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Michael Smith v. Hon. Elizabeth Hruby-Mills

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MICHAEL SMITH,

Petitioner,

v.

HON. ELIZABETH HRUBY-MILLS,

Respondent,

Case No. 20150198-CA

OPENING BRIEF OF PETITIONER

This is the opening brief of petitioner seeking extraordinary relief from the order denying his right to a de novo appeal from the justice court, which order was entered in the Third District Court for Salt Lake County, State of Utah, the Honorable Hruby-Mills, Judge, presiding.

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COUNSEL'S CERTIFICATE PURSUANT TO RULE 24(f)(1)(C)

I hereby certify that the Brief of Defendant/Appellant contains 4,384 words, including headings, footnotes, and quotations, but excluding the Table of Contents, Table of Authorities, and the Addendum.

I have relied upon the word count of the word processing system, Microsoft Word, used to prepare this brief. The font used is Times New Roman, 13 point.

Certified this 13th day of May, 2015.

s/Jason Schatz

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JURISDICTION

Utah Code Ann. § Utah Code § 78A-4-103(1) provides this Court's jurisdiction over this petition for extraordinary relief over ruling of the district court in Smith's *de novo* appeal from his justice court conviction. The underlying conviction appealed to the district court is for Driving Under the Influence, a class B misdemeanor.

ISSUES, STANDARDS OF REVIEW AND PRESERVATION

1. Is a criminal defendant divested of his constitutional right to a full *de novo* direct appeal from his justice court conviction in district court by virtue of the prosecution's prior appeal to district court from the justice court's original order granting the defendant's motion to suppress?

This issue presents a legal question, to be reviewed without deference to the lower court. E.g. State v. Sheehan, 2012 UT App 62, ¶ 16, 273 P.3d 417 (recognizing that whether defendant's constitutional right is violated presents a question of law).

The issue was preserved by Smith's memorandum in the trial court, and by his oral argument (T. 12/8/14: *passim*).

2. Should the defendant's *de novo* appeal from the justice court be assigned to the same judge or a different judge than the one who presided and ruled in the prosecution's favor in the prosecution's prior appeal from the justice court's order granting the defendant's motion to suppress?

This issue presents a legal question, to be reviewed without deference to the lower court. Cf. State v. Alonzo, 973 P.2d 975, 979 (Utah 1998) (reviewing ruling on disqualification of judge as question of law).

The issue was preserved by Smith's oral argument (T. 12/8/14: 14-15, 20-21).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The following constitutional provisions, statutes and rules apply and are copied and included in Addendum E: Constitution of Utah, Article I §§ 7, 11, 12 and 24, Article VIII § 1; United States Constitution, Amendment XIV, § 1; Utah Code Ann. §§ 77-1-6(1)(g); 78A-1-101, 78A-7-101, 78A-7-118; Utah Code of Judicial Administration Rule 4-608 (repealed); Utah Rule of Civil Procedure 65B; Utah Rule of Criminal Procedure 38.

STATEMENT OF THE CASE

NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION

The original prosecution for DUI began in the Salt Lake City Justice Court, in Salt Lake City v. Michael Bryan Smith, Case No. 131412409, the Honorable Sydney Magid, Judge, presiding. Defendant filed a Motion to Suppress which was heard by Judge Magid and granted. (See attached Court Docket for Salt Lake City Justice Court Case # 131412409-Addendum A) After Judge Magid granted Smith's motion to suppress, the prosecution appealed to the Third District Court and the case was assigned to Judge-Hruby Mills. Judge Hruby-Mills, who presided over the prosecution's appeal, then heard and denied the Defendant's Motion to Suppress and remanded the matter back to the Salt Lake City Justice Court for further proceedings. (See attached Court Docket for Third District Court Case # 141902641-Addendum B) After the remand back to the justice court, on July 9, 2014, Smith pled guilty to DUI and Judge Magid sentenced him to ten days in jail and probation. Smith immediately appealed to district court and Judge Magid stayed his sentence pending appeal. (See attached Court Docket for Salt Lake City Justice Court Case # 131412409-Addendum A)

Because she was still the Third District Court judge assigned to the justice court rotation, Judge Rhuby-Mills was assigned to preside over Smith's *de novo* appeal from the justice court conviction. The Defendant filed his Motion to Suppress and the City objected to the Court hearing the Defendant's Motion to Suppress on his *de novo* appeal. Judge Hruby-Mills required briefing on the issue of whether Smith was entitled to a hearing on his motion to suppress in his *de novo* appeal from the justice court. (See July

16, 2014 docket entry in Third District Court Case no. 145900213-Addendum C)

Following briefing by both parties and argument on December 8, 2014, Judge Hruby-Mills ruled that Smith had no right to have his motion to suppress heard. Her conclusions of law recognized that Smith had a right to a trial *de novo* pursuant to Utah Code Ann. § 78A-7-118(1), and that he had a right for the court to hear “any pre-trial evidentiary matters the court deems necessary,” pursuant to Utah Rule of Criminal Procedure 38(e)(2). Nonetheless, she deemed it unnecessary to hear the motion to suppress, as she had heard it once before in the prosecution’s appeal. (See attached Findings of Fact, Conclusions of Law and Order-Addendum D)

As he had no basis for a direct appeal from that ruling, see Utah Code Ann. §78A-7-118(9), Smith then petitioned this Court for extraordinary relief pursuant to Rule 65B(d)(2)(A), seeking a writ of mandamus directing the district court to rule that Smith has the right to litigate his motion to suppress in his *de novo* appeal from the Salt Lake City Justice Court. He further petitioned this Court to order the hearing on the motion to suppress in Smith’s *de novo* appeal be set before a judge in the Third District Court other than the judge who had heard the motion in the prosecution’s appeal. Judge Hruby Mills and the Salt Lake City Prosecutor’s Office opposed the Petition in this Court, and Smith replied to their opposition memoranda.

This Court then ordered the parties to brief the issues addressed in Smith’s petition.

RELEVANT FACTS

Smith sought to exercise his right to *de novo* appeal in district court from his DUI conviction in the justice court, and filed a motion to suppress in the district court in his *de novo* appeal. The randomly assigned district court judge, who by coincidence had presided over the prosecution's earlier appeal in the same case, ruled that Smith could not litigate his motion to suppress, because that same judge had already denied the motion in the prosecution's earlier appeal from the justice court's order granting of the motion to suppress.

There are at least two other cases in similar procedural posture that have been stayed pending the outcome of the petition for extraordinary writ in this case: Salt Lake City v. Anderson, Case # 131401294 and Salt Lake City v. Gay, Case # 131401214.

SUMMARY OF ARGUMENTS

This Court should order the district court to preside over Smith's criminal prosecution in the *de novo* proceedings as if the criminal charges had been filed there originally. A criminal defendant's appeal of right is a substantial state constitutional right.

In appeals from justice courts, the appeals are *de novo* proceedings in district court. *De novo* proceedings are required in appeals from justice courts because justice courts are fundamentally different from other courts. Justice court judges may not be law trained, and justice courts are not courts of record. Accordingly, in justice court appeals,

The *de novo* prosecutions are to proceed in district court as if they had been filed there originally. Defendants have the right to adjudication of motions to suppress in these *de novo* proceedings, just as criminal defendants do in all other criminal prosecutions.

The fact that the prosecution has already exercised its statutory right to appeal from an adverse ruling against it in the justice court by appealing to the district court does not divest the defendant of his constitutional and statutory rights to a *de novo* appeal in district court on his own appeal from his justice court conviction. The longstanding legal definition of *de novo* proceedings is not changed by the language of Rule 38, that “Discovery, the trial, and any pre-trial evidentiary matters the court deems necessary, shall be held in accordance with these rules.” The language and purpose of that rule is to indicate that the rules of criminal procedure apply in *de novo* appeal proceedings. The language of the rule, “the court deems necessary” does not give district courts the authority to limit the scope of *de novo* appeals by foreclosing litigation of dispositive motions. Similarly, discretionary doctrines such as the law of the case and *res judicata* do not apply to block or limit the defendants’ in *de novo* appeals of right.

Because Judge Hruby-Mills heard the prosecution’s appeal and denied Smith’s motion to suppress in that case, this Court should order the case assigned to a new judge who has not already indicated a predisposition to the prosecution’s position.

ARGUMENTS

I. THIS COURT SHOULD ORDER THE DISTRICT COURT TO HONOR SMITH'S CONSTITUTIONAL AND STATUTORY RIGHTS TO *DE NOVO* PROCEEDINGS IN HIS JUSTICE COURT APPEAL.

Article I § 12 of the Utah Constitution and Utah Code Ann. § 77-1-6(1)(g) both recognize the criminal defendant's right to appeal in "all cases." The right to appeal is of pronounced importance in appeals from the justice courts, which are not courts of record and which may be presided over by judges who are not members of the bar or law-trained. See, e.g., Constitution of Utah, Article VIII, § 1; Utah Code Ann. § 78A-1-101, 78A-7-101. Accordingly, to satisfy constitutional due process concerns, in our two-tiered justice court system, appeals from convictions entered in the justice courts are *de novo* proceedings before judges who are law-trained members of the bar. E.g., Utah Code Ann. § 78A-7-118. Cf. North v. Russell, 427 U.S. 328 (1976) (recognizing that due process and equal protection concerns arising from non-law trained justices of the peace are resolved in two-tiered systems wherein law-trained judges preside over *de novo* appeals); Shelmidine v. Jones, 550 P.2d 207, 211 (Utah 1976). And the appeals must be *de novo*, as there historically has been no record in cases originally litigated in justice courts which would be necessary for traditional appellate review.

As the court explained in Lucero v. Kennard, 2004 UT App 94, 89 P.3d 175,

The Utah Constitution provides: "In criminal prosecutions the accused shall have ... the right to appeal in all cases." Utah Const. art.I, § 12. For criminal cases originating in justice courts, a defendant is provided an appeal through "a trial *de novo* in the district court." Utah Code Ann. § 78-5-120(1) (2002). In a trial *de novo*, the district court is "not acting in a typical appellate capacity." State v. Hinson, 966 P.2d 273, 276 (Utah Ct.App.1998). Because justice courts

are not courts of record, “the ‘appeal’ does not involve a review of the justice court proceedings.” *Id.* at 275. Through a trial *de novo* in the district court, “the parties essentially get a fresh start,” and the case is tried again as if it originated there. *Dean v. Henriod*, 1999 UT App 50, ¶ 9, 975 P.2d 946 (quotations and citation omitted).

Id. at ¶ 9.

The history of the state of Utah underscores the critical nature of the appeal from justice court. For before Utah became a state, the justice courts had plenary jurisdiction and were presided over by Mormon bishops who were instructed to foreclose appeals, as the territorial supreme court was not susceptible to Mormon influence. With statehood and the advent of the constitution, the *de novo* appeal to a court presided over by a judge was conscientiously initiated. E.g., NOTE: Exploring Justice Courts in Utah and Three Problems Inherent in the Justice Court System, 2001 Utah Law R. 731, at 737-38.

De novo proceedings such as appeals from the justice courts give people a “‘fresh start’” in the appellate court, and proceed as if the cases had been filed originally in the courts conducting the *de novo* appeals. E.g., Dean v. Henriod, 1999 UT App 50, ¶ 9, 975 P.2d 946.

In all criminal cases, the ability to litigate dispositive motions is essential to the constitutionality of the proceedings, for our courts do not operate with or rely upon information that was obtained in violation of the constitutions in criminal cases. See, e.g., Wong Sun v. United States, 371 U.S. 471, 484-488 (1963) (requiring suppression of evidence obtained in violation of the Fourth Amendment); State v. Larocco, 794 P.2d 460, 465-71 (Utah 1990) (*plurality*) (suppression is also a necessary consequence of the

violation of Article I § 14). See also, e.g., Mincey v. Arizona, 437 U.S. 385 (1978) (forbidding any use in court of constitutionally involuntary statements of the defendant).

Under our current law, resolution of “pretrial evidentiary matters” is an integral part of *de novo* appeals. E.g. Utah R. Crim. P. 38(e)(2). The court in Bernat v Allphin clearly recognized that Utah’s two-tiered trial court system is constitutional specifically because a defendant appealing his conviction from the justice court to the district court has a guaranteed right to a “trial *de novo*” form of review in the district court, wherein he is entitled to re-litigate his entire case as though the case originated in the district court in the first instance thereby allowing the defendant to re-raise or even raise for the first time in the district court any motions, including any motions to suppress or motions to dismiss, even if they were not filed in the justice court. The court stated:

Because justice courts are courts not of record, the *appeals process from a justice court decision is unique*. A defendant who has pleaded guilty or been convicted in justice court is entitled to a trial *de novo* in a district court, provided that he or she files a notice of appeal within thirty days of the sentence or guilty plea. *Id.* § 78–5–120(1).

Bernat v. Allphin, 2005 UT 1, ¶ 5, 106 P.3d 707. The court went on to define what is meant by a “trial *de novo*” in the context of justice court appeals, and why the full panoply of procedural rights must be extended in order to satisfy constitutional demands. The court explained:

Petitioners correctly observe that the term “*de novo*” means literally “anew, afresh, a second time[.]”

...

“The meaning of ‘trial *de novo*’ ... is obviously dictated by the wording and context of the statute in which it appears and by the nature of the ... decision and

procedure being reviewed.” *Pledger*, 626 P.2d at 416–17. Here, a de novo trial is no less “anew,” “afresh,” or “a complete retrial upon new evidence” simply because it functions as a form of appellate review. The state bears the same burden of establishing a defendant's guilt in a trial de novo as it would had the case originated there, and a defendant is afforded a clean slate upon which to relitigate the facts as to his guilt or innocence. The outcome of the prior justice court proceeding plays no part in the trial de novo, except that a district court is prohibited from imposing a harsher sentence than that imposed by the justice court.

...

Due to this difference in design, it stands to reason that the differences between justice courts and district courts would necessitate different forms of appellate review. Because Utah justice courts are not “courts of record,” it is not only constitutionally permissible to allow a defendant the opportunity to relitigate his or her case anew, but practically and reasonably sound.

Bernat v. Allphin, 2005 UT 1, ¶¶ 30-32, 106 P.3d 707 (footnote omitted).

Our Supreme Court has long held that the defendant is not limited in any way as to the issues he can raise in the district court when exercising his right to a trial de novo.

Our Constitution prevents a defendant convicted of a misdemeanor in a city or justice court from appealing to the Supreme Court. He can appeal to the district court where he is entitled to a trial de novo and may there raise all questions of error.

Maxwell v. Gibson, 578 P.2d 7, 8 (Utah 1978) (emphasis added).

Furthermore, more recent Utah law clearly allows a defendant to raise in the district court any relevant defense, including Fourth Amendment search and seizure issues as part of his defense, even if those defenses were previously raised in the Justice Court as well as those that were not raised in the justice court.

The Utah Constitution gives district courts “appellate jurisdiction as provided by statute,” and the legislature has enacted a statute giving the district courts

jurisdiction over appeals from justice court convictions.¹⁴ Under this statute, a criminal defendant who has been convicted by a justice court is entitled to a trial de novo in the district court.¹⁵ As a part of this de novo review, a defendant is permitted to raise in the district court any relevant defense to the charges, including challenges to the constitutionality of the statutes or ordinances under which he was convicted.

West Jordan City v. Goodman, 2006 UT 27, ¶ 12, 135 P.3d 878 (footnote omitted).

Finally, Rule 38 of the Utah Rules of Criminal Procedure also specifically authorizes the district court to address “any pre-trial evidentiary matters” as part of the trial de novo process, stating in relevant part:

....

(e) District court procedures for trials de novo. An appeal by a defendant pursuant to Utah Code Ann. § 78A-7-118(1) shall be accomplished by the following procedures:

(e)(1) If the defendant elects to go to trial, the district court will determine what number and level of offenses the defendant is facing.

(e)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems necessary, shall be held in accordance with these rules.

The rules of statutory construction apply to court rules. See, e.g., In re A.M., 2008 UT App 118, ¶ 24, 208 P.3d 1058. Thus, the Court is to read the language of the rule as a whole according to its plain language, in a commonsensical fashion. See, e.g., State v. Jeffs, 2010 UT 49, ¶ 31, 243 P.3d 1250. Subsection (e)(2), when read as a whole according to the plain language, is designed to indicate that the rules of criminal procedure govern *de novo* appeals from justice courts. The language “the court deems necessary” in subsection (e)(2) of rule 38 does not grant district courts does not grant District Courts the authority to limit the Defendant’s de novo rights on appeal and does not supplant the common law definition of *de novo*, as it has applied to *de novo* appeals

for so many years in this state.

Both the law of the case doctrine and the doctrine of res judicata are discretionary doctrines. See, e.g., State v. O'Neal, 848 P.2d 694, 697 (Utah App. 1993) (recognizing that co-equal courts have “substantial discretion” to overrule decision of co-equal court); State in re J.J.T., 877 P.2d 161, 164 (Utah App. 1994) (recognizing that public policy at times requires “tempering” in application of res judicata doctrine).

Neither doctrine should apply in this case, as Smith’s right to a full de novo appeal is constitutional in nature, and our constitutions prevail over such discretionary doctrines. E.g., State v. Houston, 2005 UT 40, ¶ 149, 2015 Utah LEXIS 129 (Lee, concurring in part) (discussing supreme nature of state and federal constitutions). Utah’s system of justice courts and district courts has only been found to be constitutional because a defendant is guaranteed a right to *denovo* review of the justice court proceedings in the district court upon the *Defendant’s* appeal following the entry of a conviction and sentencing pursuant to Utah Code Ann. §78A-7-118(9). Our statutes providing the procedural right to appeal from justice courts to district courts have become part of the fabric of due process of law, which requires the application of all procedural rights in criminal cases wherein life or liberty may well be at stake. See, e.g., Christiansen v. Harris, 1563 P.2d 314, 317 (Utah 1945). Thus denying the Defendant a right to full *de novo* review “a fresh” or “anew” and “as if the case had originated in the district court”, constitutes a constitutional violation of a defendant’s right to due process of law. The adoption of Rule 38 does not change the fact that the constitutionality of the Utah system of justice courts and district courts hinges on the defendant’s right to a appeal from the

justice court for a full *de novo* appeal in the district court. This is especially true in light of the fact that the statutory scheme set forth in Utah Code Ann. §78A-7-118(9) precludes the defendant from appealing to the Utah Court of Appeals any adverse rulings made by the district court on the prosecution's appeal from a justice court order granting a defendant's motion to suppress thus leaving the district court as his only forum to appeal an adverse ruling in favor of the prosecution such as the one entered in this case and for which the defendant now seeks to exercise his right to *de novo* review in the district court.

Just as the City had its day in the appellate (district) court when it appealed in this case, Smith must be given the same opportunity to appeal the ruling entered against him by the district court denying his motion to suppress, as our courts are equally open to both parties, and the laws entitling them to appeal must be applied uniformly, e.g., Constitution of Utah, Article I § 24 (uniform operation of laws provision in state constitution). Constitution of Utah, Article I § 11, the open courts provision, expressly recognizes the right of access to the courts. "The clear language [of this provision] guarantees access to the courts and a judicial procedure that is based on fairness and equality." Berry v. Beech Aircraft Corp., 717 P.2d 670, 675 (Utah 1985). Under this provision, courts are to "resolve doubts in favor of permitting parties to have their day in court on the merits of a controversy." Carman v. Slavens, 546 P.2d 601, 603 (Utah 1976). "At a minimum, a day in court means each party shall be afforded the opportunity to present claims and defenses, and have them adjudicated on the merits according to the facts and the law." Miller v. USAA Cas. Ins. Co., 44 P.3d 663, 674-75 (Utah 2002).

The federal constitution likewise guarantees a right of access to the courts.Cf. Bounds v. Smith, 430 U.S. 817, 821-828 (1977) (plurality) (Fourteenth Amendment requires states to provide defendants meaningful access to courts to enable them to challenge violations of the fundamental federal constitutional rights in post-conviction). And because state law guarantees the right to appeal, the Fourteenth Amendment to the federal constitution mandates that the fair and non-discriminatory administration of the right to appeal. Griffin v. Illinois, 351 U.S. 12, 18 (1956). The mere fact that the prosecution has exercised its right to appeal from the justice court in this case does not and should not divest the defendant of his constitutional and statutory rights to a true *de novo* appeal.See id.

II. THIS COURT SHOULD ORDER THE CASE REASSIGNED TO A NEW JUDGE.

The service of a “competent person ... authorized by law to determine the questions” is the first element of due process guaranteed by Article I § 7 of the Utah Constitution in cases involving life or liberty. Christiansen v. Harris, 163 P.2d 314, 317 (Utah 1945).

“Nothing is more damaging to the public confidence in the legal system than the appearance of bias or prejudice on the part of the judge.” State v. Gardner, 789 P.2d 273, 278 (Utah 1989).¹ “The purity and integrity of the judicial process ought to be protected against any taint of suspicion to the end that the public and litigants may have the highest

¹ In Gardner, the trial judge did not recuse after an affidavit of bias was filed premised on the fact that the trial judge worked in the same courthouse as the murder and other crimes at issue at trial had occurred. The supreme court found that any error stemming from any appearance of bias was harmless because Gardner did not show actual prejudice or a reasonable likelihood of a more favorable result. Id. at 278.-

confidence in the integrity and fairness of the courts.” Haslam v. Morrison, 190 P.2d 520, 523 (Utah 1948).²

Our case law recognizes that impartial judges are not just key to individual cases, but are also critical to the reputation of the judiciary. Utah historically has encouraged judges to scrupulously protect the integrity of the judiciary by recusing themselves when there is even a colorable claim of bias. See, Haslam v. Morrison, 190 P.2d 52, 523 (Utah 1948).

[A] judge *should* recuse himself when his "impartiality" might reasonably be questioned. Utah Code of Judicial Conduct 3(C)(1)(b) (1981). This standard set forth by the Code of Judicial Conduct should be given careful consideration by the trial judge. It may require recusal in instances where no actual bias is shown. Failure to observe it may subject the judge to disciplinary measures.

State v. Neeley, 748 P.2d 1091, 1094 (Utah), cert. denied, 497 U.S. 1220 (1988). This standard prevails because “the integrity of the judicial system should be protected against any taint of suspicion.” Id. at 1094-95.

It is respectfully submitted that when a district court judge has already presided over a government appeal in a justice court case and denied a motion to suppress, the case should not be assigned to the same judge in the defendant’s *de novo* appeal, which is supposed to be a “fresh start,” e.g., Lucero, *supra*. A judge who has already heard the evidence and taken a committed position on that motion could not be expected to preside


² In Haslam, the court ruled that a judge is disqualified if actually biased and prejudiced, which the court defined: “Bias and prejudice mean a hostile feeling or spirit of ill will toward one of the litigants, or undue friendship or favoritism toward one.” Id. at 523. The court found no such bias or prejudice in the allegations that the judge had previously presided in a case involving the petitioner, had found his testimony incredible, and had interrupted his testimony. Id. at 525.

over a hearing on that motion in a *de novo* appeal with the requisite level of neutrality such that the defendant would expect that his appeal is truly a “fresh start,” as Lucero and other Utah cases require. Accordingly, to provide a true *de novo* appeal, and to ensure that our judiciary is functioning in such a manner as to inspire public confidence, *de novo* appeals in successive justice court appeal cases should be assigned to new judges.

CONCLUSION

This Court should issue a writ of mandamus requiring the district court to reassign this case to a judge who did not hear the City’s appeal, for full and fair litigation of Smith’s *de novo* appeal, including a full and new hearing on the Defendant’s Motions to Suppress.

Respectfully submitted this 13th day of May, 2015.



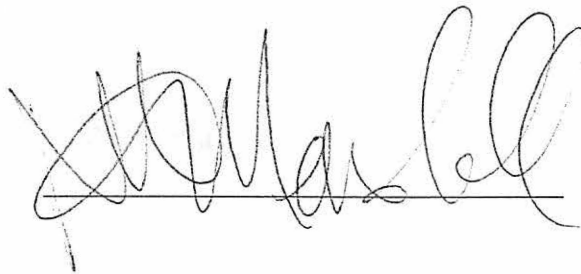
Jason Schatz
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on the 13th, day of May, 2015, I mailed, first class postage pre-paid, two true and correct copies of the foregoing and the addenda, and one disk containing a PDF searchable copy of the foregoing and the addenda, to:

Brent Johnson
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, UT 84114-0241

Brandon Simmons
Salt Lake City Prosecutor
349 S 200 E Ste 500
Salt Lake City, UT 84111

A handwritten signature in dark ink, appearing to read "Brandon Simmons", is written over a horizontal line. The signature is stylized with large, flowing loops.

ADDENDUM-A

SALT LAKE CITY JUSTICE COURT
SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY vs. MICHAEL BRYAN SMITH

CASE NUMBER 131412409 Misdemeanor DUI

CHARGES

Charge 1 - 41-6A-502 - DRIVING UNDER THE INFLUENCE OF
ALCOHOL/DRUGS Class B Misdemeanor

Offense Date: May 18, 2013

Plea: July 09, 2014 Guilty

Disposition: July 09, 2014 {Guilty}

Charge 2 - 41-6A-710(1) - FAILURE TO STAY IN ONE LANE Class C
Misdemeanor

Offense Date: May 18, 2013

Plea: September 16, 2013 Not Guilty

Disposition: July 09, 2014 Dismissed w/ Prejudi

CURRENT ASSIGNED JUDGE

SYDNEY J MAGID

PARTIES

Defendant - MICHAEL BRYAN SMITH

Represented by: JASON A SCHATZ

Plaintiff - SALT LAKE CITY

DEFENDANT INFORMATION

Defendant Name: MICHAEL BRYAN SMITH

Offense tracking number: 43033000

Date of Birth: February 23, 1977

Jail Booking Number:

Law Enforcement Agency: UHP - SALT LAKE

LEA Case Number: SL201313SL03815

Prosecuting Agency: SALT LAKE CITY

Agency Case Number:

Citation Number: D110964921

Sheriff Office Number:

ACCOUNT SUMMARY

Fine account due on

TOTAL REVENUE Amount Due: 1,615.00

Printed: 05/12/15 17:59:51

Page 1

Amount Paid:	0.00
Credit:	0.00
Balance:	1,615.00
REVENUE DETAIL - TYPE: FINE	
Amount Due:	1,615.00
Amount Paid:	0.00
Amount Credit:	0.00
Balance:	1,615.00

PROCEEDINGS

05-21-13 Filed: OWN RECOGNIZANCE RELEASE AGREEMENT

09-11-13 Case filed

09-11-13 Filed: From an Information

09-11-13 Filed: Information

09-11-13 Filed: FORMAL INFORMATION AND SUMMONS FILED.

09-11-13 ARRAIGNMENT scheduled on October 10, 2013 at 08:30 AM in Courtroom 2 with Judge BAXTER.

09-11-13 Judge JOHN L BAXTER assigned.

09-13-13 Filed: Appearance of Counsel, Demand for Jury Trial and Invocation of Right to Speedy, Impartial and Public Trial, Defendants Frist Request for Discovery, Entry of Not Guilty Plea and Motion to Set Pretrial Conference

09-16-13 ARRAIGNMENT Cancelled.

Reason: Attorney Entered notice of Appearance and Not Guilty Plea

09-16-13 Judge CATHERINE ROBERTS assigned.

09-16-13 Charge 1 Plea is Not Guilty

09-16-13 Charge 2 Plea is Not Guilty

09-16-13 Note: RECEIVED NOTICE OF APPEARANCE LEFT MESSAGE FOR DEFENSE ATTORNEY OFFICE TO CALL ME BACK TO SET A PRETRIAL CONFERENCE.

09-16-13 DUI PRETRIAL scheduled on November 15, 2013 at 09:00 AM in Courtroom 1 with Judge ROBERTS.

09-16-13 Notice - NOTICE for Case 131412409 ID 8670443

DUI PRETRIAL is scheduled.

Date: 11/15/2013

Time: 09:00 a.m.

Location: Courtroom 1

333 South 200 East

Salt Lake City, UT 84111

Before Judge: CATHERINE ROBERTS

09-16-13 Note: SET PRETRIAL TO 11/15/2013 WITH DEFENSE ATTORNEY OFFICE
NOTICE SENT TO ALL PARTIES.

10-15-13 Filed: Plaintiff's Reply to Defendant's Request for Discovery
and Certificate of Service

10-15-13 Filed: Plaintiff's Request for Discovery and Motion for Hearing

11-15-13 MOTION HEARING scheduled on January 30, 2014 at 01:30 PM in
Courtroom 1 with Judge MAGID.

11-15-13 Filed: DEFENDANT IS TO HAVE THE SMART START HAND HELD ALCOHOL
DEVICE BY 5 PM TODAY.

11-15-13 Filed: ASSESSMENT

11-15-13 Filed: TREATMENT UPDATE

11-15-13 Filed: 9 HOURS OF COMMUNITY SERVICE

11-15-13 Minute Entry - Minutes for INCOURT NOTE

Judge: CATHERINE ROBERTS
PRESENT

Clerk: wg9074

Prosecutor: BRASS, MATTHEW A

Defendant

Defendant's Attorney(s): STEWART, OWEN N

MOTION HEARING is scheduled.

Date: 01/30/2014

Time: 01:30 p.m.

Location: Courtroom 1
333 South 200 East

Salt Lake City, UT 84111

Before Judge: SYDNEY J MAGID

11-18-13 Filed: SMART START UPDATE

11-18-13 **** PRIVATE **** Filed: SMART START INSTALLED

11-22-13 Filed: Motion to Suppress Based on Lack of Reasonable Suspicion
to Initiate Traffic Stop

Filed by: SCHATZ, JASON A

12-06-13 **** PRIVATE **** Filed: LETTER FROM JASON SCHATZ (ADVISIN

12-18-13 Filed: II UPDATE

Printed: 05/12/15 17:59:52

Page 3

01-02-14 Note: ATTORNEY'S OFFICE CALLED TO SEE ABOUT MOTION THAT WAS
FAXED, IT WAS RECEIVED FORWARDED TO NANCY, SENT CALL TO
NANCY FOR FURTHER DISCUSSION.

01-02-14 Judge SYDNEY J MAGID assigned.

01-02-14 Note: SPOKE WITH CRYSTAL AT MR. SCHATZ OFFICE. SHE HAS FAXED
OVER MOTION FOR ORDER AUTHORIZING DEFENDANT TO BE EXCUSED
FROM HOME ALCOHOL MONITOR. THS CASE IS BEFORE JUDGE
MAGID. FORWARDED EMAIL TO MAGID CLERKS.

01-03-14 Filed: MOTION FOR ORDER AUTHORIZING THE DEFENDANT TO BE EXCUSED
FROM USING ALCOHOL MONITOR

01-03-14 Filed: EMAIL FROM B MILLER STIPULATING TO DEVICE REMOVAL..

01-03-14 Filed: ORDER EXCUSING DEFENDANT FROM USING HOME ALCOHOL MONITOR

01-03-14 Note: PER SJM: DEFENDANT MUST HAVE THE HOME ALCOHOL MONITORING
DEVICE REINSTALLED BY 01/14/2014.

01-16-14 Filed: LETTER FROM ATTORNEY

01-16-14 Filed: TEST RESULTS

01-22-14 Filed: SMART START UPDATE

01-28-14 Minute Entry - Minutes for INCOURT NOTE

Judge: SYDNEY J MAGID

PRESENT

Clerk: wg9074

Prosecutor: DAVIS, ADRIANNA S

Defendant

Defendant's Attorney(s): SCHATZ, JASON A

Audio

MOTION HEARING is scheduled.

Date: 02/20/2014

Time: 01:30 p.m.

Location: Courtroom 1

333 South 200 East

Salt Lake City, UT 84111

Before Judge: SYDNEY J MAGID

01-30-14 MOTION HEARING scheduled on February 20, 2014 at 01:30 PM in
Courtroom 1 with Judge MAGID.

02-20-14 Minute Entry - Minutes for MOTION HEARING

Judge: SYDNEY J MAGID

PRESENT

Clerk: mj3571

Prosecutor: DIAMOND, MICHELLE L

Defendant

Defendant's Attorney(s): SCHATZ, JASON A

Audio

HEARING

257: CITY CALLS OFFICER HAYNES

259: DEFENSE CROSS

303: CITY

304: DEFENSE CLOSING

307: CITY CLOSING

308: DEFENSE

THE COURT GRANTS THE SUPPRESSION MOTION.

CITY ADVISES APPEAL TO FOLLOW.

02-20-14 Minute Entry - Minutes for MOTION HEARING

Judge: SYDNEY J MAGID

PRESENT

Clerk: wg9074

Prosecutor: DIAMOND, MICHELLE L

Defendant

Defendant's Attorney(s): SCHATZ, JASON A

Audio

HEARING

DEFENSE'S MOTION TO SUPPRESS ON THE BASIS OF RAS IS GRANTED. CITY
ADVISES APPEAL TO FOLLOW.

DEFENDANT MAY HAVE SCRAM REMOVED DUE TO RAS MOTION BEING GRANTED.

CITY OBJECTS TO THE REMOVAL OF SCRAM

02-21-14 Filed: NOTICE OF APPEAL AND CERTIFICATION

Printed: 05/12/15 17:59:52

Page 5

02-28-14 Filed: PER SJM: FORWARD IT'S NOTICE OF APPEAL TO DISTRICT COURT FORTHWITH. JUSTICE COURT SENTENCE STAYED PENDING COURT OF APPEAL. STRIKE 03/05/2014 STATUS HEARING.

03-07-14 Note: A FILE COPY HAS BEEN TAKEN TO THIRD DISTRICT COURT FOR APPEAL

06-10-14 Filed: THIRD DISTRICT COURT DOCKET 141902641

06-11-14 Note: CASE APPEALED TO DISTRICT COURT 141902641 REMAND BACK TO JUSTICE COURT ON 06/09/2014 FILE TO CLERK TO SET REMAND HEARING

06-13-14 REMAND HEARING scheduled on July 09, 2014 at 09:00 AM in Courtroom 1 with Judge MAGID.

06-13-14 REMAND HEARING scheduled on June 27, 2014 at 09:00 AM in Courtroom 1 with Judge MAGID.

06-13-14 REMAND HEARING Cancelled.

Reason: Clerk error

07-09-14 Filed: Notice of Appeal

07-09-14 Filed: Motion to Stay Sentence Pursuant to Rule 27B of the Utah Rules of Criminal Procedure
Filed by: SCHATZ, JASON A,

07-09-14 Minute Entry - SELF COMMITMENT

Judge: SYDNEY J MAGID

DOB:02/23/1977

YOU ARE HEREBY ORDERED TO CONTACT THE ADULT DETENTION CENTER AT 385-468-8700 TO SET UP AN APPOINTMENT TO SELF COMMIT ON THE FOLLOWING CHARGE(S): DUI.

It is hereby ordered that the defendant serve a total of 10 days in the Salt Lake County Adult Detention Center You are to self report by (07/28/2014 BY 9AM).

The defendant is hereby ordered to contact the Adult Detention Center at 385-468-8700 within 24 hours from now to set up an appointment to self commit.

Appointment times are 7 days a week and are as follows: 6:00am - 8:00am 11:00am 12:00pm 4:00pm - 5:00pm 8:30pm 10:30pm Jail
Location: 3415 South 900 West, Salt Lake City. REPORT TO THE VISITING AREA AT THE TOP OF THE RAMP. See the Security Officer.

WHAT TO BRING: This Self-Commitment paper, Government issued photo ID such as Drivers License, State ID, Passport or Military ID

WHAT NOT TO BRING: Family, Friends, personal items and most

importantly NO CHILDREN If you have questions, please call the
Adult Detention Center at 385-468-8700

Date: _____

Judge SYDNEY J MAGID

07-09-14 Minute Entry - Minutes for PRETRIAL CONFERENCE

Judge: SYDNEY J MAGID

PRESENT

Clerk: gf0435

Prosecutor: MILLS, NICHOLAS C

Defendant

Defendant's Attorney(s): SCHATZ, JASON A

Audio

Tape Count: 94631

Court advises defendant of rights and penalties.

Defendant waives time for sentence.

The defendant is advised that this offense may be used as an
enhancement to the penalties for a subsequent offense.

Defendant signed the enhancement notice.

HEARING

2ND IN 10 SELF COMMIT TO ADC ON 7/2/14 @ 9 AM

SENTENCE JAIL

Based on the defendant's conviction of DRIVING UNDER THE INFLUENCE
OF ALCOHOL/DRUGS a Class B Misdemeanor, the defendant is sentenced
to a term of 180 day(s) in the ADULT DETENTION CENTER. The total
time suspended for this charge is 170 day(s).

SENTENCE FINE

Charge # 1 Fine: \$1950.00

Suspended: \$335.00

Surcharge: \$786.05

Due: \$1615.00

Total Fine: \$1950.00

Total Suspended: \$335.00

Total Surcharge: \$786.05

Total Principal Due: \$1615.00

Plus Interest

ORDER OF PROBATION

The defendant is placed on probation for 364 day(s).

Probation is to be supervised by SALT LAKE COUNTY PROBATION.

Defendant to serve 10 day(s) jail.

Defendant is to report to the ADULT DETENTION CENTER.

Defendant is to report by July 28, 2014 by 9 a.m..

Defendant is to pay a fine of 1615.00 which includes the surcharge.

Interest may increase the final amount due.

Pay fine to The Court. This can be paid online at:

[HTTP://WWW.SLCGOV.COM/COURTS](http://WWW.SLCGOV.COM/COURTS).

PROBATION CONDITIONS

Defendant is to comply with all terms of Salt Lake County Probation Services.

Defendant is ordered to obey all local, state, and federal laws and to have no further violations.

Defendant is to notify the court of a current address at all times and report to the court when notified by mail, or a warrant may issue.

Defendant is ordered to pay court costs, fines and fees as directed by the court.

All fines/fees are due in full within 330 days.

Defendant is ordered to complete a substance abuse evaluation and any recommended classes or treatment.

An Ignition Interlock calibrated at .025 is ordered for any vehicle owned or operated by the defendant for the full term of probation.

Defendant is to provide proof of Ignition Interlock installation or a sworn affidavit stating that he/she does not own a vehicle to the court within 30 days.

Defendant is ordered to attend a MADD Victim Impact Panel.

Defendant is ordered to submit to random urinalysis.

Defendant is ordered NOT to consume any alcohol or drugs unless

medically prescribed.

No Drinking and Driving.

Defendant is ordered to complete an evaluation and any recommended classes or treatment.

ONE ETG PER WEEK IF PROBATION WANT IT OR SCRAM

EVALUATION DUE IN 60 DAYS...DONE

PROOF OF IID OR AFFIDAVIT DUE IN 30 DAYS

The ignition interlock is to remain until 7/9/2015

07-09-14 Charge 1 Disposition is {Guilty}

07-09-14 Charge 2 Disposition is Dismissed w/ Pr

07-09-14 Fine Account created Total Due: 1615.00

07-09-14 Filed: NOTIFICATION OF ENHANCEMENT

07-09-14 Filed: WAIVER OF RIGHTS/PLEA FORM

07-09-14 Filed: SALT LAKE COUNTY PROBATION REFERRAL

07-09-14 **** PRIVATE **** Filed: CLD3 COUNSELING

07-09-14 **** PRIVATE **** Filed: ARS ASSESSMENT

07-10-14 Note: FILE TO JUDGE WITH APPEAL

07-10-14 Filed: Notice of Appeal

07-10-14 Filed: MOTION TO STAY SENTENCE PURSUANT TO RULE 27B OF THE UTAH
RULES OF CRIMINAL PROCEDURE

Filed by: SMITH, MICHAEL BRYAN

07-10-14 Filed: ORDER STAYING THE IMPOSITION OF SENTENCE PENDING THE
APPEAL

07-11-14 Note: A FILE COPY HAS BEEN TAKEN TO THIRD DISTRICT COURT FOR
APPEAL

07-15-14 Note: JUDGE MAGID SIGNED ORDER STAYING THE IMPOSITION OF
SENTENCE PENDING APPEAL. FORWARD NOTICE OF APPEAL TO
DISTRICT COURT FORTHWITH. FAXED SIGNED ORDER TO DEFENSE
ATTORNEY OFFICE. FILE TO APPEALS CLERK.

08-11-14 Filed: SELF REPORT JAIL COMMITMENT - NO SHOW

08-11-14 Note: CASE APPEALED JAIL STAYED PENDING APPEAL.

08-13-14 Filed: SELF COMMITMENT - COMMITMENT VIOLATION 8/11/14

08-19-14 Note: JAIL SENTENCE STAYED PENDING APPEAL.

ADDENDUM-B

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY vs. MICHAEL BRYAN SMITH

CASE NUMBER 141902641 {Not Applicable}

CHARGES

Charge 1 - 78A-7-118 - HEARING DE NOVO Not Applicable
Offense Date: March 12, 2014
Disposition: June 09, 2014 Remanded

CURRENT ASSIGNED JUDGE

ELIZABETH A HRUBY-MILLS

PARTIES

Defendant - MICHAEL BRYAN SMITH
Represented by: JASON A SCHATZ
Plaintiff - SALT LAKE CITY
Represented by: PADMA VEERU-COLLINGS

DEFENDANT INFORMATION

Defendant Name: MICHAEL BRYAN SMITH
Offense tracking number: 43033000
Date of Birth: February 23, 1977
Jail Booking Number:
Law Enforcement Agency: UHP - ALL
LEA Case Number: SL201313SL03815
Prosecuting Agency: SALT LAKE CITY
Agency Case Number:
Citation Number: D110964921
Sheriff Office Number:

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	12.66
	Amount Paid:	12.66
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

	Amount Due:	10.00
	Amount Paid:	10.00
	Amount Credit:	0.00

CASE NUMBER 141902641 {Not Applicable}

Balance:	0.00
REVENUE DETAIL - TYPE: POSTAGE-COPIES	
Amount Due:	2.66
Amount Paid:	2.66
Amount Credit:	0.00
Balance:	0.00

CASE NOTE

** APPEAL / HEARING DE NOVO **

PROCEEDINGS

03-12-14 Case filed

03-12-14 Filed: From an Information

03-12-14 Note: CASE APPEALED FROM SLC JC # 131412409 / APPEAL DOCS IN
SLOT BOX

03-17-14 Note: **THIS CASE IS ASSIGNED TO JUDGE HRUBY-MILLS - NEXT ON
JUSTICE COURT APPEALS ROTATION - DOCUMENTS REFERRED TO
JUDGE'S CLERKS FOR SCHEDULING**

03-17-14 Judge ELIZABETH A HRUBY-MILLS assigned.

03-17-14 Filed: Summons

03-17-14 Filed: Information

03-17-14 Filed: Jail booking sheet

03-17-14 Filed: Own recognizance release agreement

03-17-14 Filed: Entry of not guilty plea and motion to set pretrial
conference

03-17-14 Filed: Defendants first request for discovery

03-17-14 Filed: Demand for jury trial and invocation of right to speedy,
impartial and public trial

03-17-14 Filed: Appearance of counsel

03-17-14 Filed: Fax confirmation

03-17-14 Filed: Notice of DUI pretrial

03-17-14 Filed: Proof of service

03-17-14 Filed: Plaintiff's Request for Discovery and Motion for Hearing

03-17-14 Filed: Plaintiff's reply to defendants Request for Discovery
and certificate of service

03-17-14 Filed: Minute entry/sentence and judgment

03-17-14 Filed: Fax cover sheet

03-17-14 Filed: Order excusing defendant from using home alcohol monitor

03-17-14 Filed: Motion for order authorizing the defendant to be excused
from using home alcohol monitor

Printed: 05/12/15 18:01:55

Page 2

03-17-14 Filed: Motion to suppress based on lack of reasonable suspicion
to initiate traffic stop

03-17-14 Filed: Minute entry/sentence and judgment

03-17-14 Filed: Minute entry/sentence and judgment

03-17-14 Filed: Minute entry/sentence and judgment

03-17-14 Filed: Docket

03-17-14 Filed: Notice of appeal and certification

03-17-14 Filed: Minute entry/sentence and judgment

03-17-14 Filed: Salt Lake City Justice Court transfer sheet

03-19-14 PRETRIAL CONFERENCE scheduled on May 12, 2014 at 09:00 AM in
THIRD FLOOR - W35 with Judge HRUBY-MILLS.

03-19-14 Filed: Notice for Case 141902641 ID 15828772

03-19-14 PRETRIAL CONFERENCE Modified.

Reason: Correct Calendar

03-19-14 PRETRIAL CONF/APPEAL scheduled on May 12, 2014 at 09:00 AM in
THIRD FLOOR - W35 with Judge HRUBY-MILLS.

05-12-14 MOTION TO SUPPRESS scheduled on June 09, 2014 at 04:00 PM in
THIRD FLOOR - W35 with Judge HRUBY-MILLS.

05-12-14 Minute Entry - Minutes for PRETRIAL CONFERENCE

Judge: ELIZABETH A HRUBY-MILLS

PRESENT

Clerk: katiem

Prosecutor: ROBINSON II, R SPENCER

Defendant

Defendant's Attorney(s): CHARLES R STEWART

Audio

Tape Number: W35 Tape Count: 10:29

HEARING

TIME: 10:29 AM Defense requests to set the matter for a motion
hearing on the motion to suppress that has previously been filed.
City stipulates. Court sets the matter for June 9, 2014 at 4 pm.
MOTION TO SUPPRESS is scheduled.

Date: 06/09/2014

Time: 04:00 p.m.

Location: Third Floor - W35

THIRD DISTRICT COURT

450 SOUTH STATE
SLC, UT 84114-1860

Before Judge: ELIZABETH A HRUBY-MILLS

05-13-14 Filed: Motion to Suppress Based on Lack of Reasonable Suspicion
to Initiate Traffic Stop

Filed by: SMITH, MICHAEL BRYAN

05-13-14 Filed: Return of Electronic Notification

06-09-14 Charge 1 Disposition is Remanded

06-09-14 Minute Entry - Minutes for MOTION TO SUPPRESS

Judge: ELIZABETH A HRUBY-MILLS

PRESENT

Clerk: katiem

Prosecutor: ROBINSON II, R SPENCER

Defendant

Defendant's Attorney(s): SCHATZ, JASON A

Audio

Tape Number: W35 Tape Count: 4:15-5:01

HEARING

TIME: 4:15 PM The matter comes before the Court for a motion to suppress. All parties are present as stated on the record. Defense addresses the Court regarding a memorandum in opposition that was filed and requests it be stricken and gives basis.

TIME: 4:16 PM

City addresses the Court regarding the opposition to the motion to suppress.

TIME: 4:18 PM

All parties discuss and stipulate moving forward with the motion hearing.

TIME: 4:19 PM

Court grants the request to strike the opposition memorandum. City calls and examines Witness 1, Nathan Haynes, Utah Highway Patrol Trooper, who is placed under oath and testifies.

TIME: 4:22 PM

Defense stipulates to the identity of the Defendant.

TIME: 4:24 PM

Cross Examination by Defense.

TIME: 4:34 PM

Redirect by City.

TIME: 4:36 PM

Witness 1 is excused from the stand. Defense rests.

TIME: 4:37 PM

City gives oral argument.

TIME: 4:39 PM

Rebuttal argument by Defense.

TIME: 4:43 PM

Redirect by City.

TIME: 4:44 PM

Court takes a brief recess to make a ruling.

TIME: 4:58 PM

Court is back on the record.

TIME: 4:59 PM

Court denies the motion to suppress with basis given for the record. Court orders the matter remanded to the Justice Court.

TIME: 5:01 PM

Court is in recess.

06-09-14 Filed: Memorandum Opposition to Motion to Suppress

06-09-14 Filed: Return of Electronic Notification

06-10-14 Filed order: Signed Minutes - Case Remanded to Justice Court

Judge ELIZABETH A HRUBY-MILLS

Signed June 10, 2014

07-08-14 Fee Account created

Total Due:

10.00

Printed: 05/12/15 18:01:55

Page 5

CASE NUMBER 141902641 {Not Applicable}

07-08-14 Fee Account created	Total Due:	2.66
07-08-14 AUDIO TAPE COPY	Payment Received:	10.00
Note: POSTAGE-COPIES, Request for Recording - ONLINE WEB SITE		
07-08-14 POSTAGE-COPIES	Payment Received:	2.66

ADDENDUM-C

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY vs. MICHAEL BRYAN SMITH

CASE NUMBER 145900213 Misdemeanor DUI

CHARGES

Charge 1 - 41-6A-502 - DRIVING UNDER THE INFLUENCE OF
ALCOHOL/DRUGS Class B Misdemeanor
Offense Date: May 18, 2013
Mandatory Appearance
Charge 2 - 41-6A-710(1) - FAILURE TO STAY IN ONE LANE Class C
Misdemeanor
Offense Date: May 18, 2013
Recommended Bail Amount: \$90.00

CURRENT ASSIGNED JUDGE

ELIZABETH A HRUBY-MILLS

PARTIES

Defendant - MICHAEL BRYAN SMITH
Represented by: JASON A SCHATZ
Plaintiff - SALT LAKE CITY
Represented by: PADMA VEERU-COLLINGS

DEFENDANT INFORMATION

Defendant Name: MICHAEL BRYAN SMITH
Offense tracking number: 43033000
Date of Birth: February 23, 1977
Jail Booking Number:
Law Enforcement Agency: UHP - ALL
LEA Case Number: SL201313SL03815
Prosecuting Agency: SALT LAKE CITY
Agency Case Number:
Citation Number: D110964921
Sheriff Office Number:

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	12.66
	Amount Paid:	12.66

Printed: 05/12/15 18:02:16

Page 1

Credit:	0.00
Balance:	0.00
REVENUE DETAIL - TYPE: AUDIO TAPE COPY	
Amount Due:	10.00
Amount Paid:	10.00
Amount Credit:	0.00
Balance:	0.00
REVENUE DETAIL - TYPE: POSTAGE-COPIES	
Amount Due:	2.66
Amount Paid:	2.66
Amount Credit:	0.00
Balance:	0.00

CASE NOTE

** APPEAL / TRIAL DE NOVO **

PROCEEDINGS

07-14-14 Case filed

07-14-14 Filed: From an Information

07-14-14 Note: CASE APPEALED FROM SLC JC #131412409 / APPEAL DOCS IN
SLOT BOX

07-16-14 Note: **THIS CASE IS ASSIGNED TO JUDGE HRUBY-MILLS - NEXT ON
JUSTICE COURT APPEALS ROTATION - DOCUMENTS REFERRED TO
JUDGE'S CLERK FOR SCHEDULING**

07-16-14 Judge ELIZABETH A HRUBY-MILLS assigned.

07-16-14 Filed: Summons

07-16-14 Filed: Information

07-16-14 Filed: Jail booking sheet

07-16-14 Filed: Own recognizance release agreement

07-16-14 Filed: Entry of not guilty plea and motion to set pretrial
conference

07-16-14 Filed: Defendants first request for discovery

07-16-14 Filed: Demand for jury trial and invocation of right to speedy
impartial and public trial

07-16-14 Filed: Appearance of counsel

07-16-14 Filed: Fax confirmation

07-16-14 Filed: Notice of DUI pretrial

07-16-14 Filed: Proof of service

07-16-14 Filed: Plaintiff's Request for Discovery and Motion for Hearing

07-16-14 Filed: Plaintiff's reply to defendants Request for Discovery

and certificate of service

07-16-14 Filed: Minute entry/sentence and judgment

07-16-14 Filed: Fax cover sheet

07-16-14 Filed: Order excusing defendant from using home alcohol monitor

07-16-14 Filed: Motion for order authorizing the defendant to be excused
from using home alcohol monitor

07-16-14 Filed: Community service hours

07-16-14 Filed: Email

07-16-14 Filed: Motion to suppress based on lack of reasonable suspicion
to initiate traffic stop

07-16-14 Filed: Minute entry/sentence and judgment

07-16-14 Filed: Minute entry/sentence and judgment

07-16-14 Filed: Minute entry/sentence and judgment

07-16-14 Filed: Minute entry/sentence and judgment

07-16-14 Filed: Notice of appeal and certification

07-16-14 Filed: Salt Lake City Justice Court transfer sheet

07-16-14 Filed: Smart start removal notification

07-16-14 Filed: Docket

07-16-14 Filed: Minutes, motion to suppress

07-16-14 Filed: Fax confirmation

07-16-14 Filed: SLCPS referral

07-16-14 Filed: Statement of defendant

07-16-14 Filed: Notification of enhancement of charges/penalties

07-16-14 Filed: Fax confirmation

07-16-14 Filed: Self commitment

07-16-14 Filed: Minute entry/sentence and judgment

07-16-14 Filed: Fax cover sheet

07-16-14 Filed: Order staying the imposition of sentence pending appeal

07-16-14 Filed: Motion to stay sentence pursuant to rule 27b of the utah
rules of criminal procedure

07-16-14 Filed: Notice of appeal

07-16-14 Filed: Docket

07-16-14 Filed: Salt Lake City Justice Court transfer sheet

07-22-14 PTC/JUSTICE COURT APPEAL scheduled on August 18, 2014 at 09:00
AM in THIRD FLOOR - W35 with Judge HRUBY-MILLS.

07-22-14 Filed: Notice for Case 145900213 ID 16074747

08-18-14 PRETRIAL CONFERENCE scheduled on September 29, 2014 at 09:00 AM
in THIRD FLOOR - W35 with Judge HRUBY-MILLS.

08-18-14 Minute Entry - Minutes for PTC/JUSTICE COURT APPEAL

Judge: ELIZABETH A HRUBY-MILLS
PRESENT
Clerk: susanp
Prosecutor: DIAMOND, MICHELLE L
Defendant
Defendant's Attorney(s): SCHATZ, JASON A

Audio
Tape Number: CR W35 Tape Count: 9:43-44

CONTINUANCE

Whose Motion:
The Defendant's counsel JASON A SCHATZ.
Reason for continuance:
Court Ordered
HEARING

Defense is requesting 30 days to file their motion on whether they are entitled to another Motion to Suppress hearing. The Court needs the Motion filed before scheduling a hearing on the Motion. A Scheduling Conference is scheduled for September 29, 2014 @ 9:00 am.

By stipulation of counsel, the defendant's appearance at the next hearing is waived.

PRETRIAL CONFERENCE is scheduled.

Date: 09/29/2014
Time: 09:00 a.m.
Location: THIRD FLOOR - W35
THIRD DISTRICT COURT
450 SOUTH STATE STREET
SALT LAKE CITY, UT 84114-1860

Before Judge: ELIZABETH A HRUBY-MILLS

09-24-14 Filed: Motion and Stipulation for Continuance

Filed by: SMITH, MICHAEL BRYAN

09-24-14 Filed: Order (Proposed) Granting Continuance

09-24-14 Filed: Return of Electronic Notification

09-25-14 Filed order: Order Granting Continuance

Printed: 05/12/15 18:02:17 Page 4

Judge ELIZABETH A HRUBY-MILLS

Signed September 25, 2014

09-25-14 Filed: Return of Electronic Notification

09-26-14 PRETRIAL CONFERENCE scheduled on October 20, 2014 at 09:00 AM
in THIRD FLOOR - W35 with Judge HRUBY-MILLS.

10-14-14 Filed: Memorandum In Support Of Smiths Right To Litigate Motion
To Suppress In De Novo Appeal

10-14-14 Filed: Return of Electronic Notification

10-20-14 MOTION TO SUPPRESS scheduled on December 08, 2014 at 04:30 PM
in THIRD FLOOR - W35 with Judge HRUBY-MILLS.

10-20-14 Minute Entry - Minutes for PRETRIAL CONFERENCE

Judge: ELIZABETH A HRUBY-MILLS

PRESENT

Clerk: katiem

Prosecutor: JORGENSEN, RICHARD T

Defendant not present

Defendant's Attorney(s): SCHATZ, JASON A

Audio

Tape Number: W35 Tape Count: 10:09

HEARING

TIME: 10:10 AM Defendant not present and presence was excused.
Defense addresses the Court regarding the status of the case and a
motion to suppress. City requests to have 2-3 weeks to respond to
motion and set the matter for hearing.

City is to file responsen by November 14, 2014 and Defense to file
reply by December 1, 2014. Court sets the matter for motion hearing
on December 8, 2014 at 4:30. Defense requests Defendant's presence
be excused and gives basis. City stipulates.

No testimony is expected.

MOTION TO SUPPRESS is scheduled.

Date: 12/08/2014

Time: 04:30 p.m.

Location: THIRD FLOOR - W35

THIRD DISTRICT COURT

450 SOUTH STATE STREET

SALT LAKE CITY, UT 84114-1860

Before Judge: ELIZABETH A HRUBY-MILLS

11-13-14 Filed: Memorandum in Opposition

11-13-14 Filed: Return of Electronic Notification

12-08-14 MOTION TO SUPPRESS scheduled on December 08, 2014 at 02:00 PM
in THIRD FLOOR - W35 with Judge HRUBY-MILLS.

12-08-14 Minute Entry - Minutes for DEFENDANT'S MOTION TO RE-HEA

Judge: ELIZABETH A HRUBY-MILLS

PRESENT

Clerk: susanp

Prosecutor: SIMMONS, BRANDON E

Defendant not present

Defendant's Attorney(s): SCHATZ, JASON A

Audio

Tape Number: CR W35 Tape Count: 2:07-37

This matter is before the Court for a hearing regarding the
Defendant's Motion to Re-Hear the Motion to Suppress.

Counsel are present as listed above.

Defendant was excused from attending today's hearing.

TIME: 2:09 PM

Defendant's argument, wants the City to argue first.

TIME: 2:10 PM

City's argument.

TIME: 2:15 PM

Defense argument.

TIME: 2:27 PM

City's response.

TIME: 2:30 PM

RULING: For reasons stated on the record, the request to have the

Motion to Suppress heard again is denied.

The defense is going to file a Petition for Extra-Ordinary Relief with the Court of Appeals. Would like a Status Conference scheduled in late January.

The Court schedules a Status Conference for February 23, 2015 @ 9:00 AM.

Defense counsel requests that his client be excused from attending that hearing. The City does not object.

The Court excuses the defendant from attending the February 23 hearing.

STATUS CONFERENCE is scheduled.

Date: 02/23/2015

Time: 09:00 a.m.

Location: THIRD FLOOR - W35

THIRD DISTRICT COURT

450 SOUTH STATE STREET

SALT LAKE CITY, UT 84114-1860

Before Judge: ELIZABETH A HRUBY-MILLS

12-08-14 STATUS CONFERENCE scheduled on February 23, 2015 at 09:00 AM in
THIRD FLOOR - W35 with Judge HRUBY-MILLS.

12-11-14 Fee Account created Total Due: 10.00

12-11-14 Fee Account created Total Due: 2.66

12-11-14 AUDIO TAPE COPY Payment Received: 10.00

Note: POSTAGE-COPIES, Request for Recording - ONLINE WEB
SITE

12-11-14 POSTAGE-COPIES Payment Received: 2.66

01-20-15 Filed: Motion for Written Findings of Fact, Conclusions of Law
and Order on Defendants Motion RE: Defendants Right to Litigate
Motion to Suppress in De Novo Appeal

Filed by: SMITH, MICHAEL BRYAN

01-20-15 Filed: Order (Proposed) Directing Salt Lake City Attorney to
Prepare Written Findings of Fact, Conclusions of Law and Order

on Defendants Motion RE: Defendants Right to Litigate Motion to Suppress in De Novo Appeal

01-20-15 Filed: Return of Electronic Notification

02-04-15 Filed order: Order Directing Salt Lake City Attorney to Prepare Written Findings of Fact, Conclusions of Law and Order on Defendants Motion RE: Defendants Right to Litigate Motion to Suppress in De Novo Appeal

Judge ELIZABETH A HRUBY-MILLS

Signed February 04, 2015

02-04-15 Filed: Return of Electronic Notification

02-17-15 Filed: Findings of Fact/Conclusions of Law (Proposed)

02-17-15 Filed: Return of Electronic Notification

02-18-15 Filed: Motion to Continue Status Conference

Filed by: SMITH, MICHAEL BRYAN

02-18-15 Filed: Order (Proposed) Granting Continuance

02-18-15 Filed: Return of Electronic Notification

02-20-15 Filed: Findings of Fact/Conclusions of Law

Judge ELIZABETH A HRUBY-MILLS

Signed February 20, 2015

02-20-15 Filed: Return of Electronic Notification

02-20-15 Filed: Other - Declined to Sign Order (Proposed) Granting Continuance

02-20-15 Note: Declined to Sign: Formatting is off. Please fix and resubmit.

02-20-15 Filed: Return of Electronic Notification

02-20-15 Filed: Order (Proposed) Granting Continuance

02-20-15 Filed: Return of Electronic Notification

02-20-15 Filed order: Order Granting Continuance

Judge ELIZABETH A HRUBY-MILLS

Signed February 20, 2015

02-20-15 Filed: Return of Electronic Notification

03-19-15 Filed: Utah Court of Appeals Letter dated 3/19/2015 - (Petition for Extraordinary Writ filed - Case #20150198 should be indicated on future filings - rules/info etal AND Response due March 30, 2015)

03-19-15 Filed: Emailed copy of Petition for Extraordinary Relief filed with the Utah COA dated 3/18/2015

03-19-15 Filed: Utah Court of Appeals Letter dated 3/19/2015 to Brent Johnson AOC

04-13-15 Filed: Motion to Continue Status Hearing

Filed by: SMITH, MICHAEL BRYAN

04-13-15 Filed: Order (Proposed) Granting Continuance

04-13-15 Filed: Return of Electronic Notification

04-15-15 Filed order: Order Granting Continuance

Judge ELIZABETH A HRUBY-MILLS

Signed April 15, 2015

04-15-15 STATUS HEARING scheduled on August 31, 2015 at 09:00 AM in

THIRD FLOOR - W35 with Judge HRUBY-MILLS.

04-15-15 Filed: Return of Electronic Notification

ADDENDUM-D

The Order of Court is stated below:

Dated: February 20, 2015
10:56:22 AM

/s/ Elizabeth A. Hruby-Mills
District Court Judge



IN THE THIRD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY,
A Municipal Corporation,

Plaintiff,

vs.

MICHAEL SMITH,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Case No. 145900213

Judge HRUBY-MILLS

This Court, the Honorable Elizabeth Hruby-Mills presiding, at a hearing held on December 8, 2014, heard argument on the Defendant's request to litigate for a second time in the District Court a motion to suppress evidence. The Defendant was excused, and was represented by counsel Jason Schatz. The City was represented by Brandon Simmons. After hearing argument from the parties, the Court hereby enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The Defendant filed a Motion to Suppress Based on Lack of Reasonable Suspicion to Initiate Traffic Stop in Salt Lake City Justice Court on November 22, 2013 in case 131412409. That motion was argued on February 20, 2014, and granted.
2. The Salt Lake City Prosecutor's Office filed a timely Notice of Appeal of the

Justice Court's decision to grant that motion. Evidence was heard and that motion was argued on appeal in the Third District Court before Judge Hruby-Mills in case 141902641 on June 9, 2014. On appeal, this Court denied the Motion to Suppress and remanded the case to the Justice Court for further proceedings.

3. After remand, the Defendant entered a guilty plea to count 1, DUI, in case 131412409, and was sentenced. The Defendant timely appealed his conviction, resulting in this case before the District Court. The Defendant's case was assigned to Judge Hruby- Mills.
4. On August 18, 2014, the Defendant expressed to the Court through counsel his intention to re- litigate in the District Court in this case his motion that he had previously argued before the justice court and, on appeal, before this Court. The City expressed its opposition to that intention.

CONCLUSIONS OF LAW

1. The Defendant in this case is entitled to a trial de novo, pursuant to Utah Code 78A-7-118(1).
2. The Defendant in this case is also entitled to have the District Court hear "any pre-trial evidentiary matters the court deems necessary," pursuant to Rule 38(e)(2).
3. The Court in this case does not deem it necessary for the Defendant to have the District Court hear again in this case the same Motion to Suppress that has previously been argued before and decided by the District Court in case 141902641.

ORDER

Therefore, this Court DENIES the Defendant's request to have the District Court again hear evidence and argument in this case on the same Motion to Dismiss that this Court already ruled on in case 141902641.

SO ENTERED this _____ day of _____, 2015.

END OF DOCUMENT

Approved as to form:

/s/ Jason Schatz

[approved by email 2-17-15, signature used with permission]

Jason Schatz
Attorney for Defendant

CERTIFICATE OF DELIVERY

The undersigned hereby certifies that he caused to be electronically delivered, by email on February 13, 2015, pursuant to U.R.C.P. 7(f)(2), as applied to this case by U.R.C.P. 81(e), a true and correct copy of the foregoing proposed Findings of Facts, Conclusions of Law, and Order, to Jason Schatz, counsel for the Defendant.

Dated this 13th day of February, 2015.

/s/ Brandon Simmons

ADDENDUM-E

77-1-6 Rights of defendant.

(1) In criminal prosecutions the defendant is entitled:

- (a) To appear in person and defend in person or by counsel;
- (b) To receive a copy of the accusation filed against him;
- (c) To testify in his own behalf;
- (d) To be confronted by the witnesses against him;
- (e) To have compulsory process to insure the attendance of witnesses in his behalf;
- (f) To a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed;
- (g) To the right of appeal in all cases; and
- (h) To be admitted to bail in accordance with provisions of law, or be entitled to a trial within 30 days after arraignment if unable to post bail and if the business of the court permits.

(2) In addition:

- (a) No person shall be put twice in jeopardy for the same offense;
- (b) No accused person shall, before final judgment, be compelled to advance money or fees to secure rights guaranteed by the Constitution or the laws of Utah, or to pay the costs of those rights when received;
- (c) No person shall be compelled to give evidence against himself;
- (d) A wife shall not be compelled to testify against her husband nor a husband against his wife; and
- (e) No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, in case of an infraction, upon a judgment by a magistrate.

Enacted by Chapter 15, 1980 General Session

78A-1-101 Courts of justice enumerated -- Courts of record enumerated.

(1) The following are the courts of justice of this state:

- (a) the Supreme Court;
- (b) the Court of Appeals;
- (c) the district courts;
- (d) the juvenile courts; and
- (e) the justice courts.

(2) All courts are courts of record, except the justice courts, which are courts not of record.

Renumbered and Amended by Chapter 3, 2008 General Session

Effective 5/12/2015

78A-4-103 Court of Appeals jurisdiction.

- (1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:
 - (a) to carry into effect its judgments, orders, and decrees; or
 - (b) in aid of its jurisdiction.
- (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
 - (a)
 - (i) a final order or decree resulting from:
 - (A) a formal adjudicative proceeding of a state agency; or
 - (B) a special adjudicative proceeding, as described in Section 19-1-301.5; or
 - (ii) an appeal from the district court review of an informal adjudicative proceeding of an agency other than the following:
 - (A) the Public Service Commission;
 - (B) the State Tax Commission;
 - (C) the School and Institutional Trust Lands Board of Trustees;
 - (D) the Division of Forestry, Fire, and State Lands, for an action reviewed by the executive director of the Department of Natural Resources;
 - (E) the Board of Oil, Gas, and Mining; or
 - (F) the state engineer;
 - (b) appeals from the district court review of:
 - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
 - (ii) a challenge to agency action under Section 63G-3-602;
 - (c) appeals from the juvenile courts;
 - (d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
 - (e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;
 - (f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;
 - (g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;
 - (h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;
 - (i) appeals from the Utah Military Court; and
 - (j) cases transferred to the Court of Appeals from the Supreme Court.
- (3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.
- (4) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Amended by Chapter 441, 2015 General Session

78A-7-101 Creation of justice court -- Not of record -- Classes of justice.

- (1) Under Article VIII, Section 1, Utah Constitution, there is created a court not of record known as the justice court. The judges of this court are justice court judges.
- (2) Justice courts shall be divided into the following classes:
 - (a) Class I: 501 or more case filings per month;
 - (b) Class II: 201-500 case filings per month;
 - (c) Class III: 61-200 case filings per month; and
 - (d) Class IV: 60 or fewer case filings per month.

Amended by Chapter 205, 2012 General Session

Effective 5/12/2015

78A-7-118 Appeals from justice court -- Trial or hearing de novo in district court.

- (1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:
 - (a) sentencing, except as provided in Subsection (4)(b); or
 - (b) a plea of guilty or no contest in the justice court that is held in abeyance.
- (2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice court shall be stayed as provided for in Section 77-20-10 and the Rules of Criminal Procedure.
- (3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.
- (4) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if the defendant files a notice of appeal within 30 days of:
 - (a) an order revoking probation;
 - (b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;
 - (c) a sentence entered pursuant to Subsection (4)(b); or
 - (d) an order denying a motion to withdraw a plea.
- (5) The prosecutor is entitled to a hearing de novo in the district court on:
 - (a) a final judgment of dismissal;
 - (b) an order arresting judgment;
 - (c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;
 - (d) a judgment holding invalid any part of a statute or ordinance;
 - (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution of an infraction or class C misdemeanor;
 - (f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence impairs continued prosecution of a class B misdemeanor; or
 - (g) an order granting a motion to withdraw a plea of guilty or no contest.
- (6) A notice of appeal for a hearing de novo in the district court on a pretrial order excluding evidence under Subsection (5)(e) or (f) shall be filed within 30 days of the order excluding the evidence.
- (7) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:
 - (a) the decision results in immediate dismissal of the case;
 - (b) with agreement of the parties, the district court consents to retain jurisdiction; or
 - (c) the defendant enters a plea of guilty or no contest in the district court.
- (8) The district court shall retain jurisdiction over the case on trial de novo.
- (9) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Amended by Chapter 99, 2015 General Session

Amended by Chapter 258, 2015 General Session

Article I, Section 7 [Due process of law.]

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

Article I, Section 11 [Courts open -- Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Article I, Section 12 [Rights of accused persons.]

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

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.

Article I, Section 24 [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.

Article VIII, Section 1 [Judicial powers -- Courts.]

The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish. The Supreme Court, the district court, and such other courts designated by statute shall be courts of record. Courts not of record shall also be established by statute.

Rule 65B. Extraordinary relief.

(a) Availability of remedy. Where no other plain, speedy and adequate remedy is available, a person may petition the court for extraordinary relief on any of the grounds set forth in paragraph (b) (involving wrongful restraint on personal liberty), paragraph (c) (involving the wrongful use of public or corporate authority) or paragraph (d) (involving the wrongful use of judicial authority, the failure to exercise such authority, and actions by the Board of Pardons and Parole). There shall be no special form of writ. Except for instances governed by Rule 65C, the procedures in this rule shall govern proceedings on all petitions for extraordinary relief. To the extent that this rule does not provide special procedures, proceedings on petitions for extraordinary relief shall be governed by the procedures set forth elsewhere in these rules.

(b) Wrongful restraints on personal liberty.

(b)(1) Scope. Except for instances governed by Rule 65C, this paragraph shall govern all petitions claiming that a person has been wrongfully restrained of personal liberty, and the court may grant relief appropriate under this paragraph.

(b)(2) Commencement. The proceeding shall be commenced by filing a petition with the clerk of the court in the district in which the petitioner is restrained or the respondent resides or in which the alleged restraint is occurring.

(b)(3) Contents of the petition and attachments. The petition shall contain a short, plain statement of the facts on the basis of which the petitioner seeks relief. It shall identify the respondent and the place where the person is restrained. It shall state the cause or pretense of the restraint, if known by the petitioner. It shall state whether the legality of the restraint has already been adjudicated in a prior proceeding and, if so, the reasons for the denial of relief in the prior proceeding. The petitioner shall attach to the petition any legal process available to the petitioner that resulted in restraint. The petitioner shall also attach to the petition a copy of the pleadings filed by the petitioner in any prior proceeding that adjudicated the legality of the restraint.

(b)(4) Memorandum of authorities. The petitioner shall not set forth argument or citations or discuss authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition.

(b)(5) Dismissal of frivolous claims. On review of the petition, if it is apparent to the court that the legality of the restraint has already been adjudicated in a prior proceeding, or if for any other reason any claim in the petition shall appear frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating that the claim is frivolous on its face and the reasons for this conclusion. The order need not state findings of fact or conclusions of law. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal.

(b)(6) Responsive pleadings. If the petition is not dismissed as being frivolous on its face, the court shall direct the clerk of the court to serve a copy of the petition and a copy of any memorandum upon the respondent by mail. At the same time, the court may issue an order directing the respondent to answer or otherwise respond to the petition, specifying a time within which the respondent must comply. If the circumstances require, the court may also issue an order directing the respondent to appear before the court for a hearing on the legality of the restraint. An answer to a petition shall state plainly whether the respondent has restrained the person alleged to have been restrained, whether the person so restrained has been transferred to any other person, and if so, the identity of the transferee, the date of the transfer, and the reason or authority for the transfer. Nothing in this paragraph shall be construed to prohibit the court from ruling upon the petition based upon a dispositive motion.

(b)(7) Temporary relief. If it appears that the person alleged to be restrained will be removed from the court's jurisdiction or will suffer irreparable injury before compliance with the hearing order can be enforced, the court shall issue a warrant directing the sheriff to bring the respondent before the court to be dealt with according to law. Pending a determination of the petition, the court may place the person alleged to have been restrained in the custody of such other persons as may be appropriate.

(b)(8) Alternative service of the hearing order. If the respondent cannot be found, or if it appears that a person other than the respondent has custody of the person alleged to be restrained, the hearing order and any other process issued by the court may be served on the person having custody in the manner and with the same effect as if that person had been named as respondent in the action.

(b)(9) Avoidance of service by respondent. If anyone having custody of the person alleged to be restrained avoids service of the hearing order or attempts wrongfully to remove the person from the court's jurisdiction, the sheriff shall immediately arrest the responsible person. The sheriff shall forthwith bring the person arrested before the court to be dealt with according to law.

(b)(10) Hearing or other proceedings. In the event that the court orders a hearing, the court shall hear the matter in a summary fashion and shall render judgment accordingly. The respondent or other person having custody shall appear with the person alleged to be restrained or shall state the reasons for failing to do so. The court may nevertheless direct the respondent to bring before it the person alleged to be restrained. If the petitioner waives the right to be present at the hearing, the court shall modify the hearing order accordingly. The hearing order shall not be disobeyed for any defect of form or any misdescription in the order or the petition, if enough is stated to impart the meaning and intent of the proceeding to the respondent.

(c) Wrongful use of or failure to exercise public authority.

(c)(1) Who may petition the court; security. The attorney general may, and when directed to do so by the governor shall, petition the court for relief on the grounds enumerated in this paragraph. Any person who is not required to be represented by the attorney general and who is aggrieved or threatened by one of the acts enumerated in subparagraph (2) of this paragraph may petition the court under this paragraph if (A) the person claims to be entitled to an office unlawfully held by another or (B) if the attorney general fails to file a petition under this paragraph after receiving notice of the person's claim. A petition filed by a person other than the attorney general under this paragraph shall be brought in the name of the petitioner, and the petition shall be accompanied by an undertaking with sufficient sureties to pay any judgment for costs and damages that may be recovered against the petitioner in the proceeding. The sureties shall be in the form for bonds on appeal provided for in Rule 73.

(c)(2) Grounds for relief. Appropriate relief may be granted: (A) where a person usurps, intrudes into, or unlawfully holds or exercises a public office, whether civil or military, a franchise, or an office in a corporation created by the authority of the state of Utah; (B) where a public officer does or permits any act that results in a forfeiture of the office; (C) where persons act as a corporation in the state of Utah without being legally incorporated; (D) where any corporation has violated the laws of the state of Utah relating to the creation, alteration or renewal of corporations; or (E) where any corporation has forfeited or misused its corporate rights, privileges or franchises.

(c)(3) Proceedings on the petition. On the filing of a petition, the court may require that notice be given to adverse parties before issuing a hearing order, or may issue a hearing order requiring the adverse party to appear at the hearing on the merits. The court may also grant temporary relief in accordance with the terms of Rule 65A.

(d) Wrongful use of judicial authority or failure to comply with duty; actions by board of pardons and parole.

(d)(1) Who may petition. A person aggrieved or whose interests are threatened by any of the acts enumerated in this paragraph may petition the court for relief.

(d)(2) Grounds for relief. Appropriate relief may be granted: (A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; (B) where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled; or (D) where the Board of Pardons and Parole has exceeded its jurisdiction or failed to perform an act required by constitutional or statutory law.

(d)(3) Proceedings on the petition. On the filing of a petition, the court may require that notice be given to adverse parties before issuing a hearing order, or may issue a hearing order requiring the adverse party to appear at the hearing on the merits. The court may direct the inferior court, administrative agency, officer, corporation or other person named as respondent to deliver to the court a transcript or other record of the proceedings. The court may also grant temporary relief in accordance with the terms of Rule 65A.

(d)(4) Scope of review. Where the challenged proceedings are judicial in nature, the court's review shall not extend further than to determine whether the respondent has regularly pursued its authority.

Advisory Committee Notes

Rule 38. Appeals from justice court to district court.

(a) Appeal of a judgment or order of the justice court is as provided in Utah Code Section 78A-7-118. A case appealed from a justice court shall be heard in a district courthouse located in the same county as the justice court from which the case is appealed. In counties with multiple district courthouse locations, the presiding judge of the district court shall determine the appropriate location for the hearing of appeals.

(b) The notice of appeal.

(b)(1) A notice of appeal from an order or judgment must be filed within 30 days of the entry of that order or judgment.

(b)(2) Contents of the notice. The notice required by this rule shall be in the form of, or substantially similar to, that provided in the appendix of this rule. At a minimum the notice shall contain:

(b)(2)(A) a statement of the order or judgment being appealed and the date of entry of that order or judgment;

(b)(2)(B) the current address at which the appealing party may receive notices concerning the appeal;

(b)(2)(C) a statement as to whether the defendant is in custody because of the order or judgment appealed; and

(b)(2)(D) a statement that the notice has been served on the opposing party and the method of that service.

(b)(3) Deficiencies in the form of the filing shall not cause the court to reject the filing. They may, however, impact the efficient processing of the appeal.

(c) Duties of the justice court. Within five days of receiving the notice of appeal, the justice court shall transmit to the appropriate district court a certified appeal packet containing copies of:

(c)(1) the notice of appeal;

(c)(2) the docket;

(c)(3) the information or citation;

(c)(4) the judgment and sentence, if any; and

(c)(5) any other orders and papers filed in the case.

(d) Duties of the district court.

(d)(1) Upon receipt of the appeal packet from the justice court, the district court shall hold a scheduling conference to determine what issues must be resolved by the appeal. The district court shall send notices to the appellant at the address provided on the notice of

appeal. Notices to the other party shall be to the address provided in the justice court docket for that party.

(d)(2) If the defendant is in custody because of the matter appealed, the district court shall hold the conference within five days of the receipt of the appeals packet. If the defendant is not in custody because of the matter appealed, the court shall hold the conference within 30 days of receipt of the appeals packet.

(e) District court procedures for trials de novo. An appeal by a defendant pursuant to Utah Code Ann. §78A-7-118(1) shall be accomplished by the following procedures:

(e)(1) If the defendant elects to go to trial, the district court will determine what number and level of offenses the defendant is facing.

(e)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems necessary, shall be held in accordance with these rules.

(e)(3) After the trial, the district court shall, if appropriate, sentence the defendant and enter judgment in the case as provided in these rules and otherwise by law.

(e)(4) When entered, the judgment of conviction or order of dismissal serves to vacate the judgment or orders of the justice court and becomes the judgment of the case.

(e)(5) A defendant may resolve an appeal by waiving trial and compromising the case by any process authorized by law to resolve a criminal case.

(e)(5)(A) Any plea shall be taken in accordance with these rules.

(e)(5)(B) The court shall proceed to sentence the defendant or enter such other orders required by the particular plea or disposition.

(e)(5)(C) When entered, the district court's judgment or other orders vacate the orders or judgment of the justice court and become the order or judgment of the case.

(e)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this section may only seek to withdraw it pursuant to the provisions of Utah Code Ann. § 77-13-6.

(e)(6) Other dispositions. A defendant, at a point prior to judgment, by plea or trial, may choose to withdraw the appeal and have the case remanded to the justice court. Within 10 days of the defendant notifying the court of such an election, the district court shall remand the case to the justice court.

(f) District court procedures for hearings de novo. If the appeal seeks a de novo hearing pursuant to Utah Code Ann. § 78A-7-118(3) or (4); and

(f)(1) the court shall conduct such hearing and make the appropriate findings or orders.

(f)(2) Within 10 days of entering its findings or orders, the district court shall remand the case to the justice court, unless the case is disposed of by the findings or orders, or the district court retains jurisdiction pursuant to §78A-7-118(6).

(g) Retained jurisdiction. In cases where the district court retains jurisdiction after disposing of the matters on appeal, the court shall order the justice court to forward all cash bail, other security, or revenues received by the justice court to the district court for disposition. The justice court shall transmit such monies or securities within 20 days of receiving the order.

(h) Other bases for remand. The district court may also remand a case to the justice court if it finds that the defendant has abandoned the appeal.

(i) Justice court procedures on remand. Upon receiving a remanded case, the justice court shall set a review conference to determine what, if any proceedings need be taken. If the defendant is in custody because of the case being considered, such hearing shall be had within five days of receipt of the order of remand. Otherwise, the review conference should be had within 30 days. The court shall send notice of the review conference to the parties at the addresses contained in the notice of appeal, unless those have been updated by the district court.

(j) During the pendency of the appeal, and until a judgment, order of dismissal, or other final order is entered in the district court, the justice court shall retain jurisdiction to monitor terms of probation or other consequences of the plea or judgment, unless those orders or terms are stayed pursuant to Rule 27A.