

1990

Logan City v. David Craig Carlsen : Brief of Appellant

Utah Court of Appeals

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David Craig Carlsen; Appellant in Pro Se.

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

LOGAN CITY, :
Plaintiff-Appellee, : Case No. 900115-CA
vs- : Case Type: APPEAL
DAVID CRAIG CARLSEN, : Priority No. 2
Defendant-Appellant. :
:

BRIEF OF APPELLANT

AN APPEAL FROM THE FIRST CIRCUIT
COURT OF THE STATE OF UTAH, COUNTY OF CACHE
LOGAN CITY DEPARTMENT, THE HONORABLE
CLINT S. JUDKINS, JUDGE PRESIDING

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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Plaintiff-Appellee, : Case No. 900115-CA

-vs- : Case Type: APPEAL

DAVID CRAIG CARLSEN, : Priority No. 2

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IN THE UTAH COURT OF APPEALS

LOGAN CITY, :

Plaintiff-Appellee, : Case No. 900115-CA

-vs- : Case Type: APPEAL

DAVID CRAIG CARLSEN, : Priority No. 2

Defendant-Appellant. :

STATEMENT OF NATURE OF PROCEEDINGS

This is an appeal from a jury verdict finding the defendant guilty of No Utah Registration in violation of § 10.04.010 of the Revised Ordinances of Logan City incorporating by reference U.C.A. § 41-1-18, (1953 as amended); and Not Wearing a Seat Belt in violation of § 10.04.010 of the Revised Ordinances of Logan City incorporating by reference U.C.A. § 41-6-182, (1953 as amended). This appeal is taken to the Utah Court of Appeals from the First Circuit Court of the State of Utah, County of Cache, Logan City Department pursuant to the provisions of Rule 26 of the Utah Rules of Criminal Procedure.

STATEMENT OF ISSUES PRESENTED

1. Whether or not the Vehicle Registration Ordinance of Logan City, § 10.56.010 of the Revised Ordinances of Logan City under which the defendant was charged is Unconstitutional?

2. Whether or not the defendant was placed twice in jeopardy for the same offense by being tried twice for the same offense of No Utah Registration in violation of the Utah and the United States Constitution?

3. Whether or not the statutes under Utah's Motor Vehicle Act are unconstitutionally vague in violation of Due Process of Law?

4. Whether or not the statutes under Utah's Seat Belt Usage Act are unconstitutional and violate the provisions of Article I § 24 of the Utah Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

DETERMINATIVE LAWS

§ 10.56.010 of the Revised Ordinances of Logan City,
(See addendum).

§ 10.04.010 of the Revised Ordinances of Logan City,
(See Addendum).

Utah Code Annotated, § 41-1-18, (1953 as amended),
(See Addendum).

Utah Code Annotated, § 41-1-19, (1953 as amended),
(See addendum).

Utah Code Annotated, § 41-1-1, (1953 as amended),
(See addendum).

Utah Code Annotated, § 41-6-182, (1953 as amended),
(See addendum).

Utah Code Annotated, § 41-6-183, (1953 as amended),
(See addendum).

Utah Code Annotated, § 41-6-184, (1953 as amended),
(See addendum).

Utah Code Annotated, § 76-1-403, (1953 as amended),
(See Addendum).

Article I, § 7 of the Utah Constitution (See addendum).

Article I, § 12 of the Utah Constitution (See addendum).

Article I, § 24 of the Utah Constitution (See addendum).

Fifth Amendment to the United States Constitution,
(See addendum).

Fourteenth Amendment to the United States Constitution,
(See addendum).

STATEMENT OF THE CASE

The defendant was charged by Information filed on the 27th day of October, 1989 in the First Circuit Court of the State of Utah, County of Cache, Logan City Department for the three offenses of: Count I of No Utah Registration; Count II of Failure to Signal to Turn; and Count III of Driver not Wearing a Seat Belt, (R.73-74).

The defendant was tried for said offenses in a jury trial held before the Honorable Clint S. Judkins on the 20th day of December, 1989.

Officer Greg Monroe testified on behalf of Logan City that he was on duty as a Logan City Police Officer on the 8th day of August, 1989. He was stopped at a traffic semaphore facing north at the intersection of 100 West and 400 North in Logan, Utah. He observed the defendant in the turning lane facing West on 400 North and 100 West. He then observed the defendant make a left hand turn and proceed South on 100 West. Officer Monroe subsequently made a U-turn and stopped the defendant who was driving West on 300 North between 200 West and 300 West. During the stop, he issued the defendant a citation for No Utah Registration; Not making a Left Hand Turn Signal; and Driver Not Wearing a Seat Belt (R. 80).

Officer Monroe further testified that defendant's vehicle

was registered in the State of Idaho and that the registration did not expire until the 31st day of December, 1989. Officer Monroe stated that a Cache County Deputy Sheriff was following him in a Sheriff's vehicle on 100 West, and was involved in stopping the defendant. The Cache County Deputy Sheriff did not testify at the trial.

The defendant testified on his own behalf. He testified that Officer Monroe was not stopped at the traffic semaphore when he made a left hand turn at the intersection of 400 North and 100 West in Logan, Utah. He testified that he made a mechanical left hand turn signal when turning left at the intersection. He observed Officer Monroe's police vehicle after he made the turn and that Officer Monroe was driving North between 300 North and 400 North on 100 West.

The defendant testified that he considered himself to be a resident of the State of Idaho and residing in Preston, Idaho. He stated that he worked at Logan Manufacturing in Logan, Utah and that because his privilege to operate a motor vehicle in the State of Utah had been suspended until July 3, 1989 he also maintained an apartment in Logan, Utah for work purposes for the period between May 2, 1989 and August 8, 1989.

He had a valid Utah Driver's License on August 8, 1989. The jury returned a verdict of not guilty for the offense of not making a left hand turn signal and guilty for the offenses of No Utah Registration and Driver not Wearing a Seat Belt.

Subsequent to Officer Monroe and the defendant testifying, the defendant's attorney moved the Court for dismissal of the charge of No Utah Registration on the basis that the vehicle registration ordinance of Logan City was unconstitutional. The Trial Court denied the motion. Logan City terminated its prosecution under the ordinance and filed an Amended Information and continued the prosecution under another ordinance incorporating by reference the State statute, (R. 27-33, R. 66-69). The defendant's attorney then moved for dismissal of the charge of Driver not Wearing a Seat Belt on the basis that the Logan City Ordinance incorporating by reference the State statute for the offense was unconstitutional. The Trial Court denied the Motion (R. 27-33).

The defendant subsequently filed a motion and supplemental motion for an arrest of judgment on the basis that the statutes under Utah Motor Vehicle Act and Motor Vehicle Seat Belt Usage Act are unconstitutional (R. 64-65, 19-25). Logan City filed written response to both motions (R. 16-18, 62-63). The Trial

Court by Memorandum Decision denied both motions (R. 14-15, 26).

The defendant was sentenced for both offenses on the 30th day of January, 1990. He was ordered to pay a total fine of \$ 45.00 for both offenses, \$ 15.00 to be suspended upon proof of registration (R. 13). The defendant thereafter filed a Notice of Appeal (R. 10-11).

SUMMARY OF ARGUMENT

1. THE LOGAN CITY VEHICLE REGISTRATION ORDINANCE IS UNCONSTITUTIONAL.
2. THE DEFENDANT WAS PLACED TWICE IN JEOPARDY FOR THE SAME OFFENSE OF NO UTAH REGISTRATION.
3. THE STATUTES UNDER UTAH'S MOTOR VEHICLE ACT ARE UNCONSTITUTIONALLY VAGUE.
4. THE STATUTES UNDER UTAH'S MOTOR VEHICLE SEAT BELT USAGE ACT ARE UNCONSTITUTIONAL.

ARGUMENT

POINT I

THE LOGAN CITY VEHICLE REGISTRATION ORDINANCE IS UNCONSTITUTIONAL.

The defendant contends that Logan City's Vehicle Registration ordinance is unconstitutional. § 10.56.010 of the Revised Ordinances of Logan City provides as follows:

ARTICLE I. REGISTRATION

10.56.010 Vehicles. Every vehicle, at all times while being driven, stopped or parked upon the streets or alleys of the city, shall be registered in the name of the owner thereof in accordance with the laws of the state, unless such vehicle is not required by the laws of the state to be registered in this state, and shall display in proper position valid and unexpired registration plates or indicia of registration meeting the requirements of the laws of the state, clear and distinct and free from defacement, mutilation, grease and other obscuring matter, so as to be plainly visible and legible at all times; provided, however, if such vehicle is not required to be registered in this state, territory, possession or district of the United States or a foreign country, substantially complying with the provisions of this chapter, shall be considered as compliance with this title.

The defendant's attorney after all the evidence had been presented to the Court at trial moved the Court for dismissal of the charge of No Utah Registration because the above ordinance makes criminal activities in which the State statute for the same offense does not contrary to the Utah Supreme Court's decision in Allgood v. Larson, 545 P.2d 530 (1976), (R. 31-32 Page 5 & 6 of Clerk's Minutes).

The State statute for the same offense provides as follows:

U.C.A. § 41-1-18 (1953 as amended) provides:

(1) It is a class B misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered in this State:

The Logan City ordinance in this case makes it criminal to stop or park upon any alley whether public or private a vehicle required to be registered in this State and the State

statute for this same offense does not make these activities criminal.

Logan City Council exceeded its authority under Utah's Constitution when enacting the provisions of § 10.56.010 of the Revised Ordinance of Logan City and the ordinance should be declared unconstitutional under the principles of Allgood v. Larson, supra.

POINT II

THE DEFENDANT WAS PLACED TWICE IN JEOPARDY FOR THE SAME OFFENSE OF NO UTAH REGISTRATION.

The defendant contends that he was twice placed in jeopardy for the same offense of No Utah Registration in violation of Article I, § 12 and Article I, § 7 of the Utah Constitution and the Fifth and Fourteenth Amendment to the United States Constitution.

The defendant was charged by Information for the offense of No Utah Registration in violation of § 10.56.010 of the Revised Ordinances of Logan City. Subsequent to the jury being impanelled and sworn and Officer Monroe and the defendant had testified, the defendant's attorney moved the Court for dismissal of the No Utah Registration charge upon the grounds that the ordinance was unconstitutional, (R. 31-32, Page 5 & 6 of the Clerk's Minutes). The Court denied the motion and Logan City terminated its prosecution

under § 10.56.010 of the Revised Ordinances of Logan City, the filed an Amended Information with the Court (R. 66-69, R. 30, Page 4 of the Clerk's Minutes) and proceeded with its prosecution under § 10.04.010 of the Revised Ordinances of Logan City incorporating by reference, U.C.A. § 41-1-18 (1953 as amended).

§ 10.04.010 of the Revised Ordinances of Logan City provides as follows:

10.04.010 Statutes adopted. All of UCA 41-1, 41-2, 41-6, 41-7, 41-8, 41-12(a), 41-21 and 41-22, as amended, together with all amendments and additions that may hereafter be made, are enacted, approved and adopted as part of this section to form the traffic code for this municipality, except as hereinafter specified, and by this reference are made a part of this title to the same extent and effect as though such code were copied in this chapter in full. Three copies of the laws adopted by reference shall be filed for use and examination in the office of city recorder.

U.C.A. § 41-1-18, (1953 as amended) provides as follows:

(1) It is a class B misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered in this State:

U.C.A. § 77-1-5, (1953 as amended) provides as follows:

A criminal action for any violation of a state statute shall be prosecuted in the name of the state of Utah. A criminal action for violation of any county or municipal ordinance shall be prosecuted in the name of the governmental entity involved.

It is the defendant's contention that he was tried twice for the same offense of No Utah Registration. First, he was

prosecuted under § 10.56.010 of the Revised Ordinances of Logan City which was improperly terminated by Logan City. After terminating this prosecution, Logan City Amended the Information and prosecuted the defendant under § 10.04.010 of the Revised Ordinances of Logan City incorporating by reference U.C.A. § 41-1-18, (1953 as amended) in which the jury found the defendant guilty.

The defendant contends that the second prosecution of the defendant for the offense of No Utah Registration by Logan City under § 10.04.010 of the Revised Ordinances of Logan City was barred by U.C.A. § 76-1-403, (1953 as amended).

The defendant further contends that the second prosecution of the defendant for the offense of No Utah Registration by Logan City under § 10.04.010 of the Revised Ordinances of Logan City violated the Fifth and Fourteenth Amendment to the United States Constitution, Waller v. Florida, 397 U.S. 387, 90 S.Ct. 1184, 25 L.Ed.2d 435 (1970).

This issue was not raised in the Trial Court. This Court has previously held that an issue may be raised for the first time on appeal if the issue affected the substantial rights of the defendant, State v. Turner, 736 P.2d 1043, (Utah App. 1987). The defendant being tried twice for the same offense of No Utah Registration by Logan City affected defendant's substantial rights to Due Process of Law.

The Information filed with the Court on the 27th day of October, 1989 did not have any reference to U.C.A. § 41-1-18, (1953 as amended). Logan City had every opportunity to Amend the Information prior to the jury being impanelled and sworn but waited until all the evidence had been introduced at trial. Logan City dismissed the charge of No Utah Registration by terminating its prosecution under § 10.56.010 of the Revised Ordinances of Logan City. Logan City was barred under the provisions of Rule 25 (e) of the Utah Rules of Criminal Procedure in prosecuting the defendant for No Utah Registration in violation of § 10.04.010 of the Revised Ordinances of Logan City Incorporating by reference U.C.A. § 41-1-18, (1953 as amended).

The defendant was placed twice in jeopardy by being tried twice for the same offense of No Utah Registration in violation of the Utah and United States Constitution. The conviction for No Utah Registration should therefore be reversed.

POINT III

THE STATUTES UNDER UTAH'S MOTOR VEHICLE ACT ARE
UNCONSTITUTIONALLY VAGUE.

The defendant in this case was charged by Amended Information (R. 66-69) for violating the provisions of § 10.04.010 of the Revised Ordinances of Logan City incorporating by reference U.C.A. § 41-1-18, (1953 as amended) which provides as follows:

(1) It is a class B misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered in this State:

The exceptions of vehicles required to be registered in the State of Utah is defined under the provisions of U.C.A. § 41-1-19, (1953 as amended) in which the pertinent part states as follows:

(1) Every motor vehicle, combination of vehicles, trailer, and semitrailer, when driven or moved upon a highway, is subject to the registration and certificate of title provisions of this chapter except:
(f) any motor vehicle not designed, used or maintained for the transportation of passengers for hire or for the transportation of property, if the vehicle is duly registered in another state and is owned and operated by a nonresident of this state;

The term of "nonresident" for the purpose of required vehicle registration under the Motor Vehicle Act is defined under the provisions of U.C.A. § 41-1-1, (1953 as amended) of which the pertinent part states as follows:

(22) (a) "Nonresident" means every person who is not a resident of this state and who does not engage in intrastate business within this state and operate

in that business any motor vehicle, trailer,
or simitrailer within this state.

The Utah Supreme Court in the case of State v. Blowers, 717 P.2d 1321 (Utah 1986) held that a criminal statute must be sufficiently clear and definite to inform persons of ordinary intelligence what their conduct must be to conform to its requirements and to advise one accused of violating it what constitutes the offense with which he is charged. See also, State v. Bradshaw, 541 P.2d (Utah 1975) and State v. Owens, 638 P.2d 1182, 1183 (Utah 1981).

It is defendant's contention that Utah's Motor Vehicle Act does not give a clear legal definition for the term "Non-resident" and the standards for the residency requirements for the purpose of required motor vehicle registration. The Utah Legislature had enacted statutes which give a clear legal definition for the standards of the residency requirements for the purpose of voter registration, U.C.A. § 20-2-13, & U.C.A. § 20-2-14, (1953 as amended); for the purpose of student tuition payment fees, U.C.A. § 53B-8-102, (1953 as amended); for the purpose of receiving public assistance, U.C.A. § 62A-9-115, (1953 as amended); and also for the purpose of

receiving a notarial commission, U.C.A. § 46-1-3, (1953 as amended). However, the Utah Legislature under Utah's Motor Vehicle Act which imposes criminal penalties has failed to enact a statute which gives a clear and definite definition of the term of "Nonresident" and the residency requirements for the purpose of required motor vehicle registrations.

Furthermore, the challenged statutes are unconstitutional because the statutes attempts to delegate legislative power to the judiciary. In People v. Latsis, 195 Colo. 411, 414, 578 P.2d 1055, 1058 (1978) and again in People v. Smith, 638 P.2d 1 (Colo. 1981), the Colorado Court stated:

Due Process of Law requires that the legislature provide sufficiently precise standards to guide a judge and jury in deciding whether a crime has been committed. Failure to do so may well constitute an unlawful delegation of legislative power.

The power to define crimes is legislative in character, it may not be delegated to the judiciary. See, 16 C.J.S. Constitutional Law, § 159. A statute which delegates legislative power to the judiciary violates a constitutional mandate for separation of powers. State

v. Smith, 183 Conn. 17, 438 A.2d 1165 (Conn. 1981).

The statutes challenged in the instant case delegates to the judiciary the power to legislate the standards for the residency requirements under Utah's Motor Vehicle Act in each individual case.

The Court in Kelm v. Carlson, 473 F.2d 1267, 1271, (Sixth Cir. 1973) held that the word "resident" has many different meanings in law, largely determined by the statutory context in which it is used.

The Court in United States v. Calhoun, 566 F.2d 969, 973 (Fifth Cir. 1978) held that a person's legal residence is the permanent place of abode which person intends to be his residence and to which he intends to return despite temporary residence elsewhere or despite temporary absences.

The defendant testified that he considered himself to be a resident of the State of Idaho despite his temporary absence and temporary residence in the State of Utah (R. 29).

Logan City contended in the Trial Court that because the defendant had a Utah Driver's License on August 8, 1989 that he was a resident of the State of Utah. However, Utah's Operator's License Act, U.C.A. § 41-2-102 (16), (1953 as amended) can be construed to require any person who resides in Preston, Idaho and travels or sojourns the 25 miles to Logan, Utah for employ-

ment purposes must have a valid Utah Driver's License.

There are perhaps many valid arguments as to whether the defendant was or was not a resident of the State of Utah which demonstrates the vagueness of the statutes challenged by defendant. The statutes are vague both on their face and as applied to defendant and therefore violate Article I, § 7 of the Utah Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The defendant's conviction for No Utah Registration should therefore be reversed.

POINT IV

THE STATUTES UNDER UTAH'S MOTOR VEHICLE SEAT
BELT USAGE ACT ARE UNCONSTITUTIONAL.

The defendant contends that the statutes under Utah's Motor Vehicle Seat Belt Usage Act, U.C.A. § 41-6-182 et seq. (1953 as amended) violate the provisions of Article I, § 24 of the Utah Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The defendant was charged by Information (R. 73-74, 66-69) for violating the provisions of § 10.04.010 of the Revised Ordinances of Logan City incorporating by reference U.C.A. § 41-6-182 (1953 as amended) which reads as follows:

(1) Except as provided in Section 41-6-148.20 for children under five years of age and except as provided in Subsection (2) for passengers who are at least five years of age but younger than 18 years of age, the driver and front seat passengers of a motor vehicle as defined in Subsection 41-6-148.20(1), operated on a street or highway in this state shall wear a properly adjusted and fastened safety belt system, which meets standards promulgated by the Department of Public Safety.

(2) The driver of a motor vehicle shall secure or cause to be secured a properly adjusted and fastened safety seat belt system on any passenger in the front seat who is at least five years of age but younger than 18 years of age.

The appellant contends that the enforcement of § 41-6-182 against him subjected him to arbitrary and invidious discrimination because the provisions of § 41-6-183 (1953 as amended) excludes the following class of people from its operation:

This part [article] does not apply to a driver or front seat passenger of:

(5) a motor vehicle engaged in pick up, delivery, or service operations involving repeated starts and stops and requiring the front seat occupant to frequently and repeatedly enter and leave the vehicle.

The appellant further contends that the enforcement of § 41-6-182 against him subjected him to arbitrary and invidious discrimination because the provisions of U.C.A. § 41-6-184 (1953 as amended) excludes the following class of people from its operation:

Enforcement of this part [article] by state or local law enforcement agents shall be only a secondary action when a driver of a motor vehicle has been detained for a suspected violation of Title 41 other than this part, or another offense.

Article I § 24 of the Utah Constitution provides that: All laws of a general nature shall have uniform operation.

It is clear that the above statutory provisions violate this constitutional mandate. The Utah Supreme Court under the provisions of Article I § 24 of the Utah Constitution held a Sunday closing ordinance to be unconstitutional as being arbitrarily discriminatory, Gronlund v. Salt Lake City, 194 P.2d 464 (1948). The Court in Dodge Town, Inc., v. Romney, 25 U.2d 267, 480 P.2d 461 (1971) held a statute prohibiting Sunday sales of new or used automobiles by licensed dealers to be unreasonably discriminatory against licensed auto dealers. The Court in Johnston v. Stoker, 685 P.2d 539 (Utah 1984) and

Malan v. Lewis, 693 P.2d 661 (Utah 1984) held that Utah's guest statutes violated the equal protection principles of the above section of the Utah Constitution. The Court in Justice v. Standard Gilsonite Co., 12 U.2d 357, 366 P.2d 974 (Utah 1961) held that a wage payment statute which excluded banks and mercantile houses from the penalty provisions of the statute to be an unreasonable classification with no reasonable justification and therefore unconstitutional.

In the instant case there is no reasonable justification to exclude from the operation of § 41-6-182 a driver or front seat passenger of a motor vehicle engaged in pick up, delivery, or service operations involving repeated starts and stops and requiring the front seat occupant to frequently and repeatedly enter and leave the vehicle.

An ordinary person who is not a professional or commercial driver may during their normal day to day activities be required to make repeated starts and stops requiring them to frequently and repeatedly enter and leave their vehicle. They are all similarly situated.

There is no reasonable justification to exclude from the operation of § 41-6-182 a driver or front seat passenger when the driver is not detained for a suspected violation of Title 41 other than § 41-6-182 or another offense.

A peace officer can observe someone driving down a street or highway with part of their seat belt system hanging out the door. The provisions of § 41-6-184 precludes the officer from enforcing § 41-6-182. However, if a peace officer detains a driver for a speeding violation and observes a seat belt violation then the peace officer can enforce § 41-6-182. Both drivers are similarly situated by not wearing their seat belt, but § 41-6-184 allows only the driver who was speeding to be cited for not wearing a seat belt and fined. Clearly, this is an unreasonable classification without any reasonable justification.

The United States Supreme Court in Rinaldi v. Yaeger, 384 U.S. 305, 16 L.Ed.2d 577, 86 S.Ct. 1497 (1966) and again in James, Judicial Administrator v. Strange, 407 U.S. 128, 32 L.Ed.2d 600, 92 S.Ct. 2027 (1972) held that the Equal Protection Clause imposes a


requirement of some rationality in the nature of the class singled out.

There is no rationality in the nature of the class singled out for enforcement of the statutes challenged in this case. The statutory scheme may encourage some overly zealous law enforcement officers to issue unwarranted citations for other offenses just to cite a person for not wearing a seat belt. The statutes under Utah's Motor Vehicle Seat Belt Usage Act are arbitrary and discriminatory in violation of Article I, § 24 of the Utah Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The defendant's conviction for Not Wearing a Seat Belt should therefore be reversed.

CONCLUSION

The defendant respectfully submits that based upon the foregoing his convictions for No Utah Registration and for Not Wearing a Seat Belt should be reversed by this Court and remanded to the Lower Court for further proceedings consistent with this Court's decision.

RESPECTFULLY SUBMITTED on this 9th day of August, 1990.


DAVID CRAIG CARLSEM
Appellant in Pro Se

CERTIFICATE OF MAILING

I certify that I mailed two true and correct copies of the foregoing Brief of Appellant to W. SCOTT BARRETT, Logan City Attorney, located at 255 North Main, P.O. Box 527, Logan, Utah, 84321, postage prepaid and by placing the same in a U.S. Mailbox on this 9th day of August, 1990.


DAVID CRAIG CARLSEN

A D D E N D U M

ARTICLE I. REGISTRATION

10.56.010 Vehicles. Every vehicle, at all times while being driven, stopped or parked upon the streets or alleys of the city, shall be registered in the name of the owner thereof in accordance with the laws of the state, unless such vehicle is not required by the laws of the state to be registered in this state, and shall display in proper position valid and unexpired registration plates or indicia of registration meeting the requirements of the laws of the state, clear and distinct and free from defacement, mutilation, grease and other obscuring matter, so as to be plainly visible and legible at all times; provided, however, if such vehicle is not required to be registered in this state, the indicia of registration issued by another state, territory, possession or district of the United States or a foreign country, substantially complying with the provisions of this chapter, shall be considered as compliance with this title. (Prior code §42-15-36)

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Chapter 10.04

STATUTES ADOPTED

Sections:

10.04.010 Statutes adopted.

10.04.010 Statutes adopted. All of UCA 41-1, 41-2, 41-6, 41-7, 41-8, 41-12(a), 41-21 and 41-22, as amended, together with all amendments and additions that may hereafter be made, are enacted, approved and adopted as part of this section to form the traffic code for this municipality, except as hereinafter specified, and by this reference are made a part of this title to the same extent and effect as though such code were copied in this chapter in full. Three copies of the laws adopted by reference shall be filed for use and examination in the office of the city recorder. (Added during 1989 codification)

ARTICLE 3

ORIGINAL AND RENEWAL OF REGISTRATION, ISSUANCE OF CERTIFICATES OF TITLE

41-1-18. Driving without registration or certificate of title — Penalty — Temporary permit.

(1) It is a class B misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered in this state:

(a) which is not registered or for which a certificate of title has not been issued or applied for; or

(b) for which the appropriate fee has not been paid as required unless allowed under Subsection (2).

(2) If an application accompanied by the proper fee has been made in this state for registration and certificate of title for a vehicle, it may be operated temporarily, pending complete registration, by displaying a valid temporary permit or other evidence of the application under rules made by the commission.

History: L. 1935, ch. 46, § 18; 1937, ch. 65, § 1; C. 1943, 57-3a-18; L. 1989, ch. 274, § 5.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, inserted the subsection designations (1)(a) and (b) and (2);

substituted "is a class B misdemeanor" for "shall be unlawful" at the beginning of Subsection (1); and made numerous stylistic changes.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

41-1-19. Vehicles subject to registration — Exceptions.

(1) Every motor vehicle, combination of vehicles, trailer, and semitrailer, when driven or moved upon a highway, is subject to the registration and certificate of title provisions of this chapter except:

(a) any vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters,

41-1-19

MOTOR VEHICLES

dealers, lien holders, or interstate commercial vehicles duly registered in another state and not owned by a resident of the state or under a temporary registration permit issued by the department or dealer as authorized by this chapter;

(b) any vehicle driven or moved upon a highway only for the purpose of crossing the highway from one property to another;

(c) any implement of husbandry, whether of a type otherwise subject to registration or not, which is only incidentally operated or moved upon a highway;

(d) any special mobile equipment;

(e) no certificate of title need be obtained for any vehicle of a type subject to registration which is owned by the government of the United States;

(f) any motor vehicle not designed, used, or maintained for the transportation of passengers for hire or for the transportation of property, if the motor vehicle is duly registered in another state and is owned and operated by a nonresident of this state;

(g) any vehicle or combination of vehicles designed, used, or maintained for the transportation of persons for hire or for the transportation of property, if the vehicle or combination of vehicles is duly registered in another state and is owned and operated by a nonresident of this state, and if the vehicle or combination of vehicles has a gross laden weight of 26,000 pounds or less or an unladen weight of 7,000 pounds or less;

(h) any trailer of 750 pounds or less unladen weight and not designed, used, and maintained for the transportation of property or person for hire; or

(i) any manufactured home or mobile home.

(2) The registration provisions of this chapter do not apply to:

(a) any off-highway vehicle currently registered under Section 41-22-3,

(18) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered at an established place of business in this state.

(19) "Metal tire" means every tire the surface of which in contact with the highway is wholly or partially of metal or other hard, nonresilient material.

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

(21) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(22) (a) "Nonresident" means every person who is not a resident of this state and who does not engage in intrastate business within this state and operate in that business any motor vehicle, trailer, or semi-trailer within this state.

(b) Every person who engages in intrastate business within this state and operates in that business any motor vehicle, trailer, or semitrailer in this state or who, even though engaging in interstate commerce, maintains any vehicle in this state as the home station of that vehicle is considered a resident of this state, in so far as that vehicle is concerned in administering this chapter.

(23) "Off-highway implement of husbandry" is used as defined under Section 41-22-2.

(24) "Off-highway vehicle" is used as defined under Section 41-22-2.

(25) "Owner" means a person who holds the legal title of a vehicle. In the event a title reflects the names of two or more persons as coowners in the alternative by use of the word "or" or "and/r," each coowner is considered to have granted to the other coowners the absolute right to endorse and deliver title and to dispose of the vehicle. If the title reflects the names of two or more persons as coowners in the conjunctive by use of the word "and," or the title does not reflect any alternative or conjunctive word, the title shall require the endorsement of each coowner to transfer the vehicle. If a vehicle is the subject of an agreement for the conditional sale or installment sale or mortgage of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or mortgagor, or if the vehicle is the subject of a security agreement, then the conditional vendee, mortgagor, or debtor is considered the owner for the purposes of this chapter. If a vehicle is the subject of an agreement to lease, the lessor is considered the owner until the lessee exercises his option to purchase the vehicle.

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

(27) "Pneumatic tire" means every tire in which compressed air is designed to support the load.

(28) "Preceding year" means a period of 12 consecutive months fixed by the department, which is within 16 months immediately preceding the commencement of the registration or license year in which proportional registration is sought. The department in fixing the period shall conform

not operated upon rails, except motorized wheel chairs and vehicles moved solely by human power.

(15) "Motorcycle" means every motor vehicle, other than a tractor, having a seat or saddle for the use of the rider and designed to travel with not more than three wheels in contact with the ground.

(16) "Nonresident" means a person who is not a resident of this state and who has not sojourned or engaged in any gainful occupation in this state for an aggregate period of 60 days in the preceding 12 months and also every person who is temporarily assigned by his employer to work in Utah.

(17) "Operator" means any person who is in actual physical control of a vehicle.

(18) "Owner" means a person other than a lienholder having an interest in the property or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person but excludes a lessee under a lease not intended as security.

(19) "Person" means every natural person, firm, partnership, association, or corporation.

(20) "Reportable violation" means an offense required to be reported to the Driver License Division as determined by the division and includes those offenses against which points are assessed under Section 41-2-128.

(21) "Revocation" means the termination by action of the division of a licensee's privilege to operate a motor vehicle.

(22) "School bus" means every publicly or privately owned motor vehicle designed for transporting ten or more passengers and operated for the transportation of children to or from school or school activities.

(23) "Suspension" means the temporary withdrawal by action of the division of a licensee's privilege to operate a motor vehicle.

(24) "Taxicab" means any class D motor vehicle transporting any number of passengers for hire and that is subject to state or federal regulation as a taxi.

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

History: L. 1933, ch. 45, § 1; 1935, ch. 47, § 2; 1941, ch. 51, § 2; C. 1943, 57-4-3; L. 1951 (1st S.S.), ch. 9, § 1; 1967, ch. 81, § 1; 1983, ch. 183, § 4; C. 1953, § 41-2-1; renumbered by L. 1987, ch. 137, § 2; 1987, ch. 136, § 2; 1989, ch. 22, § 23; 1989, ch. 209, § 1; 1989, ch. 252, § 1.

Amendment Notes. — The 1989 amendment by Chapter 22, effective April 24, 1989, substituted "Subsection 41-2-128(4)" for "Section 41-2-19(4)" in Subsection (18).

The 1989 amendment by Chapter 252, effective April 24, 1989, added Subsection (6); redesignated former Subsections (6) to (22) as (7)

to (23); and substituted "41-2-128" for "41-2-19(4)" in Subsection (19).

The 1989 amendment by Chapter 209, effective July 1, 1989, deleted the definitions of "Class A license," "Common carrier," "Contract carrier," and "Private carrier"; added definitions of "Class D license," "Class M license," "Commercial driver license (CDL)," "Commercial motor vehicle," "Disqualification," and "Taxicab"; renumbered the definitions accordingly; and substituted "Subsection 41-2-128(4)" for "Section 41-2-19(4)" in Subsection (19).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

ARTICLE 17

MOTOR VEHICLE SEAT BELT USAGE

41-6-181. Short title.

This part [article] is known as the "Motor Vehicle Seat Belt Usage Act."

History: C. 1953, 41-6a-181, enacted by L.
1986, ch. 186, § 1.

41-6-182. Driver and front seat passengers.

(1) Except as provided in Section 41-6-148.20 for children under five years of age and except as provided in Subsection (2) for passengers who are at least five years of age but younger than 18 years of age, the driver and front seat passengers of a motor vehicle, as defined in Subsection 41-6-148.20(1), operated on a street or highway in this state shall wear a properly adjusted and fastened safety belt system, which meets standards promulgated by the Department of Public Safety.

(2) The driver of a motor vehicle shall secure or cause to be secured a properly adjusted and fastened safety seat belt system on any passenger in the front seat who is at least five years of age but younger than 18 years of age.

TRAFFIC RULES AND REGULATIONS

41-6-186

41-6-183. Exceptions.

This part [article] does not apply to a driver or front seat passenger of:

- (1) a motor vehicle manufactured before July 1, 1966;
- (2) a motor vehicle in which the driver or passengers possess a written verification from a licensed physician that the driver or passenger is unable to wear a safety seat belt system for physical or medical reasons;
- (3) a motor vehicle which is not required to be equipped with a safety seat belt system under federal law;
- (4) a motor vehicle operated by a rural letter carrier of the United States Postal Service while performing the duties of a rural letter carrier;
- or
- (5) a motor vehicle engaged in pick up, delivery, or service operations involving repeated starts and stops and requiring the front seat occupant to frequently and repeatedly enter and leave the vehicle.

History: C. 1953, 41-6a-183, enacted by L.
1986, ch. 186, § 3.

41-6-184. Enforcement.

Enforcement of this part [article] by state or local law enforcement agents shall be only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of Title 41 other than this part, or another offense.

History: C. 1953, 41-6a-184, enacted by L.
1986, ch. 186, § 4.

41-6-185. Penalty for violation.

A person who violates Section 41-6-182 shall be fined \$10. Points for a motor vehicle reportable violation, as defined under Section 41-2-1 [41-2-102], may not be assessed against any person for a violation of Section 41-6-182.

History: C. 1953, 41-6a-185, enacted by L.
1986, ch. 186, § 5; L. 1987, ch. 136, § 6.

Amendment Notes. — The 1987 amendment in the second sentence substituted

"Points for a motor vehicle reportable violation, as defined under Section 41-2-1, may not" for "No motor vehicle moving violation points may."

76-1-403. Former prosecution barring subsequent prosecution for offense out of same episode.

(1) 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 if:

(a) The subsequent prosecution is for an offense that was or should have been tried under Subsection 76-1-402(2) in the former prosecution; and

(b) The former prosecution:

(i) resulted in acquittal; or

(ii) resulted in conviction; or

(iii) was improperly terminated; or

(iv) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

(2) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.

(3) There is a conviction if the prosecution resulted in a judgment of guilt that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the court.

GENERAL PROVISIONS

76-1-404

(4) There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impanelled and sworn to try the defendant, or, if the jury trial is waived, after the first witness is sworn. However, termination of prosecution is not improper if:

(a) The defendant consents to the termination; or

(b) The defendant waives his right to object to the termination;

(c) The court finds and states for the record that the termination is necessary because:

(i) It is physically impossible to proceed with the trial in conformity with the law; or

(ii) There is a legal defect in the proceeding not attributable to the state that would make any judgment entered upon a verdict reversible as a matter of law; or

(iii) Prejudicial conduct in or out of the courtroom not attributable to the state makes it impossible to proceed with the trial without injustice to the defendant or the state; or

(iv) The jury is unable to agree upon a verdict; or

(v) False statements of a juror on voir dire prevent a fair trial.

History: C. 1953, 76-1-403, enacted by L. 1973, ch. 196, § 76-1-403; 1974, ch. 32, § 3.

NOTES TO DECISIONS

ANALYSIS

Conduct constituting single crime.
Severed counts.
Cited.

Conduct constituting single crime.

Retention of stolen property of different individuals is a single act and a single offense when evidence shows that the items were retained simultaneously. Therefore, where stolen items were the subject of a previous prosecution for related offenses, a second prosecution

Severed counts.

This section does not mandate dismissal if counts were properly severed. Thus, where a magistrate severed counts "to promote justice" and the district court later refused to rejoin them for the same reason after defendant had been convicted on one of the counts, the case was not one that "should have been tried under § 76-1-402." *State v. Haga*, 735 P.2d 44 (Utah 1987).

Cited in *State v. Franklin*, 735 P.2d 34

77-1-5. Prosecuting party.

A criminal action for any violation of a state statute shall be prosecuted in the name of the state of Utah. A criminal action for violation of any county or municipal ordinance shall be prosecuted in the name of the governmental entity involved.

Rule 25. Dismissal without trial.

(a) In its discretion, for substantial cause and in furtherance of justice, the court may, either on its own initiative or upon application of either party, order an information or indictment dismissed.

(b) The court shall dismiss the information or indictment when:

(1) There is unreasonable or unconstitutional delay in bringing defendant to trial;

(2) The allegations of the information or indictment, together with any bill of particulars furnished in support thereof, do not constitute the offense intended to be charged in the pleading so filed;

(3) It appears that there was a substantial and prejudicial defect in the impaneling or in the proceedings relating to the grand jury;

(4) The court is without jurisdiction; or

(5) The prosecution is barred by the statute of limitations.

(c) The reasons for any such dismissal shall be set forth in an order and entered in the minutes.

(d) If the dismissal is based upon the grounds that there was unreasonable delay, or the court is without jurisdiction, or the offense was not properly alleged in the information or indictment, or there was a defect in the impaneling or of the proceedings relating to the grand jury, further prosecution for the offense shall not be barred and the court may make such orders with respect to the custody of the defendant pending the filing of new charges as the interest of justice may require. Otherwise the defendant shall be discharged and bail exonerated.

An order of dismissal based upon unconstitutional delay in bringing the defendant to trial or based upon the statute of limitations, shall be a bar to any other prosecution for the offense charged.

Rule 25

UTAH RULES OF CRIMINAL PROCEDURE

(e) In misdemeanor cases, upon motion of the prosecutor, the court may dismiss the case if it is compromised by the defendant and the injured party. The injured party shall first acknowledge the compromise before the court or in writing. The reasons for the order shall be set forth therein and entered in the minutes. The order shall be a bar to another prosecution for the same offense; provided however, that dismissal by compromise shall not be granted when the misdemeanor is committed by or upon a peace officer while in the performance of his duties, or riotously, or with an intent to commit a felony.

Cross-References. — Detainers against prisoners, dismissal of action for failure to bring to trial, § 77-29-1

Dismissal for failure to find indictment, § 77-12-2.

Dismissal where evidence not sufficient to establish offense charged, Rule 17

Right to speedy trial, Utah Const., Art. I Sec. 12, § 77-1-6

NOTES TO DECISIONS

ANALYSIS

Dismissal of codefendant.

Dismissal order

Good cause for delay.

Magistrate's authority to dismiss.

Offense improperly alleged

Reasonableness of delay

Statutes not in conflict.

Subsequent prosecution

Dismissal of codefendant

of those cases requested and received psychiatric examination and who was appointed various counsel because of necessity and at his own request, was not denied right to speedy trial where he was held sane on August 14, 1969 and trial was initially set for January 7, 1970 and commenced on April 3, 1970, after disposition of defendant's motion to dismiss made on January 7. State v. Carlsen, 25 Utah 2d 136 478 P 2d 326 (1970)

ART. I, § 7

CONSTITUTION OF UTAH

Gun control laws, validity and construction of, 28 A. L. R. 845.

Law Reviews.

The Constitutional Right to Keep and

Bear Arms, Lucilius A. Emery, 28 Harv. L. Rev. 473.

Restrictions on the Right To Bear Arms.—State and Federal Firearms Legislation, 98 U. Pa. L. Rev. 905.

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Comparable Provision.

Montana Const., Art. III, § 27.

body, or agency authorized by law to determine the questions; (b) an inquiry into the merits of the

Sec. 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Comparable Provision.

—acquittal notwithstanding defect in information or indictment 77-24-19

Sec. 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.

Cross-Reference.

Prohibition on private or special laws, Const., Art. VI, § 26.

In general.

All laws shall operate uniformly wherever uniform laws can be enacted. *State v. Holtgreve*, 58 U. 563, 200 P. 894, 26 A. L. R. 696.

Objects and purposes of law present touchstone for determining proper and improper classifications. *State v. Mason*, 94 U. 501, 78 P. 2d 920, 117 A. L. R. 330; *State v. J. B. & R. E. Walker, Inc.*, 100 U. 523, 116 P. 2d 766.

One who assails legislative classification as arbitrary has burden of proving it to be such. *State v. J. B. & R. E. Walker, Inc.*, 100 U. 523, 116 P. 2d 766.

Classification is never unreasonable or arbitrary in its inclusion or exclusion features so long as there is some basis for differentiation between classes or subject matters included, as compared to those excluded, provided differentiation bears reasonable relation to purposes of act. *State v. J. B. & R. E. Walker, Inc.*, 100 U. 523, 116 P. 2d 766.

Before legislative enactment can be interfered with, court must be able to say that there is no fair reason for the law that would not require equally its exten-

State v. J. B. & R. E. Walker, Inc., 100 U. 523, 116 P. 2d 766.

Only where some persons or transactions excluded from operation of law are, as to the subject matter of the law, in no differentiable class from those included in its operation, is the law discriminatory in the sense of being arbitrary and unconstitutional, and if reasonable basis to differentiate can be found, law must be held constitutional. *State v. J. B. & R. E. Walker, Inc.*, 100 U. 523, 116 P. 2d 766.

Inability of legislature to make perfect classification does not render statute unconstitutional. *State v. J. B. & R. E. Walker, Inc.*, 100 U. 523, 116 P. 2d 766.

In determining whether classification made by legislature is unconstitutional, discrimination is very essence of classification and is not objectionable unless founded upon unreasonable distinctions. *Gronlund v. Salt Lake City*, 113 U. 284, 194 P. 2d 464.

An act is never unconstitutional because of discrimination as long as there is some reasonable basis for differentiation between classes which is related to the purposes to be accomplished by the act, and it applies uniformly to all persons within the class. *Hansen v. Public Employees' Retirement System Board of Ad-*

AMENDMENT III [1791]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV [1791]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV [1870]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

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Verdict Forms & Jury Instructions	39-61

<input type="checkbox"/> STATE OF UTAH <input type="checkbox"/> COUNTY OF CACHE <input checked="" type="checkbox"/> CITY OF <u>Logan</u> THE DEFENDANT IS HEREBY GIVEN NOTICE TO APPEAR BEFORE 1ST CIRCUIT COURT JUDGE _____ LOCATED AT <u>140 N. 100W</u> ON OR BEFORE THE <u>25</u> DAY OF <u>Aug</u> , 19 <u>89</u> AT THE HOUR OF <u>9:00</u> (A.M./P.M.) IN THE <u>Circuit</u> COURT.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;">LOGAN CITY POLICE DEPARTMENT</td> <td colspan="2">CASE NO. <u>8920058825</u></td> </tr> <tr> <td colspan="2" style="text-align: center;">UNIFORM CITATION OR INFORMATION AND NOTICE TO APPEAR</td> <td colspan="2">CITATION NO. <u>A 2895</u></td> </tr> <tr> <td colspan="2">Name (Last) <u>Carlson</u> (First) <u>David</u> (Middle) <u>Craig</u></td> <td colspan="2">Address (City) <u>Logan</u> (State) <u>Ut.</u> (Zip) <u>84321</u> Phone _____</td> </tr> <tr> <td>Place of Birth <u>Logan</u></td> <td>DOB <u>3-5-59</u></td> <td>Social Security Number <u>529-72-0929</u></td> <td>Ht. <u>5'11"</u> Wt. <u>135</u> Hair <u>Blk</u> Eyes <u>Blu</u> Race <u>M</u></td> </tr> <tr> <td>Driver License No. <u>1880958</u></td> <td>State <u>Ut</u></td> <td>Vehicle License No. <u>57686</u></td> <td>State <u>Id</u> Expires <u>12/89</u></td> </tr> <tr> <td>Picture ID <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</td> <td>Vehicle Color <u>Tan</u> Vehicle Year <u>76</u> Vehicle Make <u>Chev</u> Type <u>2dr</u> Model <u>Monte Carlo</u></td> <td colspan="2">Accident <u>R</u> N</td> </tr> <tr> <td colspan="4"> THE ABOVE NAMED DEFENDANT IS CHARGED WITH VIOLATING: UTAH COUNTY CITY _____ </td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/> <u>Improper left turn</u></td> <td><u>4-16-69</u></td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/> <u>No Utah registration</u></td> <td><u>10-5-00</u></td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/> <u>Driver not seatbelted</u></td> <td><u>7-16-82</u></td> </tr> <tr> <td colspan="2">Location <u>300 N 247 W</u></td> <td>Mile Post No. _____</td> <td>Interstate <input type="checkbox"/> Yes <input type="checkbox"/> No Direction <u>N S E W</u></td> </tr> <tr> <td>Date <u>8-8-89</u></td> <td>Military Time _____</td> <td>Speeding _____ in a _____ zone</td> <td>MPH Over _____</td> </tr> <tr> <td colspan="4">WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AS DIRECTED HEREIN:</td> </tr> <tr> <td colspan="4">SIGNATURE <u>David Craig Carlson</u></td> </tr> <tr> <td colspan="4"> I CERTIFY THAT 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. 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Mail Inks to Dep.

10

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.

CARLSEN, David C.
598 North Main
Logan, Utah
3/5/49

Defendant

892018887

The undersigned, CRAIG ANDREWS under oath, states on the information and belief that the above named Defendant committed the crime(s) of:

COUNT 1: NO UTAH REGISTRATION (CLASS B MISDEMEANOR)

COUNT 2: FAILURE TO SIGNAL TO TURN (CLASS B MISDEMEANOR)

COUNT 3: DRIVER NOT SEATBELTED (CLASS B MISDEMEANOR)

at Logan, Utah on 8/8/89 in violation of the following sections of the Revised Ordinances of Logan City:

10.56.010; 10.04.010 incorporating by reference Utah Code Annotated (1953 as amended) Sections 41-6-69(1), 41-6-182

That, contrary to Logan City Ordinances, Defendant's acts constituting the offense were:

COUNT 1: That the Defendant did drive or permit a motor vehicle to be driven, stopped or parked on the streets or alleys of the City of Logan without vehicle displaying in proper position valid and unexpired registration plates or indication of registration meeting the requirements of the laws of the State of Utah. Class B Misdemeanor

COUNT 2: That the Defendant did make a right/left hand turn without giving a signal of intention to do so continuously for at least three (3) seconds proceeding the beginning of the turn. Class B Misdemeanor

COUNT 3: That the Defendant, being the driver or operator of a vehicle upon the streets of Logan City did fail to secure to cause to be secured to himself/herself a properly adjusted and fastened safety seat belt system. Class B Misdemeanor

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

G. MONROE, LCPD

Authorized for presentment & filing


COMPLAINANT


Logan City Prosecutor/Attorney

Subscribed & sworn to before me
this 27 day of Oct 1989

DAMAGES: YES NO


CIRCUIT COURT JUDGE

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

LOGAN CITY,

Plaintiff

)
A M E N D E D
I N F O R M A T I O N

vs.

CARLSEN, David C.
598 North Main
Logan, Utah
3/5/49

Defendant

)

)

The undersigned, CRAIG ANDREWS under oath, states on the information and belief that the above named Defendant committed the crime(s) of:

COUNT 1: NO UTAH REGISTRATION (CLASS B MISDEMEANOR)
COUNT 2: FAILURE TO SIGNAL TO TURN (CLASS B MISDEMEANOR)
COUNT 3: DRIVER NOT SEATBELTED (INFRACTION)

at Logan, Utah on 8/8/89 in violation of the following sections of the Revised Ordinances of Logan City:

10.04.010 incorporating by reference Utah Code Annotated (1953 as amended)
Sections 41-1-18, 41-6-69(1), 41-6-182

That, contrary to Logan City Ordinances, Defendant's acts constituting the offense were:

COUNT 1: That the Defendant did drive or permit a motor vehicle to be driven on the streets of the City of Logan without vehicle displaying in proper position valid and unexpired registration plates or indication of registration meeting the requirements of the laws of the State of Utah.
Class B Misdemeanor

COUNT 2: That the Defendant did turn a vehicle from a direct course when such movement could not be made with reasonable safety and/or Defendant turned said vehicle without giving an appropriate signal for at least three (3) seconds preceeding the beginning of the turn or change.
Class B Misdemeanor

COUNT 3: That the Defendant, being the driver or operator of a vehicle upon the streets of Logan City did fail to secure or cause to be secured to himself/herself a properly adjusted and fastened safety seat belt system.
Infraction

This information is based on evidence obtained from the following witnesses:
G. MONROE, LCPD

Authorized for presentment & filing

Cheryl A. Russell
Logan City Prosecutor/Attorney

DAMAGES: YES NO

Don R. Carlson
COMPLAINANT

Subscribed & sworn to before me
this 20 day of Dec 1989.

[Signature]
CIRCUIT COURT JUDGE

First Circuit Court, State of Utah, County of Cache,
Logan Department

STATE OF UTAH

~~LOGAN CITY~~

JUDGMENT

Plaintiff

)

vs.

No. 892008887

David Carlsen

Defendant

)

Defendant (having been adjudged) (~~entered a plea of~~ GUILTY to the charge of

Count No. 1 No Utah Registration a Class B

Count No. 2 _____ a Class _____

Count No. 3 Driver not seatbelted a Class I

Count No. 4 _____ a Class _____

Misdemeanor, and no legal reason having been shown why judgment should not be pronounced, and Defendant being present (with) (~~having waived~~) Counsel. It is the judgment and sentence of the Court as follows:

Count No. 1 Defendant is fined \$ 35 plus surcharge of \$ _____
less the following suspended \$ 15*
TOTAL TO BE PAID \$ 20

and to be imprisoned for _____ days in the Cache County Jail with _____ days to be suspended on payment of fine.

Count No. 2 Defendant is fined \$ _____ plus surcharge of \$ _____
less the following suspended \$ _____
TOTAL TO BE PAID \$ _____

and to be imprisoned for _____ days in the Cache County Jail with _____ days to be suspended on payment of fine.

Count No. 3 Defendant is fined \$ 10 plus surcharge of \$ _____
less the following suspended \$ _____
TOTAL TO BE PAID \$ 10

and to be imprisoned for _____ days in the Cache County Jail with _____ days to be suspended on payment of fine.

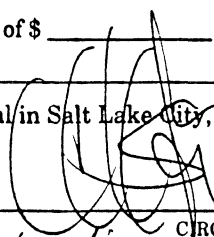
Count No. 4 Defendant is fined \$ _____ plus surcharge of \$ _____
less the following suspended \$ _____
TOTAL TO BE PAID \$ _____

and to be imprisoned for _____ days in the Cache County Jail with _____ days to be suspended on payment of fine.

Stay of Execution to FRIDAY _____ at 4:30 p.m. and the defendant is
ordered to appear in Court at said time. Fine to be paid in installments of \$ _____ per _____ beginning

Defendant may appeal this judgment within 30 days to Court of Appeal in Salt Lake City, Utah.

Dated 1-30-90


CIRCUIT JUDGE

suspended upon proof of Registration

Code:

855 Judge Clint Judkins

4 - Cheryl Russell

DA - Alder Lauritzen

Publ - Greg Monroe

Def - David Carlson

IN THE CIRCUIT COURT OF LOGAN CITY

COUNTY OF CACHE, STATE OF UTAH

File No 892008887

#1

89576, #289577

TITLE

(Parties Present)

COUNSEL:

(Parties Present)

City

Russell

Plaintiff

David Craig Carlson

Lauritzen

Defendant

Iml

HON.

Judkins

Clerk

Mark Olson

Date

12-20-89

Bailiff

8 Csj

opens Court

"

Comments to Prospective Jurors

Clerk

calls Panel of 10

100

Csj

questions panel

116

"

reviews offense by Def

131

Russell

Introduces Witness

136

Lauritzen

"

Def.

156

Ms. Mitchell

friends w/Def.

160

Csj

response

170

"

excuses Ms. Mitchell

175

Clerk

calls & swears Alan Blair

8M

Poi

Question - Mr Blair

Counter No.	Proceedings
236	Panel Introduces the Jurors
297	Russell No Questions
300	Lauritzen Questions
315	Csj Comments to Panel
362	Csj Names of 4 on panel
410	Clerk Swears panel
435	Csj The trial instructions
535	" reads information
589	Russell address jury, opening
625	Lauritzen
629	Csj Calls recess for Jurors
640	" Juror Remarks. Late
642	Stidmore, exclamation
675	Csj Comments
690	Stidmore response
700	PW1 Greg Monroe surr. testifies
733	PW1 Jan 1971 Monte Carlo
745	PW1 tells & draws on board
773	recalls events

CASE NO.

PAGE NO.

Counter No.	Proceedings
936	PW1 Saw no turn signal
950	Russell cont x's
963	PW1 Continued to elaborate
980	" Could see shoulder seat belt hanging, not on vehicle
997	PW1 Re: Contact w/dep.
908	" identifies Del.
"	" valid ill. D/L.
924	" Car regis in Del's name
"	" Idaho license plates
"	" Dep gave Logan address
950	" Re: Conversation w/Dep.
971	Russell no further x's
976	Muritzen Cross exam
1103	Russell Re-direct
1105	Muritzen objects, CJ sustains
1115	Russell Continues
1120	Muritzen Obj, CJ sustains
1135	Muritzen Obj
1150	" Obj
1160	CJ denies object.
1170	Muritzen Calls Dep David Craig
"	" Call on
"	" Dep states keep
1175	Del lives in Creston

Counter No.	Proceedings
1260	Def drove to Houston on weekends
1326	Lauritzen X's the events of evening
1330	Def relates events
1370	" had turn signal on
	" continued to conversation
1355	" did not have seat belt on
1364	Russell cross exam
1435	" No further X's
1443	Lauritzen No further X's
1450	" Confers w/Def
1462	Csj Council approaches Bench re: Jury Instructions
1481	Csj Comments to Panel, excuses
1500	" Comments to Counsel re: the instruction
1524	Lauritzen exception to #2
1558	Russell re: Amended the Def re: Ordinance 41-1-18
1586	Csj to Lauritzen
1590	Lauritzen response
1622	Russell Re Confers subject of #2
1640	Csj Change wording? Lauritzen response
1698	Csj Amended exceptions?
1729	Lauritzen reads additional instruct. re: ordinance law

Counter No.	Proceedings
1760	Csj. Response
	Russell Response
1800	Csj. Re. #22-18
1860	Lauritzen Argues point of residency
1906	Russell. Response
	Csj. Resp
	Russell 41-1-19
1973	Csj. Instructs Lauritzen to write down a proposed instruction concerning Residency
2030	Russell Ordinance T
	41-2-102-16
	defines a Non-Resident
2050	Csj. Reads the ordinance.
2106	Lauritzen. Response, Wants dismissal
2120	Csj. denies Motion
	Instructs clerk to change instruction for Non-Resident
2173	Lauritzen #1 Cites San Cty Ordinance as Class C
	16-64-010
	Russell & Lauritzen Argues Viability of Ordinance.
	on Aug 7, 1989
2320	Lauritzen Re: 16-64-010

Counter No.	Proceedings
2423	Russell 41-1-126
2443	" 10-04-01
	41-3
	41-6, 4-7 etc.
	Lauritzen. Continued Argument
2518	CJ exception denied, but noted
2533	Lauritzen Motions
	Moves to Dismiss #1
	cites Case on books
2600	10:56-010
2660	Lauritzen/Algood v. Larsen 5:45 Pm and 530
2760	Russell response
2866	CJ ruling on Motion, denied
2917	Lauritzen Moves to Dismiss #3
	" Argues for his motion
3064	CJ Overruled
3076	" Instructs Jury to bring Jury back in.
3115	CJ Reads Instructions to Jury
3400	Jury #2 begins
-#2/331	Russell closing arguments
276	Lauritzen closing arguments
472	Russell rebuttal

Counter No.	Proceedings
515	Plurk swears Bailiff
529	Csj Bailiff to take (Jury to Jury room
545	Csj recess until jury returns
546	" Jurors returned w/ Verdict
564	Csj reads Verdict
	Guilty #1
	Not Guilty #2
	Guilty #3
	Exitance, Jan 30, 1990, 9 AM
600	Csj Thanks & dismisses Jury
620	Russell Waive 30 days
625	Hauritzen Will Waive 30 days
663	Csj Court dismiss recessed

RECEIVED

DEC 21 1989

CIRCUIT COURT CL.

DAVID CRAIG CARLSEN
Defendant in Pro Se
78 1/2 North 100 East, # 1
Logan, Utah

CIRCUIT COURT, STATE OF UTAH

COUNTY OF CACHE, LOGAN CITY DEPARTMENT

LOGAN CITY,	:	
	:	DEFENDANT'S MOTION FOR AN ARREST OF
Plaintiff,	:	JUDGMENT
-vs-	:	
DAVID CRAIG CARLSEN,	:	Case No. _____
Defendant.	:	

COMES NOW, the above-named defendant, David Craig Carlsen, and hereby respectfully moves this Honorable Court for an Order of an Arrest of Judgment in the above-entitled matter.

The basis for this motion is that the provisions of Section 10.04.010 of the revised Ordinances of Logan City incorporating by reference Section 41-6-182 U.C.A. (1953 as amended) subjects a person situated as the defendant in this case to an unreasonable classification without any reasonable justification in violation of the provisions of Article I, Section 24 of the Utah Constitution of Utah which requires that All laws of a general nature shall have uniform operation, and the statute subjects a person situated as the defendant in this case to arbitrary and invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

A further basis for this motion is that the defendant has been denied Due Process of Law as secured under the Fourteenth Amendment of the United

States Constitution because when viewing the evidence adduced at the trial as a whole in the light most favorable to the prosecution, no reasonable or prudent person could have found the defendant guilty of the offense of No Utah Registration beyond a reasonable doubt.

A further basis for this motion is that the evidence adduced at the trial clearly establishes that Officer Monroe did not have probable cause to believe that the defendant did not properly make a left hand turn signal and did not have probable cause to believe that the defendant had committed any criminal offense when he stopped the defendant on August 8, 1989 and the evidence obtained by Officer Monroe to prosecute the defendant for the offenses of No Utah Registration and No Seat Belt was tainted and the convictions violate the doctrine of the Fruits of the Poisonous Tree.

DATED this 21st day of December, 1989.


DAVID CRAIG CARLSEN

CERTIFICATE OF MAILING

MAILED a true and correct copy of the foregoing Motion for an Arrest of Judgment to Cheryl Russell, Logan City Prosecutor, located at 255 North Main, Logan, Utah, 84321, postage prepaid and by placing the same in a U.S. Mailbox on this 21st day of December, 1989.


DAVID CRAIG CARLSEN

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

LOGAN CITY,)	RESPONSE TO DEFENDANT'S
)	MOTION TO ARREST
Plaintiff)	JUDGMENT
vs.)	
DAVID CRAIG CARLSEN)	Case No. <u>892008887</u>
Defendant)	

COMES NOW the Logan City Prosecutor, Cheryl A. Russell, and responds to Defendant's Motion to Arrest Judgment as follows:

1. Defendant's motion is unsupported by an affidavit or memorandum to support his motion to arrest judgment and is therefore insufficient on its face.

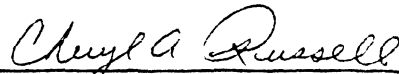
2. Defendant's motion fails to set forth how specifically Logan City Ordinance 10.04.010 incorporating by reference Section 41-6-182 of Utah Code makes an unreasonable classification in violation of Article I, Section 24 of the Utah Constitution and the equal protection clause of the Fourteenth Amendment. The burden of establishing the same is on the Defendant, and he has failed in his motion herein to establish the same.

3. Defendant's motion fails likewise to set forth any evidence of a violation of Due Process of Law secured by the Fourteenth Amendment to the United States Constitution. The jury found that the Defendant was guilty of the offense of No Utah Registration beyond a reasonable doubt.

4. Although the Defendant was found not guilty of making a left hand turn by the jury, it does not necessarily follow there was no reason for the stop. The test for the stop is a reasonable suspicion not probable cause. See Terry v. Ohio, 392 US 1, 20 L Ed 2d 889, 88 S. Ct 1868 (1968). The later is for an arrest. Officer Monroe clearly saw the defendant fail to make a mechanical left turn signal. Furthermore, Defendant was not only cited for the turn but also for no Utah Registration as well. Finally, Defendant filed to make a motion to suppress the evidence of no Utah registration and no seat belt at the time of the trial. Defendant thereby waived his right to object to the same.

WHEREFORE, Plaintiff Logan City prays Defendant's Motion to Arrest Judgment be denied.

DATED this 31 day of December, 1989.


CHERYL A. RUSSELL
LOGAN CITY PROSECUTOR

CERTIFICATE OF MAILING

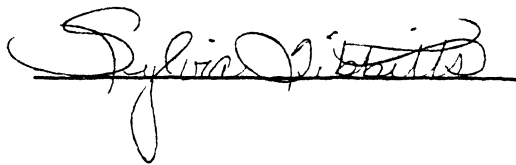
I, Sylvia Tibbitts, secretary for the Logan City Attorneys Office, mailed a true and correct copy of the foregoing Response to Defendant's Motion to Arrest Judgment to:

David Craig Carlsen
Defendant in Pro Se
78.5 North 100 East #1
Logan, Utah 84321

and

Arden W. Lauritzen
Attorney of record for David Craig Carlsen
326 North First East
P. O. Box 171
Logan, Utah 84321

Dated: 12-31-89



IN THE FIRST CIRCUIT COURT OF CACHE COUNTY
STATE OF UTAH

LOGAN CITY,

Plaintiff

vs.

DAVID CARLSEN,

Defendant

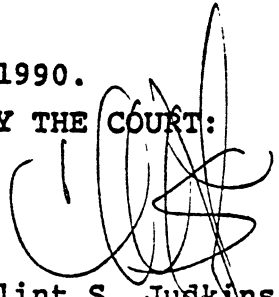
MEMORANDUM DECISION

CASE NO. 892008887CV

TRIAL IN THE above referred to matter was held before a Jury on the 20th day of December, 1989. The Jury having returned a verdict of guilty and the Court having set the date of January 30, 1990 for sentencing. The Defendant has filed a Motion for an Arrest of Judgment. The Court after reviewing said Motion and Plaintiff's response thereto finds that there is no basis upon which to Arrest Judgment and therefore Defendant's Motion is hereby denied.

Dated this 11th day of January, 1990.

BY THE COURT:


Clint S. Judkins
Circuit Court Judge

DAVID CRAIG CARLSEN
Defendant in Pro Se
78 ½ North 100 East, # 1
Logan, Utah 84321

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

LOGAN CITY, :
Plaintiff, : DEFENDANT'S SUPPLEMENTAL MOTION
-vs- : FOR AN ARREST OF JUDGMENT
DAVID CRAIG CARLSEN, :
Defendant. ; Case No. 892008887
;

COMES NOW, the above-named defendant, David Craig Carlsen
and hereby respectfully moves this Court for an Order to Arrest
Judgment in the above-entitled matter.

The basis for this motion is that the No Utah Registration
Statutes, U.C.A. § 41-1-18, § 41-1-19 (f), and § 41-1-1 (22),
(1953 as amended) does not give a clear definition for the term
of nonresident and fails to give a person of ordinary intelligence
fair notice of the residency requirements imposed by said statutes
and therefore are unconstitutionally vague in violation of the
Due Process Clause of the Fourteenth Amendment to the United

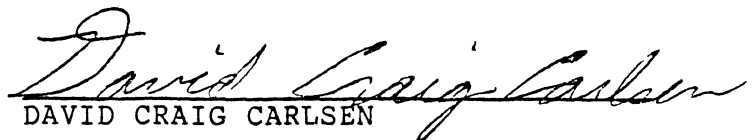
States Constitution and the application of said statutes against the defendant in this case deprived the defendant of Equal Protection of the Laws and restricted his right to Freedom of Travel as secured under the Constitution and the Equal Protection Clause of the Fourteenth Amendment.

DATED this 15th day of January, 1990.


DAVID CRAIG CARLSEN

CERTIFICATE OF MAILING

MAILED a true and correct copy of the foregoing Supplemental Motion for an Arrest of Judgment and the Memorandum in Support thereof to Cheryl Russell, Logan City Prosecutor, located at 255 North Main, Logan, Utah, 84321, postage prepaid and by placing the same in a U.S. Mailbox on this 15th day of January, 1990.


DAVID CRAIG CARLSEN

DAVID CRAIG CARLSEN
Defendant in Pro Se
78 ½ North 100 East, # 1
Logan, Utah 84321

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

LOGAN CITY, :
Plaintiff, : MEMORANDUM IN SUPPORT OF SUPPLEMENTAL
-vs- : MOTION FOR AN ARREST OF JUDGMENT
DAVID CRAIG CARLSEN, :
Defendant. : Case No. 892008887
:

COMES NOW, the above-named defendant, David Craig Carlsen,
and hereby respectfully submits the following Memorandum in
Support of his Supplemental Motion for an Arrest of Judgment:

STATEMENT OF FACTS

The above-named defendant, David Craig Carlsen was tried
before this Court on a jury trial for the offense of No Utah
Registration on the 20th day of December, 1989. The testimony
adduced at the trial shows that on the 8th day of August, 1989,
the defendant was operating a vehicle properly registered to him
in the State of Idaho. The defendant testified that he considered

himself to be a resident of the State of Idaho and residing in Preston, Idaho. The jury returned a verdict of guilty.

ARGUMENT

POINT I

THE NO UTAH REGISTRATION STATUTES ARE UNCONSTITUTIONAL

It is well recognized in law that one may not be held criminally responsible for conduct which he could not reasonably understand to be proscribed, United States v. Harriss, 347 U.S. 612, (1954); Papachristou v. City of Jacksonville, 405 U.S. 156 (1972); and Logan City v. Carlsen, 585 P.2d 449, cert. denied, 439 U.S. 1131 (1979).

The defendant in this case was charged by Information for violating the provisions of U.C.A. § 41-1-18, (1953 as amended) which provides as follows:

(1) It is a class B misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered in this state:

The exceptions to the vehicles required to be registered in the State of Utah is defined under the provisions of U.C.A. § 41-1-19, (1953 as amended) in which the pertinent parts states as follows:

(1) Every motor vehicle, combination of vehicles, trailer, and simitrailer, when driven or moved upon a highway, is subject to the registration and certificate of title provisions of this chapter except:

(f) any motor vehicle not designed, used, or maintained for the transportation of passengers for hire or for the transportation of property, if the vehicle is duly registered in another state and is owned and operated by a nonresident of this state;

At the trial in the instant case, the prosecutor during discussions with the Court and defense counsel on instructing the jury as to the term of nonresident claimed that the provisions of U.C.A. § 41-2-102 (16), (1953 as amended) is the applicable statute defining the term of nonresident. However, this statute applies only to a Utah Operator's License and since the defendant was not cited or charged by Information for not having a valid Utah Driver's License, the provisions of this statute was not properly applied to the Motor Vehicle Act in the instant case.

The term of nonresident for the purposes of required registration under the Motor vehicle Act is defined under the provisions of U.C.A. § 41-1-1, (1953 as amended) of which the pertinent part states as follows:

(22) (a) "Nonresident" means every person who is not a resident of this state and who does not engage in intrastate business within this state and operate in that business any motor vehicle, trailer, or simitrailer within this state.

It is the defendant's contention that the Motor Vehicle Act does not give a clear definition of the term, "Nonresident" for required motor vehicle registration. The legislature has enacted statutes giving a clear definition of residency requirements for the purposes of voter registration, U.C.A. § 20-2-13, § 20-2-14, (1953 as amended); for the purpose, student tuition fees, U.C.A. § 53B-8-102, (1953 as amended); for the purpose of receiving public assistance, U.C.A. § 62A-9-115, (1953 as amended); and for the purpose of receiving a notarial commission, U.C.A. § 46-1-3, (1953 as amended). However, the legislature under the Motor Vehicle Act which imposes a criminal penalty has failed to enact a statute which gives a clear definition of the residency requirements for the purpose of motor vehicle registrations.

It is clearly unfair that during discussions on instructing the jury the Court, prosecutor and defense counsel could not determine the proper residency requirements under the Motor

Vehicle Act and at the same time hold the defendant criminally responsible for acts in which a person of ordinary intelligence should have known to be proscribed by the statutes. The statutes under the Motor Vehicle Act are unconstitutionally vague in that said statutes fails to give a person of ordinary intelligence, fair notice of the residency requirements for the purpose of motor vehicle registrations under such Act.

Furthermore, the application of U.C.A. § 41-2-102 (16), (1953 as amended) against the defendant in this case subjected him to arbitrary and invidious discrimination in violation of the Equal Protection Clause and an infringement of his right to freedom of travel in violation of the United States Constitution, Barnett v. Lindsay, 319 F.Supp. 610 (D. Utah 1970).

DATED this 15th day of January, 1990.


DAVID CRAIG CARLSEN

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

LOGAN CITY,)	PLAINTIFF'S MEMORANDUM IN
)	RESPONSE TO DEFENDANT'S
Plaintiff)	SUPPLEMENTAL MOTION FOR
)	AN ARREST OF JUDGMENT
vs.)	
)	
DAVID CRAIG CARLSEN,)	No. 892008887
)	
Defendant)	

COMES NOW Plaintiff by and through their attorney, Cheryl A. Russell, Logan City Prosecutor, and responds to Defendant's Supplemental Motion for Arrest of Judgment as follows:

1. The court issued on January 11, 1990 a Memorandum Decision denying Defendant's motion to arrest judgment.

2. The statement of facts in Defendant's memorandum in support of supplemental motion for an arrest of judgment conveniently leaves out the undisputed fact the Defendant had a Utah driver's license; was working in the State of Utah; and was living five days a week in Utah and going to Idaho on weekends for 2 days. Plaintiff believes that the jury elected to believe these facts over Defendant's testimony that he considered himself an Idaho resident and to be living in Preston, Idaho.

3. At the time of trial, Defendant's attorney requested that an instruction be given defining residency. The court as well as the prosecution had no objection to such an instruction being given. Defendant's counsel was then asked to offer a proposed instruction on the same. Defendant's counsel did not have a proposed instruction. So it was agreed to use the definition of resident as set forth in Utah Code Annotated (1953 as amended) Section 41-2-102(16).

4. Furthermore, Defendant did not request that the definition alleged to be set forth in Utah Code Annotated (1953 as amended) Section 41-1-19 be given by the court at trial. This is raised for the first time in his supplemental motion.

5. The definition in Utah Code Annotated (1953 as amended) Section 41-2-102(16) was appropriate under the facts of this case since Defendant at the time of the alleged offense had a Utah drivers license.

6. Utah Code Annotated (1953 as amended) Section 41-1-19(f) specifically provides the exception is only applicable "if the vehicle is duly registered in another state and is owned and operated by a nonresident of this state" (Utah). Defendant was clearly a resident of Utah - he had a Utah drivers license.

7. Defendant for the first time in his supplemental motion raises the issues of Due Process and Equal Protection. Utah Code Annotated (1953 as amended) Section 41-1-1(22) sets forth the definition of residency. Interestingly enough, neither the Defendant in his supplemental motion nor his attorney requested that the terms thereof be used in the court's instruction.

8. Finally, Defendant's motion and memorandum fails to set forth how Defendant was denied equal protection by alleged arbitrary and invidious discrimination. Defendant has the burden on said issue.

WHEREFORE, Plaintiff requests Defendant's supplemental motion to arrest also be denied.

DATED this 23 day of January, 1990.



CHERYL A. RUSSELL
Logan City Prosecutor

LOGAN CITY,

Plaintiff

vs.

DAVID CARLSEN,

Defendant

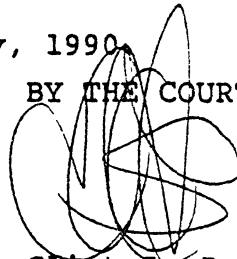
The Court after reviewing said Supplemental Motion and

Logan City vs. David Carlson
#892008887
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Plaintiff's response thereto finds that there is no basis upon which to Arrest Judgment and therefore Defendant's Motion is hereby denied.

Dated this 25th day of January, 1990.

BY THE COURT:

A handwritten signature in black ink, appearing to be "Clint S. Judkins", written over the printed name.

Clint S. Judkins
Circuit Court Judge