2011

State of Utah v. Milo Simons : Brief of Respondent

Utah Court of Appeals

Case No. 20110842-SC

IN THE

UTAH SUPREME COURT

STATE OF UTAH,
Plaintiff/Respondent,

vs.

MILO SIMONS,
Defendant/Petitioner.

Brief of Respondent

On Writ of Certiorari to the Utah Court of Appeals

JEFFREY S. GRAY (5852)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854
Telephone: (801) 366-0180

JEFFREY R. BUHMAN
Utah County Attorney's Office

Counsel for Respondent

DOUGLAS J. THOMPSON
Utah County Public Defender Ass'n
51 South University Avenue, Ste. 206
Provo, UT 84601

Counsel for Petitioner

Case No. 20110842-SC

IN THE

UTAH SUPREME COURT

STATE OF UTAH,
Plaintiff/Respondent,

vs.

MILO SIMONS,
Defendant/Petitioner.

Brief of Respondent

On Writ of Certiorari to the Utah Court of Appeals

JEFFREY S. GRAY (5852)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854
Telephone: (801) 366-0180

DOUGLAS J. THOMPSON
Utah County Public Defender Ass'n
51 South University Avenue, Ste. 206
Provo, UT 84601

JEFFREY R. BUHMAN
Utah County Attorney's Office

Counsel for Petitioner

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF JURISDICTION 1

STATEMENT OF THE ISSUE 1

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES 2

STATEMENT OF THE CASE 3

A. Summary of Facts 3

B. Summary of Proceedings. 5

SUMMARY OF ARGUMENT 6

ARGUMENT 8

THE OFFICER'S SINGLE QUESTION TO PETITIONER DID NOT EXCEED THE STOP'S PERMISSIBLE SCOPE 8

A. The brief inquiry of Petitioner was justified by reasonable suspicion of further criminal activity 10

B. In any event, the deputy's question to Petitioner did not unreasonably delay the investigation. 18

CONCLUSION 25

ADDENDA

Addendum A: *State v. Simons*, 2011 UT App 251, 262 P.3d 53

Addendum B: Minute Entry [Denying Motion to Suppress] (04/30/07)

TABLE OF AUTHORITIES

FEDERAL AUTHORITIES

Arizona v. Johnson, 555 U.S. 323 (2009) ..... *passim*

Brendlin v. California, 551 U.S. 249 (2007) 8

Brigham City v. Stuart, 547 U.S. 398 (2006) 18

Chambers v. Maroney, 399 U.S. 42 (1970) 20

Delaware v. Prouse, 440 U.S. 648 (1979) 19

Illinois v. Caballes, 543 U.S. 405 (2005) 9, 21, 23, 24

Illinois v. Wardlow, 528 U.S. 119 (2000) 12, 17

Maryland v. Pringle, 540 U.S. 366 (2003) 12, 15, 16, 17

Michigan v. Summers, 452 U.S. 692 (1981) 11

Muehler v. Mena, 544 U.S. 93 (2005) 11, 17, 21, 23

Terry v. Ohio, 392 U.S. 1 (1968) 11, 20

United States v. Brignoni-Ponce, 422 U.S. 873 (1975) 11, 18

United States v. Di Re, 332 U.S. 581 (1948) 12, 13

United States v. Fladten, 230 F.3d 1083 (8th Cir. 2000) 11

United States v. Munoz, 590 F.3d 916 (8th Cir. 2010) 11

United States v. Place, 462 U.S. 696 (1983) 21

United States v. Ross, 456 U.S. 798 (1982) 15

United States v. Sharpe, 470 U.S. 675 (1985) 9, 18

United States v. Sparks, 291 F.3d 683 (10th Cir. 2002) 10

Wyoming v. Houghton, 526 U.S. 295 (1999) 12, 14, 15, 17

Ybarra v. Illinois, 444 U.S 85 (1979) 12, 13, 14

STATE AUTHORITIES

State v. Alverez, 2006 UT 61, 147 P.3d 425 11

State v. Baker, 2010 UT 18, 229 P.3d 650 ..... 7, 9, 20, 24

State v. Brake, 2004 UT 95, 103 P.3d 699 2

State v. Chapman, 921 P.2d 446 (Utah 1996) 24

State v. Chism, 2005 UT App 41, 107 P.3d 706 20

State v. Hansen, 2002 UT 125, 63 P.3d 650 ..... 9, 19

State v. Krukowski, 2004 UT 94, 100 P.3d 1222 2

State v. Lopez, 873 P.2d 1127 (Utah 1994) 9, 19, 20

State v. Morris, 2011 UT 40, 259 P.3d 116 ..... 20, 22

State v. Rodriguez, 2007 UT 15, 156 P.3d 771 19

State v. Simons, 2011 UT App 251, 262 P.3d 53 ..... i, 1, 5, 6, 8

State v. Visser, 2000 UT 88, 22 P.3d 1242 2

State v. Worwood, 2007 UT 47, 164 P.3d 397 ..... 18, 20

FEDERAL CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

U.S. Const. amend. IV 2

STATE CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann. § 78A-3-102 (West 2009) 1

Case No. 20110842-SC

IN THE

UTAH SUPREME COURT

STATE OF UTAH,
Plaintiff/Respondent,

vs.

MILO SIMONS,
Defendant/Petitioner.

Brief of Respondent

STATEMENT OF JURISDICTION

This case is before the Court on a writ of certiorari to the Utah Court of Appeals from its opinion in *State v. Simons*, 2011 UT App 251, 262 P.3d 53 (Addendum A). The Supreme Court has jurisdiction from its grant of certiorari under Utah Code Ann. § 78A-3-102(5) (West 2009).

STATEMENT OF THE ISSUE

After stopping the car in which Petitioner was a passenger, the officer saw drug paraphernalia in the driver's door. Then, while his partner watched the driver, the officer approached Petitioner, told him what he had found, and asked Petitioner if he had anything on his person he needed to know about. Petitioner confessed that he had a pipe in his underwear.

Did the officer's brief inquiry of Petitioner infringe upon his Fourth Amendment rights?

Standard of Review. On certiorari, the Supreme Court reviews the decision of the Court of Appeals for correctness. *State v. Visser*, 2000 UT 88, ¶ 9, 22 P.3d 1242. "The correctness of the Court of Appeals' decision turns on whether that court accurately reviewed the trial court's decision under the appropriate standard of review." *Id.* A trial court's decision to grant or deny a motion to suppress is a mixed question of law and fact. The court's factual findings are reviewed for clear error. *State v. Krukowski*, 2004 UT 94, ¶ 11, 100 P.3d 1222. The court's legal conclusions are reviewed non-deferentially for correctness, including its application of the legal standard to the facts. *State v. Brake*, 2004 UT 95, ¶ 11, 103 P.3d 699.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

U.S. Const. amend. IV

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

STATEMENT OF THE CASE

A. Summary of Facts.

While patrolling SR-77 near Springville, Deputy John Luke and a deputy he was training ("officer-in-training") saw a car traveling 10 miles per hour above the posted speed limit. R92:4-5,17-18 (R49). When a computer check also revealed that the car was uninsured, the deputies made a traffic stop. R92:5,17-19 (R48). While Deputy Luke watched from the passenger side of the vehicle, the officer-in-training spoke with the driver. R92:5,19-20,27-28 (R49-48). Petitioner was sitting in the front passenger seat, but Deputy Luke did not speak with him at that time. R92:5,20,27-28.

After the officer-in-training finished speaking with the driver, the two deputies met at the front of their patrol car. R92:21 (R48). Deputy Luke then approached the driver and collected his driver's license and the vehicle registration. R92:5,21-22,28 (R48). The driver was unable to produce proof of insurance for the car, which had been borrowed. R92:5,22 (R48). While speaking with the driver, Deputy Luke smelled no alcohol, but "observed [other] signs of possible impairment," including watery, bloodshot eyes and "very rapid speech and movement." R92:6,20-23 (R48). The driver's "unusual" and "agitated" behavior continued while Deputy Luke returned to his patrol car and conducted a computer check. R92:6,23 (R48).

When Deputy Luke reapproached the car after completing the computer check, the driver thrust his face toward the window and blurted out, "I'm not drunk, I haven't been drinking, look at my eyes." R92:6,22-23 (R48). At that point, Deputy Luke asked the driver to exit the car to perform field sobriety tests. R92:6,23 (R.48). As the driver got out, Deputy Luke saw in plain view chewed baggies in the door's side compartment. R92:7-8,23-24,28 (R48). Recognizing the baggies as drug paraphernalia, Deputy Luke retrieved them and verified that they contained "a white powder of a small crystal residue" that was consistent with methamphetamine. R92:8,24-25,27 (R48). Deputy Luke then asked the officer-in-training to stay with the driver while he spoke with Petitioner. R92: 8,25 (R48-47).

Deputy Luke told Petitioner that he "had found paraphernalia in the car and asked him if he had anything on his person [he] need[ed] to know about." R92:9,25 (R47). Petitioner immediately confessed that he had a pipe in his underwear. R92:9 (R47). Deputy Luke asked Petitioner to shake the pipe from his pants and when he did so, a glass methamphetamine pipe fell to the ground. R92:9 (R47). The deputies then arrested the driver and found methamphetamine on his person in a search incident to arrest. R92:9-11,26. Thereafter, Petitioner volunteered that he had "some" in his pocket and he surrendered a baggie of methamphetamine. R92:10-12,26 (R47).

B. Summary of Proceedings.

Petitioner was charged with possession of methamphetamine and possession of drug paraphernalia. R.6-5. He moved to suppress the evidence seized during the stop, arguing that the question posed to him by Deputy Luke was beyond the stop's permissible scope. R.35-24. The district court denied the motion, ruling that the question was justified because the driver's possible impairment and the drug paraphernalia evidence created "a reasonable suspicion and concern about both occupants of the car." R.49-46 (Addendum B). Petitioner thereafter pled guilty to possession of methamphetamine, but reserved the right to appeal the denial of his motion to suppress. R.72-71,69-58. Petitioner was sentenced to a suspended prison term of up to five years and placed on supervised probation for 36 months. R.90-88.

Petitioner timely appealed and the Court of Appeals affirmed. *See Simons*, 2011 UT App 251. The court did not address the district court's ruling that reasonable suspicion justified the deputy's inquiry to Petitioner. Citing *Arizona v. Johnson*, 555 U.S. 323 (2009), the Court of Appeals instead held that the deputy's inquiry "did not measurably extend the length of the traffic stop or render the overall duration of the stop unreasonable." *Simons*, 2011 UT App 251, ¶11.

SUMMARY OF ARGUMENT

The trial court denied Petitioner's motion to suppress the evidence seized from his person during the traffic stop. It correctly ruled that the facts known to the officer supported "a reasonable suspicion and concern about both occupants of the car," justifying the deputy's brief inquiry of Petitioner. R47. The Court of Appeals did not address the trial court's ruling, but affirmed on alternative grounds. It held that "the question did not measurably extend the length of the traffic stop or render the overall duration of the stop unreasonable." *Simons*, 2011 UT App 251, ¶11. This Court may affirm on either ground.

The police may extend a detention for additional questioning if the facts and circumstances create reasonable suspicion of further criminal activity. The trial court correctly concluded that the deputy's question was supported by new reasonable suspicion. Chewed baggies of meth were discovered in the side compartment of the driver's door and the driver appeared to be impaired on something other than alcohol. Where Petitioner was traveling with the driver, Supreme Court precedent makes clear that it is reasonable for an officer to infer that both driver and passenger are engaged in a common enterprise—in this case, the possession or use of

drugs. This easily satisfies the reasonable suspicion standard for additional investigative questioning.

The Supreme Court has further held that a passenger's belongings in a car may be searched under similar circumstances. The Court has also held that where drugs are found in the backseat of a car and the vehicle's occupants deny ownership, probable cause exists to justify the arrest of all occupants, including the front seat passenger. Where the discovery of contraband in a car justifies an officer's search of a passenger's belongings, and even the arrest of the passenger, the officer may surely question the passenger about contraband.

In any event, the deputy's question to Petitioner did not convert the otherwise lawful encounter into an unlawful seizure, nor did it prolong the detention beyond the time reasonably required to fulfill the deputy's legitimate mission. The single question posed occurred in the midst of the lawful stop and could not have lasted more than a second or two. Accordingly, it cannot be said that the question "measurably extended" the duration of the stop. Nor is this case like *State v. Baker*, 2010 UT 18, 229 P.3d 650, where the purpose of the stop had already been completed.

ARGUMENT

THE OFFICER'S SINGLE QUESTION TO PETITIONER DID NOT EXCEED THE STOP'S PERMISSIBLE SCOPE

After Deputy Luke saw drug paraphernalia in the driver's door, he briefly turned his attention to Petitioner—the front seat passenger—told him what he had found, and asked if he had anything on him he needed to know about. R92:9,25. This question led to the seizure of drugs and paraphernalia. *See* R92:9-12,26. The trial court denied Petitioner's motion to suppress the evidence and the court of appeals affirmed, but on alternative grounds. This Court may affirm on the ground upon which the trial court relied: The paraphernalia in plain view created "a reasonable suspicion and concern about both occupants of the car," justifying the brief inquiry of Petitioner. R47. Or, the Court may affirm on the ground upon which the court of appeals relied: "[T]he question did not [in any event] measurably extend the length of the traffic stop or render the overall duration of the stop unreasonable." *Simons*, 2011 UT App 251, ¶11.

* * *

A traffic stop is a seizure of "everyone in the vehicle" and thus, all vehicle occupants are entitled to the protections of the Fourth Amendment. *Brendlin v. California*, 551 U.S. 249, 255-58 (2007). Like any other seizure, a traffic stop must meet two basic Fourth Amendment requirements. The

stop must (1) be "lawful at its inception," and (2) be "executed in a reasonable manner." *Illinois v. Caballes*, 543 U.S. 405, 408 (2005). The lawfulness of the stop in this case is undisputed. The observed speeding violation gave the deputies, at least, reasonable suspicion to warrant a stop. *See State v. Lopez*, 873 P.2d 1127, 1132 (Utah 1994). Accordingly, the only issue on certiorari is whether the stop was "executed in a reasonable manner." *Caballes*, 543 U.S. at 408. It was.

A traffic stop is reasonable in its execution so long as the officer "diligently pursue[s]" a course of action that is likely to fulfill the purpose of the stop. *See United States v. Sharpe*, 470 U.S. 675, 686 (1985). The police must end the stop and release the vehicle's occupants "when [they] have no further need to control the scene." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). This normally occurs once the initial purpose for the stop is concluded. *State v. Hansen*, 2002 UT 125, ¶31, 63 P.3d 650. But officers are also allowed "'to graduate their responses to the demands of [the] particular situation." *Sharpe*, 470 U.S. at 686 (citation omitted). Accordingly, "[i]f, during the scope of [a lawful] traffic stop, the officer forms new reasonable articulable suspicion of criminal activity, the officer may also expediently investigate his new suspicion." *State v. Baker*, 2010 UT 18, ¶ 13, 229 P.3d 650. The deputies in this case met this standard.

A. The brief inquiry of Petitioner was justified by reasonable suspicion of further criminal activity.

The traffic stop of Petitioner quickly, and properly, evolved into a drug investigation, supported by not just reasonable suspicion, but probable cause. After observing "signs of possible impairment" in the driver, but no alcohol odor, Deputy Luke asked the driver to step out of his vehicle. *See* R92:6,20-23. When the driver did so, the deputy saw "inside the door side compartment in plain view . . . several baggies that had been chewed on." R92:6-7. He immediately recognized the baggies as drug paraphernalia and retrieved them from the door. *See* R92:8. This plain view discovery was sufficient to establish probable cause to believe that other contraband or evidence might be in the car. *See United States v. Sparks*, 291 F.3d 683, 690 (10th Cir. 2002) (holding that "if an officer has lawfully observed an object of incriminating character in plain view in a vehicle, that observation, either alone or in combination with additional facts, has been held sufficient to

allow the officer to conduct a probable cause search of the vehicle").[1] Petitioner conceded as much on direct appeal. *See* Aplt. Brf. at 9.

But the facts, circumstances, and reasonable inferences in this case established more. They supported, at the very least, a reasonable suspicion that Petitioner also possessed contraband or was otherwise involved in drug activity together with the driver. As explained by the U.S. Supreme Court, the intrusion occasioned by a detention for investigative questioning is "modest," *United States v. Brignoni-Ponce*, 422 U.S. 873, 879-80 (1975), and "'surely less intrusive'" than a search. *See Muehler v. Mena*, 544 U.S. 93, 98 (2005) (quoting *Michigan v. Summers*, 452 U.S. 692, 701 (1981)). For this reason, an investigatory detention is permissible if the officer's suspicion "is supported by specific and articulable facts as well as any rational inferences drawn from those facts." *State v. Alverez*, 2006 UT 61, ¶14, 147 P.3d 425 (citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). This standard is "less

---

[1] *See, e.g., United States v. Munoz*, 590 F.3d 916, 923 (8th Cir. 2010) (holding that discovery of crack pipes in a vehicle's console "would have provided probable cause to search anywhere in the car, including in the backpack, for further evidence of drug activity"); *United States v. Fladten*, 230 F.3d 1083, 1086 (8th Cir. 2000) (holding that discovery of an item "commonly used in the manufacture of methamphetamine" in plain view in automobile provided probable cause to believe that "further contraband or evidence may have been in the other parts of the automobile").

demanding" than probable cause, *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000), and was easily met here.

The facts and circumstances confronting Deputy Luke were these: Petitioner was traveling in a car with "chewed" paraphernalia in plain view, and with a driver who appeared to be impaired by something other than alcohol. *See* R92:6-8,20-27. Given these facts, Petitioner's presence in the car and association with the driver made it "reasonable for [Deputy Luke] to infer a common enterprise among the [two] men." *See Maryland v. Pringle*, 540 U.S. 366, 373 (2003). They "indicated the likelihood of [drug possession or use], an enterprise to which a [user] would be unlikely to admit an innocent person with the potential to furnish evidence against him." *Id.*

Petitioner challenged this argument below, contending that his "mere presence" in the car did not support a reasonable suspicion that he was involved in drug activity. *See* Aplt. Brf. at 12-16. But an examination of four Supreme Court cases defeats that claim: *United States v. Di Re*, 332 U.S. 581 (1948), *Ybarra v. Illinois*, 444 U.S 85 (1979), *Wyoming v. Houghton*, 526 U.S. 295 (1999), and *Maryland v. Pringle*, 540 U.S. 366, 372 (2003).

United States v. Di Re

In *Di Re*, the Supreme Court addressed whether the automobile exception to the warrant requirement includes the search of all occupants

"when the contraband sought is of a character that might be concealed on the person." 332 U.S. at 584. In that case, Buffalo police officers stopped a car based on an informant's tip that the driver was selling counterfeit gasoline ration coupons at the identified location. *Id.* at 583. Both the driver and his front seat passenger, Di Re, were taken into custody and searched. *Id.* The search of Di Re uncovered two counterfeit coupons. *Id.* The Supreme Court recognized that vehicle occupants "could be used to conceal [such] contraband on [their] person," but declined to extend the automobile exception to the "search of guests in a car." *Id.* at 587.

Ybarra v. Illinois

Some 30 years later, the Supreme Court addressed a similar issue, but in the context of a warrant search of a public tavern. In *Ybarra*, police officers secured a warrant to search a tavern and one of its bartenders for drugs based on information from an informant that the bartender was selling heroin, which he kept in packets on his person and under the bar. 444 U.S. at 340-41. When officers executed the search warrant, they conducted patdown searches of the various customers present at the bar, one of whom was Ybarra. *Id.* at 341. The search of Ybarra uncovered several packets of heroin. *Id.* The Supreme Court concluded that the patdown search of Ybarra was not justified. *Id.* at 90-91. The Court held

that "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Id.* at 91.

Wyoming v. Houghton

In *Houghton*, decided two decades later, the Supreme Court addressed a somewhat different question—whether the automobile exception embraces the "search [of] a passenger's *personal belongings* inside an automobile." 526 U.S. at 297 (emphasis added). After making a traffic stop, the officer in *Houghton* observed a syringe in the front pocket of the driver, who then admitted using it to take drugs. *Id.* at 298. Officers ordered the driver and his two female passengers—one of whom was Houghton—out of the car. *Id.* Even though the only evidence of criminal wrongdoing was found on the male driver's person, officers searched Houghton's purse in the backseat and found a syringe containing methamphetamine. *Id.* Relying on *Di Re* and *Ybarra*, the Wyoming Supreme Court held that the automobile exception did not extend to the passenger's belongings. *Id.* at 299, 303. The United States Supreme Court reversed. *Id.* at 299-307.

In reversing, *Houghton* distinguished *Di Re* and *Ybarra*. The Court observed that "a car passenger—unlike the unwitting tavern patron in *Ybarra*—will often be engaged in a common enterprise with the driver, and

have the same interest in concealing the fruits of the evidence of their wrongdoing." *Id.* at 304-05. It also recognized that a driver "might be able to hide contraband in a passenger's belongings." *Id.* at 305. The Court thus held that "'[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of *every part of the vehicle and its contents* that may conceal the object of the search,'" including a passenger's belongings. *Id.* at 301-02 (quoting *United States v. Ross*, 456 U.S. 798, 825 (1982)) (emphasis supplied in *Houghton*).

Although contraband may be concealed as readily on a passenger's person as among a passenger's belongings, *Houghton* did not overrule *Di Re*. The Court noted that *Di Re* "turned on the unique, significantly heightened protection afforded against searches of one's person." *Id.* at 303. The Court reasoned that the search of a passenger's person is not justified under the circumstances because "the degree of intrusiveness upon personal privacy and indeed even personal dignity . . . differ substantially from [a] package search." *Id.* at 303. The Court concluded that the search of a passenger's belongings is justified because the "traumatic consequences [of a patdown search] are not to be expected when the police examine an item of personal property found in a car." *Id.*

Maryland v. Pringle

Finally, in *Maryland v. Pringle*, the Supreme Court recognized that the discovery of contraband in an automobile may support a probable cause finding to arrest all occupants in the vehicle. In that case, a police officer stopped a car occupied by three men—a driver, a front seat passenger (Pringle), and a back seat passenger. *Id.* at 367-68. During the course of the stop, the officer discovered more than $700 in rolled-up cash in the glove box and five plastic baggies of cocaine behind the backseat armrest. *Id.* at 368. When no one would admit ownership, the officer arrested all three. *Id.* at 368-69. Relying on *Houghton*, the Supreme Court held that because the men "were in a relatively small automobile, not a public tavern," the officer reasonably "infer[red] a common enterprise among the three men." *Id.* at 373. The Court thus concluded that the front seat passenger's arrest was justified because "the officer had probable cause to believe that [he] had committed the crime of possession of a controlled substance." *Id.* at 374.

* * *

The issue in this case involves the brief questioning of a passenger (Petitioner), rather than the search of a passenger's belongings or person, or the arrest of a passenger. But *Pringle* and *Houghton* are instructive. Like the front seat passenger in *Pringle*, Petitioner and his companion "were in a

relatively small automobile, not a public tavern." 540 U.S. at 373. And, as recognized in *Houghton*, it is reasonable in such cases to believe that the passenger is "engaged in a common enterprise with the driver, and [that both] have the same interest in concealing the fruits or the evidence of their wrongdoing." 526 U.S. at 304-05. Where an officer's discovery of contraband in the backseat of a car satisfies the probable cause burden for arresting a front seat passenger, Deputy Luke's discovery of chewed paraphernalia in the driver's door certainly satisfies the "less demanding" reasonable suspicion burden, *Wardlow*, 528 U.S. at 123, that is required for making the much "less intrusive" investigative query, *see Mena*, 544 U.S. at 98 (citation and quotation marks omitted).

Under *Houghton*, Deputy Luke would have been justified in searching any belongings that Petitioner may have had in the car. And under *Pringle's* rationale, he was likewise justified in at least asking Petitioner whether he had anything he needed to know about. Indeed, the Supreme Court in *Pringle* implicitly recognized that when confronted with the discovery of drugs in a car, officers may at least query passengers about the drugs. For in *Pringle*, the officer "questioned all three men" about the drugs. *Pringle*, 540 U.S. at 368-69. And all three were justifiably arrested, in part because they answered the officer's question and denied ownership. *See id.* at 372-73.

B. In any event, the deputy's question to Petitioner did not unreasonably delay the investigation.

Even *if* Deputy Luke's question to Petitioner was unmoored from the legitimate, though evolving, purpose of the stop, it did not render his detention unlawful.

As noted, for a traffic stop to be reasonable in its execution, officers must act "diligently" to fulfill the purpose of the stop and may not "unnecessarily prolong [the] detention." *Sharpe*, 470 U.S. at 685-86. "That being said, officers are not required to use the least restrictive means available in pursuing their investigation; the question is merely 'whether the police acted unreasonably in failing to . . . pursue' alternatives." *State v. Worwood*, 2007 UT 47, ¶28, 164 P.3d 397 (quoting *Sharpe*, 470 U.S. at 687). After all, "the Fourth Amendment's ultimate touchstone is 'reasonableness.'" *Brigham City v. Stuart*, 547 U.S. 398, 398, 404 (2006). Thus, when evaluating whether a stop was conducted in an improper manner, "common sense and ordinary human experience must govern over rigid criteria." *Sharpe*, 470 U.S. at 685.

After making a lawful traffic stop, an officer may, of course, ask the driver and passengers "to explain [the] suspicious circumstances" that gave rise to the stop. *See Brignoni-Ponce*, 422 U.S. at 882. Additionally, "an officer 'may request a driver's license and vehicle registration, conduct a computer

check [to verify that information], and issue a citation" or warning. *State v. Hansen*, 2002 UT 125, ¶31, 63 P.3d 650. This activity is part and parcel of the typical traffic stop. *See Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (holding that "when either the vehicle or an occupant is otherwise subject to seizure for violation of the law," an officer may "check [the motorist's] "driver's license and the registration of the automobile").[2]

An officer may also run a warrants or background check on the driver, "so long as it does not significantly extend the period of detention beyond that reasonably necessary" to fulfill the stop's initial objectives. *See Lopez*, 873 P.2d at 1133. Although not necessarily related to the purpose of the stop *per se*, such checks are permitted "in recognition of the safety risks confronting a police officer who makes a traffic stop." *State v. Rodriguez*, 2007 UT 15, ¶17, 156 P.3d 771. For this same reason, an officer may likewise "run a background check of . . . passengers and, in addition, . . . order [both] driver and passengers out of the vehicle." *Id.*

---

[2] This is true unless, of course, the reasonable suspicion that justified the stop is dispelled before the officer contacts the driver. *See Morris*, 2011 UT 40, ¶25 (holding that an officer who loses reasonable suspicion before contacting the driver may "offer an explanation," but "may not ask for identification, registration, or proof of insurance at this time unless during this brief encounter, new reasonable suspicion of criminal activity *immediately* arises that justifies further detention").

The Supreme Court has also held that to be reasonable in execution, a detention must be "reasonably related in scope to the circumstances that justified the interference in the first place." *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968); *accord Lopez*, 873 P.2d at 1131-32 (same); *State v. Morris*, 2011 UT 40, ¶ 15, 259 P.3d 116 (same); *Baker*, 2010 UT 18, ¶12 (same). Despite the Court's use of absolute language, this limitation in scope is not a bar to any and all officer activity unrelated to the initial purpose of the stop. As this Court recognized in *Worwood*, unrelated officer action is permissible so long as it does not (1) "'represent any further intrusion on the detainee's [constitutional] rights,'" or (2) "'add to the delay already lawfully experienced.'" 2007 UT 47, ¶28, 164 P.3d 397 (quoting *State v. Chism*, 2005 UT App 41, ¶15, 107 P.3d 706)).

When executing a stop, therefore, police cannot "change the level of coercion . . . to the degree that it is no longer justified under reasonable suspicion." *Id.* at ¶30. For example, police conduct may not "become so intrusive that it escalates into a de facto arrest" without probable cause. *Id.* at ¶30. Nor may officers conduct a search for evidence absent an additional showing of probable cause. *See Chambers v. Maroney*, 399 U.S. 42, 51 (1970) ("insist[ing] upon probable cause as a minimum requirement for a reasonable search" for evidence in an automobile). In each of those

instances, the police conduct constitutes a "discrete Fourth Amendment event" requiring independent justification. *See Mena*, 544 U.S. at 100-01.

In contrast, a mere "shift in purpose" alone does "not change the character of a [lawful] traffic stop" into "a constitutionally cognizable infringement." *See Caballes*, 543 U.S. at 408-09. For example, an otherwise lawful detention does not become unlawful by mere police questioning on unrelated matters, *see Mena*, 544 U.S. at 100-01, nor, even, by deployment of "a well-trained narcotics detection dog" that "'discloses only the presence or absence of narcotics, a contraband item,'" *Caballes*, 543 U.S. at 409 (citing *United States v. Place*, 462 U.S. 696, 707 (1983)).

On the other hand, "[a] seizure that is justified solely by the interest in issuing a warning [or] ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Caballes*, 543 U.S. at 408. The Supreme Court recently expounded on this principle in *Arizona v. Johnson*, 555 U.S. 323 (2009).

In *Johnson*, gang task force officers stopped the driver of a vehicle for a registration violation. *Id.* at 327. While one officer spoke with the driver, another officer spoke with Johnson—a backseat passenger—hoping to gain intelligence about the gang Johnson might be in. *Id.* at 328. Johnson was wearing clothing consistent with gang membership and had a scanner in his

pocket, but officers "had no reason to suspect anyone in the vehicle of criminal activity." *Id.* at 327-28. In response to the officer's questions, Johnson said he did not have any identification, volunteered that he was from a town the officer knew was home to a Crips gang, and revealed that he had been in prison for burglary. *Id.* at 328. Based on these answers, Johnson's clothing, and his possession of the scanner, the officer suspected that he may be armed and frisked him. *Id.*

The Supreme Court addressed two questions: (1) whether a frisk for weapons requires, as a prerequisite, reasonable suspicion that the suspect frisked is involved in criminal activity, *id.* at 330-32; and (2) whether questioning unrelated to the legitimate purpose of a stop renders the detention unlawful, *id.* at 332-34. The Court's answer to the second question is relevant to the question presented here.[3]

The Arizona court of appeals concluded that the officer's authority to detain Johnson, and thus her authority to frisk him, ceased once she "undertook to question Johnson on a matter unrelated to the traffic stop, *i.e.*,

---

[3] In answering the first question, the Court held that assuming there is reasonable suspicion the passenger is armed and dangerous, an officer may frisk the passenger for weapons so long as "it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation." *Johnson*, 555 at 327. It held that "[t]he police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity." *Id.*

Johnson's gang affiliation." *Id.* at 332. The Supreme Court flatly rejected that conclusion. It held that "[a]n officer's inquiries into matters *unrelated* to the justification for the traffic stop . . . do *not* convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Id.* at 333 (citing *Mena*, 544 U.S. at 100-01) (emphases added). Thus, even assuming, arguendo, that Deputy Luke's question to Petitioner was unrelated to the legitimate purpose of the stop, that fact did "not convert the encounter into something other than a lawful seizure." *Id.*

The State acknowledges that Deputy Luke walked a few feet away from the driver and asked Petitioner whether he had anything the deputy needed to know about. But that action could only have extended the stop by mere seconds. *Johnson* held that unrelated questioning is permissible "so long as [it] do[es] not *measurably* extend the duration of the stop." *Id.* (emphasis added). In other words, unrelated questioning that only extends a stop incrementally, such as occurred here, will not render it unlawful. The question is not whether the officer's actions extended the stop by a few seconds or minutes, but whether it prolonged the stop "beyond the time reasonably required to complete" its purpose. *Caballes*, 543 U.S. at 407. It cannot be said on these facts that the question posed to Petitioner prolonged

the stop beyond the time reasonably required to investigate the driver's impairment or possession of paraphernalia.

Petitioner argues that under *Baker* (as well as the pre-*Johnson* cases of *Hansen* and *State v. Chapman*, 921 P.2d 446 (Utah 1996)), any extension of time during a stop, no matter how slight, renders it unlawful. *See* Pet. Brf. at 8-26. But the Utah Supreme Court in *Baker* did not purport to overrule *Johnson*, which deals with officer conduct *during* a lawful detention. *Baker* instead addressed the propriety of extending a detention *after* the purpose of the stop is fulfilled. *See Baker*, 2010 UT 18, ¶ 31 (holding that "any detention of an individual *after* the purpose of the initial detention has concluded violates the Fourth Amendment") (emphasis added).

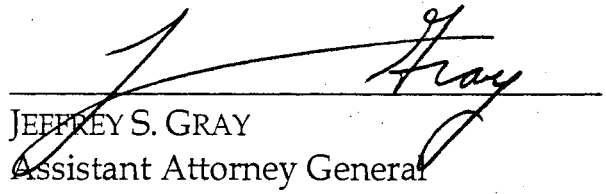
As conceded by Petitioner below, his continued detention was justified while Deputy Luke "continued to investigate [the driver's] sobriety," as well as the contraband possession, and thereafter "effectuated his arrest, or issued a citation." Aplt. Brf. at 13. The allegedly unrelated question posed to Petitioner during that time did not "measurably extend the duration of the stop," *Johnson*, 555 U.S. at 333, or otherwise prolong it "beyond the time reasonably required [for Deputy Luke] to complete" his lawful investigation, *Caballes*, 543 U.S. at 407.

CONCLUSION

For the foregoing reasons, the State respectfully requests the Court to affirm the judgment of the Court of Appeals.

Respectfully submitted on June 14, 2012.

MARK L. SHURTLEFF
Utah Attorney General



JEFFREY S. GRAY
Assistant Attorney General
Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that on June 14, 2012, two copies of the foregoing brief were

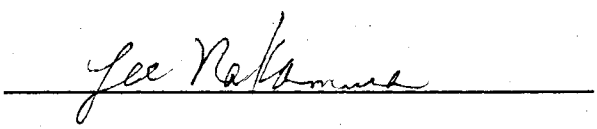
☑ mailed ☐ hand-delivered to:

Douglas J. Thompson
Utah County Public Defender Ass'n
51 South University Avenue, Ste. 206
Provo, UT 84601

Also, in accordance with Utah Supreme Court Standing Order No. 8, a Courtesy Brief on CD in searchable portable document format (pdf):

☑ was filed with the Court and served on appellant.

☐ will be filed with the Court and served on appellant within 14 days.



Addenda

ADDENDUM A

State v. Simons, 2011 UT App 251, 262 P.3d 53

IN THE UTAH COURT OF APPEALS

----ooOoo----

State of Utah, Plaintiff and Appellee, v. Milo Simons, Defendant and Appellant.	)))))))))	MEMORANDUM DECISION Case No. 20080109-CA FILED (July 29, 2011) 2011 UT App 251

Fourth District, Provo Department, 061404283
The Honorable James R. Taylor

Attorneys: Douglas J. Thompson, Provo, for Appellant
Mark L. Shurtleff and Jeffrey S. Gray, Salt Lake City, for Appellee

---

Before Judges McHugh, Roth, and Christiansen.

McHUGH, Associate Presiding Judge:

¶1 Milo Simons appeals from his conviction for possession of methamphetamine, a third degree felony, *see* Utah Code Ann. § 58-37-8(2)(a)(i) (Supp. 2010),[1] arguing that a police officer violated his Fourth Amendment rights by impermissibly extending the length of a traffic stop without reasonable suspicion. We affirm.

---

[1]Because the relevant sections of the code have not changed, we cite to the current version as a convenience to the reader.

¶2 On the evening of October 21, 2006, Deputy John Luke was on patrol near Springville, Utah, with another officer whom he was training when he observed a vehicle traveling approximately ten miles per hour over the posted speed limit. After a computer check revealed that the vehicle was also uninsured, Deputy Luke initiated a traffic stop. The officer-in-training made initial contact with the vehicle's driver. During this initial encounter, Deputy Luke approached the vehicle from the passenger side to observe the exchange. Simons was sitting in the front passenger seat, but Deputy Luke did not speak with him at the time. The officers then met behind the vehicle. After a brief exchange between the officers, Deputy Luke approached the driver, as Deputy Luke would be the one actually issuing the citation if it were determined that a citation was appropriate. Deputy Luke requested the driver's license, registration, and proof of insurance. The driver explained that the vehicle was borrowed and that he was unable to provide proof of insurance.

¶3 Deputy Luke testified at the preliminary hearing that at this point, he observed signs of possible impairment in the driver, including watery, bloodshot eyes, and rapid speech and movement. Deputy Luke continued to observe "agitated" movements in the driver after he went back to his patrol car to conduct a records check. When he again approached the driver after conducting the records check, the driver "blurted out . . . without being questioned" that he was not drunk, told Deputy Luke to "look at [his] eyes," and "forced his face towards the window." Deputy Luke asked the driver to step out of the vehicle because he wanted to conduct field sobriety tests. As the driver stepped out of the vehicle, Deputy Luke observed, in the driver's side door compartment, "several baggies that had been chewed on." Deputy Luke testified that in his experience, he had only ever seen these types of baggies used to carry drugs and he noticed "white powder of a small crystal residue inside" the baggies, which he suspected was methamphetamine.

¶4 Deputy Luke testified that after he found the baggies, he "had the assisting officer just stand by with [the driver]" while he approached Simons, who was still sitting in the passenger seat. He explained to Simons that he had found paraphernalia in the car and asked Simons if there was "anything on his person [Deputy Luke] need[ed] to know about." Simons immediately confessed to having a pipe in his underwear. Deputy Luke then had Simons step out of the vehicle and shake the pipe out of his pants, where it fell to the ground. After the officers searched the driver and

placed him under arrest, Simons informed Deputy Luke that he also had methamphetamine in his pocket.[2]

¶5 Simons was charged with possession of drug paraphernalia, a class B misdemeanor, *see id.* § 58-37a-5(1), and possession of a controlled substance, a second degree felony, *see id.* § 58-37-8(2)(a)(i). Simons was bound over for trial following a preliminary hearing. Before trial, he filed a motion to suppress the evidence of the pipe and methamphetamine, arguing that it was obtained in violation of his rights against unreasonable search and seizure pursuant to the Fourth Amendment to the United States Constitution, *see* U.S. Const. amend. IV.[3] The trial court denied Simons's motion, concluding that the used condition of the baggies "coupled with the possible impairment [of the driver] le[d] to a reasonable suspicion and concern about both occupants of the car." Following the trial court's denial of his motion, Simons entered a conditional guilty plea to the charge of possession of a controlled substance,[4] reserving his right to appeal the denial of his motion to suppress, *see State v. Sery*, 758 P.2d 935, 939 (Utah Ct. App. 1988).

¶6 Simons appeals, arguing that the evidence in this case should be suppressed because Deputy Luke exceeded the permissible length and scope of the stop when,

---

[2]Deputy Luke retrieved the bag from Simons's pocket and he testified that the bag's contents were subsequently tested and identified as methamphetamine.

[3]Simons also cites article I, section 14 of the Utah Constitution in arguing that Deputy Luke's actions violated his rights against unreasonable searches and seizures. However, because he has not argued for a separate analysis under the Utah Constitution, we consider only Simons's federal constitutional claim. *See State v. Bean*, 869 P.2d 984, 988 (Utah Ct. App. 1994) ("[A]n appellate court can decline to address state constitutional claims under article I, section 14 if the party fails to proffer any explanation as to how this court's analysis should differ under this section from the federal counterpart." (internal quotation marks omitted)). The Fourth Amendment to the United States Constitution is applicable to the states through the Fourteenth Amendment. *See* U.S. Const. amend. XIV.

[4]In exchange for pleading guilty to possession of a controlled substance, the State agreed to dismiss the charge against Simons for possession of drug paraphernalia.

without reasonable suspicion that Simons was engaged in any criminal activity, he turned his attention from the driver to Simons and asked Simons if he had "anything on his person [Deputy Luke] need[ed] to know about." When reviewing a trial court's denial of a motion to suppress, we review the findings of fact under a clearly erroneous standard, *see State v. Worwood*, 2007 UT 47, ¶ 12, 164 P.3d 397, and its legal conclusions for correctness, *see State v. Baker*, 2010 UT 18, ¶ 7, 229 P.3d 650. "'When a case involves the reasonableness of a search and seizure, we afford little discretion to the district court because there must be state-wide standards that guide law enforcement and prosecutorial officials.'" *Id.* (quoting *State v. Warren*, 2003 UT 36, ¶ 12, 78 P.3d 590). Because we conclude that Deputy Luke did not exceed the permissible length of the stop, we need not determine whether Deputy Luke's questioning of Simons was supported by reasonable suspicion. *See Bailey v. Bayles*, 2002 UT 58, ¶ 13, 52 P.3d 1158 ("[A]n appellate court may affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent on the record." (emphasis and internal quotation marks omitted)).

¶7 The Fourth Amendment to the United States Constitution protects citizens from "unreasonable searches and seizures." U.S. Const. amend. IV. "Although police must have a warrant to conduct most searches and seizures, 'officers may temporarily detain a vehicle and its occupants upon reasonable suspicion of criminal activity for the purpose of conducting a limited investigation of the suspicion.'" *Baker*, 2010 UT 18, ¶ 11 (quoting *State v. James*, 2000 UT 80, ¶ 10, 13 P.3d 576). Although "'one does not lose the protection of the Fourth Amendment while in an automobile,'" *id.* (additional internal quotation marks omitted) (quoting *State v. Lopez*, 873 P.2d 1127, 1131 (Utah 1994)), the "'automobile exception' to the warrant rule arises because occupants of a vehicle have a lesser expectation of privacy 'due to the mobile nature of vehicles and their highly regulated status,'" *id.* (quoting *James*, 2000 UT 80, ¶ 10).

¶8 In order to determine whether a traffic stop is reasonable under the Fourth Amendment, we apply a two-step test. *See id.* ¶ 12. "The first step is to determine whether the police officer's action [was] justified at its inception. In the second step, we must determine whether the detention following the stop was reasonably related in scope to the circumstances that justified the interference in the first place." *Id.* (alteration in original) (internal quotation marks omitted). Simons concedes that Deputy Luke was justified in pulling the vehicle over for a speeding violation. *See Lopez*, 873 P.2d at 1132 ("[A] police officer is constitutionally justified in stopping a

vehicle if the stop is incident to a traffic violation committed in the officer's presence." (internal quotation marks omitted)). We now address Simons's contention that Deputy Luke's conduct exceeded the scope of the traffic stop here.

¶9 For the duration of a lawful traffic stop, "'[t]he temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop.'" *Baker*, 2010 UT 18, ¶ 13 (quoting *Arizona v. Johnson*, 129 S. Ct. 781, 788 (2009)). Unless the officer forms new reasonable articulable suspicion or probable cause of further criminal activity during the course of the traffic stop, "the officer must allow the seized person to depart once the purpose of the stop has concluded." *Id.*; *see also State v. Hansen*, 2002 UT 125, ¶ 31, 63 P.3d 650 ("Any further temporary detention for investigative questioning after [fulfilling] the purpose for the initial traffic stop constitutes an illegal seizure, unless an officer has probable cause or a reasonable suspicion of a further illegality." (alteration in original) (internal quotation marks omitted)). If, during the course of the traffic stop, police officers develop probable cause to arrest the driver, the passengers may lawfully be detained until the arrest is complete. *See Baker*, 2010 UT 18, ¶¶ 16, 19. "At that time, officers must release any passengers who were detained incident to the detention of the vehicle." *Id.* ¶ 19.

¶10 During the course of an otherwise lawful encounter, however, officers may pose questions to drivers and passengers unrelated to the scope of the stop without reasonable suspicion of criminal activity, so long as those actions do not measurably extend the length of the stop. *See Johnson*, 129 S. Ct. at 788 ("An officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop."). In making the determination of whether the stop has been measurably extended, "[a] court should not micromanage the details of a traffic stop to ensure that no actions of the police improperly extend the stop so long as the duration of the stop is reasonable under the totality of the circumstances." *Baker*, 2010 UT 18, ¶ 17. Instead, "[t]he reasonableness of a detention should be evaluated on the basis of the totality of the circumstances facing the officer, not on judicial second-guessing." *Worwood*, 2007 UT 47, ¶ 28.

¶11 Although Simons concedes that Deputy Luke was entitled to detain him while investigating his reasonable suspicion that the driver was intoxicated and in possession of the residue-filled baggies, Simons contends that Deputy Luke impermissibly expanded the length of the stop when he ceased investigating the driver to approach

and question Simons. We disagree. While the record is unclear on the exact time it took for Deputy Luke to approach Simons, it indicates that Deputy Luke walked immediately from the driver's side to the passenger side and asked Simons if he had anything on his person that the officer should know about. In response to that single question, Simons immediately revealed that he had a pipe in his underwear. Under these circumstances, we are convinced that the question did not measurably extend the length of the traffic stop or render the overall duration of the stop unreasonable. *See Johnson*, 129 S. Ct. at 787-88 (concluding that questions directed to a passenger during a traffic stop designed to assess possible gang membership were not part of a consensual encounter, but also acknowledging that "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop"); *see also State v. Wilkinson*, 2008 UT App 395, ¶ 9, 197 P.3d 96 (concluding that an officer's request for a canine unit, in the absence of reasonable suspicion, did not impermissibly expand the scope or duration of a passenger's detention, because to conclude that any deviation from the purpose of the stop constitutes an illegal seizure "would place untenable demands on officers on the street"). Therefore, we affirm the denial of Simons's motion to suppress.

¶12 Affirmed.

_____

Carolyn B. McHugh,
Associate Presiding Judge

¶13 WE CONCUR:

_____

Stephen L. Roth, Judge

_____

Michele M. Christiansen, Judge

ADDENDUM B

Signed Minute Entry [Denying Motion to Suppress]
(04/30/2007)

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

State of Utah	:	
Plaintiff	:	Minute Entry
vs.	:	Date:
Kevin Sorensen, Milo B. Simons	:	Case Number: 061404282 061404283
Defendants	:	Division VII: Judge James R. Taylor

This matter comes before the Court upon the motion of each of the Defendants to suppress evidence seized at the time of their arrest. For the reasons explained below the motions are denied.

The State and both Defendants indicated to the Court that they wished to submit the motions upon the facts as elicited during the preliminary hearing. This Court conducted the hearing and has a transcript of the testimony.

On October 21st, 2006 at an undetermined time of day Deputy Sheriff John Rockwell Luke was patrolling on SR 77 in Utah County with trainee officer Dan Thomas. They observed a vehicle traveling at a steady10 miles per hour above the posted speed limit. The license plate was reported to dispatch who informed the deputies that records available to them indicated the vehicle to be uninsured. The officers made a traffic stop. Deputy Luke first went to the passenger side of the vehicle where he observed Defendant Simons in the front passenger seat.

The trainee deputy went to the driver's door. After a brief exchange the deputies met behind the vehicle and then Deputy Luke approached the driver, Defendant Sorensen. The reason for this procedure was that the trainee, Deputy Thomas, was being given experience in the stop and approach but it was determined that if a citation were to be given Deputy Luke would be the citing officer. Deputy Luke confirmed that Mr. Sorensen could not provide proof of insurance for the vehicle.

During this exchange Deputy Luke observed what he considered to be signs of impairment. These signs included watery, bloodshot eyes; rapid speech and movement and agitated, rapid body movement. The deputy felt that the unusual body language indicated possible intoxication or impairment. He stepped back to check records on the suspects and then re-approached the driver's side of the car. Mr. Sorensen, not in response to any question or comment, blurted out that he was not drunk and, forcing his face toward the window, asked the officer to look in his eyes.

From these observations the deputy concluded that he had a suspicion Mr. Sorensen was driving while impaired. In order to continue investigation of that suspicion he directed Mr. Sorensen to get out of the vehicle. When the door was opened he observed in plain view in the door compartment two used corners or fragments of baggies which were consistent with the storage and use of controlled substances. In an effort to investigate a suspicion that the occupants of the car may have recently used drugs the training deputy was directed to stay with

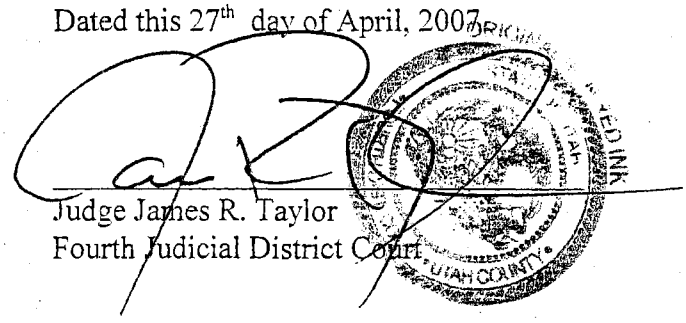
Mr. Sorensen while Deputy Luke questioned Mr. Simons, who was still in the vehicle. He told Mr. Simons he had found paraphernalia in the car and asked if he had anything on his person that he needed to know about. Mr. Simons immediately told him that he had a pipe in his underwear. Mr. Simons then stepped out of the vehicle at the deputy's direction. A pipe fell to the ground out of his right pant leg. Both Defendants were then searched and methamphetamine was located a small sack or satchel in Mr. Sorensen's left coat pocket and, also, in a small pants pocket of Mr. Simons.

It is well established in Utah that an officer may stop a vehicle for an offense committed in his presence. Indeed, in this case neither defendant challenges the propriety of the initial traffic stop. A traffic stop is a level two encounter, which may be based upon reasonable suspicion. Officers may conduct a reasonable investigation suggested by such a suspicion.

In this case Deputy Luke's initial suspicion of driving while impaired was quickly supplemented by his observation of drug paraphernalia in plain sight when the car door was properly opened to remove Mr. Sorensen to investigate the possible DUI charge. The baggies were not only strongly likely to be paraphernalia, the used condition implied use of the drugs they might have contained. That suspicion coupled with the signs of possible impairment lead to a reasonable suspicion and concern about both occupants of the car. The tactics including a quick search of Mr. Sorensen's person and questioning Mr. Simons about drug possession or use, followed by a search of his person (perhaps a bit of an overstatement since the search

consisted of having him step and literally shake a leg so the paraphernalia slipped down his pant leg to be recovered by the officer) were reasonably suggested by his concerns. Once it was confirmed that Mr. Simons was in possession of drug paraphernalia, arrest and a further, concurrent search of his person was justified. Consent of either Defendant to the search was irrelevant and this Court makes no finding on that point.

Dated this 27th day of April, 2007.



Judge James R. Taylor
Fourth Judicial District Court

A certificate of mailing is on the following page.