

1963

# State of Utah v. James Loyd Underwood : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

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STATE OF UTAH,  
*Plaintiff-Respondent,*

vs.

JAMES LOYD UNDERWOOD,  
*Defendant-Appellant*

Case No. 9723

FILED

1963

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BRIEF OF RESPONDENT

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Appeal from the Judgment of the  
2nd District Court for Weber County  
Hon. Parley E. Norseth, Judge

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*Defendant-Appellant.*

} Case No. 9723

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STATEMENT OF THE KIND OF CASE

This is an appeal from a decision of the District Court affirming the suspension order of the State Department of Public Safety, Drivers' License Division, suspending the driving privileges of the defendant-appellant.

DISPOSITION IN LOWER COURT

The District Court reviewing the matter on stipulation of facts affirmed the Department's order of revocation, which, in turn, was based upon a charge of making a false affidavit, together with further suspensions for driving during revocation.

RELIEF SOUGHT ON APPEAL

The defendant seeks a reversal of the judgment of the District Court.

## STATEMENT OF FACTS

The statement of facts appearing in appellant's brief does not, respondent contends, represent a full statement. The following, therefore, are submitted by respondent as being pertinent and relevant matters of fact to supplement the statement of facts appearing in appellant's brief. In otherwise adopting appellant's statement of facts, respondent does not thereby also adopt the arguments appearing under that heading, appearing on pages 2, 3 and 4 of appellant's brief.

The District Court requested the State to furnish for the record a copy of the defendant's driving history on file in the Motor Vehicle Department, which apparently has not previously been done. (See R. 33, page 15.) Respondent, therefore, tenders to this court under authority of Section 78-25-1 (3), Utah Code Annotated 1953, for file with the action, the original driving record summary of James Loyd Underwood, defendant-appellant herein, together with a typed transcript from that record for the purpose of legibility and ease of reading. This record indicates the actions taken by the department and the dates involved. As part of the statement of facts, respondent wishes to call attention to the following entries and dates:

9-24-56: Applicant's privilege suspended by the Department for 6 months for habitual negli-

gent driving; Driver License No. P-53041 surrendered to Department.

4-27-57: License No. P-53041 returned to applicant by Department to last known address (Dreamland Cabins, Bountiful, Utah).

5-6-57: Applicant applied for a duplicate license stating that original license (No. P-53041) had been lost, stolen, or destroyed and authorizing the Department to cancel such license, *and stating that should the license be found, he promised to surrender it immediately to the Department.* Duplicate license No. S-72596 was then issued to him as his only valid Utah driver license. (Emphasis added.)

5-7-57: License remailed to applicant at 39 Villa Drive, Clearfield, Utah, since it came back to Department unclaimed from previous mailing.

4-8-59: Applied for renewal of license No. S-72596 and was issued Permit No. 343666 made to expire August 8, 1959.

6-8-59: Applicant's privilege suspended by the Department for 1 year for habitual negligent driving under Order No. 154. Ordered to surrender duplicate License No. S-72596 *together with all other driver licenses or permits in his possession.* Advised at that time that his driving privileges would remain suspended for one year from the date they were received in the Department. (Since License No. P-53041 was surrendered to the Department May 12, 1960, his driving privilege, under Order No. 154, was suspended to May 12, 1961. This sus-

pension period was extended to May 12, 1962, under Order No. 254 and to May 12, 1963, under Order No. 259.) (Emphasis added)

- 2-20-60: Applicant issued warning ticket, during suspension, for driving on the wrong side of road and was using at that time original license number P-53041.
- 4-11-60: Department extended applicant's period under Order No. 254 for an additional year (under Section 41-2-18, Utah Code Annotated 1953), on the basis of the above warning ticket.
- 4-11-60: Department revoked applicant's driving privilege under Order No. 259 for an additional year for making a false affidavit to the Department (Section 41-2-18, Utah Code Annotated 1953) in that he stated that his original license (No. P-53041) was lost, stolen, or destroyed, and promised to surrender it immediately to the Department if found.

The "promise to return" language in the affidavit executed by Mr. Underwood is ignored by his counsel in both the argument and statement of facts portions of his brief. The appellant concedes at page 3 of his brief that for a period in issue here defendant-appellant retained both license certificates numbers P-53041 and S-72596, and upon his second suspension, only certificate No. S-72596 was surrendered.

## ARGUMENT

### POINT I

THE DISTRICT COURT COMMITTED NO ERROR  
IN AFFIRMING THE DEPARTMENT'S ACTION.

Counsel for appellant makes much of the "errors" on the part of the department, claiming that the department "lost" the defendant-appellant's automobile license. As quoted above, the records of the department indicate that the original license was mailed to appellant's last known address on April 27, 1957 (Dreamland Cabins, Bountiful, Utah). Further, on May 6, 1957, appellant applied for a duplicate license and signed an affidavit which contained a promise to surrender the original if found. The following day, May 7, 1957, the original license mailed to Dreamland Cabins was remailed to him at 39 Villa Drive, Clearfield, Utah. The close proximity of the last two dates may be explanation enough as to why both a duplicate license was issued and the original remailed to him. This was an admitted mistake, but it is further to be observed that the defendant-appellant had a clear duty to return the duplicate license, which he failed and refused to do.

Having surrendered the duplicate when his license was suspended for habitual negligent driving, he subsequently, on February 20, 1960, exhibited the original license No. P-53041, and it is this exhibition of that license during the period when his



driving privilege was suspended out of which the current litigation arises.

Counsel for defendant-appellant urge that this original license, as of February 20, 1960, by its own terms had expired and appeared to be expired on its face. On this basis, they seek to excuse their client's overt action in displaying the license. Apparently the officer who had stopped defendant-appellant for driving on the wrong side of the road did not note the expiration date on the document. At any rate, no citation for driving on an expired license was issued to defendant-appellant by said officer.

The issue, therefore, before this court is whether or not the department was justified in revoking, as it did, for an additional period, defendant-appellant's license on the ground of making a "false affidavit". This would appear to be a question of fact more than one of law. Since the affidavit in question contains a tacit promise to return the original license, and since, in fact, on the date in question (February 20, 1960), defendant-appellant had not only not returned the license, but exhibited it to an arresting officer, respondent's position is that he thereby breached or falsified by his conduct the affidavit he had previously executed.

The suspension "for making a false affidavit"

is based upon the authorization of Section 41-2-18(a) (3), Utah Code Annotated 1953, which provides:

“(a) Except as hereinafter provided, the department shall forthwith revoke the license of any person upon receiving a record of the conviction of such person of any of the following crimes:

\* \* \*

“(3) Perjury or the making of a false affidavit to the department under this act or any other law of this state requiring the registration of motor vehicles or regulating their operation on highways.”

The act further provides at 41-2-14 as follows:

“In the event that an operator’s or chauffeur’s license certificate issued under the provisions of this act shall be lost, stolen, or destroyed, the person to whom the same was issued may obtain a duplicate thereof upon furnishing proof satisfactory to the department that such license certificate has been lost, stolen or destroyed and upon payment of a fee of one dollar (\$1.00). In the event that the department is advised that an operator’s or chauffeur’s license certificate has been lost, stolen, or destroyed, the same shall forthwith be void.”

Further, the act provides at 41-2-24 as follows:

“Any person who shall make any false affidavit or shall knowingly swear or affirm falsely, to any matter or thing required by the terms of this act to be sworn to or affirmed, shall be guilty of perjury and upon conviction shall be punishable by fine or im-

prisonment as other persons committing perjury are punishable.”

Finally, the act provides at 41-2-23:

“It shall be unlawful for any person to commit any of the following acts:

“First. To display or cause or permit to be displayed or to have in possession any operator’s or chauffeur’s license knowing the same to be fictitious or to have been canceled, revoked, suspended or altered;

\* \* \*

“Fourth. To fail or refuse to surrender to the department upon demand, any operator’s or chauffeur’s license which has been suspended, canceled or revoked as provided by law.”

In that connection, it is noted that all of the orders of suspension issued to defendant-appellant contain the language “in the matter of \_\_\_\_\_, license number \_\_\_\_\_, *and all other drivers’ licenses or permits in your possession*” (Emphasis added).

Respondent therefore contends that the action of the department in suspending defendant-appellant’s license for making a false affidavit is clearly justified under the applicable provisions of the law cited above.

The subsequent revocations and extensions thereof apparently are not questioned by defendant-appellant, except on the grounds that the orders issued in connection therewith failed to give him “due

process". In answer to that contention, respondent contends that, pursuant to 41-2-20, defendant-appellant did request and was granted a hearing of the matter in the District Court in and for Weber County. The rule enunciated in the case of *McAnerney v. State Dept. of Public Safety*, 9 U. 2d 191, 341 P. 2d 212, constitutes such hearing a trial de novo. He has, therefore, had due process. Any irregularities of administrative procedure were to be cured or complained about by defendant-appellant in that hearing. The entire record was presumably reviewed by that court and defendant-appellant has, therefore, "had his day in court". In *McAnerney* this court said:

"While the appellant contends that in the hearing before the Department he was denied due process of law, we are of the opinion that the provisions of the law are reasonable regulations in the safeguarding of lives and property upon the highways, even though a driver may have his license suspended pending a hearing. The right to a hearing before the Department and its determination being subject to re-examination in the court is sufficient to protect the substantial rights of the driver."

The cases cited by defendant-appellant in his brief, therefore, do not apply in this instance.

## CONCLUSION

For the foregoing reasons it is respectfully submitted that the decision of the District Court should be affirmed.

Respectfully submitted,

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