATCHER,)	PRIORITY NUMBER 2
Defendant/Appellant.)	

ON APPEAL FROM THE FIRST CIRCUIT COURT CACHE COUNTY

JUDGE CLINT S. JUDKINS

BRIEF OF RESPONDENT

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JURISDICTIONAL STATEMENT

This is an appeal from a jury verdict finding Appellant guilty of speeding, a violation of Logan City Ordinance 42/7/1, in the First Circuit Court, Cache County, Utah. The Court of Appeals has jurisdiction over this appeal under Section 78-2a-3(2)(d), Utah Code Annotated (1953 as amended).

STATEMENT OF THE ISSUES PRESENTED

1) Whether or not Logan City and/or the State of Utah may establish a twenty mile per hour speed limit near a school when children are going to or leaving school during opening or closing hours.

2) Whether or not a citation with a written promise to appear may be issued by a police officer for a misdemeanor offense committed in his presence in lieu of placing the person under arrest and taking him into custody.

3) Whether or not Utah Code Annotated (1953) §77-7-18 through 77-7-21 enabling this act is unconstitutionally vague.

RELEVANT STATUTES AND ORDINANCES

Utah Code Annotated (1953 as amended):

41-6-46

41-6-47

41-6-48

77-7-18

77-7-19

77-7-20

Logan City Ordinance

42-7-1

Complete Copies of the foregoing statutes and ordinances are included in the Addendum.

STATEMENT OF THE CASE

NATURE OF THE CASE

This is an appeal from a jury verdict finding Appellant guilty of speeding, in the First Circuit Court of Cache County, Utah. The Appellant is requesting the Court of Appeals to reverse his conviction based on the following: (1) Appellant was issued a citation for speeding and gave his written promise to appear in lieu of being arrested and taken into custody by the arresting officer; (2) Logan City and/or State of Utah may not establish a twenty mile per hour speed limit near a school when children are going to or leaving school during opening or closing hours; (3) Utah Code Annotated (1953 as amended) §77-7-18 through 77-7-21 referred to as the citation enabling act by Appellant is unconstitutionally vague.

Respondent contends that Appellant's arguments are without merit and Appellant's conviction should be affirmed. The prosecution herein was under a formal written information thereby rendering Appellant's arguments regarding citations and Utah Code Annotated (1953 as amended)

§77-7-18 through 77-7-21 constitutionality irrelevant to the case herein. Furthermore, Logan City and/or the State of Utah clearly had authority to establish a twenty mile per hour speed limit near a school when children are going to or leaving school during opening or closing hours.

STATEMENT OF FACTS

On December 16, 1988 at 8:40 a.m., the Logan City Crossing Guard turned on two yellow flashing lights (T. 74 Ln. 12) to designate a "school zone, speed limit 20 miles per hour" (T. 48 Ln. 3-4) at Fourth North of Logan City where daily approximately thirty to forty children cross to go to and from school (T. 75 Ln. 8-11).

An officer had been assigned to run traffic control in the area that morning, in the area of the school zone because quite often people fail to slow down and observe the speed limit (T. 42 Ln. 20-23).

At 9:00 a.m., the officer tested his radar equipment to assure that it was working properly (T. 49 Ln. 10-25 and T. 50 Ln. 1-7). The equipment was later rechecked at 9:25 a.m. (T. 52 Ln. 2-3) to again verify that it was working properly (T. 52 Ln. 15-18).

At 9:13 a.m., the officer observed a vehicle driven by Appellant (T. 47 Ln. 15), which based upon his over twenty-two years of police work as well as training in regard to radar operation and certification, was visually estimated at traveling 34 miles per hour (T. 51, Ln. 2-18, T. 53 Ln. 5). The officer then obtained a radar reading of 33 miles per hour (T. 53 Ln. 7-8). The Appellant was then pulled over for speeding.

Appellant in lieu of being formally arrested and taken into custody was issued a citation on which he signed his written promise to appear. Exhibit "A" in the Addendum herein. The City later filed a formal information upon Appellant for speeding in violation of Revised Ordinances of Logan City 42-7-1 which was proceeded on at the trial (T. 39 Ln. 5-21). Exhibit "B" in the Addendum herein.

The officer testified that 33 miles per hour was not a reasonable and prudent speed in this particular area at the particular time because

there were several-quite a few children who use that street, live south of Fourth North and go to school at the Adams School which is on 5th North and Fourth East. They have to cross Fourth North, which is the main thoroughfare. In fact, it is a State Highway running East and West in Logan City. It is a four lane high-road. Traffic volume is very heavy, particularly at that time of day. The kids are going, not only to grade school, but to the University, to and from, and work and whatever have you, and these children are required to cross that street, and it is very hazardous to allow the traffic to travel at that speed without endangering these children. (T. 55 Ln 17-25, T. 56 Ln. 1-3).

The flashing lights were turned off by the crossing guard at 9:25 a.m. (T. 74 Ln. 12). The school's first bell is at 9:10 a.m. and the las bell is at 9:15 a.m. (T. 80 Ln. 4-6).

The Appellant admitted that he was travelling 33 miles per hour in a school zone (T. 99 Ln. 1-8).

The jury found the Appellant guilty of speeding as set forth in the formal information filed by Logan City (T. 40 Ln. 9-11).

SUMMARY OF ARGUMENT

1. LOGAN CITY AND/OR STATE OF UTAH MAY ESTABLISH A TWENTY MILE PER HOUR SPEED LIMIT NEAR A SCHOOL WHEN CHILDREN ARE GOING TO OR LEAVING SCHOOL DURING OPENING AND CLOSING HOURS.
2. A CITATION WITH A WRITTEN PROMISE TO APPEAR MAY BE ISSUED BY A POLICE OFFICER FOR A MISDEMEANOR OFFENSE COMMITTED IN HIS PRESENCE IN LIEU OF PLACING THE PERSON UNDER ARREST AND TAKING HIM INTO CUSTODY.
3. THE UTAH CODE ANNOTATED (1953 as amended) §77-7-18 THROUGH 77-7-21 IS NOT UNCONSTITUTIONALLY VAGUE.

ARGUMENT

1

LOGAN CITY AND/OR STATE OF UTAH MAY ESTABLISH
A TWENTY MILE PER HOUR SPEED LIMIT NEAR A SCHOOL
WHEN CHILDREN ARE GOING TO OR LEAVING SCHOOL
DURING OPENING AND CLOSING HOURS

The Tenth Amendment to the United State Constitution provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people."

Utah Code Annotated (1953 as amended) §41-6-46 provides:

(1) A person may not operate a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.....

(2)...the following speeds are lawful. Any speed in excess of these limits is prima facie evidence that

the speed is not reasonable or prudent and that it is unlawful: (a) twenty miles per hour when passing a school building or its grounds during school recess or while children are going to or leaving school during opening or closing hours, except that local authorities may require a complete stop before passing a school building or grounds at any of these periods;... (emphasis added)

In the present case evidence was presented that thirty to forty children cross daily within the designated school zone on Fourth North of Logan City going to and from school (T. 75 Ln. 8-11). The first bell is at 9:15 a.m. (T. 80 Ln. 4-6). In fact, children have shown up as late as 9:22 a.m. (T. 79 Ln. 25). The Appellant was observed speeding in the school zone at 9:13 a.m. (T. 47 Ln. 15).

Further, Utah Code Annotated (1953 as amended) §41-6-47 provides:

- (1) (a) When the Department of Transportation determines upon the basis of an engineering and traffic investigation that any prima facie speed under this article is not reasonable or safe the existing conditions at the intersection or other place or on a state highway, the Department of Transportation may determine a reasonable and safe prima facie speed limit.....
- (2) The speed limit is effective when appropriate signs giving notice are erected at the intersection or other place or part of the highway. (emphasis added)

It appears from the facts of the case herein that the yellow flashing lights on Fourth North of Logan denoting a "school zone, speed limit 20 miles per hour", were established by the State of Utah. Fourth North is a state highway (T. 83 Ln. 4-8).

Therefore, even if this is not a school zone as Appellant argues, the speed limit of 20 miles per hour would be effective under Utah Code Annotated (1953 as amended) §41-6-47(2) and under Logan City Ordinance

42-7-1(b) (2) providing "speed limits on state highways within the city limits shall be posted by the State".

Additionally and importantly, evidence was produced that 33 miles per hour was not reasonable nor prudent under the conditions and having regard to the actual and potential hazards then existing as prescribed by Logan City Ordinance 42-7-1 and Utah Code Annotated (1953 as amended) §41-6-46.

As the arresting officer testified about traveling 33 miles per hour during the time of day the Appellant was in the Fourth North school zone:

There were several-quite a few children that use the street, live across the street, live south of Fourth North and they go to school which is on 500 North and Fourth East. They have to cross Fourth North, which is the main thoroughfare, in fact, it's a state highway running east and west in Logan City. It is a four lane high-road, traffic volume is very heavy, particularly at that time of day the kids are going, not only to grade school, but to the university, to and from to work and whatever have you, and these children are required to cross that street, and it is very hazardous to allow traffic to travel at that speed without endangering those children." (T. 55 Ln. 11-25, T. 56 Ln 1-3).

Clearly there was sufficient evidence upon which the jury could find the Appellant guilty of speeding in violation of Logan City Ordinance 42-7-1.

Finally, it is unclear from the record whether or not this issue was raised by Appellant in the lower court or is being raised for the first time on appeal.

A CITATION WITH A WRITTEN PROMISE TO APPEAR
MAY BE ISSUED BY A POLICE OFFICER FOR A
MISDEMEANOR OFFENSE COMMITTED IN HIS
PRESENCE IN LIEU OF PLACING THE PERSON
UNDER ARREST AND TAKING HIM INTO CUSTODY

First, this case was prosecuted under a formal written information (T. 39 Ln. 5-21, see Addendum Exhibit "B" also) as required by Utah Code Annotated (1953 as amended) §77-35-4 and 77-35-5. Therefore, it appears that the arguments made by Appellant in regard to the citation herein are irrelevant.

Second, Appellant places a great deal of emphasis on the Court of Appeals decision in Logan City v. Karen Thatcher, No. 880451. That case was not decided on the merits but rather

Based upon the failure of Respondent Logan City, a political subdivision of the State of Utah and the prosecutor herein, to appear at oral argument or to file a brief herein, the Defendant's conviction is hereby reversed and the charge of driving on improper registration is dismissed.

A copy of the remitter in that case is on the Addendum to this brief.

Third, in regard to the citation itself, Utah Code Annotated (1953 as amended) §77-7-18 authorizes a peace officer in lieu of taking a person into custody to issue and deliver a citation requiring the person subject to arrest on a misdemeanor to appear before the Court.

Utah Code Annotated (1953 as amended) §77-7-20 sets forth what a

citation must contain. It must contain

- (a) The name of the court before which the person is to appear;
- (b) The name of the person cited;
- (c) A brief description of the offense charged;
- (d) The date, time and place at which the offense is alleged to have occurred;
- (e) The date the citation was issued;
- (f) Name of the peace officer who issued the citation...;
- (g) The time and date or before and after which the person is to appear;
- (h) The address of the court in which the person is to appear;
- (i) A certification above the signature of the officer issuing the citation in substantially the following language: "I certify that a copy of this citation or information (Summons and Complaint) was duly served upon the Defendant according to law on the above date and I know or believe and so allege that the above-named Defendant did commit the offense herein set forth contrary to law. I further certify ahat the court which the Defendant has been directed to appear is the proper court pursuant to Section 77-7-21"; and
- (j) A notice containing substantially the following language: "READ CAREFULLY
This citation is not an information and will not be used as an information without your consent. If an information is filed you will be provided a copy by the court. You MUST appear in court on or before the time set in this citation. IF YOU FAIL TO APPEAR AN INFORMATION WILL BE FILED AND THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST."

The citation herein contained in the Addendum as Exhibit A clearly complies with Utah Code Annotated (1953 as amended) §77-7-20. In fact, the citation on the back indicates that, "This citation is not an information and will not be used as an information without your consent". Furthermore, Utah Code Annotated (1953 as amended) §77-7-20 (i) refers to "a copy of this citation or information (Summons or Complaint).

THE UTAH CODE ANNOTATED (1953 AS AMENDED)

§77-7-18 THROUGH 77-7-21 IS NOT

UNCONSTITUTIONALLY VAGUE

As previously noted, this case was prosecuted under a formal written information (T. 39 Ln. 5-21 & see Addendum Exhibit "B" also) as required by Utah Code Annotated (1953 as amended) §77-35-4 and 77-35-5. Therefore, it appears that the arguments made by Appellant in regard to the citation herein are irrelevant.

Also as previously noted, Appellant places a great deal of emphasis on the Court of Appeals decision in Logan City v. Karen Thatcher, No. 880451. That case was not decided on the merits but rather based upon the Respondent Logan City's failure to file a brief or appear at oral arguments.

In construing the constitutionality of a statute or ordinance, a court should construe law so as to carry out the legislative intent while avoiding constitutional conflicts. In Re A Criminal Investigation Seventh District Court Number CS-1, 754 P.2d 633 (Utah 1988) An ordinance or statute will not be declared unconstitutional on account of vagueness if under any sensible interpretation of its language it can be given practical effect. Greaves v. State, 528 P.2d 803 (Utah 1974).

In ascertaining the constitutionality of a statute or ordinance, the following rules of construction should be applied:

- 1) A Legislative enactment is presumed to be valid and in conformity with the constitution. Trade

Commission v. Skaggs Drug Centers, Inc. 21 Utah 2d 431, 446

P.2d 958 (1968); Greaves v. State, supra.

2) The statute or ordinance should not be invalid unless it is shown beyond a reasonable doubt to be incompatible with some particular constitutional provision Miller v. State, 462 P.2d 421 (Alaska 1969).

3) The burden of showing invalidity of an ordinance or statute is upon the one who makes the challenge Trade Commission v. Skaggs Drug Centers, supra.

In State v. Packard, 122 Utah 369, 373, 250 P.2d 561, 563 (1952), it was recognized

that statutes should not be declared unconstitutional if there is any reasonable basis upon which they may be sustained as falling within the constitutional framework, and that a statute will not be held void for uncertainty if any sort of sensible, practical effect may be given.

In determining whether or not a statute or ordinance is vague, it must be sufficiently definite

(1) To inform persons of ordinary intelligence, who would be law abiding, what their conduct must be to conform to its requirements,

(2) To advise a defendant accused of violating it just what constitutes the offense with which he or she is charged, and

(3) To be susceptible of uniform interpretation and application by those charged with responsibility of apply and enforcing it. State v. Packard, supra, Greaves v. State, supra, State v. Owens, 638 P.2d 1182 (Utah, 1981).

In fact, it is the established policy of the Utah Supreme Court to construe statutory provisions whenever possible in a way to avoid invalidating them on constitutional grounds. Greaves v. State, supra.

For example, in State v. Lafferty, 749 P.2d 1239, 1260 (Utah 1988), the Utah Supreme Court imposed the requirement that juries be instructed to find that previous crimes of the defendant which have not resulted in convictions, introduced at a penalty phase, be proven beyond a reasonable doubt.

In State v. Wood, 648 P.2d 71, 83-84 (Utah), cert. denied, 459 US 988, 103 S. Ct 341, 74 L. Ed 2d 383 (1982), the Utah Supreme Court construed Utah Code Annotated (1953 as amended) §76-3-207 to require proof beyond a reasonable doubt at the penalty phase of a capital case that the aggravating circumstances outweighed the mitigating circumstances, even though no specific burden of persuasion was provided in the statute.

In Re Criminal Investigation, 7th District Court No. Cs-1, 754 P.2d 633, 640-41 (Utah 1988), the Utah Supreme Court went to great lengths to save the constitutionality of the Subpoena Powers Act by reading into it a host of new provisions which simply were next put in by the Legislature.

The statutes herein, Utah Code Annotated (1953 as amended) §77-7-18 through 77-7-21, state with sufficient clarity and conciseness: the right to issue citations on misdemeanors or infractions; the appearance required by citation; arrest for failure to appear; collection of bail amounts; disposition of fines and costs; service of the citation on defendant; filing in court; contents of citation; proceeding of the citation-voluntary forfeiture of bail; when an information is required

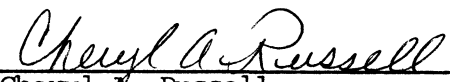
and so on.

To use the logic set forth in Appellant's brief about the above statutes being vague because of difficulty in understanding the same as a violation of due process would invalidate argueably much of the Internal Revenue Code among others.

CONCLUSION

The Appellant's conviction of speeding should be affirmed. Appellant was properly issued a citation and signed his written promise to appeal rather than to be arrested and taken into custody by the arresting officer. In fact, a formal written information was filed by the prosecution and it was upon this information that Appellant was convicted. Furthermore, Logan City and/or State of Utah may establish a twenty mile per hour speed limit near a school when children are going to or leaving school during opening or closing hours. Finally, Utah Citation Enabling Act, Utah Code Annotated (1953 as amended) §77-7-18 through 77-7-21, is constitutional.

RESPECTFULLY SUBMITTED this 30 day of August, 1989.


Cheryl A. Russell
Logan City Prosecutor

T-4
2-2-89

ADDENDUM "A"

**CITATION OR INFORMATION
AND NOTICE TO APPEAR**
IN THE CIRCUIT COURT, STATE OF UTAH, COUNTY OF CACHE
IN THE MUNICIPAL DEPARTMENT OF LOGAN CITY, CACHE COUNTY UTAH 84321

STATE OF UTAH }
COUNTY OF CACHE } ss
CITY OF LOGAN }

No. C - 1875
INFORMATION - AFFIDAVIT

The undersigned being duly sworn upon his oath deposes and says

On the 16 day of Dec 1988 at 9:13 A M ☐ P M
Name Michael Stacey Thatcher
Last (Please print) First Middle
Street 1800 So 2700 W.
City Logan State Utah
Age 21 Birth Date 5/2/67 Sex ☒ Male ☐ Female
Dir Lic No 146509394 State Utah ☒ Oper ☐ Chaul
Veh Lic No 274 CSM State Utah Year 87
Make Toyota Style 2dr Color Brnk.
Upon a public highway namely at (location) 350 E- 45th

did unlawfully operate the above described vehicle in the city, county and state aforesaid and did then and there commit the following offense

Leading Causes of Accidents	<input checked="" type="checkbox"/> SPEEDING <u>33</u> mph in <u>20</u> mph zone <u>Rad r</u>	Name Last First Middle No. C - 1875
	Improper LEFT TURN <input type="checkbox"/> No signal <input type="checkbox"/> Cut corner <input type="checkbox"/> From wrong lane	
	Improper RIGHT TURN <input type="checkbox"/> No signal <input type="checkbox"/> Into wrong lane <input type="checkbox"/> From wrong lane	
	<input type="checkbox"/> Disobeyed TRAFFIC CONTROL SIGNAL <input type="checkbox"/> Flashing red <input type="checkbox"/> Improper backing <input type="checkbox"/> Steady red <input type="checkbox"/> Too fast for existing conditions	
	Disobeyed STOP SIGN <input type="checkbox"/> Wrong place <input type="checkbox"/> Walk speed <input type="checkbox"/> Faster	
Conditions that Increased Seriousness of Violation	Improper PASSING <input type="checkbox"/> At Intersection <input type="checkbox"/> Cut in <input type="checkbox"/> Wrong lane <input type="checkbox"/> At Ped <input type="checkbox"/> Across physical bar <input type="checkbox"/> On right <input type="checkbox"/> X walk	
	FAILURE TO YIELD <input type="checkbox"/> Ped <input type="checkbox"/> Veh FOLLOWING TOO CLOSELY <input type="checkbox"/>	
	Other violations (describe)	
	in violation of the (State Statute) (City Ordinance) in such case made and provided	
Conditions that Increased Seriousness of Violation	SLIPPERY PAVEMENT <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Ice <input type="checkbox"/> Night <input type="checkbox"/> Fog <input type="checkbox"/> Snow	Type Accident PD <input type="checkbox"/> PI <input type="checkbox"/> Fatal <input type="checkbox"/> Ped <input type="checkbox"/> Veh <input type="checkbox"/> Hit fixed object <input type="checkbox"/> Right Angle <input type="checkbox"/> Head on <input type="checkbox"/> Sideswipe <input type="checkbox"/> Ran off Road <input type="checkbox"/> Intersection <input type="checkbox"/> Back end
	DARKNESS <input type="checkbox"/> Night <input type="checkbox"/> Fog <input type="checkbox"/> Snow	
	OTHER TRAFFIC PRESENT <input type="checkbox"/> Cross <input type="checkbox"/> Oncoming <input type="checkbox"/> Pedestrian <input type="checkbox"/> Same Direction	
	AREA <input type="checkbox"/> Business <input type="checkbox"/> Industrial <input type="checkbox"/> School <input type="checkbox"/> Residential	
	HIGHWAY TYPE <input type="checkbox"/> 2 lane <input type="checkbox"/> 3 lane <input type="checkbox"/> 4 lane divided	
Conditions that Increased Seriousness of Violation	CAUSED PERSON TO DODGE <input type="checkbox"/> Pedestrian <input type="checkbox"/> Driver <input type="checkbox"/> JUST MISSED ACCIDENT	

I certify that a copy of this Citation or Information was duly served upon the defendant according to law on the above date and I know or believe and so allege that the above named defendant did commit the offense herein set forth contrary to law. I further certify that the court to which the defendant has been directed to appear is the proper court pursuant to Section 77-7-21 (SK 77-7-19)

Sworn and subscribed to before me

this _____ day of _____ 198____
Circuit Judge

X William
(Signature and identification of officer or other complainant)

COURT APPEARANCE. 23 day of Dec 1988 at 7 A M ☐ P M

ADDRESS OF COURT & CLERK OFFICE. 140 NORTH 1ST WEST LOGAN, UTAH
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AS DIRECTED HEREIN

28

COURT COPY

Signature

Michael Thatcher

IN THE CIRCUIT COURT, STATE OF UTAH
COUNTY OF CACHE, LOGAN CITY DEPARTMENT

LOGAN CITY,

)

Plaintiff

I N F O R M A T I O N

vs.

)

THATCHER, Michael Stacey
1800 South 2800 West
Logan, Utah

882013599

Defendant

)

The undersigned, RICHARD HENDRICKS under oath, states on the information and belief that the above named Defendant committed the crime(s) of:
SPEEDING (SCHOOL ZONE) (CLASS C MISDEMEANOR)
at Logan, Utah on 12/16/88 in violation of the following sections of the Revised Ordinances of Logan City:
42/7/1

That, contrary to Logan City Ordinances, Defendant's acts constituting the offense were:
That the Defendant did drive at a speed greater than was reasonable and prudent under the conditions and having regards to the actual and potential hazards then existing namely 33 mph in a 20 mph zone (SCHOOL ZONE).


Class C Misdemeanor

This information is based on evidence obtained from the following witnesses:

B. FILLMORE, LCPD

Authorized for presentment & filing


COMPLAINANT


Logan City Prosecutor/Attorney

DAMAGES: YES

NO

Subscribed & sworn to before me
this 7 day of Feb 1989.


CIRCUIT COURT JUDGE

UTAH COURT OF APPEALS

-----oo0oo-----

Mar. 23, 1989

REMITTITUR

Logan City,)	
)	
Plaintiff and Respondent,)	
)	
v.)	Court of Appeals No. 880451-CA
)	
Sharen Thatcher,)	First Circuit Court
)	Logan Dept. No. 825461
Defendant and Appellant.)	
)	

Based upon the failure of respondent Logan City, a political subdivision of the State of Utah and the prosecutor herein, to appear at oral argument or to file a brief herein, the defendant's conviction is hereby reversed and the charge of driving on improper registration is dismissed.

Issued: Feb. 17, 1989

Record: 1 VOL and 6 ENVS

operators. Towing, impound, or storage fees are a lien on the vehicle.

(8) The registered owner of the vehicle upon the payment of all fees and charges incurred in the seizure and impoundment of the owner's vehicle has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the operator of the vehicle whose actions caused the impoundment.

(9) No liability may be imposed upon any peace officer, the state, or any of its political subdivisions on account of the enforcement of this section. 1987

15. Reckless driving — Penalty.

A person who operates any vehicle in willful or conscious disregard for the safety of persons or property is guilty of reckless driving.

A person convicted of reckless driving is guilty of a class B misdemeanor. Upon a first conviction, the penalty is a minimum term of imprisonment of not more than five days, or a minimum fine of not less than \$25. On a second or subsequent conviction, the penalty is a minimum term of imprisonment of not more than ten days, or a minimum fine of not less than \$50. 1987

ARTICLE 6

SPEED RESTRICTIONS

46. Speed regulations — Safe and appropriate speeds at certain locations — Prima facie speed limits — Emergency power of the governor.

(1) A person may not operate a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, including, but not limited to when:

- (a) approaching and crossing an intersection or railroad grade crossing;
- (b) approaching and going around a curve;
- (c) approaching a hill crest;
- (d) traveling upon any narrow or winding roadway; and

(e) special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(2) Where no special hazard exists, and subject to section (3) and Sections 41-6-47 and 41-6-48, the following speeds are lawful. Any speed in excess of the limits is prima facie evidence that the speed is unreasonable or prudent and that it is unlawful:

(a) twenty miles per hour when passing a school building or its grounds during school recess or while children are going to or leaving school during opening or closing hours, except that local authorities may require a complete stop before passing a school building or grounds at any of these periods;

(b) twenty-five miles per hour in any urban district; and

(c) fifty-five miles per hour in other locations.

(3) The Governor by proclamation in time of war or emergency may change the speed limits on the highways of the state. 1987

46-47. Prima facie speed limit.

(1) (a) When the Department of Transportation determines upon the basis of an engineering and traffic investigation that any prima facie speed under this article is not reasonable or safe under

the existing conditions at any intersection or other place or on a state highway, the Department of Transportation may determine a reasonable and safe prima facie speed limit.

(b) When changing a speed limit, the Department of Transportation shall consult with local political units prior to erecting or changing any signs within local political boundaries.

(2) The speed limit is effective when appropriate signs giving notice are erected at the intersection or other place or part of the highway. 1988

41-6-48. Speed restrictions — Powers of local authorities — Posted speed.

(1) When local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the prima facie speed permitted under this article is not reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine a reasonable and safe prima facie limit which:

(a) decreases the limit at intersections;

(b) increases the limit within an urban district; or

(c) decreases the limit outside an urban district, but not to less than 35 miles per hour.

(2) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the prima facie speed for all highways under their respective jurisdictions and shall declare a reasonable and safe prima facie limit, which may be different than the prima facie speed permitted under this chapter for an urban district.

(3) Any limit altered under this section is effective when appropriate signs giving notice are erected upon the highway.

(4) The Department of Transportation determines prima facie evidence of a lawful speed on state highways whether the highways are within or without the corporate limits of any city. 1987

41-6-49. Minimum speed regulations.

(1) A person may not operate a motor vehicle at a speed so slow as to impede or block the normal and reasonable movement of traffic except when:

(a) reduced speed is necessary for safe operation;

(b) upon a grade; or

(c) in compliance with official traffic control devices.

(2) Operating a motor vehicle on a controlled access highway at less than the lawful maximum speed side by side with and at the same speed as a vehicle operated in the adjacent right lane constitutes evidence of impeding or blocking normal movement of traffic.

(3) When the Department of Transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the Department of Transportation or local authority may determine and shall post a minimum speed limit below which no person may operate a vehicle except when necessary for safe operation. 1987

41-6-50. Special speed limit on bridges — Prima facie evidence.

(1) A person may not operate a vehicle over any bridge or other elevated structure which is a part of a highway at a speed which is greater than the maximum speed which may be maintained with safety on

Citation on misdemeanor or infraction charge.

peace officer, in lieu of taking a person into custody any public official of any county or municipality charged with the enforcement of the law, may and deliver a citation requiring any person to appear or prosecution on a misdemeanor or infraction charge to appear at the court of the magistrate before whom the person should be taken pursuant to law if the person had been arrested. 1980

9. Appearance required by citation — Arrest for failure to appear — Collection of bail amounts by Office of Recovery Services — Motor vehicle violations — Disposition of fines and costs.

Persons receiving misdemeanor citations shall appear before the magistrate designated in the citation or before the time and date specified in the citation.

No citation shall require a person to appear more than five days or later than 14 days following issuance.

Any person who receives a citation and who does not appear on or before the time and date and at the court specified shall be subject to arrest. The magistrate may issue a warrant of arrest and may order the Office of Recovery Services, within the Department of Social Services, to enforce collection of any amounts ordered by the court. The Office of Recovery Services may only permanently withhold its right of collection from any bail amount collected which is subsequently forfeited. If the collected bail amount is forfeited, the appropriate percentage or amount of that forfeited bail shall be distributed to the appropriate governmental entity as provided by law. It is the intent of the Legislature that appropriations to the Department of Public Safety reflect a percentage of the forfeited bail amounts collected by the Office of Recovery Services pursuant to this subsection and Section 62A-11-109, so that the costs of law enforcement may be adequately recognized.

(b) Except where otherwise provided by law, citations or informations, issued for violations of Title 41, Utah Code Annotated 1953, shall state that the person receiving the citation or information shall appear before the magistrate nearest and most accessible to the place of violation who has jurisdiction over the offense charged. If the citation or information is issued for a violation within the geographical boundaries of any municipality or county precinct in which a justice court exists and in which a justice of the peace is currently serving, such court shall be deemed the nearest most accessible magistrate before whom the person shall appear; provided, however, that consistent with Section 78-4-5, informations or citations issued for driving under the influence of alcohol, drugs, driving with blood alcohol content of .10% or higher, and reckless driving may be filed and tried in circuit court in the county where the offense occurred without regard to the location of the offense within the county.

(5) Any justice of the peace may, upon his own motion or upon the motion of either defense attorney or prosecuting attorney, transfer cases to the nearest justice of the peace court or the nearest circuit court within said county, except those cases filed under municipal ordinances.

(6) It shall be the duty of clerks and other administrative personnel serving the circuit, juvenile, and justice courts to ensure that all citations for violation of Title 41, Utah Code Annotated 1953, are filed properly

in accordance with the foregoing subsection and to refuse to receive citations that should be filed in another court. Fines, fees, costs and forfeitures imposed or collected for violations of Title 41, Utah Code Annotated 1953, which are not filed contrary to the foregoing subsections shall be paid over to the municipality or county entitled to the same by the state, county, or municipal treasurer who has received such fines, fees, costs, or forfeitures from the court which collected them. Such accounting and remitting of any sums due hereunder shall be accomplished at the close of the fiscal year of the municipality or county which has received fines, fees, costs, or forfeitures as a result of any improperly filed citations. 1988

77-7-20. Service of citation on defendant — Filing in court — Contents of citations.

(1) If a citation is issued pursuant to Section 77-7-18, the peace officer or public official shall issue one copy to the person cited and shall within five days file a duplicate copy with the court specified in the citation.

(2) Each copy of the citation issued under authority of this chapter shall contain:

(a) The name of the court before which the person is to appear;

(b) The name of the person cited;

(c) A brief description of the offense charged;

(d) The date, time and place at which the offense is alleged to have occurred;

(e) The date on which the citation was issued;

(f) The name of the peace officer or public official who issued the citation, and the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested person before a magistrate;

(g) The time and date on or before and after which the person is to appear;

(h) The address of the court in which the person is to appear;

(i) A certification above the signature of the officer issuing the citation in substantially the following language: "I certify that a copy of this citation or information (Summons and Complaint) was duly served upon the defendant according to law on the above date and I know or believe and so allege that the above-named defendant did commit the offense herein set forth contrary to law. I further certify that the court to which the defendant has been directed to appear is the proper court pursuant to Section 77-7-21."; and

(j) A notice containing substantially the following language:

READ CAREFULLY

This citation is not an information and will not be used as an information without your consent. If an information is filed you will be provided a copy by the court. You MUST appear in court on or before the time set in this citation. IF YOU FAIL TO APPEAR AN INFORMATION WILL BE FILED AND THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST. 1980

77-7-21. Proceeding on citation — Voluntary forfeiture of bail — Information, when required.

(1) Whenever a citation is issued pursuant to the provisions of Section 77-7-18, the copy of the citation filed with the magistrate may be used in lieu of an information to which the person cited may plead

guilty or no contest and be sentenced or on which bail may be forfeited. With the magistrate's approval a person may voluntarily forfeit bail without appearance being required in any case of a class B misdemeanor or less. Such voluntary forfeiture of bail shall be entered as a conviction and treated the same as if the accused pleaded guilty.

(2) If the person cited willfully fails to appear before a magistrate pursuant to a citation issued under Section 77-7-18, or pleads not guilty to the offense charged, or does not deposit bail on or before the date set for his appearance, an information shall be filed and proceedings held in accordance with the Rules of Criminal Procedure and all other applicable provisions of this code, which information shall be deemed an original pleading; provided, however, that the person cited may by written agreement waive the filing of the information and thereafter the prosecution may proceed on the citation notwithstanding any provisions to the contrary. 1980

77-7-22. Failure to appear as misdemeanor.

Any person who willfully fails to appear before a court pursuant to a citation issued under the provisions of Section 77-7-18 is guilty of a class B misdemeanor, regardless of the disposition of the charge upon which he was originally cited. 1980

77-7-23. Delivery of prisoner arrested without warrant — Information — Violation as misdemeanor.

When an arrest is made without a warrant by a peace officer or private person, the person arrested shall, without unnecessary delay, be taken to the magistrate in the precinct of the county or municipality in which the offense occurred, and in information, stating the charge against the person shall be made before such magistrate. In the event the magistrate of the precinct is not available, the arrested person shall be taken before the available magistrate nearest to the scene of the alleged offense. Any officer or person violating any of the provisions of this section shall be guilty of a class B misdemeanor. 1980

CHAPTER 8

LINEUPS

Section

77-8-1. Order of magistrate — Grounds — Arrested suspect's appearance without order.

77-8-2. Suspect's right to have attorney present.

77-8-3. Conduct of peace officer.

77-8-4. Record of proceedings — Access by suspect.

77-8-1. Order of magistrate — Grounds — Arrested suspect's appearance without order.

(1) A magistrate may issue an order requiring a suspect to appear in a lineup when probable cause exists to believe a crime has been committed and there is reason to believe the suspect committed it.

(2) A suspect who has been arrested, and is in custody, may be required by a peace officer to appear in a lineup without a court order.

(3) Upon application of any suspect and a showing of good cause, a magistrate may order a lineup. 1980

77-8-2. Suspect's right to have attorney present.

A suspect has the right to have his attorney present at any lineup. The magistrate or party in charge of the lineup shall notify the suspect of this right. Every

suspect unable to employ counsel shall be entitled to representation by an attorney appointed by a magistrate for a lineup either before or after an arrest. 1980

77-8-3. Conduct of peace officer.

The peace officers conducting a lineup shall not attempt to influence the identification of any particular suspect. 1980

77-8-4. Record of proceedings — Access by suspect.

The entire lineup procedure shall be recorded, including all conversations between the witnesses and the conducting peace officers. The suspect shall have access to and may make copies of the record and any photographs taken of him or any other persons in connection with the lineup. 1980

CHAPTER 9

UNIFORM ACT ON FRESH PURSUIT

Section

77-9-1. Authority of peace officer of another state.

77-9-2. Procedure after arrest.

77-9-3. Authority of peace officer of this state beyond normal jurisdiction.

77-9-1. Authority of peace officer of another state.

A peace officer of another state or the District of Columbia who enters this state in fresh pursuit and continues in fresh pursuit of a person in order to arrest him on the ground that he is reasonably believed to have committed a felony in another state, has the same authority to arrest and hold a person in custody as a peace officer of this state. Fresh pursuit does not require instant action, but pursuit without unreasonable delay. 1980

77-9-2. Procedure after arrest.

An officer who has made an arrest pursuant to Section 77-9-1 shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made. The magistrate shall conduct a hearing to determine the lawfulness of the arrest. If he finds the arrest was lawful, the magistrate may commit the person arrested for a reasonable time or may admit the person to bail pending extradition proceedings. 1980

77-9-3. Authority of peace officer of this state beyond normal jurisdiction.

(1) Any peace officer duly authorized by any governmental entity of this state may exercise a peace officer's authority beyond the limits of such officer's normal jurisdiction as follows:

(a) When in fresh pursuit of an offender for the purpose of arresting and holding that person in custody or returning the suspect to the jurisdiction where the offense was committed;

(b) When a public offense is committed in such officer's presence;

(c) When participating in an investigation of criminal activity which originated in such officer's normal jurisdiction in cooperation with the local authority;

(d) When called to assist peace officers of another jurisdiction.

(2) Any peace officer, prior to taking such authorized action, shall notify and receive approval of the local law enforcement authority, or if such prior contact is not reasonably possible, notify the local law

Chapter 7.

SPEED REGULATIONS

42-7-1. Speed Regulations--Maximum Speeds--School Buildings--Intersections, Crossing, and Curves.

(a) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(b) The following speeds shall be lawful unless otherwise posted. Speeds in excess of the following limits or in excess of the posted limits shall be prima facie evidence that the speeds are not reasonable and prudent and that they are unlawful:

1. Twenty miles per hours when passing a school building or grounds thereof during school recess or while children are going to or leaving school during opening and closing hours.
2. Twenty-five miles per hour in any business, residential or urban district inside the city limits of Logan City, unless otherwise posted.
3. Speeds other than those listed in subparagraphs 1 and 2 above may be allowed within the corporate limits of Logan City whenever it is determined upon the basis of an engineering and traffic investigation that the speed permitted by law is more or less than is necessary for the safe operation of the vehicles thereon. Any such change in speeds shall be posted by properly erected signs giving notice thereof.
4. Speed limits on state highways within the city limits shall be as posted by the state.

42-7-2. Driving Too Slow. No person shall drive a motor vehicle at such slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation in compliance with law.

42-7-3. Speed or Acceleration Contests. No person shall engage in any motor vehicle speed contest or in any motor vehicle acceleration contest on any street or alley, and no person shall aid or abet any such vehicle speed contest or acceleration contest on any street or alley.

42-7-4. Obstruction for Exhibition Forbidden. No person shall for the purpose of facilitating, aiding or as an incident to any vehicle speed contest or vehicle acceleration contest in any manner obstruct or place any barricade or obstruction or assist or participate in placing any such barricade or obstruction upon any street or alley.

CERTIFICATE OF MAILING

I hereby certify that on the 30 day of August, 1989, ^{there was} I mailed four (4) copies of the foregoing Respondent's Brief to David R. Daines, Attorney for Appellant, USU Box 1328, Logan, Utah 84322.

Cheryl A Russell
Cheryl A. Russell
Logan City Prosecutor