

2001

Michael C.W. Hess v. G. Barton Blackstock : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

Brief of Appellant, *Hess v. Blackstock*, No. 20010621 (Utah Court of Appeals, 2001).

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IN THE UTAH COURT OF APPEALS

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MICHAEL C.W. HESS, (
) Case Nos. 20010621-CA
Petitioner and Appellant, (010700131 AA
)
vs. (
)
G. BARTON BLACKSTOCK, Bureau Chief, (Priority No. 15
STATE OF UTAH,)
DRIVER LICENSE DIVISION, (
)
Respondents and Appellees. (

BRIEF OF APPELLANT

Appeal from the Final Judgment and Order Affirming Administrative Action
from the Honorable Rodney S. Page
of the Second Judicial District Court
in and for Davis County, State of Utah

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Attorneys for Respondents and Appellees

* **ORAL ARGUMENTS &** *
PUBLISHED OPINION REQUESTED

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	(BRIEF OF APPELLANT
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STATE OF UTAH,)	010700131 AA
DRIVER LICENSE DIVISION,	(
)	
Respondents and Appellees.	(Priority No. 15
)	

Michael Hess appeals the trial court's decision to affirm the suspension of his driver's license. The issue presented on this appeal deal with the de novo trial only as to the service and the commencement of the division's action (as required by *Utah Code Ann. § 53-3-223(3)-(6)*) as contemplated by the Utah Administrative Procedures Act, 63-46b-1 *et seq.* The trial court's erroneous conclusion and application of Utah Law was plain error of which this court should review *de novo*.

STATEMENT OF JURISDICTION

Jurisdiction is conferred on this Court by *Utah Code Ann.* § 78-2a-3 (2)(j) (1953, as amended) (appeals transferred to the Court of Appeals from the Supreme Court). Mr. Hess appeals the final order and judgment of the Second District Court, in and for Davis County involving the judicial review of an informal administrative hearing.

STATEMENT OF ISSUES

(1) Whether the trial erroneously declared the commencement of a driver license division action is exempted as an emergency proceeding pursuant to Utah Code Ann. § 63-46b-20.

STANDARDS OF REVIEW

(1) The commencement of a driver license action is commenced by Utah Code Ann. § 63-46b-3; not § 63-46b-20.

We review questions of statutory interpretation for correctness giving no deference to the trial court's interpretation. Ward v. Richfield City, 798 P.2d 757, 759 (Utah 1990). See also Chris & Dick's Lumber v. State Tax Comm'n, 791 P.2d 511, 513-14 (Utah 1990) (interpretation of statute or rule is generally accorded no deference on appeal).

Wells v. Wells, 871 P.2d 1036 (Utah Ct. App. 1994); also Hercules, Inc. v. State Tax Comm'n, 877 P.2d 133 (Utah 1994).

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

[Included in Appendix. (App. 1-8)]

Utah Code Ann. § 63-46b-3 (2001)

Utah Code Ann. § 63-46b-20 (2001)

Utah Code Ann. § 53-3-223 (2001)

Utah Code Ann. § 41-6-44.1 (2001)

Utah Adm. Code R708-14-6

STATEMENTS OF FACT FOR THE CASE

I. Nature of the Case:

This is an appeal from a de novo appeal of the Second Judicial District Court affirming the driver's license division suspending Mr. Hess's driving privilege. Mr. Hess was deprived of the statutory right to a proceeding commenced under Section 63-46b-3 (neither the State issued a notice of agency action, nor did Mr. Hess request for an action by the division). Meanwhile, the facts underlying the arrest for Driving Under the Influence were stipulated between the parties. (App. 14)¹

II. Course of the Proceedings:

The parties conducted a de novo trial on May 8, 2001.² During the trial

¹ Mr. Hess is required to reference to an appendix form of record. The trial court refused to allow Mr. Oliver to check out the record for the purpose of the appeal. (See trial court docket—Appendix 11). He has elected to brief with this form of reference to the record to avoid destroying his reputation with the trial judge that seeking an order compelling the release would have caused if counsel pursued the matter before this court.

² A complete transcript of the de novo trial is included in the record and is cited as (App. 12-30).

the court heard arguments relevant to the commencement of the division's action alone. The parties stipulated to the facts of the underlying arrest. (App. 14) and the parties stipulated to the service of the DUI Summons and Citation. (App. 31). The citation is issued by the arresting officer; not a presiding officer. (App. 31).

During the de novo trial, Mr. Oliver argued that the driver license action was wrongfully commenced. (App. 17-20). He argued that in order to comply with the Utah Administrative Procedures Act (hereinafter, the "UAPA"), the division would have to comply with Section 63-46b-3 to be commenced properly (App. 6). The judge took the time to review the UAPA and then argued with counsel that the commencement was pursuant to Section 63-46b-20 (concerning emergency proceedings). (App. 20-24). The trial court's arguments were clearly erroneous, (app. 20), but since he's the judge Mr. Oliver's arguments fell on deaf ears. Thus, this appeal. The court took the matter under advisement then later issued its decision by memorandum decision. (See App. 32-36).

III. Disposition in Trial Court:

The trial court affirmed the division's action against Mr. Hess. The license was to remain suspended pursuant to the Findings Of Fact, Conclusions Of Law And Order. (App. 32-36).

SUMMARY OF THE ARGUMENT

Pursuant to Utah Code Ann. § 53-3-223 (1953, as amended) and Utah

Code Ann. § 41-6-44.1 (1953, as amended), Utah Law requires the arresting officer to provide personal service upon a person suspected of driving under the influence of alcohol, and it mandates that division to follow Title 63, Chapter 46b of the UAPA. These provisions are in conflict with each other. The Utah Administrative Code, pursuant to R708-14-6 clarifies that the division must follow Section 63-46b-3 when commencing its action. The person service by the officer under Section 53-3-223 does not accomplish the requirements of Section 63-46b-3. This question was presented to the trial judge, and the court avoided the decision by claiming an exemption under Section 63-46b-20. This error by the court was clearly erroneous pursuant to R70-8-14-6.

ARGUMENT

POINT.

THE TRIAL COURT CONCLUDED ERRONEOUSLY THAT A DRIVERS LICENSE ACTION IS COMMENCED UNDER SECTION 63-46b-20 RATHER THAN AS REQUIRED UNDER SECTION 63-46b-3 AS REQUIRED BY LAW.

A. Introduction.

The U.S. Constitution expressly provides, in pertinent part, “No person shall be held to answer . . . nor shall be deprived of life, liberty, or property, without due process of law. . . .” *U.S. Const.* amend. V. Moreover “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; not shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws.” *U.S. Const.* amend. XIV § 1.

The Utah State Constitution expressly provides, “No person shall be deprived of life, liberty or property, without due process of law.” *Utah Const.* art. I, § 7. 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.” *Utah Const.* art. I, § 11. Finally, “All laws of a general nature shall have uniform operation.” *Utah Const.* art. I, § 24.

The Utah Supreme Court, in Nelson v. Jacobsen, 669 P.2d 1207 (Utah 1983), articulated the standards regarding due process, stating, inter alia:

"Due process" is not a technical concept that can be reduced to a formula with a fixed content unrelated to time, place, and circumstances. Rather, "the demands of due process rest on the concept of basic fairness of procedure and demand a procedure appropriate to the case and just to the parties involved." Rupp v. Grantsville City, Utah, 610 P.2d 338, 341 (1980).

Id. In this case, it is quite clear that by denying Mr. Hess's rights were affected by the division and affirmed by the trial judge as it pertained to his right to locomotion (his driver's license privilege).

B. The Deprivation of Right Outside Of Due Process.

In this matter, Mr. Hess contends that he was deprived of his driving privilege outside of the due course of law. In the State of Utah, the Legislature has established the means in which due process rights of drivers are to be administered when the division desired to suspend, revoke, cancel, or disqualify (hereinafter,

“suspend” only) for suspicion of driving under the influence. These procedures were outlined in Utah Code Ann. §§ 41-6-44.1; 53-3-223; 63-46b-3; and R708-14-6 of the Utah Administrative Code.

In this matter, the division failed to follow these provisions as they clearly read. When the division desires to suspend a driver’s license, the division must either act on the request of the intended party or upon notice by the division. Pursuant to Section 63-46-3, proper notice is accomplished by including, inter alia:

- (A). The Notice must be signed by a presiding officer.
- (B). The Names and mailing addresses of all persons to whom notice is being given by the presiding officer, including the driver.
- (C). The agency's “file number”, the file number for the Division is not the Citation Number. It is the D.L. number however, the Notice does provide clear understanding.
- (D). The name of the adjudicative proceeding.
- (E). A statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63-46b-4 and 63-46b-5, or formally according to the provisions of Sections 63-46b-6 to 63-46b-11.
- (F). If the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action.

- (G). If the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default.
- (H). A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained.
- (I). The name, title, mailing address, and telephone number of the presiding officer.

In this matter, the DUI Summons and Citation fails to provide any of these requirements.

(App. 31). The citation is signed by the arresting officer, not a presiding officer. The notice fails to include the names and addresses of witnesses and other parties to be included in the notice. In order to comply with the UAPA, the division should just automatically set a hearing and provide the accused with notice of the action and of any hearings. Instead, the Summons requires a party to request a hearing. Why should the accused request a hearing? It is not his desire to commence an action against his own civil liberties. If it is the division which desires to suspend, the division must comply with Section 63-46b-3 as required by R708-14-6. In this matter, the division failed to do so, rather the division summarily took action against Mr. Hess, without the benefit of a hearing, as required by the UAPA—the substantive authority which empowers the division to exercise the power to suspend.

As a result of the deficiency, and in view of the substantial policy error the division exercises against the citizens and guests of the State of Utah, Mr. Hess appealed the decision to the Second District Court. The trial judge in the Second District Court, erroneously applied the law during the May 18, 2001 trial de novo. Instead of following the law pursuant to Section 63-46b-3 and R708-14-6, the court elected to argue with Mr. Hess that Section 63-46b-20 applied. The judge's philosophy was that the division's policy must have that the circumstances call for the matter to be treated as an emergency. The judge's decision should be reversed.

CONCLUSION

In this matter, the trial court condoned the division's deprivation of Mr. Hess's right to operate a motor vehicle. The trial court condoned the division's action contrary to the established substantive due process as provided by the law. Therefore, this Court should reverse the trial court's decision and its September 5, 2001 order.

RESPECTFULLY SUBMITTED this 23rd day of
April, 2002.

D. BRUCE OLIVER
Attorney for Petitioner and Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing
BRIEF OF APPELLANT, postage prepaid, to: Rebecca D. Waldron, State Agency
Counsel Division, 160 East 300 South, P.O. Box 140857, Salt Lake City, Utah 84114-
0857.

DATED this 23rd day of April, 2002.

APPENDICES

which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based

(12) (a) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Subsection (2) to be suspended or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways those persons who have shown they are safety hazards

(b) If the court suspends or revokes the person's license under this Subsection (12)(b), the court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time

(13) (a) If the court orders a person to participate in home confinement through the use of electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts

(b) The electronic monitoring device shall be used under conditions which require

(i) the person to wear an electronic monitoring device at all times,

(ii) that a device be placed in the home or other specified location of the person, so that the person's compliance with the court's order may be monitored, and

(iii) the person to pay the costs of the electronic monitoring

(c) The court shall order the appropriate entity described in Subsection (13)(e) to place an electronic monitoring device on the person and install electronic monitoring equipment in the residence of the person or other specified location

(d) The court may

(i) require the person's electronic home monitoring device to include a substance abuse testing instrument,

(ii) restrict the amount of alcohol the person may consume during the time the person is subject to home confinement,

(iii) set specific time and location conditions that allow the person to attend school educational classes, or employment and to travel directly between those activities and the person's home, and

(iv) waive all or part of the costs associated with home confinement if the person is determined to be indigent by the court

(e) The electronic monitoring described in this section may either be administered directly by the appropriate corrections agency, probation monitoring agency, or by contract with a private provider

(f) The electronic monitoring provider shall cover the costs of waivers by the court under Subsection (13)(c)(iv)

(14) (a) If supervised probation is ordered under Subsection (4)(e) or (5)(e)

(i) the court shall specify the period of the probation,

(ii) the person shall pay all of the costs of the probation, and

(iii) the court may order any other conditions of the probation

(b) The court shall provide the probation described in this section by contract with a probation monitoring agency or a private probation provider

(c) The probation provider described in Subsection (b) shall monitor the person's compliance with all conditions

of the person's sentence, conditions of probation and court orders received under this article and shall notify the court of any failure to comply with or complete that sentence or those conditions or orders

(d) (i) The court may waive all or part of the costs associated with probation if the person is determined to be indigent by the court

(ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers by the court under Subsection (14)(d)(i)

(15) If a person is convicted of a violation of Subsection (2) and there is admissible evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order

(a) treatment as described under Subsection (4)(d)(5)(d), or (6)(b)(iii), then the court shall enter the reasons on the record, and

(b) the following penalties, the court shall enter the reasons on the record

(i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6-44 7, or

(ii) the imposition of home confinement through the use of electronic monitoring in accordance with Subsection (13)

2000

41-6-44.1. Procedures — Adjudicative proceedings.

The Department of Public Safety shall comply with the procedures and requirements of Title 63, Chapter 46b, in its adjudicative proceedings

1987

41-6-44.2. Repealed.

1983

41-6-44.3. Standards for chemical breath analysis — Evidence.

(1) The commissioner of the Department of Public Safety shall establish standards for the administration and interpretation of chemical analysis of a person's breath, including standards of training

(2) In any action or proceeding in which it is material to prove that a person was operating or in actual physical control of a vehicle while under the influence of alcohol or any drug or operating with a blood or breath alcohol content statutorily prohibited, documents offered as memoranda or records of acts, conditions, or events to prove that the analysis was made and the instrument used was accurate, according to standards established in Subsection (1), are admissible if

(a) the judge finds that they were made in the regular course of the investigation at or about the time of the act, condition, or event, and

(b) the source of information from which made and the method and circumstances of their preparation indicate their trustworthiness

(3) If the judge finds that the standards established under Subsection (1) and the conditions of Subsection (2) have been met, there is a presumption that the test results are valid and further foundation for introduction of the evidence is unnecessary

1987

41-6-44.4. Renumbered as § 53-3-231.

1996

41-6-44.5. Admissibility of chemical test results in actions for driving under the influence — Weight of evidence.

(1) (a) In any civil or criminal action or proceeding in which it is material to prove that a person was operating or in actual physical control of a vehicle while under the influence of alcohol or drugs or with a blood or breath alcohol content statutorily prohibited, the results of a chemical test or tests as authorized in Section 41-6-44 10 are admissible as evidence

- (h) (i) "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding
- (ii) If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding
- (iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding
- (i) "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an agency or any other person
- (j) "Superior agency" means an agency required or authorized by law to review the orders of another agency
- (2) This section does not prohibit an agency from designating by rule the names or titles of the agency head or the presiding officers with responsibility for adjudicative proceedings before the agency 1988

63-46b-3. Commencement of adjudicative proceedings.

- (1) Except as otherwise permitted by Section 63-46b-20, all adjudicative proceedings shall be commenced by either
- (a) a notice of agency action, if proceedings are commenced by the agency, or
- (b) a request for agency action, if proceedings are commenced by persons other than the agency
- (2) A notice of agency action shall be filed and served according to the following requirements
- (a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include
- (i) the names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency,
- (ii) the agency's file number or other reference number,
- (iii) the name of the adjudicative proceeding,
- (iv) the date that the notice of agency action was mailed,
- (v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63-46b-4 and 63-46b-5, or formally according to the provisions of Sections 63-46b-6 to 63-46b-11,
- (vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action,
- (vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default,
- (viii) if the adjudicative proceeding is to be informal and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, a statement that the parties may request a hearing within the time provided by the agency's rules,
- (ix) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained,
- (x) the name, title, mailing address, and telephone number of the presiding officer, and

- (xi) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided
- (b) When adjudicative proceedings are commenced by the agency, the agency shall
- (i) mail the notice of agency action to each party,
- (ii) publish the notice of agency action, if required by statute, and
- (iii) mail the notice of agency action to any other person who has a right to notice under statute or rule
- (3) (a) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by that person's representative, and shall include
- (i) the names and addresses of all persons to whom a copy of the request for agency action is being sent,
- (ii) the agency's file number or other reference number, if known,
- (iii) the date that the request for agency action was mailed,
- (iv) a statement of the legal authority and jurisdiction under which agency action is requested,
- (v) a statement of the relief or action sought from the agency, and
- (vi) a statement of the facts and reasons forming the basis for relief or agency action
- (b) The person requesting agency action shall file the request with the agency and shall mail a copy to each person known to have a direct interest in the requested agency action
- (c) An agency may, by rule, prescribe one or more forms eliciting the information required by Subsection (3)(a) to serve as the request for agency action when completed and filed by the person requesting agency action
- (d) The presiding officer shall promptly review a request for agency action and shall
- (i) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed,
- (ii) notify the requesting party in writing that the request is denied and, if the proceeding is a formal adjudicative proceeding, that the party may request a hearing before the agency to challenge the denial, or
- (iii) notify the requesting party that further proceedings are required to determine the agency's response to the request
- (e) (i) Any notice required by Subsection (3)(d)(ii) shall contain the information required by Subsection 63-46b-5(1)(i) in addition to disclosure required by Subsection (3)(d)(ii)
- (ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except that any notice required by Subsection (3)(d)(iii) may be published when publication is required by statute
- (iii) The notice required by Subsection (3)(d)(iii) shall
- (A) give the agency's file number or other reference number,
- (B) give the name of the proceeding,
- (C) designate whether the proceeding is one of a category to be conducted informally according to the provisions of rules enacted under Sections 63-46b-4 and 63-46b-5, with citation to the applicable rule authorizing that designation, or formally according to Sections 63-46b-6 to 63-46b-11,

(D) in the case of a formal adjudicative proceeding, and where respondent parties are known, state that a written response must be filed within 30 days of the date of the agency's notice if mailed, or within 30 days of the last publication date of the agency's notice, if published,

(E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default,

(F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules, and

(G) give the name, title, mailing address, and telephone number of the presiding officer

(4) When initial agency determinations or actions are governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules

(5) For designated classes of adjudicative proceedings, an agency may, by rule, provide for a longer response time than allowed by this section, and may provide for a shorter response time if required or permitted by applicable federal law

(6) Unless the agency provides otherwise by rule or order, applications for licenses filed under authority of Title 32A, chapters 3, Packaging Agencies, 4, Public Liquor License, and Private Club Liquor License are not considered to be a quest for agency action under this chapter

(7) If the purpose of the adjudicative proceeding is to award license or other privilege as to which there are multiple competing applicants, the agency may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege

2001

63-46b-4. Designation of adjudicative proceedings as informal — Standards — Undesignated proceedings formal.

(1) The agency may, by rule, designate categories of adjudicative proceedings to be conducted informally according to the procedures set forth in rules enacted under the authority of this chapter if

(a) the use of the informal procedures does not violate any procedural requirement imposed by a statute other than this chapter,

(b) in the view of the agency, the rights of the parties to the proceedings will be reasonably protected by the informal procedures,

(c) in the view of the agency, the agency's administrative efficiency will be enhanced by categorizations, and

(d) the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding

(2) Subject to the provisions of Subsection (3), all agency adjudicative proceedings not specifically designated as informal proceedings by the agency's rules shall be conducted informally in accordance with the requirements of this chapter

(3) Any time before a final order is issued in any adjudica-

ing, or an informal adjudicative proceeding to a formal adjudicative proceeding if

(a) conversion of the proceeding is in the public interest, and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party

1987

63-46b-5. Procedures for informal adjudicative proceedings.

(1) If an agency enacts rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe procedures for informal adjudicative proceedings that include the following

(a) Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed

(b) The agency shall hold a hearing if a hearing is required by statute or rule, or if a hearing is permitted by rule and is requested by a party within the time prescribed by rule

(c) In any hearing, the parties named in the notice of agency action or in the request for agency action shall be permitted to testify, present evidence, and comment on the issues

(d) Hearings will be held only after timely notice to all parties

(e) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law

(g) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention

(h) All hearings shall be open to all parties

(i) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following

(i) the decision,

(ii) the reasons for the decision,

(iii) a notice of any right of administrative or judicial review available to the parties, and

(iv) the time limits for filing an appeal or requesting a review

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings

(k) A copy of the presiding officer's order shall be promptly mailed to each of the parties

(2) (a) The agency may record any hearing

(b) Any party, at his own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

1988

63-46b-6. Procedures for formal adjudicative proceedings — Responsive pleadings.

(1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63-46b-3(5), the respondent, if any, shall file and serve a written response signed by the

15 to 30 days

- (a) the agency's file number or other reference number,
- (b) the name of the adjudicative proceeding,
- (c) a statement of the relief that the respondent seeks,
- (d) a statement of the facts, and
- (e) a statement summarizing the reasons that the relief requested should be granted

(2) The respondent shall send a copy of the response filed under Subsection (1) to each party

(3) The presiding officer, or the agency by rule, may permit or require pleadings in addition to the notice of agency action, the request for agency action, and the response. All documents permitted or required to be filed shall be filed with the agency and one copy shall be sent to each party

2001

63-46b-7. Procedures for formal adjudicative proceedings — Discovery and subpoenas.

(1) In formal adjudicative proceedings, the agency may, by rule, prescribe means of discovery adequate to permit the parties to obtain all relevant information necessary to support their claims or defenses. If the agency does not enact rules under this section, the parties may conduct discovery according to the Utah Rules of Civil Procedure

(2) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute

1987

63-46b-8. Procedures for formal adjudicative proceedings — Hearing procedure.

(1) Except as provided in Subsections 63-46b-3(d)(i) and (ii), in all formal adjudicative proceedings, a hearing shall be conducted as follows

(a) The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions

(b) On his own motion or upon objection by a party, the presiding officer

(i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious,

(ii) shall exclude evidence privileged in the courts of Utah,

(iii) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document,

(iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge

(c) The presiding officer may not exclude evidence solely because it is hearsay

(d) The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence

(e) The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing

(f) All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath

(g) The hearing shall be recorded at the agency's expense

approved by the agency prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing

(i) All hearings shall be open to all parties

(2) This section does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing

1988

63-46b-9. Procedures for formal adjudicative proceedings — Intervention.

(1) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include

(a) the agency's file number or other reference number

(b) the name of the proceeding,

(c) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law, and

(d) a statement of the relief that the petitioner seeks from the agency

(2) The presiding officer shall grant a petition for intervention if the presiding officer determines that

(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding, and

(b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention

(3) (a) Any order granting or denying a petition to intervene shall be in writing and mailed to the petitioner and each party

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding

(c) The presiding officer may impose the conditions at any time after the intervention

2001

63-46b-10. Procedures for formal adjudicative proceedings — Orders.

In formal adjudicative proceedings

(1) Within a reasonable time after the hearing, or after the filing of any posthearing documents permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes

(a) a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted

(b) a statement of the presiding officer's conclusions of law,

(c) a statement of the reasons for the presiding officer's decision,

(d) a statement of any relief ordered by the agency

(e) a notice of the right to apply for reconsideration,

(f) a notice of any right to administrative or judicial review of the order available to aggrieved parties and

(g) the time limits applicable to any reconsideration or review

(2) The presiding officer may use the presiding officer's experience, technical competence, and specialized knowledge to evaluate the evidence

(3) A finding of fact that was contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence

APP. 4

(4) This section does not preclude the presiding officer from issuing interim orders to

- (a) notify the parties of further hearings,
- (b) notify the parties of provisional rulings on a portion of the issues presented, or
- (c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding

2001

6b-11. Default.

The presiding officer may enter an order of default against a party if

- (a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceeding,
- (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice, or
- (c) a respondent in a formal adjudicative proceeding fails to file a response under Section 63-46b-6

An order of default shall include a statement of the grounds for default and shall be mailed to all parties

- (a) A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure

(b) A motion to set aside a default and any subsequent order shall be made to the presiding officer

(c) A defaulted party may seek agency review under Section 63-46b-12, or reconsideration under Section 63-46b-13, only on the decision of the presiding officer on the motion to set aside the default

- 4) (a) In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding begun by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party

(b) In an adjudicative proceeding that has no parties other than the agency and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding

1988

63-46b-12. Agency review — Procedure.

- (1) (a) If a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule

(b) The request shall

- (i) be signed by the party seeking review,
- (ii) state the grounds for review and the relief requested,
- (iii) state the date upon which it was mailed, and
- (iv) be mailed to the presiding officer and to each party

- (2) (a) Within 15 days of the mailing date of the request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the person designated by statute or rule to receive the response

(b) The party who files a response under Subsection (2)(a) shall mail a copy of the response to each of the parties and to the presiding officer

- (3) If a statute or the agency's rules require review of an order by the agency or a superior agency, the agency or superior agency shall review the order within a reasonable

time or within the time required by statute or the agency's rules

(4) To assist in review, the agency or superior agency may by order or rule permit the parties to file briefs or other documents, or to conduct oral argument

(5) Notice of hearings on review shall be mailed to all parties

- (6) (a) Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the agency or superior agency shall issue a written order on review

(b) The order on review shall be signed by the agency head or by a person designated by the agency for that purpose and shall be mailed to each party

(c) The order on review shall contain

(i) a designation of the statute or rule permitting or requiring review,

(ii) a statement of the issues reviewed,

(iii) findings of fact as to each of the issues reviewed,

(iv) conclusions of law as to each of the issues reviewed,

(v) the reasons for the disposition,

(vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded,

(vii) a notice of any right of further administrative reconsideration or judicial review available to aggrieved parties, and

(viii) the time limits applicable to any appeal or review

2001

63-46b-13. Agency review — Reconsideration.

- (1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order

(2) The request for reconsideration shall be filed with the agency and one copy shall be mailed to each party by the person making the request

- (3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied

2001

63-46b-14. Judicial review — Exhaustion of administrative remedies.

(1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute

(2) A party may seek judicial review only after exhausting all administrative remedies available, except that

(a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required,

(b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if

- (i) the administrative remedies are inadequate, or

- (ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion
- (3) (a) A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued or is considered to have been issued under Subsection 63-46b-13(3)(b)
- (b) The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in this chapter 1988

63-46b-15. Judicial review — Informal adjudicative proceedings.

- (1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to
 - (i) the removal or placement of children in state custody,
 - (ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78-3a-906, and
 - (iii) substantiated findings of abuse or neglect made by the Division of Child and Family Services, after an evidentiary hearing
- (b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains the petitioner's principal place of business
- (2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include
 - (i) the name and mailing address of the party seeking judicial review,
 - (ii) the name and mailing address of the respondent agency,
 - (iii) the title and date of the final agency action to be reviewed, together with a copy, summary, or brief description of the agency action,
 - (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action,
 - (v) a copy of the written agency order from the informal proceeding,
 - (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review,
 - (vii) a request for relief, specifying the type and extent of relief requested, and
 - (viii) a statement of the reasons why the petitioner is entitled to relief
- (b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure
- (3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings
- (b) The Utah Rules of Evidence apply in judicial proceedings under this section 2001

63-46b-16. Judicial review — Formal adjudicative proceedings.

- (1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings
- (2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the

appropriate appellate court in the form required by the appellate rules of the appropriate appellate court

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record,

(b) the appellate court may tax the cost of preparing transcripts and copies for the record

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record, or

(ii) according to any other provision of law

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied,

(b) the agency has acted beyond the jurisdiction conferred by any statute,

(c) the agency has not decided all of the issues requiring resolution,

(d) the agency has erroneously interpreted or applied the law,

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure,

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification,

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court,

(h) the agency action is

(i) an abuse of the discretion delegated to the agency by statute,

(ii) contrary to a rule of the agency,

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency, or

(iv) otherwise arbitrary or capricious 1988

63-46b-17. Judicial review — Type of relief.

- (1) (a) In either the review of informal adjudicative proceedings by the district court or the review of formal adjudicative proceedings by an appellate court, the court may award damages or compensation only to the extent expressly authorized by statute
- (b) In granting relief, the court may
 - (i) order agency action required by law,
 - (ii) order the agency to exercise its discretion as required by law,
 - (iii) set aside or modify agency action,
 - (iv) enjoin or stay the effective date of agency action, or
 - (v) remand the matter to the agency for further proceedings
- (2) Decisions on petitions for judicial review of final agency action are reviewable by a higher court, if authorized by statute 1987

APP. 6

6b-18. Judicial review — Stay and other temporary remedies pending final disposition.

) Unless precluded by another statute, the agency may sit a stay of its order or other temporary remedy during the pendency of judicial review, according to the agency's rules

) Parties shall petition the agency for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention

) If the agency denies a stay or denies other temporary remedies requested by a party, the agency's order of denial shall be mailed to all parties and shall specify the reasons why stay or other temporary remedy was not granted

) If the agency has denied a stay or other temporary remedy to protect the public health, safety, or welfare against substantial threat, the court may not grant a stay or other temporary remedy unless it finds that

(a) the agency violated its own rules in denying the stay, or

(b) (i) the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter,

(ii) the party seeking judicial review will suffer irreparable injury without immediate relief,

(iii) granting relief to the party seeking review will not substantially harm other parties to the proceedings, and

(iv) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency's action under the circumstances

1987

46b-19. Civil enforcement.

1) (a) In addition to other remedies provided by law, an agency may seek enforcement of an order by seeking civil enforcement in the district courts

(b) The action seeking civil enforcement of an agency's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement

(c) Venue for an action seeking civil enforcement of an agency's order shall be determined by the requirements of the Utah Rules of Civil Procedure

(d) The action may request, and the court may grant, any of the following

(i) declaratory relief,

(ii) temporary or permanent injunctive relief,

(iii) any other civil remedy provided by law, or

(iv) any combination of the foregoing

(2) (a) Any person whose interests are directly impaired or threatened by the failure of an agency to enforce an agency's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced

(i) until at least 30 days after the plaintiff has given notice of his intent to seek civil enforcement of the alleged violation to the agency head, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement,

(ii) if the agency has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant, or

(iii) if a petition for judicial review of the same order has been filed and is pending in court

(b) The complaint seeking civil enforcement of an agency's order must name, as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement

(c) Except to the extent expressly authorized by statute, a complaint seeking civil enforcement of an agency's order may not request, and the court may not grant any monetary payment apart from taxable costs

(3) In a proceeding for civil enforcement of an agency's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that

(a) the order sought to be enforced was issued by an agency without jurisdiction to issue the order,

(b) the order does not apply to the defendant,

(c) the defendant has not violated the order, or

(d) the defendant violated the order but has subsequently complied

(4) Decisions on complaints seeking civil enforcement of an agency's order are reviewable in the same manner as other civil cases

1987

63-46b-20. Emergency adjudicative proceedings.

(1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if

(a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists, and

(b) the threat requires immediate action by the agency

(2) In issuing its emergency order, the agency shall

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare,

(b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings, and

(c) give immediate notice to the persons who are required to comply with the order

(3) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter

1987

63-46b-21. Declaratory orders.

(1) Any person may file a request for agency action, requesting that the agency issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances

(2) Each agency shall issue rules that

(a) provide for the form, contents, and filing of petitions for declaratory orders,

(b) provide for the disposition of the petitions,

(c) define the classes of circumstances in which the agency will not issue a declaratory order,

(d) are consistent with the public interest and with the general policy of this chapter, and

(e) facilitate and encourage agency issuance of reliable advice

(3) (a) An agency may not issue a declaratory order if

(i) the request is one of a class of circumstances that the agency has by rule defined as being exempt from declaratory orders, or

(ii) the person requesting the declaratory order participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request

(b) An agency may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding

(4) Persons may intervene in declaratory proceedings if

R708-14-6. Commencement of Adjudicative Proceedings.

(1) In accordance with Subsection 63-46b-3(1), alcohol/drug adjudicative proceedings may be commenced by:

- (a) a notice of division action, if the proceedings are commenced by the division; or
- (b) a request for division action, if the proceedings are commenced by a person other than the division.

(2) A notice of division action and request for division action shall include the information set forth in Subsections 63-46b-3(2)(a) and (3)(a) respectively. In addition, a request for division action shall include the petitioner's full name, date of birth, and the date of arrest or occurrence which prompted the request for division action. A request for division action that is not made timely, in accordance with Subsections 53-3-223(6)(a), 53-3-231(7)(a)(ii), and 53-3-418(9)(b), will not be granted except for good cause as determined by the division.

E NUMBER 010700131 Administrative Ag

Posted By: D BRUCE OLIVER
Posted: 300.00
Forfeited: 0.00
Refunded: 0.00
Balance: 300.00

E NOTE

CEEDINGS

29-01 Judge PAGE assigned. karenc
29-01 Filed: Petition for judicial review karenc
29-01 Fee Account created Total Due: 120.00 karenc
29-01 COMPLAINT - NO AMT Payment Received: 120.00 karenc
Note: Code Description: COMPLAINT - NO AMT
-29-01 Filed: Complaint karenc
-09-01 TRIAL DE NOVO scheduled on May 22, 2001 at 04:00 PM in
Courtroom 6 with Judge PAGE. tacys
-09-01 Notice - NOTICE for Case 010700131 ID 707622 tacys
TRIAL DE NOVO is scheduled.
Date: 05/22/2001
Time: 04:00 p.m.
Location: Courtroom 6
Justice Complex
800 West State Street
Farmington, UT 84025
Before Judge: RODNEY S. PAGE
-11-01 Notice - NOTICE for Case 010700131 ID 708866 tacys
TRIAL DE NOVO.
Date: 05/08/2001
Time: 04:00 p.m.
Location: Courtroom 6
Justice Complex
800 West State Street
Farmington, UT 84025
Before Judge: RODNEY S. PAGE
The reason for the change is Counsel's request.
-11-01 TRIAL DE NOVO rescheduled on May 08, 2001 at 04:00 PM
Reason: Counsel's request.. tacys
-12-01 Filed: Answer (Respondent) robine
-08-01 Minute Entry - Minutes for TRIAL DE NOVO tacys
Judge: RODNEY S. PAGE
Clerk: tacys
PRESENT

Plaintiff(s): MICHAEL C W HESS
Plaintiff's Attorney(s): D BRUCE OLIVER
Defendant's Attorney(s): REBECCA D WALDRON

Video

Tape Number: 5/8/01 Tape Count: 5:00

HEARING

Ms. Waldron represents that counsel have stipulated to the factual basis of the case and justification for revocation. The propriety of initiation of revocation proceedings is the issue in dispute.

COUNT: 5:01

Ms. Waldron presents argument referencing a copy of the DUI citation, State's Exhibit #1.

COUNT: 5:06

Mr. Oliver makes statements.

COUNT: 5:08

State's Exhibit #1 is offered by Mr. Oliver, and received into evidence.

COUNT: 5:20

Ms. Waldron responds.

COUNT: 5:23

Mr. Oliver makes statements.

The Court takes this matter under advisement. Counsel will be notified of decision in writing.

-10-01	Filed: Exhibit List		tacys
-10-01	Filed: Exhibit #1		tacys
-20-01	Filed order: Ruling On Appeal		tacys
	Judge rpage		
	Signed June 20, 2001		
-20-01	Filed: Notice of Appeal		tacys
-20-01	Filed: Letter from Bruce Oliver		tacys
-23-01	Filed: Notice of Appeal		krisl
-23-01	Filed: Notice of Appeal		alih
-23-01	Note: Cost Bond		alih
-23-01	Fee Account created	Total Due: 190.00	alih
-23-01	Bond Account created	Total Due: 300.00	alih
-23-01	APPEAL-CIVIL	Payment Received: 190.00	alih
	Note: Code Description: APPEAL-CIVIL; Cost Bond; Mail Payment;		
-23-01	Bond Posted	Payment Received: 300.00	alih
-25-01	Note: Address changed from		krisl
-25-01	Note: Address changed to 1260 West Mayor Circle	Woods Cross UT	
	84087		krisl
-25-01	Filed: Certificate of Mailing		krisl
-06-01	Filed: Letter from the Court of Appeals - their case no. is		
	20010621-CA		krisl
-17-01	Note: Findings of Fact Conclusions of Law and Order to Judge		
	Page 8/17/01		jennj
-05-01	Filed order: Findings of Fact and Conclusions of Law and Order		christak

Judge rpage
Signed August 22, 2001

02-01	Filed: Amended Notice of Appeal	coriec
13-01	Note: Tape duplication request from Bruce Oliver given to Joanne Pratt	alysonb
10-01	Note: mailed tape of 5/8/01 to carolyn erickson for transcription	joannep
03-02	Filed: Transcript - hearing May 8, 2001	lindaww
06-02	Filed: Index sent to Court of Appeals	lindaww
14-02	Note: Atty. Bruce Oliver wanted me to put in note that as per RSP stated the atty. could have copies of the file, but was not to check the file out for his briefs. 44 pages in file and 19 pages on transcript. A copy of the transcript was already sent to	karenc
14-02	Note: Oliver.	karenc

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY,

STATE OF UTAH, FARMINGTON DEPARTMENT

MICHAEL C. W. HESS,

: Case No. 010700131AA

Plaintiff,

: Appellate Case No. 20010621

v

G. BARTON BLACKSTOCK,

Defendant.

HEARING MAY 8, 2001

BEFORE

THE HONORABLE RODNEY S. PAGE

COPY

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER

1775 E. Ellen Way
Sandy, Utah 84092
801-523-1186

APPEARANCES

For the Plaintiff:

REBECCA D. WALDRON
Assistant Attorney General

For the Defendant:

D. BRUCE OLIVER
Attorney at Law

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DAVIS COUNTY, UTAH; MAY 8, 2001

HONORABLE RODNEY S. PAGE PRESIDING

P R O C E E D I N G S

THE COURT: This is the time set for hearing in the matter of Michael Hess versus G. Barton Blackstock, the Driver's License Division. And the Petitioner is present and represented by Mr. Oliver. The Respondent is present and represented by Ms. Waldron.

Is the Driver's License Division ready to proceed, Ms. Waldron?

MS. WALDRON: Yes, Your Honor.

THE COURT: You may call your first witness.

MS. WALDRON: Your Honor, I believe counsel has basically a legal issue that he wants to argue regarding this case, regarding the initiation of the administrative proceedings and he will, we're going to stipulate to the fact that the officer served the petitioner a copy of the summons and citation which I'd like to be marked as Exhibit 1 and that's how the Driver's License Division initiated this proceedings, and depending on the outcome of his argument, Counsel will stipulate to the PC to arrest, admonitions were read and the results of the breath test which was a .23. So he's stipulating to all the factual basis needed other than this legal issue of what's the correct way to initiate these driver's license proceedings.

1 MR. OLIVER: We just have a brief argument on that if
2 that's okay with the Court.

3 THE COURT: You may. Is that the agreement then Mr.
4 Oliver?

5 MR. OLIVER: Yes, Your Honor.

6 THE COURT: So basically you are stipulating to all
7 the factual basis necessary to justify the revocation with the
8 exception of the manner in which it was initiated, is that your
9 stipulation?

10 MR. OLIVER: Yes. That's our -

11 THE COURT: The legal question before the Court is
12 the propriety of the initiation of the proceedings; is that
13 correct?

14 MR. OLIVER: That's correct.

15 MS. WALDRON: Exactly.

16 THE COURT: All right. You may speak to that then.

17 MS. WALDRON: I will have to respond after counsel
18 makes his argument but it's our position that the case law and
19 the statutes requires that the initiation of these driver's
20 license proceedings is the service by the officer on the
21 petitioner, a copy of the DUI Summons and Citation, the bottom
22 of which give the individual the notice of the Driver's License
23 intent to deny, suspend or revoke or disqualify. It would also
24 list the individual's right to a hearing. He can request a
25 hearing within ten days and the procedure to go about getting

1 the hearing, we're relying on, number one, 53-3-223 that
2 basically explains that once an individual is arrested, the
3 officer shall serve a notice on behalf of the division and sub-
4 section three lists what needs to be in that notice and would
5 you go further down 223, it further goes on about upon a
6 written request Division shall grant a person an opportunity to
7 be heard within 29 days and kind of goes down and explains what
8 needs to be in the hearing.

9 Additionally, the case of Mavis vs Blackstock, which
10 is a 1999 case, 94 P Second 1272, which I do have a copy of it
11 for Your Honor, states that this case was regarding what was
12 initiating event for these Driver's License hearings and they
13 ruled that it is the service of the notice of intent to
14 suspend, revoke, or disqualify. Specifically, it says that the
15 Driver's License Division must show that this notice was
16 served.

17 Counsel is pulling up the Administrative Procedures
18 Act. I don't know exactly what section, and is claiming that
19 this notice does not contain what's necessary to start an
20 informal administrative procedure. Without being more specific
21 to those sections, since I don't have the book in front of me
22 and he just informed me of what his argument was, that since
23 53-3-223 is specific on what is required to start these
24 hearings, to start the administrative process and the fact that
25 we have Mavis vs Blackstock interpreting what is required that

1 whatever the difference is, the 53-3-223 and Mavis vs
2 Blackstock is controlling. I'll do further argument after I
3 hear from counsel.

4 THE COURT: Mr. Oliver?

5 MR. OLIVER: Your Honor, just one thing that I wish
6 to clear up by way of setting our facts down. In our Petition
7 for Judicial Review, we refer to this particular issue, at
8 least, let's see one, two, three, four, four times in our
9 petition. We refer to it once in Paragraph 12 of the petition,
10 once in Paragraph 18, once in Paragraph 19, once in Paragraph
11 20 and so in those four paragraphs, actually and there's also
12 Paragraph 32 refers to it and so, we actually refer to this
13 particular provision at least five times in our petition. So
14 it's not like this is something I'm raising the first time
15 today. This is actually one of our causes of action that we
16 have pled before this Court.

17 It's our position that in the code book, 41-6-44.1,
18 now 41-6-44 is the DUI section in Utah Code. 41-6-44.1 is the
19 procedures for adjudicative proceedings. This driver's license
20 hearing is an adjudicative proceedings, but the procedures
21 state in 41-6-44.1 says "The Department of Public Safety shall
22 comply with the procedures and requirements of Title 63 Chapter
23 46B in it's adjudicative proceedings." Then when we take a
24 look and we see what 63-46B refers to, what it refers to, Your
25 Honor, is, we'll start off with Paragraph 3 as we have pled in

1 our petition. It says, "Commencement of adjudicative
2 proceedings" and it says, "except as otherwise permitted in 63-
3 46-B20" and that's emergency procedures and there's some very
4 specific things that have to happen and be shown for that
5 exception to take place. The Court can refer to that. I have
6 not problem with that. "All adjudicative proceedings shall be
7 commenced by either" and it gives you two alternatives, "Notice
8 of agency action if proceedings are commenced by the agency, or
9 a request for agency action if proceedings are commenced by
10 persons other than the agency." So we have two ways to begin
11 an administrative proceeding with the agency. One is that the
12 agency begins it and it's the agency that initiating it and the
13 other is a request from a third person requesting the agency to
14 take action.

15 Now, then it goes on to state in Sub-Paragraph 2, it
16 says, "A notice of agency action shall be filed and served
17 according to the following requirements." Shall mandatory.
18 "The notice of agency action shall be in writing, signed by a
19 presiding officer." Well, Exhibit 1 has not been moved or
20 admitted but I think the stipulation is that it will be because
21 we're indicating procedures (inaudible) accordingly. I'd move
22 to admit Exhibit 1.

23 MS. WALDRON: No objection.

24 THE COURT: Is that Exhibit 1?

25 MR. OLIVER: That's correct.

1 THE COURT: All right. One is received.
2 (Plaintiff's Exhibit 1 received)
3 MR. OLIVER: Exhibit 1, if the Court will review
4 that, at no place is it signed by a presiding officer and then
5 it says, "and shall include the names and mailing addresses of
6 all persons to whom the notice is being given by the presiding
7 officer and the name, title, and mailing address of any
8 attorney or employee who has been designated to appear for the
9 agency." We have the name of the individual arrested but we
10 have nothing else and again, it's not being mailed by the
11 presiding officer. "Agency's file number or other reference
12 number." That may or may not be there if we consider the
13 driver's licence number to be the file or reference number, so
14 be it. I'm not sure that's crucial. The name of the
15 adjudicative proceeding, that is not there. The date that the
16 notice of agency action was mailed. It wasn't mailed.
17 Statement of whether the adjudicative proceedings is to be
18 conducted informally according to the provisions of the rule
19 adopted under 63-46B4 and 63-46B5 or formally according to the
20 provisions of section 63-46B6 to 63-46B11. That's not there.
21 It's not indicating whether it's going to be informal or formal
22 and that's a requirement. "If the adjudicative proceedings is
23 be formal," it is not so we'll move on from that. "If the
24 adjudicative proceedings to be" again, that's formal. We'll
25 not worry about that one. That's 6 and 7 of the sub-section

1 there. "If the adjudicative proceeding is to be informal and a
2 hearing is required by statute or rule or if a hearing is
3 permitted by rule and may be requested by a party within a time
4 prescribed by rule, a statement that the parties may request a
5 hearing within the time provided by the agency's rules." One
6 could argue that that provision is there except that this is
7 not being an initiated by the agency, this is rather being
8 initiated on a citation by the officer who is not an employee
9 of the agency. "Statement of the legal authority and
10 jurisdiction under which the adjudicative proceeding is to be
11 maintained." The name and title. "The name, title, mailing
12 address and telephone number of the presiding officer." That's
13 not there. "A statement of the purpose of the adjudicative
14 proceeding and to the extent known by the presiding officer,
15 the questions to be decided." One could argue that the purpose
16 of the proceeding is contained there but not the questions to
17 be decided. Okay? And then it goes on to state, "When
18 adjudicative proceedings are commenced by the agency, the
19 agency shall" -

20 THE COURT: Mr. Oliver, look, the whole issue is
21 whether or not this is an emergency proceeding or not isn't it?

22 MR. OLIVER: No.

23 THE COURT: Isn't that the whole issue before the
24 matter that allows him to short circuit the procedure -

25 MR. OLIVER: I'll go to that and I'll read the 20

1 because -

2 THE COURT: Yeah, I think that's the issue. The
3 question is if it isn't and they're required to go the route
4 designated by the Administrative Procedures Act, it certainly
5 doesn't qualify.

6 MR. OLIVER: And then I'll go onto 20 and I'll
7 address Section 20 which is the Emergency Adjudicative
8 Proceedings which it does not comply with this either. "An
9 agency may issue an order" now, this is the agency issuing an
10 order not commencing an action; but it says, "An agency may
11 issue an order on an emergency basis without complying with the
12 requirements of this chapter if (a) the facts known by the
13 agency..." When this citation is issued, there's no facts
14 known by the agency at that time. "Or presented to the agency
15 show then an immediate and significant danger to the public
16 health, safety or welfare exists." One could argue that if one
17 is under the influence of alcohol that they present a danger to
18 the public health or safety. I understand that, but in this
19 particular case, the problem that we have is the notice comes
20 and it doesn't take emergency action by the agency. What it
21 does is it says, you're granted a temporary license for up to
22 30 days.

23 THE COURT: But isn't the emergency action the taking
24 of his regular driving privileges?

25 MR. OLIVER: No, because then the hearing is held at

1 his request. But I'll move on -

2 THE COURT: But doesn't the action of the officer,
3 deprive him or his regular driving privilege?

4 MR. OLIVER: No.

5 THE COURT: And he has a right within 30 days to a
6 hearing or it's going to be for 90 days.

7 MR. OLIVER: Or a year, whatever the case may be.

8 THE COURT: Or a year or whatever.

9 MR. OLIVER: But, no, it doesn't deprive him of that
10 because he's still allowed his regular driving, as a matter of
11 fact that night -

12 THE COURT: Well, but-

13 MR. OLIVER: The night that he's arrested -

14 THE COURT: - the point is, not that. The point is
15 regular driving privileges are gone unless he takes an appeal
16 within 30 days and they find that it's not appropriate. Isn't
17 that right? Isn't that what happens?

18 MR. OLIVER: No.

19 THE COURT: They're essentially depriving him of his
20 driving privileges, aren't they?

21 MR. OLIVER: No.

22 THE COURT: Sure they are.

23 MR. OLIVER: No. As a matter of fact, if the
24 citation is not sent to the department -

25 THE COURT: I realize there's procedures to follow

1 but I'm saying if they follow the procedures, his license is
2 gone. His regular driving privileges are gone after 30 days;
3 isn't that right?

4 MR. OLIVER: Well, that's assuming that the facts are
5 there to substantiate it.

6 THE COURT: Well, sure it's assuming that.

7 MR. OLIVER: Okay.

8 THE COURT: But I'm saying, they're taking some
9 emergency action. They're saying Mr. Oliver, you can drive for
10 30 days, but your regular driver's license is gone unless you
11 in fact, make an application within 30 days and we decide
12 something else.

13 MR. OLIVER: Okay. Let me go on and finish reading
14 the provisions. Okay. "The threat requires immediate action
15 by the agency." Okay, now, I think that if we're going to
16 argue that indeed the agency is using the emergency procedures,
17 if that's what we're going to argue, then my position would be
18 that the threat is then and there at that time, not 30 days
19 hence. That indeed the driver should be taken off the road
20 immediately and not allowed to return to the road but indeed
21 what we say is no, we're going to take you off the road now.
22 But even right now, I'm arresting you for DUI, but even right
23 now, you still have the right to drive.

24 THE COURT: It's not an emergency, you can drive for
25 another 30 days.

1 MR. OLIVER: That's correct, yes.

2 But it goes on, "In issuing its emergency order, the
3 agency shall" which they didn't issue this, "In issuing its
4 emergency order, the agency shall limit its order to require
5 only the action necessary to prevent or avoid the danger to
6 public health, safety, or welfare." That's not what they're
7 doing. They're not saying don't drive while you've been
8 drinking which would be the emergency that the Court is
9 referring to. What they're saying is you're not going to be
10 able to drive at all and that doesn't address the emergency.
11 It addresses a punishment or a sanction. I'm not trying to use
12 the wrong word and please, let's not get hung up on double
13 jeopardy. I'm not going there. That has nothing to do with
14 this case so if I use a word that the Court feels uncomfortable
15 with, that's not what I'm after.

16 THE COURT: I'm not concerned with that.

17 MR. OLIVER: And I apologize in advance because this
18 has nothing to do with the other side of the case, Your Honor.
19 Not even remotely.

20 So, what they're doing is they're saying under any
21 circumstances you can't drive. They're not just limiting it to
22 the emergency or to the danger or to the public safety.
23 They're just saying no, this is a sanction that we're placing
24 on you and that's where it sits. Okay. So that's violated.
25 Then B, "Issue promptly a written order effective immediately"

1 right then, "that includes a brief statement of findings of
2 fact, conclusions of law and reasons for the agency's
3 utilization of emergency adjudicative proceedings." Never
4 done. There's nothing in anything that Mr. Hess has received
5 from the Driver's License Division that even comes close to
6 that or even a suggestion that the agency is using it's
7 emergency proceedings power. "Give immediate notice to the
8 persons who are required to comply with the order. If the
9 emergency order issued under this section will result in a
10 continued infringement or impairment or any legal right or
11 interest or any party, the agency shall commence a formal
12 adjudicative proceeding in accordance with the other provisions
13 of this chapter." They don't. They have informal proceedings,
14 not formal. So that provision is not even complied with by the
15 department.

16 So if we look at it under 20, I was not summarily
17 brushing 20 aside; but if we look at it under 20, they still
18 haven't complied with that. They don't even come close to it.
19 They don't even make an effort to make it look it like they're
20 complying under 20.

21 And so overall, all the way from a formal
22 adjudicative proceedings, an informal adjudicative proceedings
23 but the requirement is that they comply with 63-46B, you walk
24 by the Utah Administrative Procedures Act and that's what has
25 to happen. They didn't do it and so we've pled it. This does

1 not come as a surprise to counsel. We've pled it. We've pled
2 it very plainly and very clearly and it's our position that the
3 agency action was commenced inappropriately, not according to
4 statute, not according to authority. And the case cited by the
5 State, I appreciate that, that wasn't the question. The
6 question that is here and whether or not they followed the
7 adjudicative proceedings as outlined in 63-46B, which is
8 required to be followed under the DUI statute, if indeed - and
9 that wasn't the issue that was raised in that case. We're
10 raising very specific issues and we're saying no, if you're
11 going to commence an agency action, we'll say there's one of
12 three. You either begin it under the emergency procedures
13 which they did not do. They didn't have a formal adjudicative
14 proceeding in this matter; or the agency has to commence it and
15 there's specific requirements; or it has to be at the request
16 of a third party and then again, the statute defines what is
17 required when there's a request for agency action by a third
18 person. We actually believe, though I can't speak for the
19 agency, we actually believe that's the method under which
20 they're commencing the action and that's contained within
21 63-46B3. The provision is there for when the adjudicative
22 proceedings are to be commenced by a person other than the
23 agency, and they're not complied with either.

24 So it's our position that whether it's the agency
25 commencing it, somebody else requesting agency action or the

1 emergency powers, at no point has the agency complied with
2 their requirements to begin the administrative proceedings.
3 Therefore, we believe that the administrative proceedings were
4 commenced inappropriately and we would ask this Court to set
5 the agency's action aside.

6 THE COURT: Thank you.

7 Ms. Waldron, would you like to respond?

8 MS. WALDRON: Just briefly. Where counsel was
9 reading regarding the requirements of the mailing address of
10 the individual you're mailing it to and all that, does not
11 apply here since the requirement is the individual gets
12 personally served by the police officer which is - the
13 requirements of the mailing and all the address is to verify
14 that they were mailed to the correct address and to show
15 service. In this case, it's personal service and it's usually
16 shown by the testimony of the police officers.

17 And also, Your Honor, the statute that counsel was
18 reading, not only covered the commencement but regarding what's
19 required at the hearing. What was the section again?

20 THE COURT: 63-46B, Sub-Section 3.

21 MS. WALDRON: I mean, here, the notice is in writing
22 and according to - it's not signed by the presiding officer
23 because the Driver's License Division, pursuant to statute, has
24 given their okay for the police officers to personally serve
25 the notice of intent on their behalf which is also stated in

1 Mavis as the correct procedure to do.

2 All these other items that counsel has - the agency's
3 file number, etc., etc., I don't think that since the Driver's
4 License Division has a specific statute, 53-3-23 that lists out
5 the requirements to initiate the suspension - the driver's
6 license suspension is for the public safety. It might not come
7 under the Emergency Revocation Act where there's a separate
8 action for that where you can revoke someone's license without
9 a hearing. In this case, even in Mavis, it says that in
10 analyzing these driver's license proceedings, it says "The
11 purpose of the entire drunken driving statutory scheme is to
12 expeditiously remove drunken drivers from Utah's roads, thus
13 time is of the essence in the statutory scheme when considered
14 as a whole and substantial rights could depend on the
15 compliance with the requirement," which they're talking about
16 the service of the immediate notice and the basic information.
17 No where has there been a case stating that 53-3-23 is not
18 appropriate when it's compared to the Administrative Procedures
19 Act and it is our position that we've complied with 53-3-223
20 and have initiated the action with the service of the notice
21 and intent to suspend or revoke, and I'll submit it.

22 THE COURT: Anything further Mr. Oliver?

23 MR. OLIVER: Nothing further. I'd just refresh the
24 Court's recollection that 41-6-44, indicates that the
25 administrative and adjudicative proceedings are to be followed

1 under the Administrative Procedure Act and that's what it says.
2 It states specifically, 63-46B, the requirement is there. We
3 believe that that creates a due process position.

4 THE COURT: The Court will take the matter under
5 advisement. I would like a copy of that Mavis case if you have
6 that there.

7 MS. WALDRON: You can have my copy, Your Honor.

8 THE COURT: Do either of you have any desire to
9 submit any memorandums on it or do you just want me to take a
10 look at your arguments and rule from there?

11 MR. OLIVER: I'd be happy to submit one if the Court
12 desires. If not I'll just leave it to the Court.

13 THE COURT: Ms. Waldron, what's your desire?

14 MS. WALDRON: Leave it to the Court, Your Honor. I
15 think all the statutes are there.

16 THE COURT: All right. We'll review what your
17 arguments are and I'll make a ruling and notify you in writing.

18 MS. WALDRON: Thank you very much, Your Honor.

19 THE COURT: Thank you for appearing.

20 (Whereupon the hearing was concluded)

21

22

23

24

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(C)

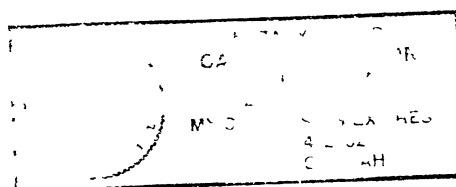
CERTIFICATE

I HEREBY CERTIFY that the foregoing transcript in the before mentioned hearing held before Judge Rodney S. Page was transcribed by me from a videotape and is a full, true, and correct transcription of the proceedings as set forth in the preceding pages to the best of my ability.

Signed this 28th day of December, 2001 in
Sandy, Utah.

Carolyn Erickson
Certified Shorthand Reporter
Certified Court Transcriber

My Commission expires May 4, 2002



DUI SUMMONS AND CITATION

ISSUING
ENFORCEMENT
AGENCY

CASE
NO.

CITATION NO.

D368847

STATE OF UTAH

COUNTY OF Davis

CITY OF West Bountiful

THE DEFENDANT IS HEREBY
GIVEN NOTICE TO APPEAR IN:

OF West Bountiful

HEARD AT 550 E. 800 W.

West Bountiful, UT 84057

742-292-4486

within (5) nor more than (14) days after issuance
of citation.

NAME (Last) <u>HESS</u> (First) <u>MICHAEL</u> (Middle)		DOB <u>3/29/71</u>
ADDRESS (City) <u>1260 W. MAIN ST. WOOD-CROSS UT 84057</u> (State)		Zip <u>84057</u>
Driver License No. <u>15-10072</u>	Class <u>D</u>	Expires <u>2000</u>
State <u>UT</u>	Restriction <u>A</u>	Social Security No. <u>518-33-44</u>
Motorcycle <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Height <u>6'11"</u>	Weight <u>200</u>	Eyes <u>GRN</u>
Sex <u>M</u>	Vehicle License No. <u>641 LUV</u>	State <u>UT</u>
Expires <u>3/200</u>		
Vehicle Make <u>Ford</u>	Vehicle Type <u>PE</u>	Year <u>87</u>
Color <u>W</u>	Accident <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Comm. Vehicle <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Haz. Material <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Director of Travel <u>N</u>	ETHNIC CODE <u>W</u>

THE ABOVE NAMED DEFENDANT IS CHARGED WITH VIOLATING:

☒ UTAH CODE ☐ COUNTY CODE ☐ CITY CODE NO.: 41-6-44

ON (DATE) 1/17/00 DAY OF WEEK Saturday MILITARY TIME 22:37

LOCATION 190 S. 500 W. MILE POST NO.

VIOLATION(S) DDT, Faulty Equipment, Improper Lane or Travel, Driving on Suspended License

WITHOUT ADMITTING GUILT I PROMISE TO APPEAR AS DIRECTED HEREIN

SIGNATURE Bunked Dan T. [Signature] 3:00 PM

I CERTIFY THAT A COPY OF THIS SUMMONS AND CITATION WAS DULY SERVED UPON THE DEFENDANT ACCORDING TO LAW ON THE ABOVE DATE AND I KNOW OR BELIEVE AND SO ALLEGE THAT THE ABOVE NAMED DEFENDANT DID COMMIT THE OFFENSE HEREIN SET FORTH CONTRARY TO LAW. I FURTHER CERTIFY THAT THE COURT TO WHICH THE DEFENDANT HAS BEEN DIRECTED TO APPEAR IS THE PROPER COURT PURSUANT TO SECTION 77-7-19, U.C.A.

OFFICER [Signature] BADGE NO. 107

DEFENDANT COPY

DATE SENT TO DLD

DOCKET NO.

READ CAREFULLY

Citation is not an information and will not be used as an information without your consent. If an information is filed you will be provided a copy by the court. **MUST** appear in court on or before the time set in this citation. IF YOU FAIL TO APPEAR AN INFORMATION WILL BE FILED AND THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

NOTICE OF INTENT TO DENY, SUSPEND, REVOKE, OR DISQUALIFY

ARE HEREBY NOTIFIED THAT THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE YOUR DRIVING PRIVILEGE IN THE STATE OF UTAH WILL BE

(ARREST UNDER 41-6-44 OR 41-6-44.6 UCA) suspended pursuant to 53-3-223 UCA for ninety (90) days for a first offense or for one (1) year for subsequent offenses. In addition, commercial drivers in commercial vehicles, your commercial privilege will be disqualified for one (1) year for a first offense and a minimum of ten (10) years for a subsequent offense.

ARREST UNDER 32A-12-209 UCA - UNDER 21 YEARS OF AGE denied pursuant to 53-3-231 UCA for ninety (90) days for a first offense, or suspended for one (1) year for a subsequent offense within three (3) years, or denied for one (1) year or until age seventeen (17), whichever is longer, if you have not been issued an original operator license. **COMPLETION OF AUTHORIZED SUBSTANCE ABUSE PROGRAM REQUIRED FOR REINSTATEMENT**

(REFUSAL TO SUBMIT UNDER 41-6-44.10 UCA) revoked for eighteen (18) months for a first refusal to submit to a chemical test or for twenty-four (24) months if it is a second or subsequent license withdrawal for an alcohol or drug related driving offense.

(COMMERCIAL DISQUALIFICATION 53-3-418 UCA) disqualified for driving a commercial vehicle, pursuant to 53-3-414 UCA for one (1) year for a first offense and a minimum of ten (10) years for subsequent offense. If you refuse the chemical test the same sanctions apply.

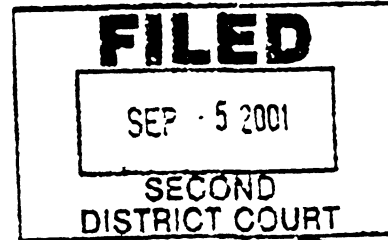
RIGHT TO HEARING: A charge of driving under the influence is a violation of both the criminal code (handled by the court) and the civil administrative code (handled by the Driver License Division). In order to keep driving privilege, you must prevail both before the court and the Driver License Division. Separately, the Driver License Division will grant an opportunity for a civil administrative hearing, upon receiving a written request within 10 calendar days of arrest. Send request to Driver License Division, PO Box 30560, Salt Lake City, Utah 84130-0560 (attn: DUI Section). Failure to properly request a hearing or to appear for a hearing, may result in loss of driving privilege. A criminal conviction or from court) or an adverse administrative determination (from Driver License Division) will result in loss of driving privilege.

is VALID ☐ NOT VALID ☒ as a temporary license for up to thirty (30) days from the date of this notice

RATOR ☒ COMMERCIAL ☐ CLASS D RESTRICTIONS A ENDORSEMENTS

on for not issuing temporary license ALREADY SUSPENDED

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IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
DAVIS COUNTY, FARMINGTON DEPARTMENT, STATE OF UTAH

MICHAEL C. W. HESS,	:	FINDINGS OF FACT CONCLUSIONS
	:	OF LAW AND ORDER
Petitioner,	:	
vs.		
G. BARTON BLACKSTOCK, Bureau	:	Case No. 010700131 AA
Chief, DAVID A. BEACH, Director,	:	
DRIVER LICENSE DIVISION,	:	Judge Rodney S. Page
Respondent.	:	

The above-entitled matter came before the Court for a trial de novo on May 8, 2001, the Honorable Rodney S. Page presiding. The Petitioner and his counsel, D. Bruce Oliver appeared. Respondent appeared through counsel Rebecca D. Waldron, Assistant Attorney General. The Parties stipulated that the Plaintiff was served with a copy of the citation at the time of arrest along with a notice of Division's intent to revoke his driver's license and information on his right

to a hearing before the revocation becomes effective. Parties further stipulated that the only issue before the Court was whether the procedure authorized by Section 53-3-223 UCA, (1953, as amended) violated Administrative Procedures Act and denied Plaintiff due process. The Court, having heard and considered the evidence, stipulations of the parties and arguments presented at the hearing, being fully advised in the premises, and good cause appearing, enters the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. On January 27, 2001, Petitioner was arrested for violation section 41-6-44 UCA (1953, as amended).

2. The arresting officer served Petitioner with a copy of the DUI Summons and Citation which included the Driver License Division's notice of their intent to suspend or revoke Petitioner's driving privilege and his right to a hearing before the revocation becomes effective.

3. Petitioner's license was suspended for one year effective February 26, 2001 based on a second or subsequent driving under the influence arrest.

CONCLUSION OF LAW

1. Section 53-3-223 of the Driver's License Act allows an officer to confiscate the driver's license of one suspected for driving under the influence of alcohol or drugs. The section allows the officer to issue the suspect a temporary license good for 30 days and to give the suspect notice that his driver's license will be suspended beginning 30 days from the date of the

citation providing information on his right to a hearing before the revocation period starts.

2. The Administrative Procedures Act sets up regulations governing procedures that must be followed prior to an agency taking certain action. Section 63-46(b)-0.5 et seq. UCA (1953, as amended).

3. Section 63-46(b)-3 sets forth how agency adjudicative procedures must be followed. Section exempts those kinds of administrative procedures that are permitted pursuant to Section 63-46(b)-20 of the act.

4. Section 63-46(b)-20 provides for emergency adjudicative proceedings and states that an agency may issue an order without complying with the requirements of the chapter if the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety or welfare exists and that the threat requires immediate action by the agency. It also provides for certain limitations on any order issued by the agency in those circumstances.

5. The procedures set up by Section 53-3-223 are designed to limit the driving privileges of those suspected of driving under the influence of alcohol or drugs and to remove them from the highway as quickly as possible without waiting for the regular judicial process. There is an immediate danger posed to the public and society by those who drive while impaired by drugs or alcohol.

6. The Court concludes that the procedures set up by Section 53-3-223 are in the nature

of emergency actions and are therefore exempt from the requirements of 63-46(b)-3. The procedures comply with the requirements of 63-46(b)-20(2) in that notice and citation provides facts and statements sufficient to provide the basis for using the emergency procedures and it is signed by the police officer. It provides notice to the defendant and an opportunity for hearing before the effective date of the revocation.

7 The procedures set forth in Section 53-3-223 UCA (1953, as amended) do not violate the Administrative Procedures Act and do not infringe on Plaintiff's rights of due process.

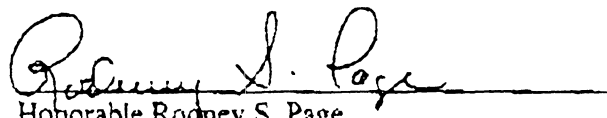
ORDER

IT IS HEREY ORDERED:

1. Petitioner's Petition seeking the return of his license is denied.
2. The February 20, 2001, suspension of Petitioner's driving privilege for a period one year effective February 26, 2001 is affirmed.

Dated this 22 day of Aug., 2001.

BY THE COURT.


Honorable Rodney S. Page
District Court Judge