

2018

**State of Utah Plaintiff/Appellee vs. JULIUS OCHIENG OLOLA  
Defendant/Appellant : Brief of Appellant**

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Herschel Bullen; counsel for appellant.

Utah Attorney General; counsel for appellee.

---

**Recommended Citation**

Brief of Appellant, *Utah v. Olola*, No. 20180616 (Utah Court of Appeals, 2018).

[https://digitalcommons.law.byu.edu/byu\\_ca3/4153](https://digitalcommons.law.byu.edu/byu_ca3/4153)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007– ) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

Case No. 20180616-CA

---

IN THE  
UTAH COURT OF APPEALS

---

State of Utah  
Plaintiff/Appellee

vs.

JULIUS OCHIENG OLOLA  
Defendant/Appellant

---

BRIEF OF APPELLANT

---

APPEAL FROM A JUDGMENT SENTENCE AND  
CONVICTION OF DRIVING UNDER THE INFLUENCE OF ALCOHOL, A  
THIRD DEGREE FELONY, AND RELATED OFFENSES IN  
THE THIRD JUDICIAL DISTRICT COURT

---

HERSCHEL BULLEN (0482)  
Attorney at Law  
369 East 900 South, No. 302  
Salt Lake City, Utah 84111  
Telephone: (801) 583-1880  
herschellaw@gmail.com  
Counsel for Appellant

Utah Attorney General  
160 East 300 South, 6th Floor  
Salt Lake City, Utah 84114  
Telephone: (801) 366-0180  
Counsel for Appellee

FILED  
UTAH APPELLATE COURTS

JAN 24 2019

The Defendant Is Not Incarcerated

Case No. 20180616-CA

---

IN THE  
UTAH COURT OF APPEALS

---

State of Utah  
Plaintiff/Appellee

vs.

JULIUS OCHIENG OLOLA  
Defendant/Appellant

---

BRIEF OF APPELLANT

---

APPEAL FROM A JUDGMENT SENTENCE AND  
CONVICTION OF DRIVING UNDER THE INFLUENCE OF ALCOHOL, A  
THIRD DEGREE FELONY, AND RELATED OFFENSES IN  
THE THIRD JUDICIAL DISTRICT COURT

---

HERSCHEL BULLEN (0482)  
Attorney at Law  
369 East 900 South, No. 302  
Salt Lake City, Utah 84111  
Telephone: (801) 583-1880  
herschellaw@gmail.com  
Counsel for Appellant

Utah Attorney General  
160 East 300 South, 6th Floor  
Salt Lake City, Utah 84114  
Telephone: (801) 366-0180  
Counsel for Appellee

The Defendant Is Not Incarcerated

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	i
INTRODUCTION: NATURE AND CONTEXT OF DISPUTE AND REASONS WHY THE DEFENDANT SHOULD PREVAIL ON APPEAL.....	1
STATEMENT OF THE ISSUES, STANDARDS OF REVIEW, PRESERVATION.....	1
RULES, STATUTES, AND CONSTITUTIONAL PROVISIONS .....	2
STATEMENT OF THE CASE AND FACTS .....	3
SUMMARY OF THE ARGUMENT .....	12
ARGUMENT	
POINT I: THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.....	12
POINT II: THE TRIAL WAS FAKED OR THAT THE EVIDENCE SUPPORTING HIS CONVICTION WAS FABRICATED AND MANUFACTURED. ....	15
CONCLUSION .....	15
CERTIFICATE OF RULE 24 COMPLIANCE .....	16
CERTIFICATE OF SERVICE .....	16
ADDENDUM A: Controlling Constitutional Provisions, Statutes And Rules	
ADDENDUM B: Sentence, Judgment, and Commitment	
ADDENDUM C: South Salt Lake Police Officer Coby Coggle’s testimony regarding his extensive training and experience.	

## TABLE OF AUTHORITIES

### **Federal Cases**

*Anders v. California*, 386 U.S. 793, 97 S.Ct. 1396 (1967).....1

### **State Cases**

*State v. Lingmann*, 2014 UT App 45, ¶ 18, 320 P.3d 1063 .....2, 13

*State v. Workman*, 2005 UT 66, ¶ 29, 122 P.3d 639.....2

*Murray City v. Hall*, 663 P.2d 1314, 1320 (Utah 1983).....10, 13

### **Statutes and Rules**

Utah Code § 41-6-44 (repealed).....10

Utah Code § 41-6A-502 .....1, 12

Utah Code Ann. § 41-6a-530 .....1, 12

Utah Code Ann. § 41-6a-518.2 .....1, 12

Utah Code Ann. § 41-6-44.3 renumbered § 41-6a-515 .....13, 14

Utah Code Ann. § 53-3-227 .....3

Utah R. App. P., Rule 24 .....16

Utah R. App. P., Rule 21 .....16

---

**IN THE UTAH COURT OF APPEALS**

---

	)	
	)	
STATE OF UTAH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Case No: 20180616-CA
	)	
JULIUS OCHIENG OLOLA,	)	
	)	
Defendant/Appellant,	)	
	)	

---

**INTRODUCTION**

**Nature And Context Of Dispute And Reasons Why  
The Defendant Should Prevail On Appeal.**

The defendant claims there was insufficient evidence to support the convictions for driving under the influence of alcohol; that the court faked the jury trial; that the evidence supporting his conviction was fabricated and manufactured. If any of these arguments have merit, the defendant would be entitled to a reversal.

This brief is submitted in the spirit of *Anders v. California*, 386 U.S. 793, 97 S.Ct. 1396 (1967); and *State v. Wells*, 13 P.3d 1056 (Utah Ct. App. 2000).

**STATEMENT OF ISSUES PRESENTED FOR REVIEW, STANDARD  
OF APPELLATE REVIEW, PRESERVATION OF ISSUES  
AND GROUNDS FOR APPEAL.**

**I. A. Issue:** Was there sufficient evidence to support the verdict?

**B. Standard of Review:** The standard of review for sufficiency claims is highly deferential—“[w]e will reverse a jury verdict for insufficient evidence only if we determine that reasonable minds could not have reached the verdict.” *State v. Lingmann*, 2014 UT App 45, ¶ 18, 320 P.3d 1063, 1069 citing *State v. Workman*, 2005 UT 66, ¶ 29, 122 P.3d 639.

**C. Preservation:** The defendant moved for directed verdict. R.196, 572-573. The motion was denied. R.196, 574.

**II. A. Issue:** Was there any evidence from which to conclude that the trial was faked or that the evidence supporting his conviction was fabricated and manufactured?

**B. Standard of Review:** Presumably the standard of review would be that set forth above in I.B, i.e., that the defendant must demonstrate that there was legitimate, bona fide, material and substantive evidence presented from which reasonable minds could reach the verdict.

**C. Preservation:** Presumably the record would be preserved as set forth above in I.C.

## **CONTROLLING CONSTITUTIONAL PROVISIONS, STATUTES AND RULES.**

The controlling constitutional provisions, statues and rules are included in Addendum A.

## STATEMENT OF THE CASE

### PROCEDURAL HISTORY NECESSARY TO UNDERSTAND ISSUES PRESENTED FOR REVIEW AND DISPOSITION IN THE COURT BELOW.

This is a criminal appeal from a final judgment of conviction in the Third Judicial District Court, Salt Lake County, State of Utah. After a one day jury trial, May 4, 2016, the jury found the defendant guilty of Driving Under The Influence Of Alcohol/Drugs, a 3rd Degree Felony, a third degree felony, in violation of Utah Code § 41-6A-502. R.200, 615-616. After excusing the jury, the trial court then found the defendant guilty of Driving On a Suspended or Revoked License, a Class B Misdemeanor; Being an Alcohol Restricted Driver, Prohibited From Operating A Vehicle While Having Any Measurable Or Detectable Amount Of Alcohol, in violation of Utah Code Ann. § 41-6a-530; and operating a vehicle without an ignition interlock system, in violation of Utah Code Ann. § 41-6a-518.2. R.197, 622-623.

Based on the defendant's conviction of Driving Under The Influence Of Alcohol/Drugs a 3rd Degree Felony, the court sentenced the defendant to an indeterminate term of not to exceed five years in the Utah State Prison. R.273-275, at 273, Addendum B. On the Driving On Suspension/Revocation Alcohol Related charge, § , § 53-3-227(3)(a), a Class B Misdemeanor, the defendant was sentenced to a term of 180 day(s), with the total time suspended. Based on the defendant's conviction of ALCOHOL RESTRICTED DRIVERS, § 41-6a-530, a Class B Misdemeanor, the court



sentenced the defendant to a term of 180 day(s), with the total time suspended. Based on the defendant's conviction of INTERLOCK RESTRICTED DRIVER OPERATING VEHICLE Without an interlock SYSTEM, a Class B Misdemeanor, the defendant was sentenced to a term of 180 day(s), with the total time suspended. R.273-275. The defendant untimely timely appealed to the Utah Court of Appeals. R.299-303. This Court summarily dismissed the appeal. R.306-307. On motion of the defendant, on July 23, 2018, the trial court reinstated the time to appeal. R.312-347, 358-360. On July 24, 2018, the defendant timely appealed. R.361-362.

The Court of Appeals has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(2)(e).

**STATEMENT OF FACTS NECESSARY TO UNDERSTAND ISSUES  
PRESENTED FOR REVIEW.**

Mark Barrett indicated he was driving in the area of South Salt Lake on September 6, 2015, during the early morning hours headed eastbound on Thirty-Third South by the Salt Lake Detention Center. R.504. He noticed a red SUV sitting about a quarter of the way into the intersection, even though the light was green, blocking his path of travel. R.505. Mr. Barrett honked and the vehicle started moving, making a left turn heading west on Thirty-Third. R.505-506. He watched the SUV turn and then go over the curb a little bit by the bus stop by the jail, which concerned him. R.506. So Mr. Barrett at that followed the SUV into the jail parking lot and called the police non-emergency number.

Id. He remained there until the police arrived, watching the vehicle, from which no one emerged during that time. R.506-507

Mr. Barrett observed that the SUV's blinkers were turned on, and the headlights were flashed in an effort, apparently, to get the gate to open. R.507. The police arrived within about fifteen minutes. Id. He never saw the driver of the SUV vehicle. Id. He remained about 150 feet away and could not see inside the vehicle. R.508.

Officer Coby Coggle, a veteran South Salt Lake Police Officer testified to his extensive training and experience. R.510-513, Addendum C. He indicated for the past three years he had been working alcohol and DUI enforcement. R.513. He was on duty the early morning of September 6, 2015, assigned to South Salt Lake. R.513-514. Dispatch advised of a reckless driver call at the intersection of 900 West and 3300 South. R.514. The call was received at 3:20 a.m., and the officer arrived at the parking lot of the jail on the southeast corner of 900 West and 3300 South 3:23 a.m. Id. Dispatch indicated a red Durango was stopped in front of the service entrance in the parking lot. Id.

Officer Coggle located the red Durango stopped, as indicated, in front of the service entrance in the parking lot at the very east side and the south end of the administrative parking lot. R.514-515. The vehicle was just at the entrance to the service road facing a closed gate. R.515. The vehicle was stopped at the time, and he parked his car and approached. Id. The engine was running. Id. He saw the lights turn on and off. R.550. He peered into the car with his flashlight on the passenger side, saw that there

was two occupants inside, and as he did so, the driver attempted to manipulate the gear shift. R.516,549,551. Thinking the driver was going to try to leave or take off, he ran around to the driver's side. Id. He identified the driver as the defendant in court. Id.

The vehicle window was already partially down and the officer noticed the odor of alcohol. Id. Once he opened the door, he testified that, "it was so strong in the air I could taste it." R.517. Officer Coggle testified as follows:

Mr. Olola was completely oblivious to me even standing at the window. He was so involved in trying to manipulate the vehicle that he didn't even realize I was standing there. He was trying to put it into gear, but from my perception, he wasn't pressing on the brake so it wouldn't go out of park. So he flashed the brights. He turned the blinker on and off. He manipulated the windshield wipers. He - he was touching everything, and then he kept trying to put it into gear, it wouldn't go. I - and again, the window's down. So I'm standing there and I'm trying to speak to him and he's not acknowledging me at all.

R.517. With flashlight in hand and speaking in a loud voice, Mr. Olola did not respond to the officer, except at one point where he looked blankly at him, then went back to trying to put the vehicle in gear. R.518. Once backup officers arrived, Officer Coggle opened the door. Id. Mr. Olola appeared to be intoxicated. Id. This was determined by the officer's observation of the overwhelming odor of alcohol in the vehicle, the defendant's depressed facial features and heavy eyelids, eyes half open, red bloodshot and glazed eyes, as well as speech so slurred he had to be asked several times to repeat things in order to understand him. R.518,551. The passenger was so intoxicated he could not speak. R.551. Mr. Olola pointed and said he was going to West Valley, the

opposite direction of where he pointed. R.518. He spoke very slowly, to the point that Officer Coggle had a hard time hearing, and slurred his words which were mixed together. R.520.

Officer Swazo had arrived and was on the passenger side, and when Officer Hunsaker arrived, they asked Mr. Olola to get out. R.521. Upon request Mr. Olola produced his ID card, fumbling through his wallet in slow motion. Id. He “poured” himself out of the car, turning and “kind of just slid(ing) out of the seat right onto (his) feet,” usually, according to the officer, a good indication of someone who is intoxicated. Id. They had to guide Mr. Olola. Id. It took him a second to get his bearings. Id. He was in between Officers Coggle and Swazo and, although he could walk straight forward, turning, pivoting seemed beyond his ability. R.522. When they went to turn him to place him in handcuffs, just pivoting around, he completely lost his balance, and had to be supported by his arms. Id.

Having observed all these signs of intoxication, Officer Coggle testified that he would normally ask the person to perform field sobriety tests. Id. He did not in this case. Id. He testified,

All my observations, coupled with my previous experience of DUIs, I determined not only, one, was it alcohol which was the impairing factor and not drugs, and two, he was not safe to operate a vehicle, and three, well beyond the legal limit.

R.522. The Officer did not believe he could have safely do the field sobriety tests. R.523. He could not communicate instructions, and Mr. Olola could barely walk, let alone do the FSTs. Id. Based on years of extensive training and experience as a police officer, especially doing DUI enforcement, he had seen this behavior many times before, and so based thereupon, he concluded that Mr. Olola was many times over the legal .08 limit, handcuffed him and placed him in the back of his car. R.524.

The officers impounded the SUV vehicle. Id. The impound inventory yielded many open containers, an open cup in the center console, and behind the passenger seat a jug of juice Officer Hunsaker located, the contents of which smelled of alcohol. R.525.

Mr. Olola was then taken to the South Salt Lake Police Station. Id. Officer Coggle believed only alcohol was involved and therefore requested a breath test. R.525-526. After reading the necessary admonitions to Mr. Olola, he was requested to and agreed to a breath test. R.526. The officer testified he had operated this particular this intoxilyzer machine somewhere around 500 times during the course of his career. R.527-528. He was trained and certified in the use of this machine. R.528. Exhibit 4 is the initial intoxilyzer certification issued initially in 2005 by the police academy and last renewed in 2016. R.528-529.

Officer Coggle testified that the intoxilyzer machine has a series of internal diagnostics. R.530. If any of the diagnostics fail, it will shut down and prevent a test from being taken. Id. He testified as follows:

So you'll start the machine. It'll do a self-check diagnostic. It does a circuitry check. It does the RF check as I described. I don't have the list in front of me. I forget the exact name of all the checks. It'll do a series of three air blanks before it will allow you to submit a test. And what that's doing is it will suck in the ambient air and check for any alcohol in the ambient air. If for some reason it, during those tests any alcohol is detected, the machine will shut down and is inoperable.

R.530.

Officer Coggle started the machine and it cycled through the process described. Id. There were no errors displayed. R.531. Prior to administering a breath test he observed a "deprivation period," i.e., he a period where sits with the individual for fifteen minutes immediately prior to the test being administered to make sure that they either don't consume or regurgitate anything. Id. If an individual has consumed alcohol recently, there may still be residual mouth alcohol. Id. In this case, the intoxilyzer 8000 is equipped with something called a slope detector which is supposed to prevent any mouth alcohol being taken into the machine. Id. However to make sure that there is no mouth alcohol present, he observes this 15 minute deprivation period. Id. This is also to determine if the individual has regurgitated. Id. If that were to occur, the regurgitation might give a higher reading than would be accurate. R.531-532.

Officer Coggle observed the "deprivation period" with Mr. Olola. R.532. He began by asking him to open his mouth to look inside. R.533. He asked if he had anything in his mouth, at which point he advised dispatch that he was starting his deprivation period, giving them the time that's on the machine as a double check. R.533-

534. During this deprivation period, the officer did not observe Mr. Olola drink anything, nor did he regurgitate. R.568. He started the deprivation period at three forty-eight and the test was administered at four zero five, a deprivation period of 17 minutes. R.533. Officer Coggle opined, without objection, that alcohol that detected through the test had been consumed prior to his interaction with defendant. R.568.

Officer Coggle operated the machine, which functioned properly, observing the deprivation period, et cetera. R.533-534. The result was 0.29 (State's Exhibit 1,). R.534. The State introduced Exhibits 2 and 3, the intoxilyzer maintenance affidavits, admissible, as stated on the record, under Utah Code § 41-6-44(3) and *Murray v. Hall, infra*, without objection. R.535, 540. Exhibits 1 through 4 were admitted and published without objection. R.539. The certifications of the machine, Exhibit 2, bore the date 8/13/ 2015 and Exhibit 3, 9/15/2015. R.541. The date of offense was 9/6/2015. *Id.* So the certifications bookended the date of offense. *Id.*

Based upon all of the circumstances, from the parked car to the taking of the intoxilyzer test, Officer Coggle determined to charge Mr. Olola with driving under the influence of alcohol. R.542-543.

On cross-examination, Officer Coggle admitted that there were four officers present, and he had the ability to require the field sobriety tests with another officer standing next to Mr. Olola, which is how it is usually done. R.556. But because Mr. Olola could not understand the instructions, among other reasons, he did not give the full

array of FSTs. R.556-560. Defense counsel did not query as to why those tests were not given. Defense counsel further cross-examined Officer Coggle regarding his knowledge of the intoxilyzer machine. R.560-562. The officer agreed that he was trained merely as an operator, not as a technician, and was not fully conversant with its inner workings. R.561-562. He testified that standard procedure is to perform only one test, and that is all that was done, with no confirmation test. R.562-563. Officer Coggle had no recollection of giving Mr. Olola Miranda warnings. R.563. No testimony was elicited, however, as to any law enforcement questions or the defendant's answers. R.409-653, *passim*.

The State rested. R.568. Final jury instructions were discussed and agreed upon. R.571. The defendant moved for a directed verdict "for the record." R.572-573. The court denied the motion. R.574. The defense called no witnesses. *Id.* Defense counsel indicated that he had spoken to Mr. Olola regarding his right to testify, recommending that he not do so. R.574-575. Counsel indicated that he was going to follow that advice. *Id.* The trial court further engaged in the following colloquy:

THE COURT: All right. So Mr. Olola, do you understand that today is the day for your trial and you have that right to testify today. Your attorney's recommending that you don't testify. What do you want to do?

DEFENDANT OLOLA: I will follow his recommendation.

THE COURT: All right. So you don't want to testify today?

DEFENDANT OLOLA: No.

R.575.



The jury found the defendant guilty of Driving Under The Influence Of Alcohol/Drugs, a 3rd Degree Felony, a third degree felony, in violation of Utah Code § 41-6A-502. R.200, 615-616.

After excusing the jury, the trial court then found the defendant guilty of Driving On a Suspended or Revoked License, a Class B Misdemeanor; Being an Alcohol Restricted Driver, Prohibited From Operating A Vehicle While Having Any Measurable Or Detectable Amount Of Alcohol, in violation of Utah Code Ann. § 41-6a-530; and operating a vehicle without an ignition interlock system, in violation of Utah Code Ann. § 41-6a-518.2. R.197, 622-623. The documentation, Exhibits 5 through 8, all appear to be in proper order and support the court's finding.

### **SUMMARY OF ARGUMENT**

The defendant's position is that the evidence was insufficient to support the verdict.

There simply is no evidence that the trial was faked or that the evidence supporting his conviction was fabricated and manufactured.

### **POINT I**

#### **THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.**

The standard of review is clearly stated as follows:

In evaluating sufficiency claims, we view "the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict." *State v. Shumway*, 2002 UT 124, ¶ 15, 63 P.3d 94. Accordingly,

the standard of review for sufficiency claims is highly deferential—“[w]e will reverse a jury verdict for insufficient evidence only if we determine that reasonable minds could not have reached the verdict.” *State v. Workman*, 2005 UT 66, ¶ 29, 122 P.3d 639 (citation and internal quotation marks omitted).

*State v. Lingmann*, *supra*, 2014 UT App 45, ¶ 18, 320 P.3d 1063.

One argument might go to the sufficiency of the evidence regarding the intoxilyzer. The intoxilyzer affidavits, certifications, and results were admitted, Exhibits 1 through 4 were admitted and published without objection. R.539. “(I)n place of the officer's testimony, § 41–6–44.3 permits the admission of affidavits regarding the maintenance of a specific breathalyzer as evidence of the proper functioning of that breathalyzer machine and the accuracy of the ampoules.” *Murray City v. Hall*, *supra*, 663 P.2d 1314, 1320 (Utah 1983). This bookending practice is still the standard regarding the intoxilyzer. The referenced § 41–6–44.3 has been renumbered as § 41-6a-515, which states, in pertinent part,

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.

Utah Code Ann. § 41-6a-515. What occurred in this instance is that counsel for the State recited the necessary findings, to which defense counsel agreed:

MS. DAVIS: Okay. So it would be that the calibration test with the intoxilyzer used in this case was performed according to the standards established by the Commissioner of Public Safety, that they were prepared in the regular course of business, and they were prepared contemporaneously with the events therein and that the source of information of these affidavits was made - were made and the method and circumstances of preparation were such to indicate their trustworthiness.

MR. SNOW: And I'm fine with that language. . . .

R. 538. The trial court then adopted the language recited. *Id.*

The remaining insufficiency argument can be stated no more strongly than did defense counsel in the motion for a directed verdict, as follows:

For the record, I move at this time for a directed verdict as far as it relates to count one, driving under the influence. I don't believe the state's presented a case at this point that the jury should have to decide whether or not Mr. Olola was driving under the influence of alcohol. The only evidence we do have is a breath ticket. We don't have a - we have a certified operator of that machine. We don't have anyone here to verify the machine was working on that day in question. The only other evidence is the officer's subjective testimony of impairment 1 as well as the testimony of the witness who did not see who was driving the vehicle, could not testify as far as impairment.

R.572-573.

Based upon the record and the foregoing analyses, undersigned counsel submits the argument to this Court to find in accordance with the merits stated.

**POINT II**

**THE TRIAL WAS FAKED OR THAT THE EVIDENCE SUPPORTING HIS  
CONVICTION WAS FABRICATED AND MANUFACTURED.**

Undersigned counsel can cite to no evidence or indication, either within the body of the record or not included therein, which would indicate that the trial was faked or that the evidence supporting his conviction was fabricated and manufactured in any way.

**CONCLUSION**

The foregoing analysis is submitted to this Honorable Court for its consideration.

Dated this \_\_\_\_ day of January, 2019.

---

HERSCHEL BULLEN, Attorney for Appellant

**CERTIFICATE OF RULE 21 & 24 COMPLIANCE**

Appellant certifies pursuant to Rule 24(f)(1)(C) Utah R. App. P. that the foregoing principal brief of appellant contains less than 4,000 words.

Appellant further certifies pursuant to Rule 21(g) that the filing herein contains no non-public information.

---

HERSCHEL BULLEN  
Attorney for Defendant/ Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_, January, I caused to be served a copy by email to [criminalappeals@agutah.gov](mailto:criminalappeals@agutah.gov) and two (2) true and accurate copies of the foregoing **BRIEF ON APPEAL** by hand delivery or placing said copies in the United States mail, postage prepaid, addressed as follows:

UTAH ATTORNEY GENERAL  
Heber M. Wells Building  
160 East 300 South, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84114-0854

---

HERSCHEL BULLEN

Tab A

West's Utah Code Annotated  
Title 41. Motor Vehicles  
Chapter 6A. Traffic Code (Refs & Annos)  
Part 5. Driving Under the Influence and Reckless Driving

U.C.A. 1953 § 41-6a-515

§ 41-6a-515. Standards for chemical breath or oral fluids analysis--Evidence

Currentness

(1) The commissioner of the department shall establish standards for the administration and interpretation of chemical analysis of a person's breath or oral fluids, 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.

**Credits**

Laws 2005. c. 2, § 71, eff. Feb. 2, 2005.

U.C.A. 1953 § 41-6a-515, UT ST § 41-6a-515

Current with the 2018 Second Special Session.

---

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

## Utah Statutes Annotated - 2015

West's Utah Code Annotated  
Title 41. Motor Vehicles  
Chapter 6A. Traffic Code (Refs & Annos)  
Part 5. Driving Under the Influence and Reckless Driving

### U.C.A. 1953 § 41-6a-502.5

#### § 41-6a-502.5. Impaired driving--Penalty--Reporting of convictions--Sentencing requirements

##### Currentness

(1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of Section 41-6a-502 committed on or after July 1, 2008, may be entered as a conviction of impaired driving under this section if:

(a) the defendant completes court ordered probation requirements; or

(b)(i) the prosecutor agrees as part of a negotiated plea; and

(ii) the court finds the plea to be in the interest of justice.

(2) A conviction entered under this section is a class B misdemeanor.

(3)(a)(i) If the entry of an impaired driving plea is based on successful completion of probation under Subsection (1)(a), the court shall enter the conviction at the time of the plea.

(ii) If the defendant fails to appear before the court and establish successful completion of the court ordered probation requirements under Subsection (1)(a), the court shall enter an amended conviction of Section 41-6a-502.

(iii) The date of entry of the amended order under Subsection (3)(a)(ii) is the date of conviction.

(b) The court may enter a conviction of impaired driving immediately under Subsection (1)(b).

(4) For purposes of Section 76-3-402, the entry of a plea to a class B misdemeanor violation of Section 41-6a-502 as impaired driving under this section is a reduction of one degree.

(5)(a) The court shall notify the Driver License Division of each conviction entered under this section.



(b) Beginning on July 1, 2012, a court shall, monthly, send to the Division of Occupational and Professional Licensing, created in Section 58-1-103, a report containing the name, case number, and, if known, the date of birth of each person convicted during the preceding month of a violation of this section for whom there is evidence that the person was driving while impaired, in whole or in part, by a prescribed controlled substance.

(6)(a) The provisions in Subsections 41-6a-505(1), (2), and (4) that require a sentencing court to order a convicted person to participate in a screening, an assessment, or an educational series, or obtain substance abuse treatment or do a combination of those things, apply to a conviction entered under this section.

(b) The court shall render the same order regarding screening, assessment, an educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under this section as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsection 41-6a-505(1), (2), or (4).

(7)(a) Except as provided in Subsection (7)(b), a report authorized by Section 53-3-104 may not contain any evidence of a conviction for impaired driving in this state if the reporting court notifies the Driver License Division that the defendant is participating in or has successfully completed the program of a driving under the influence court.

(b) The provisions of Subsection (7)(a) do not apply to a report concerning:

(i) a CDL license holder; or

(ii) a violation that occurred in a commercial motor vehicle.

(8) The provisions of this section are not available to a person who has a prior conviction as that term is defined in Subsection 41-6a-501(2).

#### **Credits**

Laws 2008, c. 226, § 2, eff. July 1, 2008; Laws 2009, c. 201, § 2, eff. May 12, 2009; Laws 2010, c. 109, § 2, eff. May 11, 2010; Laws 2015, c. 438, § 1, eff. May 12, 2015.

#### **HISTORICAL AND STATUTORY NOTES**

Laws 2009, c. 201, § 2, added subsec. (7).

Laws 2010, c. 109, § 2, designated former subsec. (5) as subsec. (5)(a) and inserted subsec. (5)(b).

Laws 2015, c. 438, § 1, in subsecs. (6)(a) and (6)(b), substituted "(4)" for "(3)"; and added subsec. (8).

#### **CROSS REFERENCES**

Reporting certain convictions to practitioners, see § 58-37f-703.

LAW REVIEW AND JOURNAL COMMENTARIES

DUI law in a flash. Philip Wormdahl, 25-APR Utah B.J. 62 (March/April 2012).

U.C.A. 1953 § 41-6a-502.5. UT ST § 41-6a-502.5

Current through 2015 First Special Session

(C) 2015 Thomson Reuters. No Claim to Orig. US Gov. Works.

---

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

## Utah Statutes Annotated - 2015

West's Utah Code Annotated  
Title 41. Motor Vehicles  
Chapter 6A. Traffic Code (Refs & Annos)  
Part 5. Driving Under the Influence and Reckless Driving

### U.C.A. 1953 § 41-6a-530

§ 41-6a-530. Alcohol restricted drivers--Prohibited from operating a vehicle while having any measurable or detectable amount of alcohol in the person's body--Penalties

#### Currentness

(1) An alcohol restricted driver who operates or is in actual physical control of a vehicle in this state with any measurable or detectable amount of alcohol in the person's body is guilty of a class B misdemeanor.

(2) A "measurable or detectable amount" of alcohol in the person's body may be established by:

(a) a chemical test;

(b) evidence other than a chemical test; or

(c) a combination of Subsections (2)(a) and (b).

(3) For any person convicted of a violation of this section, the court shall order the installation of an ignition interlock system as a condition of probation in accordance with Section 41-6a-518 or describe on the record or in a minute entry why the order would not be appropriate.

#### Credits

Laws 2005, c. 91, § 8, eff. July 1, 2005; Laws 2007, c. 261, § 4, eff. April 30, 2007.

#### HISTORICAL AND STATUTORY NOTES

Laws 2007, c. 261, added subsec. (3).

#### LIBRARY REFERENCES

Automobiles § 144.5, 332.

Sentencing and Punishment § 1979.

Westlaw Topic Nos. 48A, 350H.

C.J.S. Motor Vehicles §§ 424 to 429, 456, 459, 1574 to 1598.

RESEARCH REFERENCES

Encyclopedias

19 Am. Jur. Trials 123, Defense on Charges of Driving While Intoxicated.

NOTES OF DECISIONS

In general 1

**1 In general**

Officer's brief questioning of defendant who was stopped for a traffic violation, to determine if defendant was in compliance with his alcohol-related licensing restriction requiring that he have an ignition interlock device installed in his vehicle, did not exceed the permissible scope of the traffic stop, even though the questioning occurred in officer's second encounter with defendant, where defendant provided officer with an identification card rather than a driver license, and computer check of driving records revealed that defendant was an alcohol restricted driver which was not known to officer during initial encounter with defendant. *State v. Adamson*, 2013, 295 P.3d 717, 726 Utah Adv. Rep. 5, 2013 UT App 22. Automobiles § 349(18)

Arresting officer had reasonable belief that defendant's mouth was clear for entire observation period at police station and thus, results of breath test were reliable in prosecution for driving under influence of alcohol; defendant was in arresting officer's presence and remained handcuffed at station within five feet of officer throughout entire sixteen-minute period prior to administration of test, defendant had no opportunity to ingest or regurgitate anything during that time, and officer was simultaneously able to focus on setting up test machine and to observe defendant both visually and aurally during entire period without distractions. *State v. Relyea*, 2012, 288 P.3d 278, 702 Utah Adv. Rep. 47, 2012 UT App 55. Automobiles § 422.1

U.C.A. 1953 § 41-6a-530, UT ST § 41-6a-530

Current through 2015 First Special Session

(C) 2015 Thomson Reuters. No Claim to Orig. US Gov. Works.

---

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

## Utah Statutes Annotated - 2015

West's Utah Code Annotated  
Title 41. Motor Vehicles  
Chapter 6A. Traffic Code (Refs & Annos)  
Part 5. Driving Under the Influence and Reckless Driving

### U.C.A. 1953 § 41-6a-518.2

#### § 41-6a-518.2. Interlock restricted driver--Penalties for operation without ignition interlock system

##### Currentness

(1) As used in this section:

(a) "ignition interlock system" means a constant monitoring device or any similar device that:

(i) is in working order at the time of operation or actual physical control; and

(ii) is certified by the Commissioner of Public Safety in accordance with Subsection 41-6a-518(8); and

(b)(i) "interlock restricted driver" means a person who:

(A) has been ordered by a court or the Board of Pardons and Parole as a condition of probation or parole not to operate a motor vehicle without an ignition interlock system;

(B) within the last 18 months has been convicted of a driving under the influence violation under Section 41-6a-502 that was committed on or after July 1, 2009;

(C)(I) within the last three years has been convicted of an offense that occurred after May 1, 2006 which would be a conviction as defined under Section 41-6a-501; and

(II) the offense described under Subsection (1)(b)(i)(C)(I) is committed within 10 years from the date that one or more prior offenses was committed if the prior offense resulted in a conviction as defined in Subsection 41-6a-501(2);

(D) within the last three years has been convicted of a violation of this section;

(E) within the last three years has had the person's driving privilege revoked for refusal to submit to a chemical test under Section 41-6a-520, which refusal occurred after May 1, 2006:

(F) within the last three years has been convicted of a violation of Section 41-6a-502 and was under the age of 21 at the time the offense was committed;

(G) within the last six years has been convicted of a felony violation of Section 41-6a-502 for an offense that occurred after May 1, 2006; or

(H) within the last 10 years has been convicted of automobile homicide under Section 76-5-207 for an offense that occurred after May 1, 2006; and

(ii) "interlock restricted driver" does not include a person if:

(A) the person's conviction described in Subsection (1)(b)(i)(C)(I) is a conviction under Section 41-6a-517; and

(B) all of the person's prior convictions described in Subsection (1)(b)(i)(C)(II) are convictions under Section 41-6a-517.

(2) For purposes of this section, a plea of guilty or no contest to a violation of Section 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(3) An interlock restricted driver that operates or is in actual physical control of a vehicle in this state without an ignition interlock system is guilty of a class B misdemeanor.

(4)(a) It is an affirmative defense to a charge of a violation of Subsection (3) if:

(i) an interlock restricted driver:

(A) operated or was in actual physical control of a vehicle owned by the interlock restricted driver's employer;

(B) had given written notice to the employer of the interlock restricted driver's interlock restricted status prior to the operation or actual physical control under Subsection (4)(a)(i); and

(C) had on the interlock restricted driver's person or in the vehicle at the time of operation or physical control proof of having given notice to the interlock restricted driver's employer; and

(ii) the operation or actual physical control under Subsection (4)(a)(i)(A) was in the scope of the interlock restricted driver's employment.

(b) The affirmative defense under Subsection (4)(a) does not apply to:

(i) an employer-owned motor vehicle that is made available to an interlock restricted driver for personal use; or

(ii) a motor vehicle owned by a business entity that is all or partly owned or controlled by the interlock restricted driver.

#### Credits

Laws 2006, c. 341, § 3, eff. May 1, 2006; Laws 2008, c. 226, § 5, eff. July 1, 2008; Laws 2009, c. 390, § 5, eff. July 1, 2009.

#### HISTORICAL AND STATUTORY NOTES

Laws 2008, c. 226, § 5, in subsec. (1)(b)(i)(B)(II), substituted "offense described under Subsection (1)(b)(i)(B)(I) is committed within ten years from the date that one or more prior offenses was committed if the prior offense resulted in a conviction" for "conviction described under Subsection (1)(b)(i)(B)(I) is within ten years of one or more prior convictions"; inserted subsec. (1)(b)(i)(E); redesignated subsecs. (1)(b)(i)(E) and (1)(b)(i)(F) as subsecs. (1)(b)(i)(F) and (1)(b)(i)(G); and in subsec. (2), substituted "was held" for "is held" and inserted "prior to July 1, 2008".

Laws 2009, c. 390, § 5, inserted subsec. (1)(b)(i)(B); redesignated former subsecs. (1)(b)(i)(B) to (1)(b)(i)(G) as subsecs. (1)(b)(i)(C) to (1)(b)(i)(H); and in subsecs. (1)(b)(i)(C)(II), (1)(b)(ii)(A) and (1)(b)(ii)(B), substituted "(C)" for "(B)".

#### LIBRARY REFERENCES

Automobiles ~~600~~326, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles §§ 1529, 1545, 1572, 1628 to 1638. 1656. 1707, 1714, 1730 to 1731, 1743, 1748. 1751.

U.C.A. 1953 § 41-6a-518.2, UT ST § 41-6a-518.2

Current through 2015 First Special Session

(C) 2015 Thomson Reuters. No Claim to Orig. US Gov. Works.

---

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

Tab B



The Order of the Court is stated below:

Dated: August 22, 2016  
04:48:50 PM

At the direction of:  
/s/ ELIZABETH A HRUBY-  
MILLS  
District Court Judge

by  
/s/ KATIE JOHNSON  
District Court Clerk

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

---

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 151909925 FS
JULIUS OCHIENG OLOLA,	:	Judge: ELIZABETH A HRUBY-MILLS
Defendant.	:	Date: August 22, 2016

---

PRESENT

Clerk: katiej  
Prosecutor: DAVIS, ADRIANNA S  
Defendant  
Defendant's Attorney(s): SHAMIM MONSHIZADEH

DEFENDANT INFORMATION

Date of birth: December 10, 1973  
Sheriff Office#: 324107  
Tape Number: W35 Tape Count: 1055-1104

CHARGES

1. DRIVING UNDER THE INFLUENCE OF ALCOHOL/DRUGS - 3rd Degree Felony  
Plea: Not Guilty - Disposition: 05/04/2016 Guilty
2. DRIVE ON SUSP/REVOCAION/DEN ALC RELATED - Class B Misdemeanor  
Plea: Not Guilty - Disposition: 05/04/2016 Guilty
3. ALCOHOL RESTRICTED DRIVERS - Class B Misdemeanor  
Plea: Not Guilty - Disposition: 05/04/2016 Guilty
4. INTERLOCK RESTRICTED DRIVER OPERATING VEHICLE W/O IL SYSTEM - Class B Misdemeanor  
Plea: Not Guilty - Disposition: 05/04/2016 Guilty

SENTENCE PRISON

Based on the defendant's conviction of DRIVING UNDER THE INFLUENCE OF ALCOHOL/DRUGS a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

COMMITMENT is to begin immediately.

Case No: 151909925 Date: Aug 22, 2016

---

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

Court orders Defendant to serve 0-5 years prison on count one and the court grants credit for time served on counts two, three and four.

ALSO KNOWN AS (AKA) NOTE

JULIUS OLAIA

SENTENCE JAIL

Based on the defendant's conviction of DRIVE ON SUSP/REVOCAION/DEN ALC RELATED a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) The total time suspended for this charge is 180 day(s).

Based on the defendant's conviction of ALCOHOL RESTRICTED DRIVERS a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) The total time suspended for this charge is 180 day(s).

Based on the defendant's conviction of INTERLOCK RESTRICTED DRIVER OPERATING VEHICLE W/O IL SYSTEM a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) The total time suspended for this charge is 180 day(s).

Defendant present from ADC. Defendant addresses the Court. Court orders Defendant to serve 0-5 years prison on count one and the court grants credit for time served on counts two, three and four.

CUSTODY

The defendant is present in the custody of the Salt Lake County jail.

End Of Order - Signature at the Top of the First Page

Case No: 151909925 Date: Aug 22, 2016

---

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 151909925 by the method and on the date specified.

EMAIL: ADC adc-court1@slco.org

EMAIL: JAIL TRANSPORT adc-transportation@slco.org

EMAIL: PRISON RECORDS udc-records@utah.gov

08/22/2016

/s/ KATIE JOHNSON

Date: \_\_\_\_\_

Deputy Court Clerk

00275

Tab C

1 THE COURT: All right. So sir, if you'd step  
2 forward to be sworn in please.

3 COBY COGGLE

4 Having first been duly sworn, testified  
5 upon his oath as follows:

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Okay. So please have a seat up here.

8 DIRECT EXAMINATION

9 BY MS. DAVIS:

10 Q Could you introduce yourself and spell your name  
11 for the jury?

12 A Coby Coggle; C-O-G-G-L-E.

13 Q And how long have you been with the South Salt Lake  
14 Police Department?

15 A Five years.

16 Q And what did you do before that?

17 A Part of that I was a dispatcher for eight years.

18 Q Okay. And so could you discuss some of the  
19 training and experience you have as a law enforcement  
20 officer?

21 A I'm a [inaudible] law enforcement officer in the  
22 State of Utah. We have to attend the police academy, which I  
23 did at the Salt Lake Community College prior to my employment  
24 with South Salt Lake City. Once you're hired with an agency,  
25 you'll then complete a field training program that's, give or

1 take four to five months, where you will be assigned to  
2 various veteran officers in the field and you will work  
3 alongside them during that period.

4 Also as part of the field training process, you'll  
5 be assigned to specialty officers, such as in drugs, DUIs,  
6 traffic enforcement, and you'll be trained in those specific  
7 areas as well.

8 Q Now while you were at POST, did you specifically  
9 study DUI detection enforcement?

10 A Yes.

11 Q And could you describe some of the training you  
12 went through?

13 A So in the police academy is where you're initially  
14 introduced to the standard field sobriety tests or what you  
15 might see on TV, the walk and turn and those other - the  
16 other tests. You're also certified on the intoxilyzer 8000  
17 which is the breath alcohol instrument the State of Utah uses  
18 for breath tests and DUIs.

19 Following my training at POST, I attended A-Ride,  
20 which is an intermediate program for the alcohol interdiction  
21 where you're further trained on field sobriety tests. They  
22 add some other tests to the standard battery that you can  
23 use, and you're again re-certified on field sobriety tests.

24 I've also attended the drug recognition expert  
25 classroom portion. I'm currently in the certification phase,

1 and that's ultimately probably the top training you can get  
2 in the identification of impaired drivers and the enforcement  
3 of basically alcohol and drugs when it comes to driving.

4 Q Did you ever attend any of, I believe, a WET  
5 workshop?

6 A I have. I've done quite a few, five or six.

7 Q And could you describe to the jury how that works?

8 A Yeah. So what we do is we take a series of  
9 volunteers. We bring them down to the police academy and we  
10 get them drunk. We provide them with alcohol. They're given  
11 a measured amount to get them to specific BACs or blood  
12 alcohol contents. And then we, as students, will perform  
13 field sobriety tests on them.

14 Once we complete the test, we'll give a  
15 determination of, one, if we'd arrest them, and two, we would  
16 take an educated guess or estimate on what their BAC is. And  
17 then after it's all done, they will let us know, one, how  
18 much the volunteers consumed and what their actual BAC was  
19 going into it and after the tests were done.

20 Q And so you said it was measured, but does each  
21 person drink the same amount?

22 A Not necessarily. They measure it in the sense that  
23 they know exactly how much each individual consumes.  
24 Sometimes they'll throw individuals in who haven't consumed  
25 any alcohol at all. They might have natural ailments that

1 might trick you into thinking their intoxicated when they  
2 haven't consumed at all.

3 Q And so you go into this without knowing who has  
4 consumed, how much they've consumed? That's kept secret from  
5 you?

6 A Until the end.

7 Q Okay. And so do you have a particular assignment  
8 with the South Salt Lake Police Department?

9 A Yes, as of right now and for the past three years  
10 I've been assigned to the traffic division as a DUI - well,  
11 alcohol enforcement officer is the exact title. My primary  
12 duties are alcohol and DUI enforcement, which is strictly  
13 DUIs that are either alcohol or drug related and underage  
14 consumption, and some areas such as like bar enforcement.

15 Q And so how long have you been working that  
16 particular assignment?

17 A Three years.

18 Q Okay. And so you frequently run across people who,  
19 I presume, have been consuming alcohol; is that correct?

20 A Yes.

21 Q And do you arrest every single of them?

22 A No.

23 Q And so specifically were you on duty the early  
24 morning of September 6, 2015?

25 A Yes, ma'am.