2016

Roger Bryner, Petitioner/Appellee/Cross-Appellant, v. Utah Department of Public Safety, Driver Liscense Division, Respondent/Appellant/Cross-Appellee

Utah Court of Appeals

Case No. 20150564-CA
IN THE UTAH COURT OF APPEALS

ROGER BRYNER,
Petitioner/Appellee/Cross-Appellant,
v.
UTAH DEPARTMENT OF PUBLIC SAFETY,
DRIVER LICENSE DIVISION,
Respondent/Appellant/Cross-Appellee.

OPENING BRIEF OF PETITIONER/APPELLEE/CROSS-APPELLANT

Appeal from a Judgment of the Third Judicial District Court, Salt Lake County,
Judge Andrew H. Stone

List of all parties

Roger Bryner
General Delivery
Clearfield, Utah 84089
Petitioner/Appellee/Cross
Appellant

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CERTIFICATE PURSUANT TO RULE 24(f)(1)(C)

I hereby certify that the Brief of Respondent/Appellant=Cross-Appellee contains 5369 words, including headings, footnotes, and quotations, but excluding parts of 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 1st March, 2016

Dated March 1, 2016

Roger Bryner

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Statement of Jurisdiction and Jurisdictional objection

I do not believe that this court has jurisdiction, as the orders are not final and seek to provide a corrected notice to remedy a constitutionally defective notice. Additionally I believe the Court of Appeals in Mike's Smoke, Cigar & Gifts v. St. George City, 2015 Utah App. 158 (hereinafter Mike's Case) was incorrect in it's ruling, ignoring supreme court legal precedent, and simply ruled the way it did because Mormons from the state government of Utah were requesting the relief, much as Mormons from the state government of Utah are requesting relief now, and different standards are applied by the Mormon judges of the Court of appeals to grant relief to those they favor over those they do not favor. Because I do not believe that a honest opinion will be forthcoming, I am including arguments that discuss the merits of the decision and constitutional issues.

Statement of issues on appeal

1) The ruling in Mike's Smoke, Cigar & Gifts v. St. George City, 2015 Utah App. 158 is wrong and contrary to the weight of prior controlling legal precedent from the Utah Supreme Court, and a part of a clear pattern of the Court of Appeals ignoring that law to grant relief to favored appellants by way of unequal application of the law.

2) The court of appeals lacks jurisdiction as the order is not final and distinguished from the order in Mike's Smoke, Cigar & Gifts v. St. George City, 2015.

3) On summary disposition it was correctly determined that the notice from the Justice court to the DLD was for failure to comply with a citation, but no traffic citation ever existed. See R. 586.

4) On summary disposition it was incorrectly determined that all issues from the Justice Court itself were not at issue, and the reviewing court could initiate proceedings under the statute.

5) The entire process, the special ruling by the court of appeals both in Mikes and in this case granting jurisdiction when none exists, as well as the complete lack of notice at the Justice Court, Administrative level, Trial court, and court of appeals is an unconstitutional violation of the 14th Amendments right to due process and an egregious example of the State of Utah violating the rights of it's citizens without any due process at all.

Statement of the Case

The Justice court notified the DLD that a failure to appear for a citation (FTA/FTC code) existed for a case in the Holladay Justice Court. See R.458, motion for summary disposition of the DLD paragraph 7 and R.503, docket of Holladay Justice Court, 7/30/2014 entry on FTA/FTC and attached to the DLD motion for summary disposition. By contrast both warrants never had any notification generated to the DLD. See Docket at 7/30 at R.502 and on 5/12/2015 at R.491.

The DLD notified the Plaintiff and Appellee Roger Bryner that he had failed to comply with a promise to appear on a citation. The DLD also argued this exact undisputed fact in it's motion for summary disposition at paragraph 8 at R.459 and in it's exhibit B at R.508.

The DLD held a hearing on suspension and upheld the suspension. See motion for summary disposition of the DLD at paragraph 11 at R.459

The Plaintiff and Appellee timely sought his de-novo review of right through the district court. See motion for summary disposition of the DLD at paragraph 13 at R.459

The district court found on summary disposition, requested by the DLD itself, that the suspension proceedings were initiated for failure to comply with a citation, but that no factual basis for this existed in the record of the Justice Court as no failure to comply with a citation exists. The district court further found that as a mater of law the correct thing to do in this case was to remand to the DLD with instructions to consider factors outside the notice from the Justice Court in a new administrative suspension proceeding, after which the district court would conduct a de-novo review if necessary. See R.585-587, order of 6-18-2015.

The DLD appealed the remand order as if it were a final order on 6-29-2015. See R.590-592.

The Plaintiff and Appellee filed within 14 days a motion argued alternately under Rule 54 as a motion to reconsider a non-final order and under Rule 52 to make additional

findings and clarify the findings already made. See r.595-99 In addition he moved the court to take judicial notice of documents from Mike's case. See R.606-627. Those findings were eloquently and succulently clarified in an order dated 8-13-2015 at R.640, despite additional language denying the motion and ignoring the motion for judicial notice. Plaintiff and Appellee filed a cross notice of appeal on 9-4-2015. See R.643.

Statement of relevant facts

The relevant facts for this appeal are all found at R.640 where the court correctly found on summary disposition:

> On cross-motions for summary judgment, it was undisputed that the notice provided by the Division referred to a citation, and likewise undisputed that a warrant, and not a citation, was issued by the Justice Court, Based on that the Court remanded the matter to the Division to expressly consider the question with regard to the existence of a warrant, not as to a citation. See Order dated June 18, 2015, herein. That Order contemplates no further action by this Court until the agency completes its action. No further findings are necessary.

There is only one legal error in this ruling. That is that the District Court could substitute notice from the appellate court in place of the Court that issued the warrant providing the notice to the DLD. It is not the place of the district court acting as an appellate court to generate notice of a warrant in the first instance.

Summary of arguments

1) The ruling in Mike's Smoke, Cigar & Gifts v. St. George City, 2015 Utah App. 158 is wrong and contrary to the weight of prior controlling legal precedent from the

Utah Supreme Court, and a part of a clear pattern of the Court of Appeals ignoring that law to grant relief to favored appellants by way of unequal application of the law.

2) The court of appeals lacks jurisdiction as the order is not final and distinguished from the order in Mike's Smoke, Cigar & Gifts v. St. George City, 2015.

3) On summary disposition it was correctly determined that the notice from the Justice court to the DLD was for failure to comply with a citation, but no traffic citation ever existed. R. 586.

4) On summary disposition it was incorrectly determined that all issues from the Justice Court itself were not at issue, and the reviewing court could initiate proceedings under the statute.

5) The entire process, the special ruling by the court of appeals both in Mikes and in this case granting jurisdiction when none exists, as well as the complete lack of notice at the Justice Court, Administrative level, Trial court, and court of appeals is an unconstitutional violation of the 14th Amendments right to due process and an egregious example of the State of Utah violating the rights of it's citizens without any due process at all.

Argument

Issue 1, The ruling in Mike's Smoke, Cigar & Gifts v. St. George City, 2015 Utah App. 158 is wrong and contrary to the weight of prior controlling legal precedent from the

Utah Supreme Court, and a part of a clear pattern of the Court of Appeals ignoring that law to grant relief to favored appellants by way of unequal application of the law.

Plaintiff and Appeallee Roger Bryner moves the court to dismiss this case for lack of jurisdiction, specifically that Mike's Smoke, Cigar & Gifts v. St. George City, 2015 Utah App. 158 (hereinafter Mike's Case) is bad precedent, contrary to all prior case law, and has never been affirmed or in any way cited by the Supreme Court of the State of Utah or any other court. Miller v. USAA Cas. Ins., Co., 44 P.3d 663, 670-71 (Utah 2002) should remain the controlling law. A current shepardization of the case is attached as Exhibit C. The entire section of the Brief of the Appellee devoted to jurisdiction is reproduced here below, and argument incorporated by reference:

> Whether this Court has jurisdiction to hear the present appeal is a threshold determination that must be made by this Court prior to addressing the issues raised on
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> appeal. Miller v. USAA Cas. Ins., Co., 44 P.3d 663, 670-71 (Utah 2002); See also Utah R. App. P. 3(a). Furthermore, this Court's subject matter jurisdiction is an issue that may be raised at any time. Pearson v. S. Jordan Employee Appeals Bd., 216 P.3d 996, 997 (Utah Ct. App. 2009). Where jurisdiction is lacking, the appeal must be dismissed. Miller, 44 P.3d at 670-71.
>
> The City invokes this Court's jurisdiction pursuant to U.C.A. § 78A-4-103(2)(b). AOB at 1. In contrast to subsection (a) of that statute, subsection (b) does not expressly state the appeal must derive from a final order. Compare U.C.A. §§ 78A-4-103(2)(a) and 103(2)(b). However, that statute is not the only source of jurisdiction or limit on jurisdiction for this Court. The appellate rules of procedure also set forth mandates relating to the authority and jurisdiction of this Court. See Utah R. App. P. 3(a). The jurisdictional rules set forth in the appellate rules of procedure embody the Utah Supreme Court's long held standing that it is the "exclusive judge of its own jurisdiction." Mellor v. Wasatch Crest Mut. Ins., 282 P.3d 981, 984 n.3 (Utah 2012)(quoting Powell v. Cannon, 179 P.3d 799 (Utah 2008)). In exercising its power as "exclusive judge of its own jurisdiction," the Utah Supreme Court has "strictly adhered" to its jurisdictional limitation on appeals arising from non-final orders. Id. Indeed, the Utah Supreme Court has "repeatedly affirmed the viability of the final judgment rule as a barrier to [its] jurisdiction." Mellor, 282 P.3d at 982 n.2 (quoting Loffredo v. Holt, 37 P.3d 1070 (Utah 2001)). Accordingly, Rule 3 of the Utah Rules of Appellate Procedure provides that "[a]n

appeal may be taken from a district or juvenile court to the appellate court with jurisdiction over the appeal from all final order and judgments..." (emphasis added).

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Accordingly, this Court is without jurisdiction to hear the present appeal as it arises out of a non-final order.

An order is final only where it disposes of all claims as between all parties. Id. (stating "[w]hen claims remain pending, an order is not final."). To that end it must "must end the controversy between the litigants." Miller, 44 P.3d at 670-71 (citing Loffredo, 37 P.3d 1070). The purpose of this jurisdictional restriction is to prevent "piecemeal appeals in the same litigation" and "thereby preserve scarce judicial resources." Loffredo, 37 P.3d at 1072.

The Loffredo Court was addressing whether an appeal of an order which resolved all issues but attorney's fees was an appealable final order. Loffredo, 37 P.3d at 1071-72. The Court concluded that the order was not a final order as an issue remained to be addressed by the district court. Id. at 1073. It was not enough that the district court addressed the "majority of the issues." Id. Accordingly, the appeal was dismissed and remanded to the district court for further proceedings. Id. Indeed, for the Loffredo Court to have permitted the appeal to move forward would be to "gut the final judgment rule of much of its practical meaning and effectiveness." Id.

In the present case Mike's sought judicial review both as to the issue of substantial evidence (or lack thereof) and as to the meaning and interpretation of the analog law as codified in U.C.A. § 58-37-2(g). R. 1-8. Indeed, a major component of the judicial review was addressing the interpretation and application of U.C.A. § 58-37-2(g). Id., R. 342-68 and 413-449. In its purported final order, the district court expressly declined addressing Mike's claim on U.C.A. § 58-37-2(g) at that time. R. 517-20 and AOB appendix 1.

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Additionally, the district court has never ruled on the claim that the City lacked substantial evidence. Id. Instead, the district court determined that it lacked sufficient information to make a ruling and remanded the matter to the City for an evidentiary hearing. Id. It determined only that the facts were in dispute and the disputed facts could not be resolved solely on the written opinions of the experts. Id. Therefore, both claims raised by Mike's in its Petition for Judicial Review remain unaddressed by the district court.

Furthermore, it is evident from the language of the order itself that the district court was not treating the order as final. The district court stated in its order that "this is the final order of the Court until after the City Counsel [sic] holds an evidentiary hearing as set forth in paragraph 2 above." Id. (emphasis added). By the order's own terms it was contemplated the matter would be returned to the district court once the evidentiary hearing was held. The matter could only be returned to the district court if there were remaining issues for the Court to address. By definition, where there are issues remaining for the district court to resolve the order is not final. Consequently, while the district court stylized its order as final, the actual order is not final as it did not address and resolve all claims between all parties and left open further action by the district court. Therefore, this Court lacks jurisdiction to hear the present appeal and it should be

dismissed pending a true final order from the district court or permissive interlocutory appeal.

I agree that the court of appeals simply got it wrong in Mike's case, and reviewed a non-final order to push a decidedly mormon agenda through the courts, and entirely inconsistent with the prior case law on the mater. But for the jurisdictional ruling by the Court of Appeals the Court of Appeals it would have to be silent and wait, and not express an opinion on the issues presented. Rather than doing this the Court of Appeals created jurisdiction in Mike's case where none existed by overturning the precedent of the prior Utah Supreme Court case law. Therefore I ask that that the Court of Appeals and Utah Supreme Court restore and enforce the precedent in Miller v. USAA Cas. Ins., Co., 44 P.3d 663, 670-71 (Utah 2002) and overturn Mike's case.

Issue 2, The court of appeals lacks jurisdiction as the order is not final and distinguished from the order in Mike's Smoke, Cigar & Gifts v. St. George City, 2015.

Plaintiff and Appellee Roger Bryner moves the court to dismiss this case for lack of jurisdiction, specifically in the fact that the remand order in this case, unlike the remand order in Mike's Smoke, Cigar & Gifts v. St. George City, 2015 Utah App. 158 (hereinafter Mike's Case) is not a final order. Where jurisdiction is lacking, the appeal must be dismissed. Miller, 44 P.3d at 670-71. Plaintiff filed a motion for judicial notice of documents in case 130500429 ie. Mike's Case at R. 606-607. The court in Mike's case incorrectly remanded to conduct a fact intensive inquiry and hearing at the administrative level, while in this case the court correctly found notice was defective, and remanded in order to allow the notice to be cured at what the trial court incorrectly believes is the correct level.

1) The parties reached a stipulation in Mike's Case to hold a trial. See Docket, Exhibit A at R. 608-613 and stipulation Exhibit B at R. 614-618. However in this case there has been no stipulation and no trial.

2) The court in Mike's Case entered an order approving the stipulation of the parties to proceed to trial at the request of either party. See Exhibit 3 of Motion for Judicial Notice at R. 619.

3) The court in Mike's Case received a request to set trial by on the of the parties. See Exhibit 4 of Motion for Judicial Notice at R. 620-621.

4) The Court in Mike's Case then noticed both parties that a final hearing on the mater, as they stipulated to hold, would be held. See Exhibit 5 of Motion for Judicial Notice at R.622-623.

5) The Court in Mike's Case then held a noticed trial and entered a final remand order after trial. See exhibit 6 of Motion for Judicial Notice at R.624-627.

6) By contrast there has never been a stipulation to any proceedings in this case, much less a stipulation to proceed to trial.

7) There has never been a trial or hearing de-novo. The court specifically stated it would maintain jurisdiction for review after any proceedings on remand in this case.

8) I have been unable to get my day in court, and the remand order of the court in this case specifically denies me my day in court until after the remand proceedings.

This case is distinguished in that the Court in this case by what did not happen. In Mikes there was a final order after a trial, in which factual issues were not tried de-novo but remanded for administrative review. In this case there were only undisputed findings after summary disposition regarding a constitutionally defective notice, and a legally incorrect ruling that the

reviewing court could substitute it's notice for notice from the Justice Court. While this is an error, it can be reviewed both on remand by the DLD at hearing at by the Trial Court which has not yet reached this issue and when specifically questioned about the issue said that it would first wait for a determination by the DLD on that specific issue before proceeding with a De-novo review. See r.736, transcript of 5/11/2015 hearing reproduced below:

3 MR. BRYNER: Additionally, I dispute that the DLD
4 was notified of a warrant.
5 THE COURT: You can save that argument for another
6 day. You can make that argument to the agency if you wish.

Thus unlike Mike's case, the issue of the lack of the existence of a warrant for which notice was given remains at best a disputed, and at worst for the DLD an undisputed fact which remains to first be addressed by the DLD upon remand and then upon de-novo review.

Issue 3 On summary disposition it was correctly determined that the notice from the Justice court to the DLD was for failure to comply with a citation, but no traffic citation ever existed. R. 640.

At R.640 the court correctly found:

On cross-motions for summary judgment, it was undisputed that the notice provided by the Division referred to a citation, and likewise undisputed that a warrant, and not a citation, was issued by the Justice Court, Based on that the Court remanded the matter to the Division to expressly consider the question with regard to the existence of a warrant, not as to a citation. See Order dated June 18, 2015, herein. That Order contemplates no further action by this Court until the agency completes its action. No further findings are necessary.

Review of factual findings on a motion for summary disposition are only appropriate where they have been disputed by the parties. Here the DLD invited the error by arguing exactly what the court found, thus it has no basis to challenge the undisputed

findings of fact. Furthermore on appeal they don't challenge the undisputed findings of fact regarding the non-existence of a citation.

The case is actually very simple. The DLD was notified that a failure to comply with a citation occurred by a Justice Court. A full and fair de-novo factual review of the Justice Court record on summary disposition shows that no citation ever existed. These are the undisputed facts in the case. Therefore no suspension is warranted and the entire case should be over. Adding details about other things which may or may not lead to the suspension of a Driver's license, or complicating the procedure by having a reviewing appellate court and an administrative agency substitute their discretion to give notice under the statute for the original Justice Court, are not contemplated in law and simply not before any of the courts or administrative agencies. They would only be before the agency and reviewing courts if, and if ever, the Justice Courts notifies the DLD of the existence of a warrant, and not before. The Trial Court, in an effort to avoid a decisive ruling on the issues, sought to issue a remand. It should have simply held that a driver's license can't be suspended based upon an erroneous notification by the Justice Court where no factual basis for the notice exists.

Issue 4, On summary disposition it was incorrectly determined that all issues from the Justice Court itself were not at issue, and the reviewing court or DLD could initiate proceedings under the statute.

While the undisputed factual conclusions found at R.640 are correct factually, the legal question of what must be done now is still important. The court correctly analyzed the constitutional importance of the lack of notice at R.586 where the obvious legal conclusion "Property framing the issue by notice is important for two reasons: First, it informs the Petitioner of the actual basis for the proposed administrative action," however it went on to incorrectly find "and second, it ensures that the Division made its decision based on the actual facts that potentially Justify its action." There is no proceeding further with insufficient notice. If the division was not notified by the court of the existence of a warrant, then the legal basis for action under the plain language of UCA 53-3-221(3)(a) does not exist. Furthermore no amount of remand can fix the constitutional issue of lack of notice nor can it make the DLD a court which can notify itself of the existence of a warrant.

But this question of constitutionality need not arise if the matter ends, for now, on the notice is given only by the Justice Court which issues the warrant, then no action by the district court or the DLD can provide the required prerequisite to initiate DLD proceedings. Maters of statutory interpretation are reviewed de-novo by the court of appeals. As argued in the DLD's own motion for summary disposition at R.460:

> Utah Code Ann. § 53-3-221(3)(a) provides the Division may suspend a person's license "when the division has been notified *by a court* that the person has an outstanding unpaid fine, an outstanding incomplete restitution requirement, or an outstanding warrant levied by order of a court." (emphasis added).

Here there is no dispute, and indeed the DLD argued itself, that it was notified of a citation *by a court*. It can not suddenly become a court for the purposes of fulfilling the notification requirement of 53-3-221(3)(a). Nor can the reviewing appellate court make the decision to notify the DLD. Such a reading would be entirely inconsistent with the principle of legal review, akin to allowing the court of appeals to amend the charges or causes of action in a case under review. At most the reviewing appellate court can allow amendment of the charges by the proper originator of the claim. That originator would be the Justice Court, not the DLD by the plain language of the statute.

Issue 5, The entire process, the special ruling by the court of appeals both in Mikes and in this case granting jurisdiction when none exists, as well as the complete lack of notice at the Justice Court, Administrative level, Trial court, and court of appeals is an unconstitutional violation of the 14th Amendments right to due process and an egregious example of the State of Utah violating the rights of it's citizens without any due process at all.

The Court in denying a motion to dismiss by the DLD ruled that my request to declare the statutory review process for issuance of a warrant unconstitutional. The request to declare the statute unconstitutional for lack of appellate review was found in paragraphs 22-28 of the amended complain at R.230-231. There was also a request to

declare the statute overbroad found in paragraphs 29-32 at R.231-232. There was also a request to declare it unconstitutionally vague found in paragraphs 33-26 at R.232. These were all denied in the ruling at R.440 in paragraph 2 granting the motion to dismiss.

Remand in this case for a trial de-novo is pointless. Based upon the rulings of law and undisputed facts on summary disposition there is nothing to try, only conclusions of law to review. The undisputed facts in this case, decided correctly at summary disposition, were that a warrant exists but the driver's license suspension notice and action by the Justice Court was for failure to comply with a citation and no citation ever existed. Given that the trial court ruled that it could not review de-novo the Justice court proceedings, and will not conduct a fact sensitive review of the proceedings at the trial court level, there is no possibility of Justice with a statute that is so twisted that any Justice court can unilaterally suspend a driver's license of any person for any reason brought for the first time by the DLD before the Court of Appeals, or the District Court, rather than brought by the issuing court. It is apparent from the record in this case that multiple warrants were issued, yet only one DLD suspension hearing occurred. The DLD can not initiate suspension under the plain language of the statute, only a court may. The reviewing court correctly determined as a mater of fact, at the request of the DLD itself, that no factual basis for the reason for suspension for which the notice was given exists. To allow the Court of Appeals at this point to substitute itself for the Justice Court and even give notice that the warrant still exists(does it? at what point in time exactly, writing

of the brief, at the ruling, after appeal to the Utah Supreme Court, after appeal to the US supreme court, ...:), would be to circumvent the plain language of the statute and make a mockery of the notice requirements of the 14th amendment of the US constitution and the equal application provisions as well. Nobody but Roger Bryner will have ever had his license suspended by the Court of Appeals in the State of Utah in a memorandum decision. If that does not demonstrate bias, and a written and specific intent by the same body to discriminate against the specific individual for over a decade, what does? See 2006 UT App 398 "special leniency on the basis of pro se status is manifestly inappropriate." This is in fact a thinly veiled but explicit message from the Court of appeals to discard the protections of the 14th amendment of the US constitution for the disfavored party. There is nothing especially bad or wrong about my filings, in fact everything I submit is in general exceptional even for attorneys and I have a higher success ratio than most attorneys, and only the political opinions and agenda of the all mormon court of appeals is really at issue. No decision against the Mormons in state government will be forthcoming as long as a disfavored litigant who has been marked, by official opinion, for higher levels of scrutiny than those applied to Mormon attorneys.

A copy of the 2006 UT App 398 opinion was found in the record of the Justice Court but not produced in the documents request production which appears at R.1-R.210. I sought to have the Justice Court produce the highlighted copy of that case by way of a records request and appeal to the district court, which is currently pending in case

#20150685. Clearly the Judge in that case is reading that opinion EXACTLY as I was written, highlighting the code phrase instructing him to proceed against Roger Bryner specifically in violation of the 14th Amendment, and if the court of appeal intended otherwise, it can not reasonably expect that sort of an outcome given it's bad example.

Conclusion

I ask that the court of Appeals dismiss the appeal of the Defendant and my appeal for lack of Jurisdiction by the Court of Appeals as there is not a final order in this case. In the alternative I ask that the remand order of the Trial Court be modified to remand the case to await notice from the Justice Court of a warrant before taking any further action. In the final alternative I ask that the entire statutory basis for suspension due to a warrant be declared unconstitutional as there can be no review of the Justice Court proceedings at any higher level, and true de-novo review does not exist and can not be granted when the court of Appeals itself has come full circle and has a Justice Court judge relying on it's reasoning in 2006 UT App 398 to discriminate against Roger Bryner specifically in denial of his 14th amendment rights.

Dated March 1, 2016

Roger Bryner

Certificate of mailing

CERTIFICATE OF SERVICE

I certify that on March 1, 2016 I did cause this to be delivered by email to:
Office of the Attorney General
4501 South 2700 West, PO Box 141775
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Facsimile: (801) 965-4608
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Roger Bryner

Addendum

Order, exhibit A

Ruling, exhibit B

Shepardization, exhibit C

Exhibit A

The Order of Court is stated below:
Dated: June 18, 2015 02:52:03 PM
/s/ Andrew H. Stone
District Court Judge

KEVIN BOLANDER, Assistant Attorney General (11511)
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IN THE THIRD JUDICIAL DISTRICT COURT,

SALT LAKE COUNTY, STATE OF UTAH

Roger Bryner, Petitioner, vs. UTAH DEPARTMENT OF PUBLIC SAFETY, DRIVER LICENSE DIVISION, Respondent.	**ORDER ~~[Proposed]~~** Case No. 140906147 Judge Andrew H. Stone

The Court has made changes to the proposed order submitted by Respondent, after reviewing Petitioner's objections. The Court's additions are in bold and the Court's deletions appear as strike-throughs.

This matter came before the Court in a hearing on May 11, 2015. There were several motions pending before the Court, including cross-motions for summary judgment. The Petitioner Roger Bryner represented himself and appeared by telephone. The Utah Driver License Division ("Division") was represented by Kevin Bolander, Assistant Attorney General.

The parties briefed, among other arguments, whether the Petitioner's driving privilege may

be suspended pursuant to Utah Code Ann. Section 53-3-221(3). The Petitioner argues that during the administrative proceedings, the Division did not consider the existence of an outstanding warrant against him, giving the Division no authority to suspend his driving privilege because the agency decision was based on a different reason for suspension. The Division argues the Court cannot review the administrative record of the informal proceeding, but instead should rule based on the arguments and evidence the parties submit during de novo review of the final agency action. The Division also argues any procedural defects with its administrative proceedings are cured by de novo review, therefore the Court may consider argument regarding whether suspension is warranted pursuant to Section 53-3-221(3).

The Court rejects the Division's position that the Court should either substitute its own judgment for the Division's exercise of discretion or defer to the Division's decision when it is unclear the Division exercised its discretion with the actual facts before it. The statute plainly grants the Division discretion, but the parties' factual submissions do not indicate that the Division even knew of a warrant, as opposed to a citation, being issued against Petitioner. In such case, the alternative remedy of remand is appropriate.

After reviewing the briefs and arguments **and evidence submitted in this proceeding**, the Court finds the evidence ~~contained in the administrative record~~ is insufficient to determine whether the Division **was notified by a Court of and** considered the existence of an outstanding warrant against the Petitioner, **as required under Utah Code § 53-3-221(3)(a).** ~~Instead of further proceedings with this matter on trial de novo, the~~ **The submissions of the parties here indicate that Petitioner was informed of an outstanding citation, as opposed to the existence of a warrant. Properly framing the issue by notice is important for two reasons: First, it informs**

the Petitioner of the actual basis for the proposed administrative action, and second, it ensures that the Division made its decision based on the actual facts that potentially justify its action. The Court therefore remands this matter to the Division pursuant to Utah Code Ann. Section 63G-4-404(1)(b)(v), and instructs the Division to consider the existence of the outstanding warrant against the Petitioner when determining whether to suspend his driving privilege.

End of Document—Court Approval Appears at Top of This Page

CERTIFICATE OF SERVICE

I hereby certify that on the 29rd day of May, 2015, a true and correct copy of the foregoing ORDER [PROPOSED] was sent by email to:

Roger Bryner
roger.bryner@yahoo.com
PO Box 1082
Clearfield, Utah 84089

Bolander

Exhibit B

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

ROGER BRYNER,	:	
Plaintiff,	:	RULING
	:	
vs.	:	Case No: 140906147
DRIVERS LICENSE DIVISION,	:	Judge: ANDREW H STONE
Defendant.	:	Date: August 13, 2015

Before the Court is Plaintiff Bryner's Motion re Findings of Fact and Law on Notification or Warrant by Justice Court and Maintaining Jurisdiction After Remand.

This is an appeal of a a decision by the Utah Department of Public Safety , Drivers' License Division (Division) to suspend Petitioner's driver's license. Petitioner failed to appear at a Justice Court proceeding, and a warrant was issued. Subsequently, the Division sent him notice of an intent to suspend his driver's license due to the existence of a citation.

On cross-motions for summary judgment, it was undisputed that the notice provided by the Division referred to a citation, and likewise undisputed that a warrant, and not a citation, was issued by the Justice Court. Based on that the Court remanded the matter to the Division to expressly consider the question with regard to the existence of a warrant, not as to a citation. See Order dated June 18, 2015, herein. That Order contemplates no further action by this Court until the agency completes its action. No further findings are necessary. Plaintiff's Motion for Findings,etc. is therefore denied.

Date: August 13, 2015

Judge ANDREW H STONE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 140906147 by the method and on the date specified.

MAIL: ROGER BRYNER PO BOX 1082 CLEARFIELD, UT 84089
MAIL: KEVIN L BOLANDER 5272 S COLLEGE DR STE 200 MURRAY UT 84123

Date: 08/13/2015 /s/ MICHELLE ADAMS

Deputy Court Clerk

Exhibit C

0 of

Mike's Smoke, Cigar & Gifts v. St. George City, 2015 UT App 158, 353 P.3d 626, 2015 Utah App. LEXIS 164, 789 Utah Adv. 48 (2015)

(TM):
Restrictions: *Unrestricted*
FOCUS(TM) Terms: *No FOCUS terms*
Print Format: *FULL*
Citing Ref. Signal: *Hidden*

SHEPARD'S SUMMARY

Unrestricted *Shepard's* Summary

No subsequent appellate history.

Citing References: None

PRIOR HISTORY (0 citing references)

(CITATION YOU ENTERED):
Mike's Smoke, Cigar & Gifts v. St. George City, 2015 UT App 158, 353 P.3d 626, 2015 Utah App. LEXIS 164, 789 Utah Adv. 48 (2015)