

1989

Verdon C. Brinkerhoff v. Fred C. Schwendiman : Brief of Respondent

Utah Court of Appeals

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UTAH COURT
BRIEF

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890499

IN THE UTAH COURT OF APPEALS

VERDON C. BRINKERHOFF, :

Petitioner/Respondent, : Case No. 890499-CA

vs. :

FRED C. SCHWENDIMAN, Chief, :

Driver License Services, :

Department of Public Safety, : Category 2

State of Utah, :

Defendant/Appellant. :

BRIEF OF RESPONDENT

- - - - -

APPEAL FROM THE FINAL JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT, SALT LAKE COUNTY,
STATE OF UTAH REVERSING THE DECISION AND
ORDER OF SUSPENSION OF THE DIVISION OF DRIVER
LICENSE SERVICES RENDERED IN INFORMAL
ADMINISTRATIVE ADJUDICATION, THE HONORABLE
JUDGE RICHARD H. MOFFAT, PRESIDING

FILED

JAN 1990

COURT OF APPEALS

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VERDON C. BRINKERHOFF,	:	
Petitioner/Respondent,	:	Case No. 890499-CA
vs.	:	
FRED C. SCHWENDIMAN, Chief,	:	
Driver License Services,	:	
Department of Public Safety,	:	
State of Utah,	:	Category 2
Defendant/Appellant.	:	

Source: Authors' calculations based on data from the Survey of Consumer Finances.

Attorney for Respondent

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IN THE UTAH COURT OF APPEALS

VERDON C. BRINKERHOFF, :
Petitioner/Respondent, : Case No. 890499-CA
vs. :
FRED C. SCHWENDIMAN, Chief, :
Driver License Services, :
Department of Public Safety, :
State of Utah, : Category 2
Defendant/Appellant. :
:

BRIEF OF RESPONDENT

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This is the State's appeal from the final judgment of the Third Judicial District Court which, after review de novo, reversed the decision of the Division of Driver License Services (DLS) to suspend for ninety days the driving privilege of Appellant VerDon C. Brinkerhoff (Driver). It is not disputed that this Court has jurisdiction to hear this appeal under Utah Code Ann. §78-2a-3(2)(a).

ISSUES PRESENTED FOR REVIEW

Respondent contends that the following issues are presented to this Court for review:

1. What are the formal requirements under UAPA for the initiation of and decision rendered in these proceedings.
2. Whether DLS complied with these requirements in the instant case.

3. Whether the findings entered by the trial court are clearly erroneous.

4. Whether the trial court abused its discretion in setting aside the agency action.

5. Whether any of the issues presented herein are moot.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Constitution of the United States, Amend. 14

Constitution of Utah, Article I, Section 7

Utah Administrative Procedures Act, Utah Code Ann.
§63-46b-1, et seq.

Utah Code Ann. §41-2-128

Utah Rules of Civil Procedure

Utah Rules of Evidence

R. Utah Ct. App. 37(a)

STATEMENT OF THE CASE

This case is a review of the final judgment of the District Court sitting without a jury in a de novo review of DLS' order suspending Respondent's driving privileges. The trial court reversed and set aside the agency decision, holding that the agency had failed to comply with the UAPA in initiating the action and in rendering its decision.

Respondent generally concurs with the statement of the facts set forth in Appellant's Brief, although not all facts recited therein are necessary for disposition of this appeal.

While the Driver's testimony in the trial court is of collateral use in the disposition hereof, primary reliance is upon the documents generated by DLS, which are reproduced in the Addendum hereto.

SUMMARY OF ARGUMENT

The Driver contends that DLS failed to comply with the requirements of UAPA in the two regards stated above. After evidentiary hearing and review, the trial court agreed, and the brief of DLS does not cite any evidence to the contrary. As a result of this non-compliance with UAPA, the agency decision must be set aside for its failure to afford the Driver due process of law in the determination of his driving privilege.

ARGUMENT

POINT I

THE UTAH ADMINISTRATIVE PROCEDURES ACT
REQUIRES DLS TO SERVE A WRITTEN NOTICE
WHICH CONTAINS A STATEMENT AS TO WHETHER
ADJUDICATIVE PROCEEDINGS WILL BE CONDUCTED
FORMALLY OR INFORMALLY

The enactment of the Utah Administrative Procedures Act (UAPA) in 1987 provided state agencies and the public with a comprehensive framework for initiating, conducting, and appealing from adjudicative administrative proceedings that determine a person's legal rights, duties, privileges, and licenses. See Utah Code Ann. §63-46b-1(1), et seq. Section §63-46b-4(1) allows

State agencies to designate either formal or informal proceedings for the various actions these agencies undertake.

The administrative action in this case is a 90-day "per se" driving suspension provided by Utah Code Ann. §41-2-128. DLS has asserted, for the first time at the administrative hearing, and again at trial de novo, that such action is an informal proceeding, as so designated in the rules of that agency.

Under UAPA, an administrative action such as the instant one may be commenced by the filing and service of a written notice of agency action which "shall include" basic information about the proceeding. In addition to the name and address of persons receiving notice, the file number, the name of the action, and the date mailed, the notice must also include a statement of whether the adjudicative proceeding is to be conducted formally or informally. Utah Code Ann. §63-46b-3, reproduced in part in Addendum A.

The wisdom of the provisions of UAPA which require the agency to state whether proceedings are formal or informal is apparent from a review of the Act's bifurcated treatment of these two types of administrative actions. The applicability of responsive pleadings, discovery, subpoenas, admissibility of evidence, hearing procedure, intervention, and the form of judicial review are all factors wholly dependent upon whether a proceeding is formal or informal. In order to prepare one's position in advance of the hearing, it is elemental that a party to an adjudicative administrative proceeding know what rules are at play, what the scope and function of the hearing are, and what level of judicial review is available. Only then can a party be

said to have been afforded the procedural integrity and due process of law that UAPA obviously intended to insure.

The sound and clear language of UAPA requires that the notice of agency action contain a statement as to whether the proceedings are to be conducted formally or informally. Absent such language, further proceedings would not only run afoul of the provisions of UAPA, but would deny parties to administrative proceedings fundamental notice as to the nature of those proceedings, in violation of the Fourteenth Amendment to the Constitution of the United States, and Constitution of Utah, Article I, Section 7.

POINT II

THE UTAH ADMINISTRATIVE PROCEDURES ACT
REQUIRES DLS TO ISSUE AND MAIL TO EACH
PARTY A WRITTEN ORDER CONTAINING
THE DECISION, REASONS THEREFOR, AND
THE RIGHT TO AND TIME FOR APPEAL

The UAPA requires the officer presiding over informal adjudicative proceedings to issue a signed written order within a reasonable time. Utah Code Ann. §63-46b-5(1)(i), reproduced in Addendum B. Such an order is to be based upon the evidence introduced in the action, and must be promptly mailed to all parties. The language of the Act requires that the order state: a) the decision; b) the reasons for the decision; c) a notice of any right of review; and d) the time limits for filing an appeal or requesting a review.

The policy considerations behind this requirement again

appear to be of a fundamental nature. Not only should a party whose rights or privileges are adjudicated know what the agency's final determination is, but the reasons that the agency made such a decision. Only by knowing the basis or bases of the decision can the party decide what issues are in dispute, whether there are singular or multiple grounds of purported justification for the decision, whether review is appropriate, and, if so, whether review should be requested administratively or judicially.

The requirement of the UAPA that the reasons for the decision be stated in the order facilitates a meaningful understanding of the decision and the options available after the decision has been rendered at that level. Such an understanding is crucial to a party's evaluation as to how to proceed and upon what basis. This requirement further serves to focus the review tribunal's attention on those issues truly in contention, and provides the context for meaningful review of the proceedings below.

POINT III

THE DISTRICT COURT'S FINDING THAT DLS
FAILED TO COMPLY WITH THE UTAH
ADMINISTRATIVE PROCEDURES ACT, BOTH IN
INITIATING PROCEEDINGS AND RENDERING
A DECISION, ENJOYS SUBSTANTIAL SUPPORT
IN THE RECORD BELOW

At the outset, it should be noted that UAPA provides for de novo District Court review of decisions rendered in informal adjudicative administrative proceedings. The District Court, without a jury, determines all questions of fact and law

as well as any constitutional issues presented. At this level, the pleadings and proceedings are governed by the Utah Rules of Civil Procedure and the Utah Rules of Evidence. See Utah Code Ann. §63-46b-15, reproduced in Addendum C.

The District Court's role in a de novo review is analogous to that in the bench trial of a civil matter (the pleadings are, in fact, captioned as in a civil matter, and the "trial" is conducted in that fashion). As such, the standard of review adopted by this Court on appeal from the District Court's decision should be that normally applied in reviewing civil bench trials.

On appeal of a judgment from the bench after trial, appellate courts defer to the trial court's factual assessments unless there is clear error. Copper State Leasing vs. Blacker Appliance & Furniture, 90 U.A.R. 23 at 26 (Utah, 1988), U.R.Civ.P. 52(a). To be clearly erroneous, a finding must be shown by the appellant to be against the clear weight of evidence or that it induces a definite and firm conviction that a mistake has been made. Maughan vs. Maughan, 102 U.A.R. 44 (Utah Ct. App., 1989). If there is a reasonable basis in the evidence, the trial court's findings will be affirmed on appeal. Gillmor vs. Gillmor, 745 P.2d 461 (Utah Ct. App., 1987).

Appellant apparently contests the trial court's finding that DLS failed to comply with the plain requirements of the UAPA in two separate and distinct respects: sufficiency of the notice of action and sufficiency of the order of decision. It is the appellant's burden to cite the appellate court to all the evidence in the record that would demonstrate why, even when

viewed in the light most favorable to the court below, it is insufficient to support the finding under attack. Harker vs. Condominiums Forest Glen, Inc., 740 P.2d 1361 (Utah Ct. App., 1987). In its brief, appellant has failed to marshal any evidence in support of the trial court's findings.

As to the issue of sufficiency of the notice of action, neither the DUI Summons and Citation/Notice of Intent to Suspend or Revoke served on the Driver (Addendum D) nor the notice of hearing mailed to him (Addendum E) contain any language designating the proceedings as formal or informal. Nowhere in Appellant's brief is this assertion controverted. The record below shows not only substantial support of the trial court's finding of non-compliance by DLS, but rather compels such a finding given the absence of any evidence to the contrary.

Given the failure of DLS to comply with the notice provisions of the UAPA, the trial court did not abuse its discretion in setting aside the Order of Suspension issued by that agency, a remedy which the Act expressly authorizes. See Utah Code Ann. §63-46b-17(1)(b)(iii).

Likewise, the trial court was compelled to find non-compliance by DLS in regard to stating reasons for its decision in the order mailed to the Driver. While DLS argues here, as below, that reasons for the decision are stated on the Order of Suspension (Addendum F), inspection of that document negates such an assertion. DLS cites only the conclusional third paragraph in support of its position, which in essence restates the very statute to which it alludes. Given the two different typesets on the document, it is apparent that the order is a

form letter used in this kind of proceeding. Nowhere is the Driver apprised of the factual findings or bases for the decision, which arguments were considered, accepted, rejected, or determinative, what blood alcohol level was found to be present, or any other relevant factor. In short, the order provides the Driver with no further information about how the decision was reached, other than that his license has been suspended as a result of his arrest for DUI. This general and conclusional proposition is one of which the Driver is already well aware.

Given the additional failure of DLS to comply with the decisional requirements of the UAPA, the trial court did not abuse its discretion in setting aside the Order of Suspension issued by that agency, on this independent basis as well.

Point II of DLS' brief asserts that the Driver's alleged failure "to timely object to the informal nature of the administrative proceedings" invokes some form of estoppel, and should now preclude consideration of issues raised, reached, and decided by the trial court. This analysis is flawed in the following three regards.

First, the Driver has never objected to the proceedings being informal, but rather has asserted that he was entitled to written notice as to whether the proceedings would be formal or informal.

Second, the transcript of the administrative hearing (reproduced at Appellant's Brief, Addendum C), at page 24 and 25, reveals that the Driver's counsel specifically moved the hearing officer for a dismissal of the administrative action due to DLS' failure to designate either formal or informal proceedings. This

assertion, together with separate ground of non-compliance with UAPA in respect to the content of the order rendered, were fully raised and argued before the District Court, as is apparent from the Petition for Review, the evidence introduced, closing argument, and the findings of fact made by the trial court. Failure to timely object was not raised in the District Court by DLS.

Third, in the District Court, and again on appeal in Point III of its brief, DLS argued that since review by that Court was de novo, defects in the proceedings below can be cured at the District Court level. Assuming arguendo that the Driver failed to raise the issue to the hearing officer, this assertion is flawed and results in disparate treatment. With this statement, DLS assumes the untenable and blatantly unfair position that the agency can take two bites at the apple to remedy an omission, while the driver is stuck with whatever omissions occur at the agency level. Such a proposition makes a mockery of notions of fundamental fairness between parties to an administrative proceeding.

POINT IV

DLS IMPROPERLY URGES CONSIDERATION OF MATTERS NOT INTRODUCED OR RAISED BELOW

Appellant's Brief references various materials that are not part of the record on appeal. Such matters may not ordinarily be considered for the first time in the appellate court. Mel Trimble Real Estate vs. Monte Vista Ranch, Inc., 758

P.2d 451, 455-56 (Utah Ct. App., 1988). This is true even if the matters brought forth are of a nature that can be taken by judicial notice.

Several items appended to Appellant's Brief were not presented below, though most are of questionable value in the resolution of this appeal. These include the Driver's request for hearing (Appellant's Addendum B), the agency's Findings of Proceedings (Appellant's Addendum D), the reinstatement of the Driver's privileges, found in Appellant's Addendum F, DLS Rules and Regulations (Appellant's Addendum G), and the Comments of the Utah Administrative Law Advisory Committee found in Appellant's Addendum H.

DLS now claims that these materials, which were not before the trial court, lend credence to its position. While it is unclear how any of these materials vitiate the express requirements of the UAPA, it is simply too late in the day to present them for consideration for the first time. DLS had its opportunity to present them to the trial court, but failed to do so. Matters not presented for consideration of the trial court should be deemed waived for purposes of this appeal.

POINT V

A SUGGESTION OF MOOTNESS AS TO POINT I,
SUPRA, ARISES DUE TO DLS' RECENT
INCLUSION OF LANGUAGE IN NOTICES
INITIATING THIS TYPE OF PROCEEDING

After the de novo review of this matter, DLS began using a different form for the notices of hearing in actions such

as this. Counsel for the Driver, in an unrelated case, received such a form and has submitted the same for this Court's consideration as to potential mootness of Point I, supra. The new form, with case-specific data omitted, is reproduced in Addendum G.

With the inclusion of the language that an "informal hearing" (underlining original) will be held in the action, the instant concern of the Driver about sufficiency of the notice appears to have application only to this case and others appealed before the change was made, if any. Little or no prospective relief from this deficiency will be required as a result. As a practical matter, DLS has remedied one of the two points of non-compliance which were the bases of the District Court's ruling.

While the Driver does not necessarily contend that this factor is dispositive of the appeal, and therefore does not move for a dismissal for mootness, counsel is aware of his duty under R. Utah Ct. App. 37(a), and merely seeks to advise the Court as to factors it may deem relevant to possible issues of mootness. These circumstances also bear on the issue of whether the conduct of DLS after the de novo trial constitutes an implied confession of manifest error at the agency level.

CONCLUSION

The UAPA sets forth specific requirements for initiating and rendering decisions in informal adjudicative proceedings. In this instant case, the evidence before the trial court was undisputed that DLS did not in fact comply. Since the

Driver was not afforded the due process envisioned in the UAPA, the trial court did not abuse its discretion in setting aside the agency's order, and accordingly the judgment of the District Court should be affirmed.

RESPECTFULLY SUBMITTED to the Court this 16th day of January, 1990.



WILLIAM R. RUSSELL
Attorney for Respondent

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 16th day of January, 1990, I filed seven copies of Respondent's Brief by mailing the same by First Class Mail to:

Utah Court of Appeals
400 Midtown Plaza
230 South 500 East
Salt Lake City, UT 84102

and that I mailed four copies thereof on such date to:

Richard D. Wyss
Assistant Attorney General
236 State Capitol
Salt Lake City, UT 84114



ADDENDA

ADDENDUM A

63-46b-3. Commencement of adjudicative proceedings.

(1) Except as otherwise permitted by Section 63-46b-20, all adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) A notice of agency action shall be filed and served according to the following requirements:

(a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include:

(i) the names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding;

(iv) the date that the notice of agency action was mailed;

(v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63-46b-4 and 63-46b-5, or formally according to the provisions of Sections 63-46b-6 to 63-46b-11;

(vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action;

(vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any

ADDENDUM B

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

History: C. 1953, 63-46b-4, enacted by L. § 315 makes the act effective on January 1, 1987, ch. 161, § 260. 1988.
Effective Dates. — Laws 1987, ch. 161,

63-46b-5. Procedures for informal adjudicative proceedings.

(1) If an agency enacts rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe procedures for informal adjudicative proceedings that include the following:

(a) Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.

(b) The agency shall hold a hearing if a hearing is required by statute or rule, or if a hearing is permitted by rule and is requested by a party within the time prescribed by rule.

(c) In any hearing, the parties named in the notice of agency action or in the request for agency action shall be permitted to testify, present evidence, and comment on the issues.

(d) Hearings will be held only after timely notice to all parties.

(e) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

(h) All hearings shall be open to all parties.

(i) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:

(i) the decision;

(ii) the reasons for the decision;

(iii) a notice of any right of administrative or judicial review available to the parties; and

(iv) the time limits for filing an appeal or requesting a review.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.

(k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

(2) (a) The agency may record any hearing.

(b) Any party, at his own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

History:
 1987, ch. 161, § 260.
Amendment, effective after "hold" section (1)(b) in Subsection that read, agency may cover order

63-46b-

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History: C.
 1987, ch. 161, § 260.
Amendment, effective after "hold" section (1)(b) in Subsection that read, agency may cover order

63-46b-7

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ADDENDUM C

63-46b-15. Judicial review — Informal adjudicative proceedings.

- (1) (a) The district courts shall have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings.
(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains his principal place of business.
- (2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:
 - (i) the name and mailing address of the party seeking judicial review;
 - (ii) the name and mailing address of the respondent agency;
 - (iii) the title and date of the final agency action to be reviewed, together with a duplicate copy, summary, or brief description of the agency action;
 - (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;
 - (v) a copy of the written agency order from the informal proceeding;
 - (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
 - (vii) a request for relief, specifying the type and extent of relief requested;
 - (viii) a statement of the reasons why the petitioner is entitled to relief.
(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
- (3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

ADDENDUM D

DUI
SUMMONS AND CITATION

STATE OF UTAH
COUNTY OF SALT LAKE

CITY OF SALT LAKE

THE DEFENDANT IS HEREBY
GIVEN NOTICE TO APPEAR IN

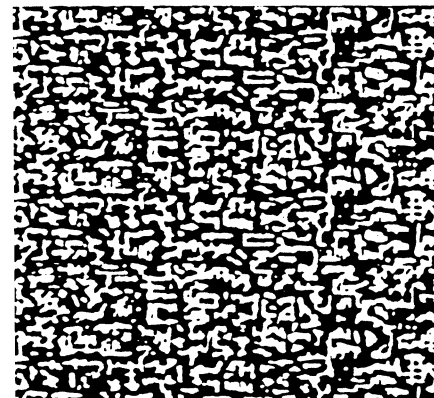
OF SALT LAKE

DATE 500 S. STATE

SALT LAKE, UT.

24115

more than (14) days after issuance



ISSUING
ENFORCEMENT
AGENCY SALT LAKE POLICE

CASE
NO

CITATION NO

20591

NAME (Last) (First) (Middle) DOB
BRINKERHOFF VERNON CLEGG 1-5-33
ADDRESS (City) (State) Zip
717 Park Row Salt Lake 84115
Driver License No. License Class Expires State Restriction Code Motorcycle
14-45-77 AM 10 UT 01 Yes No
Height Weight Eyes Sex Vehicle License No. State Expires
5'4 150 Blue M 14-45-77 10 11
Vehicle Make Vehicle Type Vehicle Year Color Accident Direction of Travel
Ford Truck 85 Red Yes No N S E W

THE ABOVE NAMED DEFENDANT IS CHARGED WITH VIOLATING

UTAH CODE COUNTY CODE & CITY CODE NO.

ON THE 10 DAY OF DECEMBER 19 85 MILITARY TIME 1935

LOCATION 2415 S. 1000TH MILE POST NO.

VIOLATION(S) DRIVING UNDER THE INFLUENCE OF
DRUGS AND ALCOHOL (1-4-102)

WITHOUT ADMITTING GUILT I PROMISE TO APPEAR AS DIRECTED HEREIN

SIGNATURE [Signature]

I CERTIFY THAT A COPY OF THIS SUMMONS AND CITATION 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 CER-
TIFY THAT THE COURT TO WHICH THE DEFENDANT HAS BEEN DIRECTED TO APPEAR IS THE PROPER
COURT PURSUANT TO SECTION 77-7-19 U.C.A.

OFFICER FERRARO

BADGE NO 6740

COMPLAINANT

CS# 3-7-45-1224

DATE OF CITATION
10-26-85

PERSE
OCT 28 1988

DRIVERS LICENSE DIVISION

DATE SENT TO DLD

DOCKET NO

VALID

READ CAREFULLY SURR. LIC.

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

NOTICE OF INTENT TO SUSPEND OR REVOKE. You are hereby notified that thirty-one (31) days from the date of
notice your privilege to operate motor vehicles in the State of Utah will be suspended pursuant to Section 41-2-19.6
for a period of ninety (90) days thereafter, or for a period of one hundred twenty (120) days if this is the second
subsequent occurrence of this offense OR if a peace officer has indicated you have refused to submit to a
chemical test to determine the alcohol or drug content of your breath, blood or urine, you are hereby notified
thirty-one (31) days from the date of this notice your privilege to operate motor vehicles in the State of
Utah will be revoked pursuant to 41-6-44.10 UCA for a period of one (1) year. YOU HAVE THE RIGHT TO RE-
QUEST A HEARING ON THIS SUSPENSION OR REVOCATION. The hearing is not for purposes of granting you
limited license but only to determine whether or not your license should be suspended or revoked.
The department will NOT contact you further regarding a hearing unless you request a hearing in writing. Your WRIT-
TEN REQUEST must be sent WITHIN TEN (10) DAYS of the date of arrest to the DRIVER LICENSE DIVISION at
1 South 2700 West, P.O. Box 30560, Salt Lake City, Utah 84130-0560. Upon your **timely** written request for a
hearing you will be notified of a time and place to appear. If you fail to appear or request a hearing, your driver license
suspension or revocation will become effective as indicated above. The administrative hearing is civil in nature and
does not satisfy the requirement for you to appear in court.

TEMPORARY DRIVER LICENSE: This entire information ☒ is VALID as a temporary driver license for a period of
thirty (30) days from the date of this notice ☐ is NOT VALID as a temporary driver license.

ADDENDUM E



DOB:

DA: 10-20-88

STATE OF UTAH
DEPARTMENT OF PUBLIC SAFETY

NORMAN H. BANGERTER, GOVERNOR

JOHN T. NIELSEN, COMMISSIONER
D. DOUGLAS BODRERO, DEPUTY COMMISSIONER

November 4, 1988

Verdon C. Brinkerhoff
917 Park Row
Salt Lake City, Ut 84105

FILE NO.: 1434579
D.O.B.: 8-5-38

Under Title 41, Utah Code Annotated 1953, a hearing will be held by this Department regarding the items checked below.



Your request for an administrative hearing regarding this Department's intention to suspend your driving privileges as a result of your arrest for driving under the influence on 10-26-88



Your request for an administrative hearing regarding this Department's intention to revoke your driving privileges as a result of your arrest for driving under the influence and alleged refusal to submit to a chemical test on _____



We have received information that on _____ you were driving while your driving privilege was under revocation/-suspension. Failure to appear at this hearing may result in extension of your revocation or suspension.

Your hearing has been set as follows:

DATE: November 21, 1988

TIME: 2:00 p.m.

PLACE: 187 North 1000 W. (Fairgrounds)
Salt Lake City, Ut
538-8490

CERTIFICATE
OF MAILING

NOV 04 '88

I certify that on the date above, as an employee of the Drivers License Division, Utah State Department of Public Safety, I deposited the United States Mail, Salt Lake City, Utah, the original order, of which this is an exact copy, in an envelope with postage stamp and address to the person named in the order at his or her last address as shown by the records of the Department.

IF YOU ARE UNABLE TO APPEAR AT THE TIME INDICATED, YOU MUST NOTIFY THE OFFICE AT LEAST FIVE (5) DAYS BEFORE THE SCHEDULED TIME, AND UPON REASONABLE REQUEST, A NEW HEARING DATE MAY BE SCHEDULED.

William R. Russell
Attorney at Law
102 W. 500 So. #202
Salt Lake City, Ut 84101

Very truly yours,

Phil Himmelberger

Phil G. Himmelberger, Bureau Chief
Driver Services

Encl: File copy to attny.
pbj/114-1

ADDENDUM F



STATE OF UTAH
DEPARTMENT OF PUBLIC SAFETY

10-26-88
DOB: 08-05-38

NORMAN H. BANGERTER, GOVERNOR

JOHN T. NIELSEN, COMMISSIONER
D. DOUGLAS BODRERO, DEPUTY COMMISSIONER
L. DALE ELTON, DEPUTY COMMISSIONER

VERDON C. BRINKERHOFF
917 PARK ROW
SALT LAKE CITY, UT. 84105

ORDER OF SUSPENSION
FILE NUMBER 001434579

BY AUTHORITY OF TITLE 41, UTAH CODE ANNOTATED 1953, IT IS HEREBY ORDERED THAT YOUR PRIVILEGE TO OPERATE A MOTOR VEHICLE ON THE HIGHWAYS OF THIS STATE IS SUSPENDED FOR A PERIOD OF 3 MONTHS EFFECTIVE 25 NOVEMBER 1988.

IT IS FURTHER ORDERED THAT IF YOU HAVE NOT ALREADY DONE SO, YOU IMMEDIATELY SURRENDER TO THIS DEPARTMENT YOUR UTAH DRIVER LICENSE, IF ANY, AND ALL OTHER LICENSES ISSUED TO YOU.

THE GROUNDS FOR SUCH ACTION IS U.C.A. 41-2-130 AND THAT A PEACE OFFICER HAD REASONABLE GROUNDS TO BELIEVE YOU HAD BEEN OPERATING A MOTOR VEHICLE IN VIOLATION OF U.C.A. 41-6-44 (DRIVING UNDER THE INFLUENCE LAW).

UTAH LAW REQUIRES ANY PERSON WHOSE UTAH DRIVING PRIVILEGE HAS BEEN SUSPENDED OR REVOKED TO PAY A \$50.00 FEE FOLLOWING THE REVOCATION OR SUSPENSION PERIOD TO HAVE THIS PRIVILEGE REINSTATED. IN ADDITION TO THE REINSTATEMENT FEE, A \$25.00 ADMINISTRATIVE SERVICE FEE WILL BE ASSESSED WHEN THE PRIVILEGE TO DRIVE HAS BEEN ADMINISTRATIVELY SUSPENDED OR BEING ARRESTED FOR DRIVING UNDER THE INFLUENCE.

IF YOU HAVE NOT VOLUNTARILY SURRENDERED WITHIN 20 DAYS OF THESE ITEMS, AN ADDITIONAL \$25.00 FEE WILL BE ASSESSED THE TIME OF REINSTATEMENT.

IT IS A MISDEMEANOR TO OPERATE ANY MOTOR VEHICLE UPON HIGHWAYS OF THIS STATE WHILE YOUR DRIVER LICENSE IS SUSPENDED OR REVOKED.

YOU MAY APPEAL THIS ACTION IN A COURT OF RECORD IN THE COUNTY OF YOUR RESIDENCE WITHIN THIRTY (30) DAYS.

I hereby certify that the above information is true and correct as shown on the records of the Department of Public Safety, State of Utah, and that the original order of which this is a true and correct copy in an envelope with postage stamp and addressed to the person named in the order, at his or her last address as shown on the records of the Department of Public Safety, State of Utah, has been mailed by the United States Mail, first class, by the State Department of Public Safety, Salt Lake City, Utah.

NOV 25 1988
 Date _____
 Employee of Department _____

cc: William R. Russell
Attorney at Law
102 West 500 South #202
Salt Lake City, UT 84101

RESPECTFULLY YOURS,

Fred C. Schwendiman
FRED C. SCHWENDIMAN, DIRECTOR
DRIVER LICENSE SERVICES

ADDENDUM G



State of Utah

DEPARTMENT OF PUBLIC SAFETY
DRIVER LICENSE DIVISION

DA 11-2-89

Norman H. Bangert
Governor
D. Douglas Bodrero
Commissioner
Brant Johnson
Deputy Commissioner

G. Barton Blackstock, Bureau Chief
Records Bureau

4501 South 2700 West, 3rd floor
P.O. Box 30560
Salt Lake City, Utah 84130-0560
(801) 965-4437

November 16, 1989

File No:

Arrest Date:

D.O.B.:

Under Title 41, Utah code Annotated 1953, an informal hearing will be held by this Department regarding the issues checked.

☒ Your request for an administrative hearing regarding this Department's intention to suspend your driving privilege as a result of your arrest for driving under the influence of alcohol or any drug on 11-2-89.

The purpose of this hearing is to determine whether a peace officer had reasonable grounds to believe you have been operating or in physical control of a motor vehicle while in violation of UCA 41-6-44.

☐ Your request for an administrative hearing regarding this Department's intention to revoke your driving privilege as a result of your arrest for driving under the influence of alcohol or any drug and the issue of your alleged refusal to submit to a chemical test on _____.

The purpose of this hearing is to determine if you refused a chemical blood test after warning and request by a peace officer with reasonable grounds to believe you were operating or in physical control of a vehicle while under the influence of alcohol or any drug.

☐ You were driving while your driving privilege was under revocation/suspension. Failure to appear at this hearing may result in extension of your revocation/suspension.

Your hearing has been set as follows:

DATE: 10, 1989
TIME:
PLACE: 187 North 1000 W. (Fairgrounds)
Salt Lake City, Ut
538-8490

ONLY IF YOU ARE UNABLE TO APPEAR AT THE TIME INDICATED, YOU MUST NOTIFY THE OFFICE AT LEAST (5) DAYS BEFORE THE SCHEDULED TIME AND, ONLY UPON REASONABLE GROUNDS, WILL THE HEARING BE CONTINUED.

cc: William R. Russell
Attorney at Law
8 East Broadway #213
Salt Lake City, Ut 84111

Encl: File copy to attny. & 2 subpoenas

Respectively,

Phil Himmelberger

Phil Himmelberger
Bureau Chief
Driver Services