

1990

Layton City v. Frank R. Aragon : Brief of Respondent

Utah Court of Appeals

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**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. _____ IN THE UTAH COURT OF APPEALS

LAYTON CITY,	:	
Plaintiff/Respondent,	:	BRIEF OF RESPONDENT
vs.	:	
	:	Case No. 900247-CA
FRANK R. ARAGON,	:	
Defendant/Appellant.	:	

BRIEF OF RESPONDENT

APPEAL FROM A JURY'S VERDICT OF GUILT, REGARDING THE
DEFENDANT'S DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL,
IN THE SECOND CIRCUIT COURT, STATE OF UTAH, DAVIS COUNTY,
LAYTON DEPARTMENT, WITH THE HONORABLE K. ROGER BEAN,
JUDGE, PRESIDING.

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IN THE UTAH COURT OF APPEALS

LAYTON CITY, :
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IN THE UTAH COURT OF APPEALS

LAYTON CITY,	:	
Plaintiff/Respondent,	:	BRIEF OF RESPONDENT
vs.	:	
	:	Case No. 900247-CA
FRANK R. ARAGON,	:	
Defendant/Appellant.	:	

STATEMENT OF JURISDICTION

This is an appeal of a jury's verdict of guilt, concerning the Defendant's driving while under the influence of alcohol, at the conclusion of a trial in the Second Circuit Court, Layton Department.

Pursuant to, Section 78-2a-3 (2)(d), Utah Code Annotated, this Court of Appeals has appellate jurisdiction over appeals from the circuit courts.

NATURE OF THE PROCEEDINGS

Although the Defendant was convicted of Disorderly Conduct, Delaying and Obstructing an Officer, and Driving Under the Influence of Alcohol, (DUI), the Defendant appeals only his conviction of DUI. These convictions were pursuant to a jury's verdict in the Second Circuit Court, Layton Department.

STATEMENT OF ISSUES

Whether the trial court properly admitted Defendant's incriminating statement, made while Defendant was in custody, but which was non-responsive or volunteered in reaction to a preliminary investigative inquiry that was not designed to elicit an incriminating statement.

Whether the City satisfied the corpus delicti requirement with corroborative evidence independent of Defendant's admission.

APPLICABLE STATUTES AND RULES OF EVIDENCE

United States Constitution, Fifth Amendment:

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.

Utah State Constitution, Article I, Section 12:

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.

STATEMENT OF THE CASE

NATURE OF THE CASE

This is an appeal of a criminal conviction entered pursuant to a jury's verdict of guilt, concerning the Defendant's driving under the influence of alcohol.

STATEMENT OF FACTS

In the early morning hours of April 2, 1989 the Layton Police Department received a call concerning a family disturbance. At approximately 1:40 a.m. Officers Beckett, Lynch and Sergeant Lybbert received a call from the dispatch center of this problem, were given the location of 366 Glen and information that a Frank Aragon was hitting his wife and was about to leave in a black Monte Carlo. (Suppression Hearing Transcript pp. 57, 65. Trial Transcript, page 54), (hereinafter "Suppr. Hrng. Tr." and "Tr. Tr."). Upon their arrival, the officers observed the Defendant and a female standing next to a black Monte Carlo in the driveway of 366 Glen and the Monte Carlo had its lights on and the engine was running. (Suppr. Hrng. Tr. pp. 10, 58; Tr. Tr. pp. 55, 94, 137, 143, 144). After exiting their patrol cars the officers approached the Defendant's location and observed that the female appeared upset, that it appeared she had been crying and there were red marks about her face and neck. (Suppr. Hrng. Tr. p. 58; Tr. Tr.

p 56).

Officer Lynch was the first to make contact with the Defendant and he immediately detected an odor of alcohol coming from the Defendant. (Suppr. Hrng. Tr. p. 59; Tr. Tr. p. 57). Initially Defendant refused to identify himself to Officer Lynch and Defendant became loud and disruptive. The Defendant stepped towards Officer Lynch who extended his left arm to maintain the distance between the two, whereupon the Defendant loudly yelled obscenities, clenched his fists and assumed a fighting stance. (Suppr. Hrng. Tr. pp. 12, 40, 58-60; Tr. Tr. pp. 59-63, 95-97, 110, 111, 140-142). Defendant was informed he was under arrest, he attempted to resist, and after a struggle he was handcuffed and placed in the rear seat of Officer Beckett's police car. (Suppr. Hrng. Tr. pp. 16, 19, 61; Tr. Tr. pp. 69, 70, 99).

From the initial contact with the Defendant to the time he was transported from the scene the officers, individually, made observations concerning the Defendant's demeanor. They each noticed that Defendant had a strong odor of alcohol on his breath. (Suppr. Hrng. Tr. pp. 15, 31, 43, 44, 66; Tr. Tr. pp. 57, 75, 98, 106, 143, 161). The Defendant had red, watery, glassy eyes. (Suppr. Hrng. Tr. pp. 59, 66; Tr. Tr. pp. 57, 84, 138, 152). The Defendant weaved while standing and had problems with his balance. (Suppr. Hrng. Tr. pp. 31, 43, 44; Tr. Tr. pp. 57, 58, 147).

The Defendant was belligerent and uncooperative. (Suppr. Hrng. Tr. pp. 13, 16, 31, 43, 44, 49, 60; Tr. Tr. pp. 59, 84, 106, 146). The Defendant had a pronounced mood swing, from inimical to

apologetic. (Suppr. Hrng. Tr. pp. 19, 60; Tr. Tr. pp. 75, 122, 133, 134). Based on these observations the officers individually opined that the Defendant was impaired to the point that he could not safely operate a motor vehicle. (Suppr. Hrng. Tr. pp. 35, 64; Tr. Tr. pp. 75, 90, 104, 151, 163). Officers Lynch and Lybbert confirmed through the dispatcher that the black Monte Carlo was owned by the Defendant. (Suppr. Hrng. Tr. p. 62; Tr. Tr. pp. 66, 67).

After the Defendant was arrested and placed in the police car, Officer Lynch and Sergeant Lybbert spoke with Rose Aragon, Nicky Trujillo and June Trujillo about the disturbance and the situation in general. (Suppr. Hrng. Tr. pp. 24, 42, 43, 61; Tr. Tr. pp. 70, 72, 117). Rose Aragon, the female who was the apparent victim, was reluctant to discuss the alleged assault but informed Officer Lynch that the Defendant drove to the present location. (Suppr. Hrng. Tr. p. 62). Nicky Trujillo also informed Officer Lynch that the Defendant had driven there. (Suppr. Hrng. Tr. p. 62). June Trujillo attempted to tell the officers that a friend had driven the Defendant to that location. (Suppr. Hrng. Tr. pp. 24, 653, 86). However, when pressed she stated that the Defendant had been to the house earlier, with someone she thought was a friend in a vehicle she did not recognize. (Suppr. Hrng. Tr. pp. 24, 53, 63). Sergeant Lybbert, having received the conflicting information approached the Defendant and asked him "Where is the other person that was in the car with you, since I need to talk to him." (Suppr. Hrng. Tr. p28; Tr. Tr. 102). To which the Defendant

responded, "There isn't anyone else with me." (Tr. Tr. pp. 104, 146).

The Defendant continued with an admission that was volunteered not volunteered responsive to the Officers inquiry by stating "I was alone when I drove here." (Suppr. Hrng. Tr. pp. 28; Tr. Tr. pp. 104,146). "I just got here three or four minutes ago." (Suppr. Hrng. Tr. pp. 28, 29; Tr. Tr. p. 231). Defendant was never asked if he had driven this car to that location. (Suppr. Hrng. Tr. p. 52).

Thereafter the Defendant was transported to the Layton Police Department, was offered a breath test, which he refused, was booked and placed in a cell. (Tr. Tr. pp. 147-151, 163-167).

SUMMARY OF THE ARGUMENT

The Defendant raises two issues that are somewhat intertwined. First, that an incriminating statement made by the Defendant after his arrest was the result of a custodial interrogation, violative of Miranda and its progeny as its applied the Fifth Amendment of the Federal Constitution and as this State has applied Article I Section 12 of Utah's State Constitution. Second, that without Defendant's incriminating statement the City failed to satisfy the doctrine of corpus delicti.

It must be remembered that Miranda's primary thrust was to cease tactics used that coerced or compelled confessions because such confessions lacked reliability and subjected suspects to

abuse. Further, Miranda does not become applicable until both custody and interrogation, or their functional equivalents, exist. While the Defendant herein was in custody, he was not held incommunicado or otherwise isolated, was not deprived of food nor water, was not promised anything in exchange for a confession, nor was he subjected to abuse. After he was arrested and after the officers left his location momentarily they returned and, because of inconsistent statements given by witnesses, simply inquired as to the whereabouts of this other individual. Clearly this is not the interrogation intending to elicit incriminating information from the Defendant.

The Defendant responded that there was no one else, but then went on to volunteer information that he had driven there alone, about three or four minutes ago. Most certainly such statements are not the product of interrogation, as courts have ruled that 1) on the scene investigatory questions not designed to elicit an incriminating response, 2) non responsive incriminating statements, and 3) voluntarily made confessions are all admissible and Miranda is not applicable thereto.

As to the corpus delicti issue, it has been held that each element need not be established independent of an admission and that an admission may be used to help satisfy the corpus delicti doctrine. Here there was no issue as to Defendant's intoxication nor that this occurred within Laytin City. The remaining issues are the Defendant's driving and that that was done while he was intoxicated. The uncontroverted evidence was that the Defendant

was about to leave in a black Monte Carlo, that the Defendant was standing next to a black Monte Carlo, that the Defendant is the sole owner of said car, that the car had the engine running and the lights on, that there was one empty and one unopened can of beer within the car, that Defendant and the alleged victim were the only ones present when the officers arrived, no witnesses gave any equivocal information that would cause the officer's concern about the charges, including DUI, and that when given one story about another person, simply verified that with the Defendant who then made the incriminating remarks. His statement that there was no one else is corroborated by the officers observations and information they received from two witnesses. Defendant's statement that he drove is corroborated by the presence of his car, having a Salt Lake City address on the registration and information given to the officers. And finally, Defendant's statement of having just driven there is corroborated by the vehicle still running and the lights being on.

With the short duration from Defendant's arrival until the officers were called, and the only known source of alcohol being that within Defendant's vehicle, a reasonable inference is that Defendant's state of intoxication even the consumption of the one additional beer would not have had much of an impact.

The trial court properly ruled the Defendant's statements admissible and the corpus delicti was satisfied.

ARGUMENTS

I

THE INCRIMINATING STATEMENT BY THE DEFENDANT, WHILE IN CUSTODY, IS ADMISSIBLE WHEN IT IS A NON RESPONSIVE VOLUNTARY EXPLANATION TO A PRELIMINARY INVESTIGATORY INQUIRY THAT IS NOT DESIGNED TO ELICIT AN INCRIMINATING RESPONSE.

It is well established that when an individual is subject to "custodial interrogation" he is first to be advised of his constitutional right that he not incriminate himself and that he be afforded legal counsel. Miranda v. Arizona, 384 U.S. 436 (1966). In other words, in order for Miranda to be applicable, two (2) things must simultaneously exist. There must be both "custody" and there must be "interrogation". However, even if a suspect is in custody officers may make inquiries that are of a routine, preliminary or investigative nature if they are not intended to elicit an incriminating response. Finally, non responsive answers or volunteered statements that are incriminating have consistently been held as admissible.

The facts surrounding the Defendant's incriminating statements are not disputed. Three Layton Police Officers are requested to respond to a "family fight" in which "a Frank Aragon is hitting on his wife and about to leave in a black Monte Carlo." (Suppr. Hrng. Tr. pp. 57, 65; Tr. Tr. p. 54) The officers arrive to see the Defendant and a female standing next to a black Monte Carlo that has the engine running and its lights on. (Suppr. Hrng. Tr. pp. 10, 58; Tr. Tr. pp. 55, 94, 137, 143, 144). Officer Lynch makes telling observations of the female and then proceeds to make

contact with the Defendant. (Suppr. Hrng.Tr. pp. 58, 59; Tr. Tr. pp. 56, 57). The Defendant is immediately uncooperative, first by refusing to identify himself and then by yelling and screaming, being loud and abusive and challenging the officers, and was thus arrested for disorderly conduct. (Suppr. Hrng. Tr. pp. 12, 40, 58-60; Tr. Tr. pp. 57-63, 95-97, 110, 111, 140-142). After the Defendant was subdued he stopped resisting and was placed in the rear of a patrol car at the scene and the officers left his location to complete their investigation. (Suppr. Hrng. Tr. pp. 24, 42, 43, 61; Tr. Tr. pp. 70, 72, 117).

Two witnesses stated that the Defendant had driven there, while a third witness said that the Defendant had been with a friend. (Suppr. Hrng. Tr. pp. 24, 53, 62, 86). Upon receiving this information as to another person, Sergeant Lybbert and Officer Beckett walked over to the Defendant's location, opened the car door, and Sergeant Lybbert stated, "Where is the other person that was in the car with you, since I need to talk to him." (Suppr. Hrng. Tr. p. 28; Tr. Tr. p. 102). The Defendant responded that "There isn't anyone else with me." (Tr. Tr. pp. 104, 146). The Defendant then made incriminating statements that were both non responsive to the question and volunteered information by saying, "I was alone when I drove here." (Suppr. Hrng. Tr. p. 28; Tr. Tr. pp. 104, 146) and " I just got here three or four minutes ago." (Suppr. Hrng. Tr. pp. 28, 29; Tr. Tr. p. 231).

Therefore, the issues to be addressed are custody, and whether interrogation occurred, or if the exchange between Sergeant Lybbert

and the Defendant were preliminary or routine or investigatory inquiries resulting in non responsive statements and volunteered statements.

The voluminous cases that address the Miranda issue reflect that there are different levels of custody and several factors to be considered determining custody or its functional equivalent. Salt Lake City v. Carner, 664 P.2d 1168 (Utah 1983). Although it is not disputed that the Defendant herein was in custody at the time he incriminating statement was uttered, it should also not be disputed that said custody was on a more innocuous level as opposed to the egregious levels of which Miranda is to be directed.

In analyzing these contentions, it is important to have in mind the origin and purpose of those rights. They came into being as a safeguard against oppressive methods and abuses by which innocent persons were imposed on and sometimes unjustly convicted and punished. We have no desire to pursue a policy which is anything less than a zealous respect for those rights. But neither their purpose, nor the safeguarding of the peace and good order of society are served if the protection of individual rights is so distorted as to give irresponsible protections to criminal conduct and impose such restrictions on peace officers that they are thwarted in their efforts to combat crime.

If it appears that an accused has been in any way abused or unfairly dealt with, so that there is any reasonable doubt that he was justly convicted, the conviction should not be permitted to stand. On the other hand, unless there is something of that character, these salutary protections of law should not be so perverted as to permit guilty persons to escape conviction.

State v. Martinez, 595 P.2d 897, at 899 (Utah 1979)

There are no allegations that Defendant's custody was

oppressive or coercive in nature to the extent that any statement Defendant made would be tainted. The simple occurrence of an exchange between law enforcement personnel and an individual in custody does not automatically invoke the Miranda requirements. The most obvious of such exchanges not requiring Miranda safeguards are volunteered statements made by suspects to officers absent any act by the officers. State v. Valdez, 513 P.2d 422 (Utah 1973). Therein the officers arrived on the scene of a shooting, took custody of the Defendant who had been restrained by witnesses, handcuffed and searched him and as the officers stood him up to inform him of Miranda he stated "You don't have to ask. I shot her." Id., 15 423.

Whether the volunteered statement occurred prior to custody, arrest, Miranda or interrogation, or subsequent thereto, is not the touchstone, but the admissibility is based on the voluntariness of the statement. State v. Jiminez, 451 P.2d 583 (Utah 1969). State v. Farnworth, 469 P.2d 9 (Utah 1970); State v. Jones, 563 P.2d 1021 (Kan. 1977).

Even in instances where the exchange is initiated by the officer, Miranda will be inapplicable to a suspect's volunteered explanations or admissions. In Commonwealth v. Rawlins, 225 N.E.2d 314 (Mass. 1967), the officer asked the Defendant how he felt. Defendant responded "Not so hot" to which the officer said "Oh, yes," and the Defendant continued by saying "Maybe I shouldn't be telling you this, but ..." The Defendant went on to give an incriminating statement. Id., at 317.

In the case of Commonwealth v. Brown, 265 A.2d 101 (Pa. 1970) a transporting officer had the following conversation with a suspect:

'Mary, Tony looks like he's in pretty bad shape.' And she said, 'I hope he dies.' And I said, 'Mary you shouldn't talk like that because if he dies, you are going to go to jail.' She said, 'I don't care, I hope he do die.'

Id., at 104. The court ruled that there was no question that Defendant was in custody and further that the suspect was not being interrogated nor questioned and thus the statements were admissible as being voluntary and spontaneous. Id.

In the situation where the officer asks a question to clarify a suspect's statement, and that question invokes an incriminating response, said response is still admissible, not barred by Miranda. Campbell v. State, 243 A.2d 642 (Md. 1968), wherein upon defendant's arrest he asked the officer "How much time can I get for this?" to which the officer inquired "For what?" The defendant then stated "For robbing that lady in the store." Id., at 643. Similarly in State v. Perry, 237 N.E.2d 891 (Ohio 1968), when the defendant was apprehended he stated to the officer that he had never done anything like that before. The officer then asked what defendant had done and he told the officer of plans to break into a business. Id., at 892.

In State v. Easthope, 510 P.2d 933 (Utah 1973), the defendant was arrested and advised of his rights. He requested counsel and then asked the basis for the arrest. When the officer informed him that he had been identified in a line-up, defendant stated he

didn't know how he could have been identified since he was wearing a silk stocking over his face. Id. Even though defendant had invoked his rights, such a voluntary statement is admissible.

Additionally, it has been consistently held in numerable jurisdictions that officers may make "on the scene" investigation inquiries or ask "routine" questions without being constrained by Miranda, as long as such inquiries are not designed to elicit an incriminating response. In Dennis v. Commonwealth, 464 S.W.2d 253 (Ky. 1971) the defendant was arrested for public drunkenness and the officers were aware that defendant had just had trouble with defendant's friend, a black male. When an officer, who was preparing to place defendant in a police car noticed blood on defendant's arm he asked what had happened and the defendant responded that he had "cut him a damned nigger." Id., at 255. The court ruled that this statement was not the result of interrogation and thus, admissible.

These rulings, allowing incriminating responses to preliminary or investigative inquiries, to be admitted in evidence, is consistent with rulings in this State. In State v. Abbott, 445 P.2d 142 (Utah 1968), a conversation between the defendant inmate and a guard was admitted under the determination that the exchange was not interrogation. The defendant had surrendered a knife to the guard immediately following an altercation with another inmate. The guard asked the defendant whether the knife belonged to the defendant and the response was "Yes." Id. See also State v. Simpson, 541 P.2d 1114 (Utah 1975), where a pilot, upon receiving

a request by officers to look on board his plane, replied "go ahead, it's loaded with pot." Id. See also State v. Hansen, 541 P.2d 1085 (Or. App. 1975); Lott v. State, 491 P.2d 337 (Okl. Cr. 1971); Winn v. State, 488 P.2d 1338 (Okl. Cr. 1971); State v. Bennett, 517 P.2d 1029 (Utah 1973); Thus, the interrogations requiring the Miranda preface, are those of one in custody that are to elicit an incriminating response, and it does not include questions normally attendant on arrest, custody or booking. State v. Knoch, 738 P.2d 979 (Or. App. 1987); State v. Bradley, 719 P.2d 546 (Wash. 1986);

Several jurisdictions also allow incriminating statements that are non responsive to officer's inquiries or comments. The defendant in Dehart v. State, 468 S.W.2d 435 (Texas 1971) had just been arrested for the murder of his father and the officer asked the defendant if he knew his father was dead. The defendant responded by saying, "Yes, I know. I only wish it had been my mother." Id. at 437. This statement was admitted even though no Miranda warning had been given. Id. See also Parson v. U.S., 387 F.2d 944 (10th Cir. 1968); U.S. v. Pauldino, 487 F.2d 127 (7th Cir. 1973) and Smith v. State, 656 P.2d 277 (Okl. Cr. 1982).

It is apparent that the foregoing case scenarios are very analogous to the case at bar. The Defendant is in custody and the officers are making "on the scene" investigations. They receive information of a "mystery driver" who was with the Defendant. Since the officers have talked with all present witnesses, it is expected that they will want a statement from this additional party

as well. Since the person is unknown to June Trujillo but described as a friend of the Defendant's, the officers inquire of the Defendant the location of this person. Clearly such a question is not "interrogation" as it is investigatory and is not designed to elicit an incriminating response. However, the Defendant makes a non responsive statement and then volunteers additional incriminating information, i.e. driving there alone about three or four minutes ago. As soon as the officers heard the incriminating remarks the conversation ceased.

There being custody but no interrogation, Miranda warnings are not thus required. Rhode Island v. Innis, 446 U.S. 291 (1980).

The cases relied upon by the Defendant are very distinguishable. In State v. Wells, 650 P.2d 117 (Or. App. 1981) the officer was asking questions directly about the crime, i.e. defendant's consumption of alcohol and the charge of DUI. Schram v. D.C., 485 A.2d 623 (D.C. App. 1984) is very incongruent. This case was dismissed because in that jurisdiction an arrest for this DUI misdemeanor can only be made if committed in the officer's presence. Commonwealth v. Meyer, 412 A.2d 517 (Pa. 1980) is a case of custodial interrogation as the defendant was not free to leave for a 30 minute period and was questioned directly about the offense. State v. Kingsbury, 460 P.2d 452 (Vt. 1983) is also a custodial interrogation. Originally defendant was stopped for a DUI. The officer then recognized the truck as matching the description of a vehicle allegedly involved in thefts of lumber. The truck was loaded with lumber and the officer questioned

defendant as to the source of the lumber. Commonwealth v. D'Nicuola, 292 A.2d 333 (Pa. 1972) involved officers questioning the defendant while he was in the hospital. They knew the victim was missing, was to have been with the defendant, and that defendant had a gun that had recently been fired. The interrogation lasted 20-30 minutes. Finally, State v. Chapman, 724 S.W.2d 713 (Mo. App. 1987), involved questioning after the arrest of the defendant and questions were directly regarding the elements of the offense. Further, there were three people at the scene and there was no evidence either establishing the defendant as the driver or eliminating the possibility that others may have driven.

II

THE CORPUS DELICTI WAS ESTABLISHED BY CORROBORATIVE EVIDENCE INDEPENDENT OF DEFENDANT'S ADMISSIONS.

Although the corpus delicti of a crime cannot be established solely on the confession of a Defendant, State v. Anderson, 561 P.2d 1062 (Utah 1977), that doctrine does not require proof of every element of the offense. State v. Cazier, 521 P.2d 554 (Utah 1974). In fact the confession may be included when determining whether the evidence establishes the corpus delicti. State v. Weldon, 314 P.2d 353 (Utah 1957).

In addressing the issue of corpus delicti in DUI cases various jurisdictions have assigned different burdens of proof for their jurisdiction, yet the elements reviewed in determining satisfaction of the doctrine appear common. State v. Knoefler, 563 P.2d 175

(Utah 1977); Bremerton v. Corbett, 723 P.2d 1135 (Wash. 1986); State v. Klimpt, 744 S.W.2d 499 (Mo. App. 1988).

The elements of the offense are 1) driving a motor vehicle, 2) being under the influence of alcohol while driving, 3) within Layton City, 4) on April 2, 1989. There being no dispute to numbers 3 and 4, just the driving and the impairment need to be discussed.

As to the driving the jury heard that there was a family fight in progress and that Frank Aragon was hitting his wife and about to leave in a black Monte Carlo. (Tr. Tr. p. 54). The officers arrive and the Defendant, Frank Aragon, is standing with a woman, an apparent victim, and next to a black Monte Carlo. (Tr. Tr. pp. 55, 56). This vehicle has its engine running and the lights on and no occupants. (Tr. Tr. pp. 55, 94, 137, 143, 144). Plaintiff's exhibit #1 shows that car belongs to the Defendant with a Salt Lake City address. (Tr. Rec. p. 35). The jurors heard that those interviewed by the officers did not cause the officers any concerns about the criminal charges, (Tr. Tr. p. 72); that the officers received information that there was no mystery driver from two witnesses, (Tr. Tr. pp. 91, 92); and even though only one other said someone besides the Defendant drove, (Tr. Tr. p. 117), the Defendant himself was the "final verifier ." (Tr. Tr. p. 130).

Some reasonable inferences that may be drawn is that since the vehicle was running the Defendant must not have been there long, corroborating his admission of arriving only three or four minutes earlier, and that since those present at the scene gave the

officers no concerns regarding the criminal charges, the information they provided would have been consistent with Defendant's admissions and officers' determinations. Finally, since June Trujillo arrived after the officers and was the only one providing conflicting information, her statements can be easily discounted.

With regards to Defendant's intoxication, all officers opined that he was intoxicated. The only apparent source of alcohol was the two cans of beer in the Defendant's vehicle, one which was unopened and the other being empty. It would be reasonable to infer that even if Defendant had consumed the beer after arriving at 366 Glen that it would not have exacerbated the Defendant's already inebriated state. However, a more reasonable inference would be that the Defendant consumed that beer while driving.

Therefore, since the officers were able to eliminate others there as drivers, it being the Defendant's vehicle, it being reported that he was about to leave in it, his intoxicated state, the limited source of additional alcohol, the vehicle on and running, no inconsistent evidence from bystanders and Defendant's statements clearly combine to overwhelmingly satisfy the corpus delicti.

The case relied upon by the Defendant are easily distinguishable. State v. Hamrick, 650 P.2d 912 (Wash. App. 1978) has a glaring distinction. In that case no evidence was offered to connect the defendant to the vehicle. There was no proof of registration or ownership. Overbee v. Commonwealth, 315 S.E.2d 242

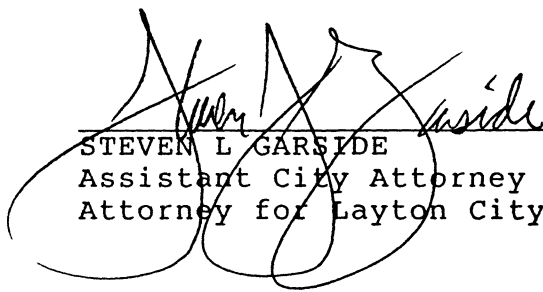
(Va. 1984), is a case involving the issue of "actual physical control". Further there was no evidence of any driving or when it may have occurred. State v. Phinney, 448 S.2d 267 (La. App. 3 Cir. 1984), has an additional distinction in that the statute therein had no "actual physical control" provision and the state could not establish "operating". Also no evidence was given as to a time frame within which the operation was to have occurred. State v. Lindinger, 357 S.2d 500 (La. 1978), had several problems. When the single car accident was discovered the car contained a fifth of whiskey 75% consumed. There was no evidence as to when that was consumed nor evidence as to vehicle ownership, when the accident happened or who was behind the wheel. State v. Willson, 534 S.2d 55 (La. App. 3 Cir. 1988), again had no evidence as to when the driving or the drinking occurred. Defendant claimed to have drank after the accident. It should be noted that his admission to driving was allowed. State v. Friesen, 725 S.W.2d 638 (Mo. App. 1987), was also a single car accident but there were two occupants and the officers failed to determine the driver. This case was further distinguished in Klimpt, supra.

CONCLUSION

The Defendant's incriminating statements, being volunteered, non responsive and not the result of interrogation, were properly admitted into evidence. Those admissions, corroborated by the independent evidence of ownership, a running vehicle, limited source for additional alcohol, consistent representations from bystanders, level of intoxication, was clearly sufficient evidence

upon which the jury founded their verdict. Defendant's conviction should be affirmed.

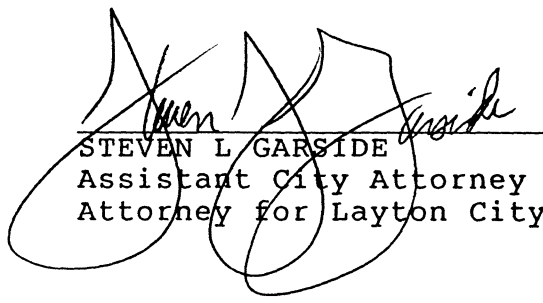
RESPECTFULLY SUBMITTED this 14 day of January, 1991.



STEVEN L. GARSIDE
Assistant City Attorney
Attorney for Layton City

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Respondent was mailed to Defendant's Attorneys, Larry Long and Craig S. Cook, 39 Exchange Place #400, Salt Lake City, Utah 84111, on this 14 day of January, 1991.



STEVEN L. GARSIDE
Assistant City Attorney
Attorney for Layton City

ADDENDUM I

(Suppression Hearing Transcript in pertinent part)

CERTIFIED COPY

1 IN THE SECOND CIRCUIT COURT, STATE OF UTAH

2 LAYTON DEPARTMENT

3 -o0o-

4 CITY OF LAYTON,)

5 Plaintiff,)

Case No. 892001620 TC

6 vs.)

HEARING

7 FRANK ARAGON,)

8 Defendant.)

9 -o0o-

10
11 BE IT REMEMBERED that on the 28th day of September,
12 1989, the above-entitled matter came on for hearing before the
13 Honorable K. Roger Bean, sitting as Judge in the above-named
14 Court for the purpose of this cause, and that the following
15 proceedings were had.

16 -o0o-

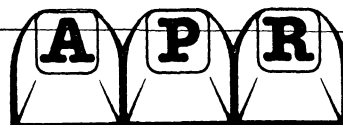
17 APPEARANCES:

18 For the City:

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20 For the Defendant:

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1 corporate limits of Layton City?

2 A Yes. It is.

3 Q And what was the nature of the call that caused you to
4 be at that location?

5 A We were--I was responding to a report of a family fight
6 in progress.

7 Q Okay. And was it at that location?

8 A Yes.

9 Q And what did you observe upon arriving at that
10 location?

11 A I observed a male and female standing in a driveway
12 next to a car that was--appeared to be running and had the
13 lights on.

14 Q Okay. And what gave it the appearance that it was
15 running?

16 A Well, the lights were on and that was--from the lights
17 being on was what I first saw when I got there, the lights were
18 on, so the car was probably running.

19 Q Did you confirm that later by hearing the engine or
20 seeing the exhaust or anything of that sort?

21 A Yes. When I got closer to the car, I could hear that
22 it was running.

23 Q Okay. Had anybody entered or exited that vehicle
24 after--from the time that you first observed it?

25 A No.

1 Q And was the defendant anywhere in the vicinity?
2 A Yes. He was.
3 Q Where was he located?
4 A He was standing next to the car on the right-hand side.
5 Q Passenger side, then?
6 A Passenger side.
7 Q Okay.
8 A I would say a little towards the rear, but not at the
9 rear of the car.
10 Q And is that the male that you were talking about
11 earlier?
12 A Yes. It is.
13 Q All right. And the individual that we referred to
14 standing next to the vehicle and as the defendant, is he in the
15 courtroom today?
16 A Yes. He is.
17 Q If you'd identify him for the Court, please?
18 A He's here, in the gray and white striped shirt.
19 THE COURT: The record will show the witness indicates
20 Mr. Aragon. You may go ahead.
21 MR. GARSIDE: Excuse me. Thank you, your Honor.
22 Q (By Mr. Garside) And were you the first officer to
23 arrive on the scene?
24 A No. I was not.
25 Q Who was the first officer?

1 A Officer Lynch.

2 Q Okay. And where was he located in reference to the
3 vehicle and the defendant?

4 A He was parked ahead of me on the street. I don't know
5 if he was--he was almost to the driveway. I believe he was--

6 Q Had he exited his vehicle, do you recall?

7 A I don't recall.

8 Q Okay. What did you do upon arriving, then?

9 A As I said, I got--well, then I got out and by that
10 time, we were both over near the car, and I started to--

11 Q You mean you and Officer Lynch?

12 A Myself and Officer Lynch.

13 Q Okay.

14 A Officer Lynch was talking to Mr. Aragon, and I began
15 talking to Mrs. Aragon.

16 Q At that time, did there appear to be any dispute going
17 on, when you arrived?

18 A Not at that time.

19 Q Okay. Continue, please. Then what occurred?

20 A Like I said, I turned my attention over and was
21 talking to Mrs. Aragon and had turned away from Mr. Aragon and
22 Officer Lynch, and then I heard, I don't know what drew my
23 attention back, loud voices, I guess; my attention was drawn
24 back to Officer Lynch and Mr. Aragon.

25 Q Okay. And what was occurring?

1 A Officer Lynch was trying to get information from
2 Mr. Aragon concerning who he was and Mr. Aragon didn't want to
3 tell him.

4 Q Was he saying anything at all in response?

5 A Well, he was. I don't know that I remember exactly
6 what was said.

7 Q Okay. And what was the volume and manner in which it
8 was said?

9 A It was getting louder. Mr. Aragon was getting more
10 agitated and the volume was getting louder, and he was moving a
11 little more forward, towards Officer Lynch.

12 Q Okay. Continue, please.

13 A At this time, Sergeant Lybbert arrived, or somewhere
14 in between there, after I had arrived and after the argument
15 started, Sergeant Lybbert arrived. And he was somewhere to the
16 north of Officer Lynch and myself in the driveway, as far as I
17 know.

18 Q Okay.

19 A I heard Sergeant Lybbert--the--the voices were--or
20 Mr. Aragon appeared to be getting very angry and was moving
21 towards Officer Lynch, and at that time, before I had a chance
22 to react, Officer Lybbert told Mr. Aragon that he was under
23 arrest.

24 Q For?

25 A I don't know if he told him right at that second what

1 he was under arrest for. He just--I remember him saying, "You're
2 under arrest".

3 Q Okay. Now, earlier you said that--you used the term
4 "argument". Was it an argument between Officer Lynch and the
5 defendant or--or what was it that was occurring between the two?

6 MR. LONG: I'd have to object, your Honor. They
7 never used the word "argument". I think the word that was used
8 was dispute, family dispute.

9 MR. GARSIDE: I'm--I think the term I'm getting at is
10 the conversation between Officer Lynch and Mr. Aragon.

11 THE COURT: The witness' testimony was that the talk
12 was getting louder and the defendant was getting agitated. I
13 think we're trying it here to the Court on a motion. Overruled
14 and you may proceed.

15 MR. GARSIDE: Thank you.

16 Q (By Mr. Garside) Please explain what was occurring
17 between Mr. Aragon and Officer Lynch.

18 A I did--I did hear Officer Lynch ask him who he was.
19 Mr. Aragon said something to the effect of, I don't have to
20 tell you, I don't know if those are the exact words. Officer
21 Lynch just explained to him that we had been called there and
22 that we--we were going to have to make a report and we needed
23 that information for the report. That was--that was the words
24 that I heard.

25 Q Okay. What observations did you make of the defendant,

1 if any?

2 A At that time, he--he appeared to be very agitated and
3 uncooperative.

4 Q Okay. Anything else?

5 A Right at that point? Nothing right at that point.

6 Q Were you able to determine at that time whether or not--
7 whether or not any alcohol had been consumed?

8 A I--

9 MR. LONG: Well, your Honor, we need a better question
10 than that. He's asking for a conclusion from the witness. We
11 need to ask for facts that were observed by this witness, not
12 conclusions that she made.

13 THE COURT: Sustained. I think it's--he can lead ti
14 that. It's a little bit leading. I think you can ask her to--
15 did she detect anything that--

16 MR. GARSIDE: Okay.

17 Q (By Mr. Garside) Did you make any observations or
18 perceptions that would--that would give you any indication that
19 alcohol had been consumed by the defendant?

20 A I don't recall if I did at that time or not.

21 Q Okay. And when--did you ever make such a determination?

22 A Yes. I did.

23 Q And when would that have occurred?

24 A After I got involved in the scuffle and got close to
25 Mr. Aragon, I could smell the alcohol.

1 Q Okay. And--okay. Let's go back. What occurred after
2 Officer--Sergeant Lybbert informed the defendant that he was
3 under arrest; what occurred?

4 A I believe he attempted to take ahold of--

5 Q Who?

6 A Sergeant Lybbert attempted to take hold of Mr. Aragon
7 and Officer Lynch attempted to take hold of Mr. Aragon, and I
8 considered trying to assist at that time, and decided just to
9 step back for a minute and wait to see what happened.

10 Q And what did happen?

11 A They all three went to the ground.

12 Q Okay. You say that Sergeant Lybbert and Officer Lynch
13 were--were reaching--trying to reach for him, why were they
14 trying? Why weren't they actually reaching or grabbing him?

15 A He was putting up a fight at that point. He was pulling
16 back and resisting.

17 Q Okay. And how was he doing that?

18 A Pulling away and--

19 Q Okay. And so then you said during that, all three went
20 to the ground?

21 A Yes.

22 Q Okay. And then what occurred?

23 A Then I attempted to help by getting his legs under
24 control, and he was placed under arrest, handcuffed and taken to
25 my car to transport.

1 make a choice of the witness that's on the stand, Mr. Long. I'd
2 deny your request that he be required to make that choice and
3 will honor the choice he has made.

4 You may proceed, then.

5 MR. GARSIDE: Thank you.

6 Q (By Mr. Garside) Did you assist in the placing of
7 Mr. Aragon into your vehicle for the transportation?

8 A I was there.

9 Q And what occurred during that time?

10 A Mr. Aragon resisted being put into the car also. He,
11 if I recall correctly, he wanted to make a deal, or was trying
12 to talk to the--talk to the--I don't remember which, if both
13 officers were there at that time or not. He was talking to the
14 officer that was there with him and wanting to forgive and forget,
15 let's just forget the whole thing.

16 Q Okay. Did you ever hear what Officer Lybbert placed
17 him under arrest for?

18 A I believe when they--yes.

19 Q Okay.

20 A Uh huh.

21 Q And when did--when did that occur? Where were you and
22 who was around, and--

23 A I believe that was as he was being handcuffed or in
24 that, in that time frame.

25 Q Before being placed into the vehicle?

1 A Before being placed into my car, yes.

2 Q Okay. And what did--what did you hear Officer Lybbert
3 place him under arrest for?

4 A Mr. Aragon inquired as to what he was under arrest
5 for, and he said for disorderly conduct.

6 Q And that was what Sergeant Lybbert informed him?

7 A Sergeant Lybbert.

8 Q Okay. All right. Was there any other exchange at that
9 time? Any other conversation at that time?

10 A I don't recall.

11 Q Okay. Then he's been placed into your vehicle; then
12 what occurs?

13 A Sergeant Lybbert had been talking to Mrs. Trujillo,
14 who I believe is somebody's sister, she had arrived prior, you
15 know, some--somewhere along the way, I'm not sure when she got
16 there. And--

17 MR. LONG: Well, your Honor, this is just a narration.
18 I'm wondering if we can have a question-response, rather than
19 just a narration, because I feel we're treading into hearsay
20 evidence, and I won't have an opportunity to object.

21 THE COURT: Well, Counsel has been asking questions
22 and I think the witness may have gone beyond the answer in that--
23 in that answer.

24 Mr. Garside?

25 MR. GARSIDE: Well, your Honor, this is--this is a

1 THE COURT: All right.

2 MR. GARSIDE: Thank you, your Honor.

3 Q (By Mr. Garside) Now, Officer Beckett, you said that--

4 was it Officer--I forgot--Lybbert or Lynch was speaking with

5 June Trujillo?

6 A Sergeant Lybbert.

7 Q Okay. Sergeant Lybbert. And did you hear that

8 conversation?

9 A I heard part of the conversation.

10 Q And what part of that conversation did you hear?

11 A He had asked her how Mr. Aragon had gotten to the

12 Tru--to the Trujillo residence.

13 Q To the 366 Glen Avenue?

14 A No. Mrs. Trujillo had arrived from somewhere else, and

15 she had said that he--Mr. Ara--

16 THE COURT: Well, without going ahead. I think you

17 need to establish, if you're going to try to have this admitted,

18 Counsel's expressed his concern about hearsay. I think you'd

19 have to lay a foundation to show, if you want to have the answer

20 come back in, that Mr. Aragon was present, you know, who was

21 present, what was said and so forth.

22 Q (By Mr. Garside) When you overheard this conversation

23 between Sergeant Lybbert and June Trujillo, who all was present?

24 A Mrs. Tru--Miss Trujillo, Sergeant Lybbert and myself.

25 Q Was Officer Lynch there, do you recall?

1 A I don't recall if he was.

2 Q Okay. Why was there a question--okay. The 366 Glen
3 Avenue address is the Aragon address; is that correct?

4 A I'm not sure who actually lives at that address.

5 Q Okay. Why was there--do you know why there was a
6 question asked then how Mr. Aragon got to the Trujillo residence?

7 A Mrs. Trujillo had made a statement to Sergeant
8 Lybbert.

9 Q Did you hear that statement?

10 A I heard part--I heard a statement that she made, yes.

11 Q And what was that statement that you heard?

12 A That Mr. Aragon had been to her house earlier, but that
13 he had been there with a friend.

14 Q Okay. All right. And--and what did Sergeant Lybbert
15 ask, if anything, as a follow-up to that statement?

16 A He asked her who the friend was, did she know--
17 inquired as to whether or not she knew who this person was,
18 and at that time, she said she didn't actually see anyone, that
19 she'd just seen a vehicle and she didn't recognize the vehicle.

20 Q Okay. And did that conversation terminate at that
21 point?

22 A That's--that's all that I heard of that conversation.

23 Q Okay. Did you hear a conversation between Sergeant
24 Lybbert and Rose Aragon?

25 A And Rose Aragon? I don't believe I did.

1 Q Okay. After that conversation terminated, did you
2 hear a conversation between Sergeant Lybbert and the defendant?
3 A Yes.
4 Q And where did that occur?
5 A At my vehicle.
6 Q Okay. And this is after the defendant has been placed
7 under arrest and has been put into your vehicle; is that correct?
8 A Yes. That's correct.
9 Q Okay. What question--well, how did that conversation
10 begin?
11 A Sergeant Lybbert inquired of Mr. Aragon who his
12 friend was.
13 Q Okay. Now, had--do you know what--do you know whether
14 Mr. Aragon had heard the conversation between June Trujillo and
15 Sergeant Lybbert?
16 A He was in my patrol car at that time, so he would not
17 have heard that conversation.
18 Q So there was some distance, then?
19 A Yes. Yes.
20 Q Okay. So, Sergeant Lybbert asked him, was that it,
21 who his friend was, or was he more specific than that, do you
22 recall?
23 A I don't recall.
24 Q Okay.
25 A Just inquiring as to who his friend was.

1 Q All right. And what did Mr. Aragon say in response to
2 that question?

3 A I don't have the exact quote, other than--

4 MR. LONG: Well, your Honor, I'd like to make sure
5 that this is what she overheard and not something that she found
6 out later from the officer.

7 THE COURT: Well, I'll let you voir dire. Would you
8 like to voir dire?

9 MR. LONG: All right. If I might.

10 THE COURT: All right.

11 VOIR DIRE EXAMINATION

12 BY MR. LONG:

13 Q So, where, exactly were you, Officer Beckett, when you
14 overheard this conversation?

15 A Standing by my patrol car, next to the door where
16 Mr. Aragon--next to the rear--rear left door, the passenger door
17 on the left side.

18 Q And Officer Lybbert was there, had placed the
19 handcuffs on the defendant and had placed him in the police
20 vehicle, in your police vehicle?

21 A These are two separate occasions.

22 Q Which one are you telling us about now?

23 A I answer--I was answering the question that
24 Mr. Garside asked.

25 Q And that question was relating to the conversation you

1 overheard with Officer Lybbert and the defendant?

2 A Yes.

3 Q And that conversation took place outside the left rear

4 passenger door of your car?

5 A Mr. Aragon was inside the car.

6 Q I see. And where was Officer Lybbert?

7 A Standing on the other side of the open door.

8 Q I see. And the door was open?

9 A Uh huh.

10 Q That's the left rear passenger door?

11 A Uh huh.

12 Q And where were you standing?

13 A I was standing on the other--the--

14 THE COURT: Maybe it would help if you went to the

15 chalkboard.

16 MR. LONG: Probably would.

17 THE WITNESS: Okay. This would be the back seat, the

18 back door would be open like this. Mr. Aragon would be here,

19 Sergeant Lybbert would be over here and I would be over here.

20 Q (By Mr. Long) And was anyone else present?

21 A Not that I recall.

22 Q All right. You can be seated, unless you can think

23 of anything else that you need to put up there.

24 Where, exactly, was your police vehicle parked?

25 A I was straight in front of the house.

1 Q And this was your vehicle; right?

2 A Yes.

3 Q Uh huh. Why is it they're putting--Officer Lybbert--

4 Sergeant Lybbert placed him under arrest and placed him in your

5 police vehicle?

6 THE COURT: I think you're beyond voir dire at this

7 point, Mr. Long.

8 I think you can go into those things, but I think

9 you're voir dire.

10 MR. LONG: Okay.

11 Q (By Mr. Long) So, those are all the people who were

12 present? Your testimony now will surround over what you over-

13 heard, not what Officer Lybbert told you later?

14 A Just what I overheard.

15 Q All right.

16 THE COURT: You may proceed, Mr. Garside.

17 MR. GARSIDE: Thank you.

18 DIRECT EXAMINATION (Continuing)

19 BY MR. GARSIDE:

20 Q And what did you hear--okay. Officer Lybbert said,

21 who's your friend, or who is your friend?

22 A Inquired, yeah, who his friend was.

23 Q Okay. And what was the defendant's response to that?

24 A I don't have the exact quote of the entire response

25 that he made. He indicated that he was by himself, and I did

1 make a quote that he said that he had driven there three or four
2 minutes ago.

3 Q Okay. Did that conversation continue at that point?
4 Do you recall?

5 A I don't recall.

6 Q All right. Did you have any other conversation with
7 Mr. Aragon at that time, at that point?

8 A I don't recall. I don't believe so.

9 Q Okay. Do you recall making a determination as to whose
10 vehicle it was that was in the driveway that had its lights on
11 and was running, at the time that you arrived?

12 A We had been--I had been advised, or I had heard over
13 the radio, dispatch advised that the suspect vehicle was in the
14 driveway--it doesn't say it was in the driveway. Suspect's
15 vehicle was a black Monte Carlo was information that we received
16 as we were on the way or just after we arrived at the home,
17 originally.

18 Q Okay. But did they say--did dispatch--do you know
19 whether dispatch ran the registration check to determine--to see
20 who the owner of the vehicle was?

21 A I don't know that for sure.

22 Q Okay. When you say the suspect vehicle, did they have
23 a name at that time?

24 A I don't recall.

25 Q Okay. Did you ever determine who it was who owned the

1 vehicle?

2 A I found who the registered owner was.

3 Q And how--and when and how did you determine that?

4 A When I was doing my report, I got the information from
5 the dispatcher, it had been printed up from the State computer.

6 Q Okay. And who was the owner of the vehicle?

7 A Mr. Aragon.

8 Q The defendant?

9 A Yes.

10 Q When--when did you place the defendant under arrest,
11 or inform him that he was also going to be charged with the
12 offense of driving under the influence of alcohol?

13 A Just prior to transporting him to the office, checked
14 his mouth and notified the dispatch.

15 Q Okay. You said that while the officers--back to the
16 time when the officers went to the ground with him, handcuffed
17 him, and then you assisted in placing him in your vehicle; what
18 observations and perceptions did you make concerning his
19 demeanor at that time, or during that time?

20 MR. LONG: Asked and answered, your Honor. He already
21 asked that question and she answered she smelled alcohol on his
22 breath.

23 THE COURT: Well, at some point she said she smelled
24 alcohol on his breath. I'm not sure it's--

25 MR. GARSIDE: I--I--

1 THE COURT: You're asking, after the scuffle on the
2 ground, she helps subdue him, then she helps the officers put
3 him in her vehicle.

4 MR. GARSIDE: And during that time period, what
5 observations or perceptions she made of his demeanor.

6 THE COURT: Okay.

7 MR. LONG: I don't see how relevant it is. I mean,
8 they bounced his face off the pavement and now he's in a case
9 of traumatic shock.

10 THE COURT: Well, I don't have any evidence of that,
11 Mr. Long, at this point.

12 MR. LONG: Well, she said they wrestled him to the
13 ground.

14 THE COURT: Yeah. And then she said she helped subdue
15 his legs and they brought him in the police car.

16 Overruled. She may answer.

17 THE WITNESS: I'm sorry.

18 Q (By Mr. Garside) The observations and perceptions you
19 made of the defendant while you were assisting Officers Lynch and
20 Lybbert place the defendant into your vehicle.

21 A I smelled the odor of alcohol. His--we had to assist
22 him, hold him up as we took him to the car. When he was taken to
23 the car, he leaned against the car.

24 Q Anything else about his speech or anything of that sort
25 that you recall?

1 A Other than he was belligerent.

2 Q Okay.

3 A And loud.

4 Q Did you make an opinion as to whether or not he was
5 under the influence of alcohol?

6 A Yes. I did.

7 Q And what is that opinion?

8 A I--

9 MR. LONG: Ultimate conclusion, your Honor.

10 THE COURT: I think you have to lay a foundation.

11 Sustained.

12 Q (By Mr. Garside) Would you briefly explain the
13 training that you've received in the detection and apprehension
14 of impaired drivers?

15 A I took the standard course in POST in my basic training
16 and also took a course in gaze Nystagmus and uniform field
17 sobriety tests.

18 Q Is it part of your duties and responsibilities to
19 detect and apprehend impaired drivers?

20 A Yes. It is.

21 Q And is that something that you do in the course of
22 your duties and responsibilities?

23 A Yes. It is.

24 Q And do you have occasion to assist other officers in
25 doing the same?

1 A Yes. I do.

2 Q Based on your training and experience and in using
3 that training and experience and--and observing and evaluating
4 the defendant's demeanor on the morning of April 2nd, 1989, did
5 you make an opinion as to whether or not he was under the
6 influence of alcohol?

7 A Yes. I did.

8 Q And what is that opinion?

9 MR. LONG: Same objection, your Honor.

10 THE COURT: Overruled. She may answer.

11 MR. LONG: May I voir dire about that?

12 THE COURT: Yes, uh huh.

13 VOIR DIRE EXAMINATION

14 BY MR. LONG:

15 Q Do you remember testifying at the per se hearing in
16 this matter held on the 9th day of May in--over in Farmington?

17 A Yes. I do.

18 Q Do you remember when you were asked the question,
19 "Did anything arouse your suspicions that may have led you to
20 believe that he was under the influence of alcohol?" Do you
21 remember being asked that question?

22 A No, I don't. I don't specifically remember that, no.

23 Q Do you remember when you said yes, and you were asked
24 and what were those? Do you remember answering, "I smelled the
25 odor of alcohol on his breath, of course, and he was arguing with

1 officers, he was belligerent, was uncooperative and finally was
2 involved in a scuffle with officers prior to being arrested".

3 Do you remember testifying to that?

4 A I remember testifying to something like that, yes.

5 Q But at that time, you didn't mention that you had to
6 hold him up, that he had to lean against the car, or that he was
7 loud; is that right?

8 MR. GARSIDE: This is argument, your Honor. This is
9 not voir dire.

10 THE COURT: Mr. Long, it really isn't voir dire
11 because the question that Counsel is in the process of asking
12 is based on your experience and training, and you're really not
13 going into that, you're going into these specific instances.
14 I think you could--

15 MR. LONG: At this point, she is basing her opinion
16 upon facts which she just testified to, and back in May, she
17 testified to something completely different.

18 THE COURT: Well, you're trying to impeach her, and
19 on the facts of what happened on that occasion on the question
20 of voir diring her about experience and training. And she's
21 about to answer yes, based on my experience and training and
22 what I observed that morning, this is my opinion, so I think
23 you're beyond the voir dire point. I think you're cross-
24 examining in effect.

25 MR. LONG: But she had completely different observations

1 in May.

2 THE COURT: Could be. You can bring that out on cross,
3 you can impeach her on cross, but you can't on voir dire.

4 MR. LONG: Even though she's basing her opinion now
5 on completely different set of observable facts than she testified
6 to in May?

7 THE COURT: Yeah. That's what cross is for.

8 All right. You may continue, Mr. Garside.

9 DIRECT EXAMINATION (Continuing)

10 BY MR. GARSIDE:

11 Q So, what is that opinion, Officer Beckett?

12 A It's my opinion that he was under the influence of
13 alcohol.

14 Q In your opinion, was he capable of safely operating a
15 motor vehicle?

16 A No.

17 MR. GARSIDE: I have nothing further, your Honor.

18 THE COURT: Thank you.

19 Mr. Long?

20 CROSS-EXAMINATION

21 BY MR. LONG:

22 Q So, as I understand it now, you say that you overheard
23 on the radio as you were going to the scene that the--the
24 suspect owned a black Monte Carlo?

25 A Yes.

1 Q Did you know who you were going to investigate?
2 A Not at that time, no.
3 Q Did you know his name?
4 A No.
5 Q But you knew what kind of a car he owned?
6 A That was the information that we were given. It was
7 the suspect--suspect's vehicle was a black Monte Carlo.
8 Q And where you--where that information came from, you
9 don't know?
10 A It would have had to have come from dispatch.
11 Q Right. But you don't know how they found out?
12 A No. I don't.
13 Q Okay. Now, when you were doing the report at the
14 jail, you found out that Frank Aragon was the owner of the black
15 Monte Carlo that was in the driveway; is that correct?
16 A I'm sorry? That's--well, that was the information
17 that I got to do my report.
18 Q And you were doing your report at the jail, after he
19 was booked?
20 A Yes.
21 Q And that's after the request for the breath--intoxilyzer?
22 A Yes.
23 Q So it was only then--it was then and only then that
24 you discovered that Frank Aragon was the owner of the registered
25 vehicle?

1 A That I--I'm sorry, I don't quite understand. I told
2 you that we received the information earlier that the suspect's
3 vehicle was a black Monte Carlo.

4 Q But you didn't know that that specific black Monte
5 Carlo belonged to this defendant until you were at the jail
6 after he was booked?

7 A That's true.

8 Q All right. Now, to get back to this--when you arrived,
9 what--what exactly was Frank and his wife doing? What were they
10 doing?

11 A They were standing a few feet apart from each other.

12 Q And having a discussion?

13 A They were standing a few feet apart from each other.
14 I would assume they were talking. I couldn't hear anything.

15 Q Didn't see any--any slaps or no physical--

16 A No.

17 Q --violence of any kind?

18 A No.

19 Q Had you been informed by dispatch that there was a
20 fight in progress?

21 A Yes.

22 Q A fight, huh?

23 A A family fight.

24 Q Not a dispute?

25 A I don't know the exact terminology that was used.

1 Q So, were you expecting to find violence, when you got
2 there?

3 A I was expecting to find some type of a problem.

4 Q Uh huh. And so when you arrived there, did you--when
5 you got there, was Officer Lynch already talking to the
6 defendant?

7 A I don't believe he was as I--as I arrived. He hadn't
8 gotten out of his vehicle, yet.

9 Q So you were the first to arrive?

10 A No. He got there ahead of me. We were just--maybe
11 not even a second apart. He pulled up and then I pulled up.

12 Q Uh huh. And so who got up to Mr. Aragon, the
13 defendant, first?

14 A Officer Lynch.

15 Q So, when you approached Officer Lynch, he was already
16 talking to Mr. Aragon?

17 A I don't recall.

18 Q Did you have a conversation with Mr. Aragon at that
19 time?

20 A Something was said. I don't recall exactly what it
21 was, but I remember looking at Mr. Aragon and there was an
22 exchange of some sort, but I don't recall exactly what it was.

23 Q So, you just stood there while Officer Lynch had a
24 conversation with him?

25 A No. I turned and started talking to Rose Aragon.

1 Q I see. And you were nearby, though?

2 A Yes.

3 Q And you were listening to that conversation out of the
4 corner of your ear, so to speak?

5 A Not the conversation, no. I was talking to
6 Mrs. Aragon.

7 Q So, you were not listening to what they were
8 discussing?

9 A No.

10 Q And the next thing you testified to was that Officer
11 Lybbert came up? Sergeant Lybbert came up?

12 A Lybbert.

13 Q Lybbert. Officer--Sergeant Lybbert.

14 A He arrived some--some time after we did. I don't know
15 exactly when he arrived.

16 Q Uh huh. And that's--he came up and started talking
17 to Officer Lynch and the defendant?

18 A I knew that Sergeant Lybbert had arrived after we
19 did, but Sergeant Lybbert--or Officer Lynch was talking to
20 Mr. Aragon, I was talking to Mrs. Aragon, and--I'm sorry, what
21 was your question?

22 Q When did Officer, or Sergeant Lybbert come up and start
23 talking to, or did he approach the defendant and Officer Lynch?

24 A When I--when I noticed that he approached was after
25 Mr. Aragon's voice started getting louder and he was arguing with

1 Officer Lynch. And as I turned, Sergeant Lybbert was there also.

2 Q Did you witness any threatening behavior on the part
3 of the defendant?

4 A I saw him going towards Officer Lynch and his voice was
5 very loud, but that was as I was turning.

6 Q You were turning away or turning toward?

7 A Back towards them.

8 Q And what--what was his threatening gesture like?

9 A What I heard was the loud, the loudness. I don't
10 recall the exact words that were used, and he was moving towards
11 Officer Lynch.

12 Q As in taking a step toward him?

13 A Yes. Moving towards him.

14 Q And I presume that Officer Lynch is armed?

15 A Yes.

16 Q He had his side arm on?

17 A Yes.

18 Q Did he have a night stick with him?

19 A I don't recall.

20 Q Does he carry mace?

21 A I don't know.

22 Q He has handcuffs?

23 A Yes.

24 Q Did he--did you witness the defendant raise his fist
25 in any way, in any threatening manner?

1 A I don't recall.

2 Q Uh huh. What did you witness next?

3 A I heard Sergeant Lybbert say, "You're under arrest."

4 And then Lybbert came forward, Lynch came forward, I believe they

5 each had an arm.

6 Q Uh huh. And then what happened?

7 A Then the three of them went to the ground.

8 MR. LONG: Excuse me, your Honor. Do we still have a

9 recording going on?

10 THE COURT: Oh, yes. It rewinds.

11 Q (By Mr. Long) And you say they went to the ground

12 together?

13 A The three of them, yes.

14 Q I see. And did you witness the defendant's face pound

15 off the pavement?

16 A No. I saw them all three go to the ground.

17 Q Uh huh. Did you later witness a massive bruise under

18 the right eye of Mr. Aragon?

19 A I wouldn't call it a massive bruise.

20 Q What was it then, what would you call it?

21 A He had a--he had some--a scrape from the sidewalk.

22 Q So his cheekbone on the right side had hit the pavement?

23 A I don't recall which side of his face it was.

24 Q But one side?

25 A Uh huh,

1 Q Did he have any other marks?
2 A I don't recall.
3 Q Was he bleeding?
4 A I don't believe so.
5 Q Just a scrape as you call it; right?
6 A I believe so.
7 Q And I presume he was put under control and the
8 handcuffs were placed on him?
9 A Yes.
10 Q Who placed the handcuffs on him?
11 A I don't know.
12 Q And then what happened after that?
13 A He was taken to my car.
14 Q And placed in your car?
15 A Placed in my car.
16 Q And that's when you overheard the conversation between
17 Officer, or Sergeant Lybbert and the defendant?
18 A No.
19 Q No? What happened next, then?
20 A We went back over to the house to talk to the other
21 people that were involved.
22 Q And Frank was left alone in the vehicle?
23 A I believe he was.
24 Q And so you--where did you go after he was placed in
25 the vehicle?

1 A Back to the front yard.

2 Q And to whom did you go to speak?

3 A I didn't go to speak to anybody in particular. I was
4 there when Sergeant Lybbert was talking to Mrs. Trujillo.

5 Q Uh huh. And so at that point, after the scuffle and he
6 was placed under arrest, what observable facts did you have about
7 Mr. Aragon that led you to believe that he was under the
8 influence?

9 A His judgment was poor, he refused to answer questions,
10 he was belligerent, he had the odor of alcohol on his breath.
11 He had been leaning against something when we first arrived,
12 he was leaning against my car prior to being put into my car,
13 and he was assisted to the car.

14 Q I'm sorry. You went a little fast for me. Poor
15 judgment; what was the second one?

16 THE COURT: The second statement was he refused to
17 answer questions.

18 MR. LONG: I'd rather have this witness answer the
19 questions, your Honor.

20 MR. GARSIDE: Well, your Honor, it's been asked and
21 answered, I think it's appropriate that the Court can use its
22 recollections.

23 THE COURT: Then you'll have to pay attention when
24 she answers, Counsel.

25 MR. LONG: Your Honor, I've got three different

1 answers, your Honor.

2 THE COURT: Well, not just then, you didn't.

3 MR. LONG: I did.

4 THE COURT: You got single answers, in seriatum and
5 you didn't write them down.

6 MR. LONG: All right. So, I'm sorry, could you help
7 me out, then?

8 THE COURT: All right.

9 MR. LONG: What was the second one?

10 THE WITNESS: He used poor judgment and not answering
11 questions.

12 MR. LONG: Uh huh.

13 THE WITNESS: He was belligerent.

14 Q (By Mr. Long) And?

15 A Smelled the odor of alcohol on his breath.

16 Q And there was another one that I missed out on,
17 before the odor of alcohol. You don't remember what that was.

18 A Leaning against the car. I don't know, did you--

19 Q That comes after.

20 A I--

21 Q My question was, what happened at the time he was
22 placed under arrest, and now you're saying he leaned on the
23 car on the way to the--as you carried him, had to hold him up
24 to get him over to the--your police car; is that right?

25 A I did not understand that as your question.

1 Q Uh huh. Did those influence your judgment in terms
2 of, did you take those into consideration later, when you did
3 place him under arrest for DUI?

4 A Yes. I did.

5 Q And the fact that you had to hold him up after he
6 bounced his face off the pavement?

7 MR. GARSIDE: I'll object, your Honor. There's been
8 no evidence that he--those are facts not in evidence and that's
9 argument that the defense counsel continues to place into the
10 record which there is no foundation for.

11 THE COURT: Sustained. It's argument.

12 Q (By Mr. Long) Now, you do remember testifying back
13 on the 9th day of May at the per se hearing on this matter, do
14 you not?

15 A Yes. I do.

16 Q And do you remember the question, at that contact,
17 did anything arouse your suspicions that may have led you to
18 believe he was under the influence of alcohol? Do you remember
19 being asked that question?

20 A I--I don't specifically remember being asked that, no.
21 I'm sure I was.

22 Q Do you remember what your response was then?

23 A I don't.

24 Q Would it have been the same as it is today?

25 A I would assume it would be essentially the same.

1 Q Uh huh. And if it's not, which story would you have us
2 believe?

3 THE COURT: Counsel, we have no objection before the
4 Court, but what you're doing is, is again argument. You
5 haven't impeached the witness or shown any inconsistency at this
6 point. You're free to do that if you'd like.

7 Q (By Mr. Long) Let me hand you then--

8 MR. LONG: Do we have a stipulation from Counsel that
9 I can use a copy of this transcript from the per se hearing?

10 THE COURT: Mr. Garside?

11 MR. GARSIDE: That's fine.

12 THE COURT: All right. You may go ahead.

13 Q (By Mr. Long) Let me direct your attention to Page 4,
14 Line 23, the question at the bottom of the page, please. Would
15 you read it out loud, please?

16 A "At that contact, did anything arouse your suspicions
17 that may have led you to believe that he was under the influence
18 of alcohol?"

19 Q And what was your response?

20 A "Yes."

21 Q Continue, please.

22 A "And what were those?"

23 Q And what was your response to that question?

24 A "I smelled the odor of alcohol on his breath, of
25 course, and he was arguing with the officers. He was belligerent,

1 was uncooperative, and finally was involved in a scuffle with
2 officers prior to being arrested."

3 Q Thank you. That answer is substantially different from
4 your response just now, is it not?

5 MR. GARSIDE: Objection, your Honor. I think that
6 that's argument and it's something for the fact finder to
7 determine.

8 THE COURT: Mr. Long? It seems like argument to me,
9 but I'll hear what you have to say about it.

10 MR. LONG: Well, she's--I asked her the same question
11 I asked her then and she has got a different story. Now, I
12 want to ask her which story we should believe.

13 THE COURT: You may ask her that, but that wasn't
14 your question. Your question was, are these substantially
15 different? And that is argument, it seems to me. I'll sustain
16 the objection.

17 You may go ahead and ask her which story.

18 Q (By Mr. Long) Which story would you have us believe,
19 then?

20 A Reading further--reading a little further in that, I
21 don't know that we're talking about the same time frame--

22 Q So--

23 A --as the question that you just asked me.

24 Q So, as the--as the evening progressed, your mind
25 changed; is that right?

1 A Pardon me?
2 Q Your mind changed as the evening progressed.
3 A Changed from what?
4 Q From what you observed. You observed more things and
5 you came to more of a conclusion, is that not right?
6 A I made my conclusion based on what I had observed
7 during the course of the evening.
8 Q Up until the time that you had placed him under
9 arrest?
10 A Yes.
11 Q And you placed him under arrest for DUI at what time?
12 A 0154.
13 Q And what was transpiring at 0154?
14 A That was when I was checking his mouth.
15 Q Where was this?
16 A Just prior to trans--when he was in the back seat of
17 my car.
18 Q That's when you placed him under arrest?
19 A He was already under arrest at that time.
20 Q Right. But you formally had placed him under arrest
21 for DUI?
22 A That's when I charged him for DUI.
23 Q And how did you do that?
24 A I--
25 Q I mean, did you open up the back door and say,

1 "Mr. Aragon, I am hereby placing you under arrest for driving
2 under the influence"?

3 A I don't recall.

4 Q Did you do anything at all?

5 A I checked his mouth, I recall doing that and at that
6 time, I told dispatch to note that.

7 Q Did you say anything to him?

8 A I don't recall.

9 Q But that's in your mind, that's the time you determined
10 that you were going to place him under arrest for DUI?

11 A Yeah. He was already under arrest.

12 Q For something else?

13 A Yes.

14 Q So, you never formally told him he was under arrest
15 for DUI, then?

16 A At that point?

17 Q Uh huh.

18 A I--I don't recall.

19 Q You never conducted any field sobriety tests, did you?

20 A No. I did not.

21 Q What was the reason for that?

22 A Because of his intoxication and his uncooperativeness.

23 Q Uh huh. So if someone is intoxicated, you usually
24 don't do the field sobriety tests then?

25 A For intoxication?

1 Q Uh huh.

2 A I don't do field sobriety tests for intoxication.

3 Q I mean, is that usually the reason for not conducting
4 the field sobriety tests is that the defendant is intoxicated?

5 A That wasn't my entire statement.

6 Q Was anyone else present when--when--at 1:5--0154 a.m.?

7 A Officer Lynch.

8 Q He was present?

9 A Or shortly thereafter.

10 Q And what--what did Officer Lynch--what was he doing?

11 A I had him search Mr. Aragon.

12 Q You--he hadn't been searched when he--

13 A I--I don't recall.

14 Q So, you had him get out of the car, then?

15 A No. He didn't. He would have had to have been searched
16 prior to being placed in the car.

17 Q You have no recollection of him being searched?

18 A I don't.

19 Q You never searched him yourself?

20 A I did not.

21 Q So, when you got to the jail, did you have occasion to
22 ask the defendant if he would submit to a chemical test of his
23 breath or blood?

24 A Yes. I did.

25 Q And what was his response?

1 MR. GARSIDE: Your Honor, not that we're objecting to
2 the substance of the information, but I believe that the motion
3 to suppress--that we're beyond what the Court would consider as
4 far as the suppression hearing with regard to the DUI.

5 THE COURT: Mr. Long?

6 MR. LONG: I'm ready for you to rule on it, your Honor.

7 THE COURT: Sustained. I can't see any relevance to
8 the purpose of the motion.

9 Q (By Mr. Long) Did you ask Frank Aragon's wife, Rose,
10 if she had driven the car there?

11 A No. I did not.

12 Q Did you ask her if she had seen him drive?

13 A No. I did not.

14 Q Did you ask anybody else whether they'd seen him drive
15 his car?

16 A No. I did not.

17 Q Did you hear, overhear anybody ask those questions?

18 A Specifically like that?

19 Q Yes.

20 A No.

21 Q So, how is it that you came to the conclusion that
22 Mr. Aragon had driven there? When did you--let me withdraw
23 that question.

24 When did you ask the defendant whether he'd been
25 driving the car?

1 A When did I ask him?

2 Q Uh huh.

3 A I didn't ask him.

4 Q Did anyone ask him?

5 A No.

6 Q So, no one asked him whether he'd been driving the car,
7 as far as you know?

8 A As far as I know, nobody asked him whether or not he
9 had driven the car.

10 Q And you still placed him under arrest for DUI?

11 A He had stated that he drove the car there.

12 Q Who did he tell that to?

13 A Sergeant Lybbert.

14 Q I thought you just stated that nobody asked him, and
15 he didn't tell anybody.

16 MR. GARSIDE: Argumentative, your Honor.

17 Q (By Mr. Long) Not true? Who was present when he
18 said that?

19 THE COURT: Well, I should rule on the objection.
20 Overruled. I think you may continue.

21 THE WITNESS: I'm sorry? Your question was?

22 Q (By Mr. Long) Who was present when Frank Aragon said
23 he was driving the car?

24 A Sergeant Lybbert and myself.

25 Q Uh huh. And is that when you were standing next to the

1 car out there?

2 A Yes. It is.

3 Q And that's after you'd already gone over and had a
4 conversation with other people there; is that right?

5 A After we had gone back to the front yard, yes.

6 Q Uh huh. And when you went back to the front yard,
7 who talked to whom? Whom did you talk to, for example?

8 A I didn't talk to anybody.

9 Q Did you witness Officer, or Sergeant Lybbert talking
10 to anyone?

11 A Yes. I did.

12 Q To whom did you hear him--

13 A June Trujillo.

14 Q And what exactly did you overhear in this conversation?

15 A Sergeant Lybbert--Mrs. Trujillo had stated that he had
16 been over to her--Mr. Aragon had been over to her house earlier,
17 and when questioned further--that he'd been over there earlier
18 with a friend, and when questioned further, she stated she
19 hadn't actually seen anyone else, she just saw the vehicle but
20 didn't recognize it.

21 Q So, she never said anything in your presence that would
22 indicate that he had been driving the vehicle?

23 A Not in my presence.

24 Q Did you over hear any other conversations?

25 A No.

1 Q That was it?

2 A Uh huh.

3 Q Did Officer Lynch tell you any information that he'd
4 found from any of the witnesses?

5 A I'm sure that we discussed it, but I don't have anything
6 specifically noted in my report.

7 Q Uh huh. So, the time you placed the defendant under
8 arrest at 0154 a.m., you had no information to indicate that
9 he'd been driving the vehicle, from either his own admission or
10 from any witnesses; is that right?

11 A No. That's not right.

12 Q The only information you had to make a determination
13 that he had driven the vehicle was his admission, in your
14 presence, to Officer--or Sergeant Lybbert that he had driven
15 there; is that right?

16 A It was a statement that he made.

17 Q To Officer Lybbert, or Sergeant Lybbert?

18 A Sergeant Lybbert, yes.

19 Q And then was that in response to a question?

20 A Yes. It was.

21 Q And that question was?

22 A Where his friend was, or words to that effect.

23 Q Uh huh. So, Sergeant Lybbert was--had him in custody
24 in handcuffs in the back of your police car while he was
25 questioning him; is that correct?

1 A Questioning him about his friend.

2 Q But not about him?

3 A In regards to what?

4 Q Did you ever witness any officer give the defendant
5 the Miranda warnings?

6 A No. I did not.

7 Q Did you personally give the defendant the Miranda
8 warning?

9 A Yes. I did.

10 Q At the jail?

11 A Yes. I did.

12 Q Much later?

13 A Yes.

14 MR. LONG: I have no further questions, your Honor.

15 THE COURT: Any further direct?

16 MR. GARSIDE: Just brief--briefly, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. GARSIDE:

19 Q Earlier, just to clarify, on your way there, you don't
20 recall hearing from dispatch a suspect's name? Is that correct?
21 Is that your answer, that you don't recall?

22 A That I don't recall a suspect's name.

23 Q But--so it could have been dispatched, the suspect's
24 name, Mr. Aragon's name, could have been dispatched over the air?

25 A It could have.

1 Q Do you recall anybody at the scene checking the--the
2 registration or ownership information on that vehicle?

3 A I don't recall.

4 Q Could that have occurred?

5 A It could have.

6 MR. GARSIDE: I have nothing further, your Honor.

7 THE COURT: Thank you.

8 Further cross?

9 MR. LONG: No further cross, your Honor.

10 THE COURT: You may step down, Officer Beckett. Thank
11 you.

12 MR. GARSIDE: The City calls Officer John Lynch.

13 JOHN LYNCH,

14 called as a witness by and on behalf of the City in this matter,
15 after having been first duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. GARSIDE:

19 Q Your full name and employment, please.

20 A John Adam Lynch, police officer for Layton City.

21 Q Were you so employed the early morning of April 2nd,
22 1989?

23 A Yes, sir.

24 Q And did you have an occasion to assist Officer Beckett
25 and Sergeant Lybbert at 366 Glen Avenue?

1 A Yes, sir.

2 Q And do you recall what information, or what the nature
3 of the call was that sent you to that location?

4 A We received a call of a family fight at 366 Glen, where
5 a Frank Aragon was hitting his wife, and might possibly be
6 leaving in a black Monte Carlo.

7 Q Now, as far as the report of a family fight, is that--
8 is that a generic term, or does it have some specific meaning?

9 A Usually in family fight, it's usually between husband
10 and wife. It's kind of generic, it's usually a couple.

11 Q Does it--does it necessarily indicate that there's
12 physical violence occurring?

13 A Not necessarily, but we usually--I'd say 80 percent of
14 the time, there is physical in that.

15 Q But you recall specifically that the defendant's name
16 was broadcast over the air?

17 A Yes, sir.

18 Q All right. Do you recall where you were when you
19 received that specific information?

20 A I was fairly close, I don't exactly recall. I think I
21 was on Golden Avenue, which is just south of there, I'm not
22 exactly sure.

23 Q Okay. Who was the first officer to arrive?

24 A I was.

25 Q And how far ahead of the next responding officer were

1 you there?

2 A Just a short time. Officer Beckett was the next
3 officer to arrive.

4 Q Okay. And what observation did you make as you
5 arrived?

6 A 366 Glen has a driveway on the--it would be the east
7 side of the house, there was a black Monte Carlo sitting in the
8 driveway. Mr. Aragon, or a gentleman with a beard, was standing
9 outside with a female, they were a couple of feet apart, I
10 guess, and it appeared to be they were talking. I--from my
11 distance, I didn't hear any conversation, but they were facing
12 each other, and looked at me as I drove up.

13 Q Did you exit your vehicle and approach them?

14 A Yes, sir. I did.

15 Q What observation did you make as you were approaching
16 their location?

17 A As I approached them, I asked what was going on. The
18 woman looked real upset, tear-stained face and that. The male
19 looked upset, also. I looked at the woman and she had red marks
20 on her neck, and that's when I--I asked what was going on, the
21 male said nothing was going on and said the police weren't needed,
22 something to that effect, like he didn't need the police, or
23 along those lines.

24 Q Did you make any observations concerning the vehicle?

25 A The vehicle was running, at the time, in the driveway.

1 Q Were there any other individuals in the immediate area?

2 A No, there weren't. I believe there was someone looking
3 out of the house, the front door and that, but there wasn't
4 anybody else.

5 Q Okay. Did you continue your conversation with
6 Mr. Aragon at that time?

7 A Yes, sir.

8 Q And what was that?

9 A I asked him his name, he didn't want to give it to me.
10 I believe I asked him a couple of times, and then explained why
11 we were here and why I needed his name, and that he could be
12 arrested for delaying and obstructing an investigation and that.
13 And I believe somewhere in there, I asked him if he was Frank
14 Aragon. Somewhere after I advised him about he could be arrested,
15 he told me his name.

16 Q Okay. And how did he identify himself?

17 A He told me his name was Frank Aragon, and I believe
18 I asked him for a date of birth.

19 Q Okay. During that conversation, did you make any
20 observations or perceptions concerning the defendant's demeanor?

21 A He was somewhat agitated. As soon as I started
22 talking to him, I could smell alcohol. He had glassy eyes, I
23 figured that was from the alcohol.

24 Q Okay. When you asked him for the date of birth,
25 what response did you get at that time?

1 A I don't remember, at that time. I remember--something
2 I probably wrote down and called in at that time.

3 Q Okay. Continue, please, in your conversation with the
4 defendant.

5 A I asked him his name and he provided his name, Frank,
6 Aragon, and I believe a D.O.B. or something, and then he stepped
7 towards me.

8 Q And describe that--that action.

9 A I was standing probably over an arm's length away, he
10 stepped towards me, why, I don't know, he just closed distance
11 between us and, due to my training and that, I pushed him back
12 with my left hand, just stood him back away from me, and I
13 believe I told him to step back. I don't recall, it's usually
14 standard. And I pushed him back. And at that time, his
15 agitation then accelerated.

16 Q Okay. And how did that--what--what occurred that leads
17 you to say that?

18 A He--if you want me to quote what he said, he said,
19 "Don't touch me, mother fucker", I wrote it down here, he said
20 that, and he doubled up his fists, and he said, "Don't touch me,
21 mother fucker, come on, do you want some trouble".

22 Q And what was the volume that that was stated at?

23 A That went up pretty high, the volume.

24 Q Okay. And how did you respond?

25 A I can't remember. I told him something, and at that

1 time, Officer Lybbert had come up from behind me, told him he
2 was under arrest, so I went to take hold of him and place him
3 under arrest.

4 Q Okay. And do you recall at that time whether or not
5 Sergeant Lybbert articulated why the defendant was under
6 arrest?

7 A I don't recall at that time. I remember he said,
8 "You're under arrest."

9 Q Okay. And then what occurred?

10 A We moved against the car, Mr. Aragon resisting,
11 pulling away, got to the side of the car, he was still resisting
12 and fighting with us. And then he went to the ground and the
13 sidewalk area. We had him down on the ground and at that time,
14 he was handcuffed, and I believe after he was handcuffed, he
15 was searched, on the ground. And then we stood him back up and
16 put him over in Officer Beckett's car, and--

17 Q And after he was placed in Officer Beckett's car, what
18 then did you do?

19 A I started to do some standard questioning, I asked
20 people how he got there, or what--you know, what had been going
21 on, to try and see if someone had witnessed an assault, or what
22 had been going on.

23 Q And whom did you approach?

24 A I remember talking to Rose Aragon.

25 Q And what did she inform you?

1 A I asked her how he got there, and she said he drove.

2 Q Any other information that she provided to you?

3 A Not that I can recall. I remember asking her that
4 question.

5 Q Anything concerning the assault?

6 A Well, I--

7 Q Or the alleged assault?

8 A I asked her about the red marks, I believe, somewhere
9 in there, and she didn't want to talk about that.

10 Q Okay. Do you know whether or not anybody checked the
11 registration of that--of the black Monte Carlo that was there
12 in the driveway, that was running?

13 A I believe Sergeant Lybbert called it in, and I may
14 have also requested who it belonged to and to have it printed.

15 Q Was that--do you know, do you recall whether or not
16 that information was given back over the air?

17 A I believe it was.

18 Q Okay. And what was the information?

19 A It was Frank Aragon's car.

20 Q After Rose Aragon provided you with that information,
21 what did you do?

22 A I believe I went to the house and talked to some
23 people there, there were a couple other people, and a young
24 lady by the name of Nicky Trujillo, I was asking how he got
25 there, and she said he drove there.

1 Q A Nicky Trujillo?

2 A Yes, sir.

3 Q Okay. Any other contacts you made at that location
4 at that time?

5 A There was a--a Gentry, who I believe is Nicky's mother,
6 somewhere, and I can't remember if it was right then, I believe
7 at that time, I asked her and she started to tell me a story
8 about he had come over to her house earlier, with a friend.
9 And then I walked back, talked to Officer--Sergeant Lybbert and
10 he said something about she doesn't know who the friend, or
11 Mr. Aragon and had had that conversation where he'd asked about a
12 friend, and he said Mr--Sergeant Lybbert related to me that
13 Mr. Aragon had said there wasn't a friend, so I assumed
14 Ms. Trujillo was telling me a story, for some reason, so I
15 stepped back, Mirandized her and informed her if she was telling
16 me a story, that it could be delaying and obstructing an
17 investigation, if I found out otherwise. At that time, she said
18 she didn't know anything, she thought a friend.

19 Q Will you briefly explain to the Court the training that
20 you've received in detecting and apprehending impaired drivers?

21 A I'm certified in two different states, police
22 academies, I've also completed a basic DUI apprehension school
23 and also an advanced DUI apprehension school, and the uniform
24 field sobriety testing and gaze Nystagmus.

25 Q And has it always been part--as--since you've been a

1 peace officer, has it always been part of your duties and
2 responsibility to apprehend such individuals?

3 A Yes, sir.

4 Q Based on--based on your training and experience, did
5 you make an opinion as to whether or not the defendant was under
6 the influence of alcohol?

7 A Yes, sir.

8 Q What is that opinion?

9 MR. LONG: Objection, your Honor, it's irrelevant.
10 This is not the arresting officer.

11 THE COURT: Overruled. You may answer.

12 THE WITNESS: That he was under the influence of
13 alcohol.

14 Q (By Mr. Garside) In your opinion, was he capable of
15 safely operating a motor vehicle?

16 A No, sir.

17 MR. GARSIDE: I have nothing further, your Honor.

18 THE COURT: Thank you.

19 Mr. Long?

20 CROSS-EXAMINATION

21 BY MR. LONG:

22 Q Now, Officer Lynch, you said that you were originally_
23 dispatched to this location for what, to respond to what?

24 A It was a family fight.

25 Q Family fight? And that's all you knew about it, just

1 a family fight?

2 A No. They said family fight, and they supplied me with
3 the information that a Frank Aragon was hitting on his wife and
4 may leave in a black Monte Carlo.

5 Q Uh huh, that's the information that came from
6 dispatch?

7 A Yes, sir.

8 Q All right. And how is it you recall that so--so
9 clearly?

10 A I wrote it in my report, and that's something that
11 would stick with you, and when they give you a specific name,
12 you try and pick out important parts of a dispatch; black
13 Monte Carlo, Frank Aragon, hitting on his wife, those are
14 important things to remember.

15 Q Uh huh. And you don't know where this report came
16 from?

17 A What report?

18 Q From dispatch?

19 A Probably a phone call. I was not sitting in dispatch.

20 Q Uh huh, so you really don't know, you just--all you
21 heard was what came over dispatch?

22 A Yes, sir. That's what I'm supposed to do on patrol.

23 Q Uh huh. And when you first had the initial
24 conversation with Mr. Aragon, when you first make contact with
25 him, did anything arouse your suspicions that would have led you

1 to conclude that he could have been under the influence of
2 alcohol?

3 A Repeat that inquiry, sir.

4 Q When you first made initial contact with Mr. Aragon,
5 when he was talking with his wife, next to his vehicle--

6 A Yes, sir.

7 Q --or the Monte Carlo, did anything arouse your
8 suspicions that would have led you to conclude that he could
9 have been under the influence of alcohol?

10 A Probably the smell of alcohol.

11 Q Uh huh, and that's it?

12 A And his glassy eyes, at that time.

13 Q Uh huh. Anything else?

14 A Nothing I can recall.

15 Q Uh huh. Did--you had some conversation with him at
16 that--at that initial contact, though; is that right?

17 A Yes, sir.

18 Q Did you ever ask him if he was the driver of the car?

19 A No. I don't believe I ever did.

20 Q Uh huh, okay. This conversation you had with these
21 other people, these were after he was seated in the police car,
22 under arrest?

23 A Yes, sir.

24 Q Now, when you scuffled and you went to the ground,
25 what exactly happened to--to Frank's face?

1 A I believe he got some, as we term it, road rash, a
2 scraping on his cheek from the sidewalk.

3 Q Do you remember which cheek it was?

4 A I can't recall. Perhaps it was the right one, for some
5 reason I think, but I don't exactly recall.

6 Q Did it bleed?

7 A I don't believe it bled. I think, you know, if you're
8 familiar with what they call road rash, when you scrape along,
9 I think it might have had some oozing or something of body
10 fluids, but I don't remember it bleeding.

11 Q Uh huh. Did he--did his head hit the pavement rather
12 hard?

13 A No, sir.

14 Q But just enough to have road rash?

15 A I believe so.

16 Q Uh huh. Did you sustain any injuries?

17 A I think probably bruised my knee a little bit or
18 something.

19 Q How about Officer Lybbert, to your knowledge? Sergeant
20 Lybbert?

21 A I don't remember at that time.

22 Q You never witnessed any field sobriety tests, did you?

23 A No, sir.

24 Q Did you ever overhear Officer Beckett place the
25 defendant under arrest?

1 A No, sir. I was not near the vehicle.

2 Q Uh huh. But you did witness Sergeant Lybbert place him

3 under arrest for disorderly conduct?

4 A We were right there together, yes, sir.

5 Q Do you remember him specifically saying--saying that?

6 A I can't exactly say when I specifically heard him say

7 it. I know somewhere in the scuffling and that, the words

8 "you're under arrest" and "disorderly conduct" were said, but

9 I don't say exactly when.

10 Q Maybe when you were down on the ground, all three of

11 you?

12 A That's a possibility.

13 MR. LONG: I have no further questions.

14 THE COURT: Thank you.

15 Any redirect?

16 MR. GARSIDE: No, your Honor.

17 THE COURT: You may step down Officer Lybbert--or Lynch,

18 thank you.

19 MR. GARSIDE: The City has nothing further at this

20 time, your Honor.

21 THE COURT: Thank you.

22 Mr. Long, would you be putting in evidence?

23 MR. LONG: No, your Honor.

24 THE COURT: All right. Speak to the case.

25 MR. LONG: Well, I think my memo, I wouldn't change