

1999

# State of Utah v. Blaine Horrocks : Brief of Appellant

Utah Court of Appeals

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Shelden R. Carter; Attorney for Appellant.

Joanne C. Slotnik; Assistant Attorney General; Jan Graham; Attorney General; Mariane O'Bryant; Attorneys for Appellee.

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## Recommended Citation

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DETERMINATIVE CONSTITUTIONAL PROVISIONS & STATUTES

U.C.A. 76-1-402(1).

A defendant may be prosecuted in a single criminal action for all separate offenses arising out of that criminal episode. However, whenever conduct may be established separate offenses under a single criminal episode, unless the Court otherwise orders to promote justice, a defendant shall not be subject to separate trials for multiple offenses when, (a) the offenses are within the jurisdiction of a single court, (b) the offenses are known to the prosecuting attorney at the time the defendant is arraigned on the first information or indictment

Utah Rules of Criminal Procedure, Rule 9.5:

- (1) (a) Unless otherwise provided by law, complaints, citations or informations charging multiple offenses, which may include violations of state laws, county ordinances or municipal ordinances, and arising from a single criminal episode as defined by Section 76-1-401, shall be filed in a single court that has jurisdiction of the charged offense with the highest possible penalty of all of the offenses charged. (b) The offenses within the complaint, citation or information may not be separated except by order of the Court and for good cause shown.

Rule 26 of the Utah Rules of Criminal Procedure:

1) An appeal is taken by filing with the clerk of the Court from which the appeal is taken a notice of appeal, stating the *order or judgment* appeal from and by serving a copy of it on the adverse party . . .

2) An appeal may be taken by the defendant from:

a) the final judgment of conviction, whether by verdict or plea;

b) *an order made, after judgment, affecting the substantial rights of the defendant. . . .*

(Emphasis Added)

Rules 25 (b)(4) of Criminal Procedure

The court shall dismiss the information or indictment when: . . . (4) The court is without jurisdiction.

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of these charges was then charged with additional offenses within the District Court for Utah County relating to this same criminal episode.)

2. The defendant on July 29, 1996, within the fourteen days mandated by citation appeared before the Justice of the for the City of Payson.

At said hearing, the defendant entered a pleas as follows:

- a) no-contest to the Driving on Suspension;
- b) guilty to the Failure to Yield; and
- c) guilty to the charge of no insurance.

At said time, the court pronounced orally the sentence by advising the defendant that he was fined the sum of \$555.00 and ninety days in jail on the Driving on Suspension charge. The court suspended the jail and \$150.00 of the fine leaving a balance owing of \$405.00.

On the "No Insurance" charge the defendant also entered a plea of guilty and the court imposed the same jail term and fines(90 days and \$555.00 in fine). The court suspended the same amounts leaving

the defendant with a balance owing of \$405.00

U.S. v. Allen, 13 F.3d 105, 108 (4th Cir. 1993) .....11

### JURISDICTION OF APPELLATE COURT

Authority for said appeal is found within the confine of Section Rule 26 of the Utah Rules of Criminal Procedure; Utah State Constitution Article 1, Section 12; Utah Code Annotated Section 77-1 6(g); and Section 78-2-2 (i) Utah Code Annotated, and the Rule of the Utah Court of Appeals.

### STATEMENT OF CASE

This is a appeal from an order of sentencing. The essence of appellar single criminal episode statute . Its bars the prosecution of separate but multiple charges arising from one single incident.

### STATEMENT OF RELEVANT FACTS

1. The defendant herein was cited for an offenses which 1. allegedly occurred on July 21, 1996. Defendant was cited with the offense of 'Driving on Suspension', 'Failure to Yield' and having 'No Insurance'. Defendant was mandated by a Payson City Police citation to appear in the Payson Justice Court, a municipal court, within 14 days from the date of July 21,1996. See copy of original citation given to the defendant. (The defendant after the resolution



of these charges was then charged with additional offenses within the District Court for Utah County relating to this same criminal episode.)

2. The defendant on July 29, 1996, within the fourteen days mandated by citation appeared before the Justice of the for the City of Payson.

At said hearing, the defendant entered a pleas as follows:

- a) no-contest to the Driving on Suspension;
- b) guilty to the Failure to Yield; and
- c) guilty to the charge of no insurance.

At said time, the court pronounced orally the sentence by advising the defendant that he was fined the sum of \$555.00 and ninety days in jail on the Driving on Suspension charge. The court suspended the jail and \$150.00 of the fine leaving a balance owing of \$405.00.

On the "No Insurance" charge the defendant also entered a plea of guilty and the court imposed the same jail term and fines(90 days and \$555.00 in fine). The court suspended the same amounts leaving the defendant owing a balance of \$405.00.

The defendant also was sentenced upon the failure to yield and was fined \$50.00 for doing so.

Jail terms were imposed but suspended upon his completion of the Court ordered probation.

The Court, based on its oral pronouncement of sentence, made a computer entry and a written order of the sentencing. Said documents was submitted to the District Court (Spanish Fork Division) as an exhibit. A copy of the same is attached hereto.

Said documentation being prepared on July 29, 1996, in writing, evidencing the fines, jail and the suspended terms therein based upon compliance with the court's order. (Said document was submitted as evidence in the above matter on February 24, 1997 and entered into the court as defendant's Exhibit #1.)

3. On the 5th day of August, 1996 the Payson City Prosecutor filed a Motion to Dismiss said charges of driving on suspension, failure to yield and no insurance under the supposed authority granted by Rule 23 and 25 of the Utah Rules of Criminal Procedure.

4. The prosecution's (Payson City) motion to dismiss was granted by Justice of the Peace on August 19, 1996, without hearing. The defendant objected to such dismissal and dated his response August 7, 1996. The defendant challenged the prosecution's suggestion that the offenses were not within City Court jurisdiction. Defendant argued the City had no authority under Rule 23 or under Rule 25 of the Rules of Criminal Procedure to set aside the order of sentence.

The defendant initiated his appeal from the Justice Court on September 10, 1996, appealing it to the District Court for Utah County, Spanish Fork Division of the Fourth Judicial District Court.

DISTRICT COURT PROCEEDINGS  
(Spanish Fork)

5. These matters were presented to this court on February 24, 1997 on appeal. The District Court (Spanish Fork Division) refused to hear the appeal of the defendant Horrocks

Based thereupon and based upon the following recitation of facts, as noted above, the court dismissed the defendants' Appeal of the Justice Courts' Order of dismissal. The District Court ruled that the defendant had no authority to initiate the appeal from the Justice Court and struck the appeal.

The Court ruled as follows:

This matter came before the court on February 24, 1997. Based on the information given to this Court, the court makes the following Findings:

1. The defendant herein was cited for an offense which allegedly occurred on July 21, 1996. Defendant was cited with the offense of Driving on Suspension, Failure to Yield and having no insurance. Defendant was mandated by a Payson City Police citation to appear in the Payson Justice Court within 14 days from the date of July 21, 1996. See copy of original citation given to the defendant.

2. The defendant on July 29, 1996, within the fourteen days mandated by citation appeared before the Honorable Judge James E. Box, Justice Court Judge for the Payson City Justice Court.

At said hearing, the defendant entered a pleas as follows:

- a) no-contest to the Driving on Suspension;
- b) guilty to the Failure to Yield; and
- c) guilty to the charge of no insurance.

At said time, the court pronounced orally the sentence by advising the defendant that he was fined the sum of \$555.00 and ninety days in jail on the Driving on Suspension charge. The court suspended the jail and \$150.00 of the fine leaving a balance owing of \$405.00.

On the "No Insurance" charge the defendant also entered a plea of guilty and the court imposed the same jail term and fines(90 days and \$555.00 in fine). The court suspended the same amounts leaving the defendant owing a balance of \$405.00.

The defendant also was sentenced upon the failure to yield and was fined \$50.00 for doing so.

Jail terms were imposed but suspended upon his completion of the Court ordered probation.

The Court made a computer entry and a written order of the sentencing. Said documents was submitted to this Court as an exhibit. A copy of the same is attached hereto.

Said documentation being prepared on July 29, 1996, in writing, evidencing the fines, jail and the suspended terms therein based upon compliance with the court's order. Said document was submitted as evidence in the above matter on February 24, 1997 and entered into the court as defendant's Exhibit #1.

4. On the 5th day of August, 1996 the Payson City Prosecutor filed a Motion to Dismiss said charges of driving on suspension, failure to yield and no insurance.

The City petitioned the Justice Court to grant said Motion and to arrest the Judgment. They did so on the basis of Rule 23 of the Utah Criminal Procedure and also Rule 25(b)(4) of the Rules of Criminal Procedure.

Rule 25 provides the following in relevant part:

The court shall dismiss the information or indictment when: . . . (4) The court is without jurisdiction.

The prosecution advised the court to support their Motion to Dismiss that the defendant was involved in an accident on July 21, 1996.

*They argued that he was cited for a DUI with Injury, Possession of a Controlled Substance, Possession of Drug Paraphernalia, Possession of Psilosybin, Driving on Suspension, Failure to Yield and No Insurance. The case was sent to the Utah County Attorney for review.*

*However, the defendant came into the Payson City Justice Court with the citation that contained the Class B Misdemeanor of Driving on Suspension, Failure to Yield and no insurance. The citation for DUI was written on a separate citation and other charges were sent to the County Attorney for determination and review of the charges. The court did not have the original citation, however, the defendant gave the court a copy of his misdemeanor citation. Defendant misled the court into thinking that those were all of the charges. The court allowed him to make a plea and issued an oral sentence.*

5. The motion to dismiss was granted by Judge James E. Box on August 19, 1996. The defendant objected to such dismissal and dated his response August 7, 1996. The defendant alleged therein that the offenses were within City Court jurisdiction or no basis existed to now grant a dismissal.

6. The defendant initiated his appeal from the Justice Court on September 10, 1996, appealing it to the District Court for Utah County, Spanish Fork Division of the Fourth Judicial District Court.

6. The defendant then appealed to the Court of Appeals arguing that the District Court made error when they refuse to hear the defendant's appeal from the Justice Court. The Court of Appeals summarily dismissed the defendant's appeal.

7. The State of Utah then filed the new information charging the defendant with the current offense. He entered a "Sery" plea and now seeks review.

## **SUMMARY OF ARGUMENTS**

The underlying idea, one that is deeply rooted in the Anglo-American system of jurisprudence, is that the State with all its resources and powers should not be allowed to make repeated attempts to convict an individual for an alleged offense.

Utah has enacted the "Single Criminal Episode" statute which prohibits multiple punishments based on one act. U.C.A. 76-1-402 (3). Here the defendant was subjected to multiple punishment for varying offenses twice.

If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred. Utah Code Annotated Section 76-1-403. Here the defendant had been subjected to a misdemeanor penalty and then the State choose to charge him with a felony offense when he had already been subjected to a criminal sanction resulting from this one event.

### **DETAILED ARGUMENT**

#### **POINT ONE---DEFENDANT ARGUES THAT THE PROSECUTION OF THE FELONY HEREIN IS BARRED BY THE DOUBLE JEOPARDY AND THE SINGLE CRIMINAL EPISODE STATUTE**

#### **DOUBLE JEOPARDY**

The underlying idea, one that is deeply rooted in the Anglo-American system of jurisprudence, is that the State with all its resources and powers should not be allowed to make repeated attempts to convict an individual for an offense. Green v. United States, 355 U.S. 184 (1957). Arizona v. Washington, 434 U.S. 497 (1978). The Constitution further prohibits multiple punishments for

the *same offense*, United States v. Harper, 490 U.S. 435 (1989). .  
U.S. v. Allen, 13 F.3d 105, 108 (4th Cir. 1993). A defendant may not  
be prosecuted for two offenses based on a single criminal act.  
Blockburger v. U.S. 284 U.S. 299, 304 (1932). They just can't keep  
coming after us. They get one try and that is it.

Here, the defendant followed the mandates of the misdemeanor  
citation and appeared as directed. He then entered pleas in the case  
and a sentence was imposed. The State then utilizes its resources to  
set this aside to enable them to prosecute at the felony level.

#### STATUTORY AUTHORITY

##### SINGLE CRIMINAL EPISODE

Utah has enacted the 'Single Criminal Episode' statute which  
prohibits multiple punishments based on one act. U.C.A. 76-1-402  
(3). Here the defendant was subjected to multiple punishment for  
varying offenses twice.

If a defendant has been prosecuted for one or more offenses  
arising out of a single criminal episode, a subsequent prosecution for  
the same or a different offense arising out of the same criminal  
episode is barred. Utah Code Annotated Section 76-1-403.

A defendant may be prosecuted in a single criminal action for  
all separate offenses arising out of that criminal episode. However,  
whenever conduct may be established separate offenses under a  
single criminal episode, unless the Court otherwise orders to promote  
justice, a defendant shall not be subject to separate trials for multiple  
offenses when, (a) the offenses are within the jurisdiction of a single  
court, (b) the offenses are known to the prosecuting attorney at the

time the defendant is arraigned on the first information or indictment. Utah Code Annotated 76-1-402

A single criminal episode is defined to include all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective. Section 76-1-401. These events here occurred all within the same accident, same place, same time with all witnesses and persons being the same.

In defining a single criminal episode the Utah Supreme Court has held that the retention of stolen property from different individuals is a single act and a single offense. If the items were retained simultaneously, it is deemed within the definition of a single criminal episode, State v. Bair, 671 P.2d 203 (Utah, 1983), and the person cannot be subjected to continued prosecutions. There the State attempted to prosecute the defendant although he had been previously prosecuted and acquitted.

However, a robbery committed in one county and then a subsequent robbery in another county 65 miles away and separated in time and location did not fall within the definition of single criminal episodes. State v. Ireland, 570 P.2d 1206 (Utah, 1977). The events of Bair appear more relevant to the facts of Ireland.

The Rules of Criminal Procedure mandate a single filing. See Utah Rules of Criminal Procedure, Rule 9.5 which provides as follows:

- (1) (a) Unless otherwise provided by law, complaints, citations or informations charging multiple offenses, which may include violations of state laws, county ordinances or municipal ordinances, and arising from a single criminal episode as



defined by Section 76-1-401, shall be filed in a single court that has jurisdiction of the charged offense with the highest possible penalty of all of the offenses charged. (b) The offenses within the complaint, citation or information may not be separated except by order of the Court and for good cause shown.

The prosecution, recognizing the difficulties with prosecuting him with greater offenses, set out to set aside the pleas and thereby allow the felony prosecution to go forward. They succeeded.

If the defendant is to prevail on his first argument, the Court must look to the mechanics utilized by the prosecution to set aside the plea. For if the Court upholds the dismissal of the misdemeanor charges, the defendant's argument fails.

### **ILLEGALITY OF THE CITY'S ACTION**

The City petitioned the Justice Court to grant said Motion and to Arrest the Judgment. They did so on the basis of Rule 23 of the Utah Criminal Procedure (Arrest of Judgment) and also Rule 25(b)(4) of the Rules of Criminal Procedure (Dismissal without Trial).

Rule 25 provides the following in relevant part:

The court shall dismiss the information or indictment when: . . . (4) The court is without jurisdiction.

Obviously, the City Justice Court had jurisdiction over the misdemeanor offenses. These are the typical charges filed with this Justice Court. The Justice Court did have jurisdiction. To argue otherwise appears spurious.

Rule 23 provides as follows:

At any time prior to the imposition of sentence, the court upon its own initiative may, or upon motion of the defendant shall, arrest judgment if the facts proved or admitted do not constitute a public offense, or the defendant is mentally ill, or there is other good cause for the arrest of judgment. . . .

The right to move for a arrest of judgment lies with the defendant not with the prosecution. Furthermore, the motion must be made prior to the imposition of sentence, not after as was present here. It is not for the purpose of correcting a prosecution error.

#### JUSTICE COURT PROCEEDINGS

The prosecution advised in support of their 'Motion to Dismiss' that the defendant was involved in an accident on July 21, 1996. They argued that he was cited for a DUI with Injury, Possession of a Controlled Substance, Possession of Drug Paraphernalia, Possession of Psilosybin, Driving on Suspension, Failure to Yield and No Insurance. The case the had been sent to the Utah County Attorney for review.

The Court did not initiate this motion nor did the defendant and the plaintiff (prosecution) has no authority to initiate said motion.

The District Court (Spanish Fork Division) should have heard the issues on the appeal from the Justice Court. The District Court does have authority to hear such issues on appeal but was denied the same.

The defendant argues that under the Rules of Criminal Procedure, more particularly Rule 26, the defendant may take an appeal from an order made, after judgment, affecting the substantial rights of the defendant. Rule 26(2)(b). Utah Rules of Criminal Procedure.

Under Rule 26 of the Utah Rules of Criminal Procedure, an order or judgment may be appealed. It provides as follows:

1) An appeal is taken by filing with the clerk of the Court from which the appeal is taken a notice of appeal, stating the *order or judgment* appeal from and by serving a copy of it on the adverse party . . . .

2) An appeal may be taken by the defendant from:

a) the final judgment of conviction, whether by verdict or plea;

b) *an order made, after judgment, affecting the substantial rights of the defendant. . . .*

(Emphasis Added)

Consequently, the question out to be whether the defendant's appeal is from an order made, after judgment, affecting the substantial rights of the defendant. If so, did the defendant initiate his appeal with 30 days from the denial of his motion. It is an order, which substantially affects the rights of the defendant, and it was filed with the 30 days prescribed.

The defendant contends that his right to appeal of an adverse ruling is authorized under the Utah State Constitution, Article I, Section 12. It is further granted pursuant to statute. U.C.A. 77-1-6(1)(a). See City of Monticello v. Christensen, 788 P.2d 703 (Utah 1990); State v. Tuttle, 713 P.2d 703 (Utah 1985); State v. Alexander, 15 Utah 2 14, 386 P.2d 41 (1963).

In Alexander, the Utah Court held that a second judgment/sentence which was clearly an attempt to render a judgment in a criminal proceeding, which if valid, would have affected the defendant's substantial rights was appealable. In Anderson, the Court had imposed a term of one-year incarceration in the Utah State Prison. Following his release after the one-year was served, the Court re-imposed a corrected sentence. The Appellate Court held that the defendant could appeal from the corrected sentence. The State had argued that the defendant appeal was untimely since the 30-day period had expired from the original sentence. See also State v. Ambrose, 598 P.2d 354 (Utah 1979) wherein the Utah Supreme Court held that the denial of the defendant's motion for dismissal (on double jeopardy claims) was an appealable order.

### **THE PREJUDICE SUFFERED BY THE DENIAL OF DEFENDANT'S RIGHT TO APPEAL**

The real import of this case is that the defendant has been twice placed in jeopardy by the prosecutions of these two separate accusations in the Justice Court and the felony accusations filed in the District Court. The State recognizing this prohibition sought out to set aside the order of sentencing in the Justice Court. They did so without authority of law. This further evidences that the Justice Courts within this State and more particularly within the individual cities is an extension of the respective police departments and the respective prosecutors. They do what they are told and they did so here. They look only to the prosecution for legal authority. In this case, the Justice of the Peace was the former Chief of Police for the City of Payson.

The misdemeanor sentence stood as a bar to the felony prosecution under 'double jeopardy' claims and 'single criminal episode' statutes. The State, in conjunction with the City, attempted to save the felony prosecution. To do so, they need the misdemeanor charges dismissed without a conviction. Thereby, the City sought to undo the previously imposed sentence of the municipal Justice Court and succeeded.

The defendant seeks to uphold the sentence and judgments of the Justice Court. If so, he has been twice prosecuted out of the same events. If not, his argument fails.

### CONCLUSIONS

The defendant has been twice placed in jeopardy for the same facts. He was sentenced on one in the Justice Court. The State,

realizing their mistakes, attempted to undo the prior judgments. To prosecute the defendant on this felony charge, they had to unravel a mistake wherein they charged him with a criminal complaint in the Justice Court. They went to the local Justice of the Peace and sought their relief. They did so after judgment and without legal authority.

The Justice of the Peace, the former Chief of Police, granted the City's request and set aside the judgment, although without legal justification.

The defendant now seeks relief from this Court and asks this Court to bar this prosecution. The defendant been sentenced and this felony prosecution places him twice in jeopardy.

DATED this **26** day of February, 2000.

  
SHELDEN R CARTER  
Attorney for Appellant

MAILING CERTIFICATE

I hereby certify that I mailed a copy of motion and order to extend time to file appellant's brief to:

Attorney General for the State of Utah (four copies)  
124 State Capitol  
Salt Lake City, Utah 84114

Utah Court of Appeals (eighth copies)  
450 South State  
#500  
Salt Lake City, Utah 84114-0230

Postage prepaid this 26 day of February, 2000.



S. Carter

ADDENDUM

1. MEMORADUM DECISION OF COURT OF APPEALS
2. ADVISEMENT OF RIGHTS SIGNED BY DEFENDANT IN PAYSON JUSTICE COURT
3. FINDINGS AND ORDERS OF SPANISH FORK DISTRICT COURT.
4. FINDINGS OF THE PROVO DISTRICT COURT.

FILED

OCT 30 1997

IN THE UTAH COURT OF APPEALS

COURT OF APPEALS

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Payson City,

Plaintiff and Appellant,

v.

Blaine Horrocks,

Defendant and Appellee.

FOURTH

SP

MEMORANDUM DECISION

(Not For Official Publication)

Case No. 970458-CA

F I L E D

(October 30, 1997)

-----

Fourth District, Spanish Fork Department  
The Honorable John C. Backlund

Attorneys: Shelden R. Carter, Provo, for Appellant  
David C. Tuckett, Payson, for Appellee

-----

Before Judges Wilkins, Bench, and Billings.

PER CURIAM:

Pursuant to Utah R. Crim. P. 26(12), if a case originates in justice court and is appealed to district court, no further appeal is allowed:

An appeal may be taken to the district court from a judgment rendered in the justice court under this rule, except:

(a) the case shall be tried anew in the district court. The decision of the district court is final, except when the validity or constitutionality of a statute or ordinance is raised in the justice court. (Emphasis added.)

See also City of Monticello v. Christensen, 769 P.2d 853 (Utah Ct. App. 1989), aff'd, 788 P.2d 513, cert. denied, 498 U.S. 841, 112 L.Ed.2d 89, 111 S. Ct. 120 (1990) (stating that one cannot appeal a district court's review of a justice court's judgment unless the validity or constitutionality of an ordinance or statute was at issue).



COVER SHEET

CASE TITLE:

Payson City,  
Plaintiff and Appellee,  
v.  
Blaine Horrocks,  
Defendant and Appellant.

Case No. 970458-CA  
Oct 31 2 30 PM '97  
FOURTH DISTRICT COURT  
SPANISH FORK, UT  
1997

October 30, 1997. MEMORANDUM DECISION (Not For Official Publication).

Memorandum Decision by PER CURIAM.

CERTIFICATE OF MAILING

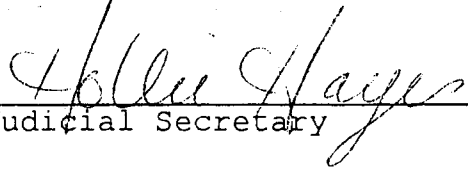
I hereby certify that on the 30th day of October, 1997, a true and correct copy of the attached MEMORANDUM DECISION was deposited in the United States mail to:

Shelden R. Carter  
Carter, Phillips & Wilkinson  
3325 N University #200  
Provo UT 84604-4434

David C. Tuckett  
Payson City Attorney  
439 W Utah Ave  
PO Box 421  
Payson UT 84651

and a true and correct copy of the attached MEMORANDUM DECISION was deposited in the United States mail to the judge listed below:

Honorable John C. Backlund  
Fourth District Court  
40 S Main Street  
Spanish Fork UT 84660

  
Judicial Secretary

TRIAL COURT:  
Fourth District, Spanish Fork Dept. #975000142

PAYSON CITY JUSTICE COURT  
439 WEST UTAH AVENUE  
PAYSON, UT 84651  
(801) 465-5210  
JAMES E. BOX-JUSTICE COURT JUDGE

DEFENDANTS RIGHTS

You are appearing here today to enter into a plea of Guilty or Not Guilty on a complaint issued against you.

Before entering a plea, you have the right to speak to an Attorney. If you desire to do so we will reschedule your arraignment.

On entering a plea of Not Guilty you are telling the court you did not commit the offense with which you have been charged. If you plead Not Guilty, we will set the matter for trial. At the time of trial you have the right to confront city/state witnesses and question them and to compel witnesses to come in on your own behalf. Also, you are protected against self-incrimination, meaning you do not have to take the stand unless you desire to do so. you are presumed innocent and it is the city/state burden to prove your guilt beyond a reasonable doubt.

If you wish a trial by a Jury of your peers, you must make a clear request in writing to the court for such a trial. By Utah Law you may be required to pay Jury and/or witness fees.(UCA 21-5-18)

You have the right to plead Guilty. But, if you do plead guilty, that is considered an admission of guilt and at that point you waive your right to trial, confrontation of witnesses, protection against self-incrimination and presumption of innocence. If you plead guilty and waiver your right, you will be allowed to make an explanation to the court as to what happened. The Judge may wish to discuss your case. Based on your explanation and discussion, sentence will be imposed.

If on a plea of Guilty, or a conviction, it is your right to appeal the conviction in writing within 30 days.

I understand my rights as they are explained here, and as verbally explained by the court.

7-29-96  
DATE

Blaine Horvath  
DEFENDANT'S SIGNATURE

I AM MAKING A PLEA OF GUILTY OR NOT GUILTY

COUNT I: DRIVING ON SUSPENSION NO CONTEST 25

COUNT II: FAIL TO YIELD GUILTY

COUNT III: NO INSURANCE (CAR) NO CONTEST

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DEFENDANT'S SIGNATURE

2007

SHELDEN R CARTER (0589) F0...  
CARTER, PHILLIPS & WILKINSON  
Attorney for Defendant  
3325 North University, Suite 200  
Provo, Utah 84604-4438  
Telephone: 375-9801

FOURTH DISTRICT COURT, STATE OF UTAH  
UTAH COUNTY, SPANISH FORK DEPARTMENT

---ooOoo---

PAYSON CITY,	)	
	)	
Plaintiff,	)	ORDER
	)	& FINDINGS
vs.	)	
	)	
BLAINE HORROCKS,	)	CASE NO. 975000142
	)	JUDGE: JOHN C. BACKLUND
Defendant.	)	
	)	

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This matter came before the court on February 24, 1997.  
Based on the information given to this Court, the court makes the following Findings:

1. The defendant herein was cited for an offense which allegedly occurred on July 21, 1996. Defendant was cited with the offense of Driving on Suspension, Failure to Yield and having no insurance. Defendant was mandated by a Payson City Police citation to appear in the Payson Justice Court within 14 days from the date of July 21, 1996. See copy of original citation given to the defendant.

2. The defendant on July 29, 1996, within the fourteen days mandated by citation appeared before the Honorable Judge James E. Box, Justice Court Judge for the Payson City Justice Court.

At said hearing, the defendant entered a pleas as follows:

- a) no-contest to the Driving on Suspension;
- b) guilty to the Failure to Yield; and
- c) guilty to the charge of no insurance.

At said time, the court pronounced orally the sentence by advising the defendant that he was fined the sum of \$555.00 and ninety days in jail on the Driving on Suspension charge. The court suspended the jail and \$150.00 of the fine leaving a balance owing of \$405.00.

On the "No Insurance" charge the defendant also entered a plea of guilty and the court imposed the same jail term and fines(90 days and \$555.00 in fine). The court suspended the same amounts leaving the defendant owing a balance of \$405.00.

The defendant also was sentenced upon the failure to yield and was fined \$50.00 for doing so.

Jail terms were imposed but suspended upon his completion of the Court ordered probation.

The Court made a computer entry and a written order of the sentencing. Said documents was submitted to this Court as an exhibit. A copy of the same is attached hereto.

Said documentation being prepared on July 29, 1996, in writing, evidencing the fines, jail and the suspended terms therein based upon compliance with the court's order. Said document was submitted as evidence in the above matter on February 24, 1997 and entered into the court as defendant's Exhibit #1.

4. On the 5th day of August, 1996 the Payson City Prosecutor filed a Motion to Dismiss said charges of driving on suspension, failure to yield and no insurance.

The City petitioned the Justice Court to grant said Motion and to arrest the Judgment. They did so on the basis of Rule 23 of the Utah Criminal Procedure and also Rule 25(b)(4) of the Rules of Criminal Procedure.

Rule 25 provides the following in relevant part:

The court shall dismiss the information or indictment when: . . . (4) The court is without jurisdiction.

The prosecution advised the court to support their Motion to Dismiss that the defendant was involved in an accident on July 21, 1996.

*They argued that he was cited for a DUI with Injury, Possession of a Controlled Substance, Possession of Drug Paraphernalia, Possession of Psilocybin, Driving on Suspension, Failure to Yield and No Insurance. The case was sent to the Utah County Attorney for review.*

*However, the defendant came into the Payson City Justice Court with the citation that contained the Class B Misdemeanor of Driving on Suspension, Failure to Yield and no insurance. The citation for DUI was written on a separate citation and other charges were sent to the County Attorney for determination and review of the charges. The court did not have the original citation, however, the defendant gave the court a copy of his misdemeanor citation. Defendant misled the court into thinking that those were all of the charges. The court allowed him to make a plea and issued an oral sentence.*

5. The motion to dismiss was granted by Judge James E. Box on August 19, 1996. The defendant objected to such dismissal and dated his response August 7, 1996. The defendant alleged therein that the offenses were within City Court jurisdiction or no basis existed to now grant a dismissal.

6. The defendant initiated his appeal from the Justice Court on September 10, 1996, appealing it to the District Court for Utah County, Spanish Fork Division of the Fourth Judicial District Court.

These matters were presented to this court on February 24, 1997.

Based thereupon and based upon the following recitation of facts as noted above, the court dismissed the defendants' Appeal of the Justice Courts' Order of dismissal finding the defendant had no authority to initiate the appeal.

DATED AND SIGNED this 8 day may 1997.

  
\_\_\_\_\_  
Judge John C. Backlund

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing Order to the following:

Spanish Fork Circuit Court  
40 South Main  
Spanish Fork, Utah 84660

David Tuckett, Esq.  
439 West Utah Ave.  
Provo, Utah 84651

Postage prepaid this 30 day of April 1997.

B. Carter  
Secretary



MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing document  
to:

Marianne O'Bryant  
Kay Bryson  
100 E. Center, Suite 2100  
Provo, UT 84606

Postage prepaid this 16 day of Jan., 1998.

B. Cant  
Secretary

KAY BRYSON #0473  
Utah County Attorney  
MARIANE O'BRYANT #5442  
Deputy Utah County Attorney  
100 East Center, Suite 2100  
Provo, Utah 84606  
(801) 370-8026

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

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STATE OF UTAH,	:	
	:	FINDINGS OF FACT,
Plaintiff,	:	CONCLUSIONS OF LAW, AND
	:	ORDER
vs.	:	
BLAINE HORROCKS,	:	Case No. 971400157
Defendant(s).	:	Judge Anthony W. Scofield

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This matter came before the Court, the Honorable Judge Schofield presiding, on the 17th day of March, 1998, for a second hearing on the defendant's Motion of Dismissal. The defendant was present and was represented by Sheldon Carter. The State was represented by Mariane O'Bryant, Deputy Utah County Attorney. The court heard testimony from justice court clerk Marly Lasonbee. The defendant requested an opportunity to present witness information in affidavit form, which was to be submitted within 10 days. The court has not received any additional information from the defendant. On May 6, 1998, the State filed a Motion to Strike Evidentiary Hearing set for June 8, 1998. The Court now being

fully informed regarding these matters and finding good cause therefore, makes and enters the following:

**FINDINGS OF FACT**

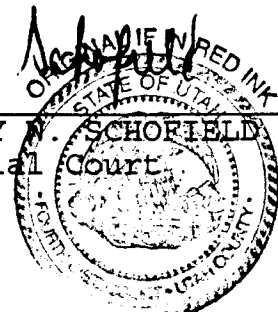
1. No judgment of conviction was entered against the defendant in the Payson City Justice Court.
2. Judge Backlund has previously addressed the issue of double jeopardy based on the defendant's appeal from the Justice court and ruled that no judgment was entered, therefore no jeopardy attached.
3. The court declines to review Judge Backlund's ruling on the issue of double jeopardy.

**CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Court now enters the following conclusions of law: No judgment of conviction was entered against the defendant in the justice court, therefore no jeopardy attached before the matter was dismissed in the justice court. The current charges against the defendant in the instant case before the Fourth Judicial District Court do not constitute double jeopardy.

DATED this 5th day of June, 1998.

*Anthony M. Schorfield*  
JUDGE ANTHONY M. SCHORFIELD  
Fourth Judicial Court



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed this 28th day of May 1998, to Sheldon Carter, Counsel for Defendant, at 3325 N. University Ave., Suite 200, Provo, Utah 84604.

Allyson Mausfield