

2018

**STATE OF UTAH, Plaintiff/Appellee, v. JULIUS OCHIENG OLOLA,  
Defendant/Appellant. : Brief of Appellee**

Utah Court of Appeals

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Case No. 20180616-CA

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STATE OF UTAH,  
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Brief of Appellee

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Appeal from convictions for driving under the influence of alcohol, a third-degree felony, and three related class B misdemeanors, in the Third Judicial District, Salt Lake County, the Honorable Elizabeth A. Hruby-Mills presiding

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Oral Argument Not Requested

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Brief of Appellee

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INTRODUCTION

Officer Cody Coggins responded to a citizen's call at 3:00 a.m. to find Defendant Julius Olola in the driver's seat of an SUV stopped and idling at a gate in the back of the county jail's parking lot. He was flipping the SUV's lights and blinkers on and off in an attempt to put it in gear. Olola's appearance, slow and slurred speech, sluggish and uncoordinated movements, and inability to walk or pivot unaided, combined with an overwhelming smell of alcohol, resulted in his arrest. An intoxilyzer test conducted within 40 minutes of his arrest put his blood alcohol content at more than three times the legal limit.

Olola challenges his subsequent DUI conviction, claiming that the evidence regarding the functionality of the intoxilyzer was insufficient in two ways. But he does not adequately brief his first claim because he provides no argument or legal analysis. His second claim is meritless because it faults the absence of testimony that was rendered unnecessary upon admission of other documentary evidence.

Olola also claims his conviction was based on a fake trial and manufactured evidence. This claim is also inadequately briefed, and counsel concedes that it lacks merit.

### STATEMENT OF THE ISSUES

**Issue 1.A.** Should this Court review Olola's insufficiency claim when he neither identifies the alleged insufficiency nor includes any legal analysis?

*Standard of Review.* No standard of review applies to this issue.

**Issue 1.B.** The prosecutor established the necessary foundation to allow admission of the testing technician's certificates in lieu of his testimony on the intoxilyzer's functioning. This invoked the statutory rebuttable presumption that the intoxilyzer was working properly when Olola was tested. Olola did not rebut the presumption.

Was the evidence sufficient to establish that the intoxilyzer was working on the day of Olola's breath test without the use of live testimony?

*Standard of Review.* No standard of review applies because this argument is inadequately briefed.

Should this Court review the claim, it will “review the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict.” *State v. Salgado*, 2018 UT App 139, ¶23, 427 P.3d 1228 (quoting *State v. Robertson*, 2018 UT App 91, ¶20, 427 P.3d 361 (quotation simplified), *cert. denied* 429 P.3d 462 (Utah)), *cert. denied* 432 P.3d 1233 (Utah). This Court “will reverse the jury’s verdict only when the evidence, so viewed, is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted.” *Id.* (quoting *State v. Bryson*, 2018 UT App 111, ¶9, 427 P.3d 530 (quotation simplified), *cert. denied* 429 P.3d 466 (Utah)).

**Issue 2.** Should this Court review Olola’s claims that his conviction rests on a “fake” jury trial and fabricated evidence when appellate counsel inadequately briefs them and concedes that they lack merit?

*Standard of Review.* No standard of review applies to this issue.

## STATEMENT OF THE CASE

### A. Summary of relevant facts.

Mark Barrett stopped for a red light as he drove home near 3:00 a.m. on a September morning. R504-05. When his light turned green, he was unable to move because a red SUV had stopped in the intersection to turn and was blocking his car. R505. Barrett waited 30 seconds, then honked to get the SUV to move. *Id.* The SUV completed a left turn, hitting a curb before pulling into a nearby parking lot. R506, 515. Concerned, Barrett shifted lanes and followed the SUV while calling the police. *Id.* The SUV stopped at the back of the parking lot in front of a closed gate while Barrett stayed about 150 feet behind it. R506-08. He could not see inside the SUV but could tell that no one got out of it. R507. As he watched, he saw its headlights flash and the blinkers go on and off. *Id.*

Officer Cody Coggins was on duty that night. R513. He had been an officer for several years, was educated and trained in DUI detection enforcement, and had been an alcohol enforcement officer in the traffic division of the South Salt Lake Police Department for over two years. R510-13. He arrived within minutes of Barrett's call to find the SUV idling in front of a gate located at the back of the parking lot for the Salt Lake County Sheriff's complex. R514-15. The officer stopped his car perpendicular with the

SUV with his headlights and his spotlight shining into the SUV. R4, 516-17. He saw two people in the SUV as he approached the passenger window, heard the SUV running, and noticed the driver was trying to get the SUV into gear. R515-17. He ran to the driver's side to find the window partially down and a strong smell of alcohol near the SUV. R516-17. Defendant Julius Olola was in the driver's seat and appeared to be "completely oblivious" to the officer standing outside his window with his flashlight directed into the SUV. R516-18. Olola was wholly focused on trying to put the SUV into gear but managed only to flash the headlights and turn the blinkers and the wipers on and off. Olola looked at the officer once with "a blank face" before returning to his efforts. R517-18.

After trying to speak with Olola but getting no response, Officer Coggins opened the driver's door, releasing a smell of alcohol that he could almost "taste[.]" *Id.* He immediately noticed Olola's "depressed facial features," including heavy half-opened eyelids and red, bloodshot, glazed eyes. R519. Olola produced his wallet, moving slowly and fumbling to find and remove his Utah I.D. card. R520-21. The officer asked Olola questions which he answered in a slow, low, slurred manner that the officer had trouble understanding. R519-20. When asked where he was going, Olola pointed to the gate and said he was on his way to West Valley City. R519. But West

Valley was in the opposite direction. *Id.* The gate blocked a service road officers used to deliver their prisoners to the jail. R515.

Two officers had to help Olola out of the truck, one on each side, in what Officer Coggins described as “pouring” him out: helping Olola to “slide out of the seat” onto his feet. R521. Olola could walk straight ahead but could not turn or pivot without losing his balance. R522-23. Officer Coggins did not ask Olola to do field sobriety testing for “many” reasons, including Olola’s inability to turn and pivot, inability to balance, and inability to communicate enough to understand the instructions or to complete the tasks. R521-23, 557. Instead, he cuffed Olola while he and another officer supported Olola’s weight, then they put him into Officer Coggins’ squad car. R522-24. The officer’s on-scene observations and his years of experience with DUIs led him to conclude that Olola was impaired by alcohol and not drugs, he was unable to safely operate a vehicle, and he was well beyond the legal limit. R522-23.

Olola’s passenger was so intoxicated that he could neither speak nor drive. R551. As a result, Officer Coggins impounded the SUV and conducted the mandatory vehicle inventory which revealed multiple open containers of alcohol. R524-25, 551.

The officer drove Olola the short distance to the police station and, suspecting that he was under the influence of alcohol, took him to the

intoxilyzer room to do a breath test. R525-26. The station used an Intoxilyzer 8000 on which Officer Coggins had been trained and certified. R511-13, 528. The machine was tested at least once every 45 days and had passed testing 24 days earlier and 9 days later. R540-41.

Officer Coggins had conducted nearly 500 tests on the same machine, had observed the machine's periodic testing, and was current in his operator's certification. R527-29, 541. He outlined the machine's functioning and explained that it conducted a series of self-diagnostics twice before an actual test was done, checking things like its circuitry and internal functioning as well as the ambient air to ensure the accuracy of the test results. R529-32, 534. If a problem arose, the machine would shut down and would not conduct a test. R529-31. Testing also required a fifteen-minute deprivation period in which the officer and a suspect sat together to ensure that the suspect did not consume or regurgitate anything that might contaminate the breath results. R531-33. The machine would monitor the length of the period, would not permit a test to run until the end of the period, and would print the information on the final test receipt. R531-34. Officer Coggins conducted Olola's test after a seventeen-minute period using a previously-sealed mouthpiece. R532-34. He received the results approximately 40 minutes after having found Olola behind the wheel of the

SUV. R568; St. Exh. 1. Olola had a blood alcohol level of 0.292 – more than 3.5 times the legal limit. R535.

**B. Summary of proceedings and disposition of the court.**

The State charged Olola with driving under the influence [DUI], a third-degree felony in violation of Utah Code Ann. §41-6a-502 (West 2013); and with driving on a suspended or revoked license, in violation of Utah Code Ann. §53-3-227(3)(a) (West 2013); being an alcohol restricted driver, in violation of Utah Code Ann. §41-6a-530 (West 2013); and operating or being in actual physical control of a vehicle without an ignition interlock system, in violation of Utah Code Ann. §41-6a-518.2(3) (West Supp. 2016), all class B misdemeanors. R1-4.

After a one-day trial at which Olola did not testify and the defense rested without calling any witnesses, a jury convicted him of DUI. R193-98. A bench trial immediately followed, after which the trial judge convicted him of the remaining counts. R622-23. Olola tried but failed to perfect an appeal. R284-98. The trial court ultimately granted a *Manning* motion, and Olola timely appealed his DUI conviction. R358-62.

## **SUMMARY OF ARGUMENT**

**I. Sufficiency of the evidence.** Olola makes two insufficiency claims involving the intoxilyzer. The first claim is devoid of any legal analysis,

leaving the State and this Court to intuit the targeted insufficiency. The law he cites and the sidebar statement he quotes do not identify his concern. The law permits use of technician affidavits in lieu of officer testimony to establish a rebuttable presumption that a particular intoxilyzer was functioning properly at a relevant time, but only upon an affirmative assertion of four findings. The quoted sidebar is the prosecutor's correct statement of those findings, with which defense counsel and the court agreed. Without some analysis from Olola, the State is unable to discern his complaint. Thus, the claim is inadequately briefed, and this Court should deny review.

His second claim quotes trial counsel's argument from his directed verdict motion in the district court. Counsel challenged the evidence of his intoxication because no one was called "to verify the machine was working on that day in question." But it is well-established that compliance with Utah Code Ann. §41-6a-515, which invokes a rebuttable presumption that an intoxilyzer was functioning properly, eliminates the need for an officer to testify about the machine's functioning. Additional testimony was not required because Olola did not rebut that presumption.

**II. Fake trial and fabricated evidence.** Olola's appellate counsel identifies two additional claims he attributes to Olola: that the trial "court faked the jury trial" and that the evidence upon which he was convicted was

“fabricated and manufactured.” Citing to “the spirit of *Anders*[,]” counsel states that he cannot cite to any evidence supporting either claim. This is not an *Anders* case. Further, this Court should not review Olola’s claims because they are inadequately briefed, and counsel concedes that they lack merit.

## ARGUMENT

### I.

**Olola has not shown that the DUI evidence was insufficient.**

Olola maintains that there was insufficient evidence on which to base his DUI conviction. In a directed verdict motion made at the close of the State’s case, defense counsel argued that because there was no live testimony to “verify the machine [intoxilyzer] was working on that day in question[,]” there was insufficient impairment evidence to permit the case to go to the jury. R572-73.

Olola repeats that argument on appeal but only after first implying that there was something wrong with the statutorily-required findings on which the admission of the technician affidavits rested. Appt.Br. 12-14. Olola does not adequately brief this claim. Rather, he merely concludes that the evidence was insufficient to support the verdict without giving any legal analysis or argument defining and addressing his perceived insufficiency. This Court should therefore refuse to review this claim.

The directed verdict argument that Olola then repeats on appeal is that the evidence was insufficient to submit the case to the jury because no one appeared at trial to verify that the intoxilyzer was working on the day Olola was tested. But such testimony was rendered unnecessary because the admission of the technician affidavits triggered a rebuttable presumption that the intoxilyzer was functioning properly. Because Olola did not rebut the presumption, there was sufficient evidence to support his conviction without the need for the added testimony.

**A. Olola's insufficiency claim concerning the findings for the statutory presumption is inadequately briefed.**

Olola first appears to challenge the findings that formed the basis for admission at trial of the documentation regarding the intoxilyzer's functioning. Aplt.Br. 13-14. But he has not adequately briefed the claim because he fails to articulate his challenge or to provide any reasoned analysis.

The argument section of an appellate brief must contain "the contentions and reasons of the appellant with respect to the issues presented, *including the grounds for reviewing any issue not preserved in the trial court*, with citations to the authorities, statutes, and parts of the record relied on." Utah R. App. P. 24(a)(9) (emphasis added). "Implicitly, rule 24(a)(9) requires not just bald citation to authority but development of that authority and reasoned

analysis based on that authority.” *State v. Thomas*, 961 P.2d 299, 305 (Utah 1998). An “issue is inadequately briefed when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court.” *State v. Heywood*, 2015 UT App 191, ¶35, 357 P.3d 565. When a party does nothing more than “cursorily” raise an issue, this Court should “decline[ ] to address” it on appeal. *State v. Arave*, 2009 UT App 278, ¶12 n.3, 220 P.3d 182, *rev’d on other grounds*, 2011 UT 84, ¶3, 268 P.3d 163; *see also State v. Green*, 2005 UT 9, ¶11, 108 P.3d 710 (“A brief which does not fully identify, analyze, and cite its legal arguments may be disregarded or stricken by the court.”); *accord State v. Garner*, 2002 UT App 234, ¶12, 52 P.3d 467 (“When a party fails to offer any meaningful analysis regarding a claim, we decline to reach the merits.”).

Olola’s first argument does nothing more than “cursorily” raise an issue. He claims that the argument involves “the sufficiency of the evidence regarding the intoxilyzer.” *Aplt.Br.* 13. Then he identifies the statutory rebuttable presumption afforded qualified documentary evidence and quotes the prosecutor’s recitation of the four statutorily-required findings to invoke the functionality presumption. *Id.* at 13-14. But he does not provide any analysis concerning any alleged insufficiency of the evidence.

Nor is any insufficiency apparent on the face of the argument. The quoted remarks from the prosecutor are taken from a sidebar requested by defense counsel. Counsel had no objection either to the admission of the supporting documents or to the trial court's entry of the requisite findings. R536-38. He only wanted to be sure that when the findings were stated before the jury, there was no mention "that the machine was working on that day" or that "there's the rebuttable presumption that this test was accurate." R536. So, the prosecutor then stated the findings he would ask the court to make, defense counsel agreed "with that language[,] and when the jury returned, the judge made the requisite four findings. R535-39. The sidebar recitation that Olola quotes accurately reflects the four required findings and mirrors the findings thereafter made in front of the jury—findings that defense counsel agreed to. Without any analysis by Olola beyond the generic conclusion that there was "insufficient evidence to support the verdict," the State and the Court are left to guess how the record evidence is in some way insufficient. Thus, this Court should reject the claim as inadequately briefed.

**B. The evidence sufficed to prove beyond a reasonable doubt that the intoxilyzer was working on the day of Olola's test.**

Olola's second insufficiency argument fails on its merits. "The standard of review for a sufficiency claim is highly deferential to a jury verdict." *State v. Workman*, 2005 UT 66, ¶29, 122 P.3d 639. In reviewing the

sufficiency of the evidence, the Court must view the evidence in the light most favorable to the jury verdict. *See id.* The Court will reverse the jury's decision only if it determines "that reasonable minds could not have reached the verdict." *See id.* (internal quotation marks omitted).

Olola claims that there was insufficient evidence because there was no one called "to verify the machine was working on that day in question." Apl't.Br. 14. Without that testimony, he argues, there was not enough evidence to establish that he was driving while impaired by alcohol. *Id.* The claim fails because the law clearly permits the State to establish this factor through documentary evidence, rather than live testimony, which occurred here.

Section 41-6a-515 permits the use of affidavits regarding the maintenance of a specific intoxilyzer as evidence of the machine's proper functioning. Utah Code Ann. §41-6a-515 (West 2013) (in Add. A). *See Murray City v. Hall*, 663 P.2d 1314, 1320 (Utah 1983) (addressing a prior version of Utah Code Ann. §41-6a-515). The statute "'defines th[e] conditions under which a prosecutor may invoke a rebuttable presumption that breath test evidence is accurate and reliable.'" *Salt Lake City v. George*, 2008 UT App 257, ¶18, 189 P.3d 1284 (quoting *State v. Garcia*, 965 P.2d 508, 515 (Utah App 1998)). Subsections (1) and (2) establish the standards and conditions which must be

met before the presumption takes effect. Utah Code Ann. §41-6a-515(1) and (2). Pursuant to those subsections, the trial court is required to make four affirmative findings as a prerequisite to invoking the presumption:

(1) the calibration and testing for accuracy of the breathalyzer and the ampoules were performed in accordance with the standards established by the Commissioner of Public Safety, (2) the affidavits were prepared in the regular course of the public officer's duties, (3) that they were prepared contemporaneously with the act, condition or event, and (4) the "source of information from which made and the method and circumstance of their preparation were such as to indicate their trustworthiness."

*Bountiful City v. Maestas*, 788 P.2d 1062, 1065 (Utah App. 1990) (quoting *Hall*, 663 P.2d at 1320). When all the conditions are met and the four requirements are stated on the record, then a presumption arises that the breath test evidence is accurate and reliable, and the prosecutor need not produce testimony from the officer responsible for testing the accuracy of the intoxilyzer equipment. *State v. Turner*, 2012 UT App 189, ¶17, 283 P.3d 527; *George*, 2008 UT App 257, ¶17; *Maestas*, 788 P.2d at 1065.

The prosecutor here offered technician affidavits establishing that the intoxilyzer was functioning properly 24 days before Olola's test and 9 days afterward. R540-41. The trial court determined that all the conditions had been met, made the necessary affirmative findings on the record before the jury, and admitted the documents. R535-39. Thus, the rebuttable

presumption arose, and Olola offered no evidence to rebut it. Rather, defense counsel agreed with the findings. *Id.* Therefore, testimony from the technician was not necessary for Olola's conviction. *See Turner*, 2012 UT App 189, ¶17 (recognizing the threshold showing of intoxilyzer reliability may be met by either the statutory presumption or the testing officer's testimony).

Moreover, Cody Coggins, a certified operator of the machine, explained how problems with the intoxilyzer's functioning would automatically shut the machine off and prevent him from performing a test. R529-35. Such problems did not occur during Olola's testing, and the officer confirmed, based on his extensive experience with the machine, that it operated as it was supposed to. *Id.* Accordingly, there was ample evidence on which the jury could decide that the intoxilyzer was working properly when Olola was tested without the need to call the testing technician as a witness. Olola's claim is therefore meritless.<sup>1</sup>

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<sup>1</sup> In any event, there was ample evidence absent the intoxilyzer results to establish the alternative that Olola was under the influence of alcohol "to a degree which rendered him incapable of safely operating a vehicle." R223-24.

## II.

**This Court should not reach the issues in Point II of Olola's brief, either because appellate counsel inadequately briefs them or because he concedes that they are meritless.**

In Point II, Olola's counsel lists two additional issues that Olola wanted raised: (1) the trial court "faked" the jury trial; and (2) the evidence on which he was convicted was "fabricated and manufactured." Aplt.Br. 1, 15. Appellate counsel merely states that he can cite to nothing that supports either claim. *Id.* at 15. This Court should not address these issues because they are inadequately briefed and appellate counsel concedes they have no merit.

Counsel maintains that he submitted his brief "in the spirit" of *Anders v. California*, 386 U.S. 738 (1967), and *State v. Wells*, 13 P.3d 1056 (Utah 2000). Aplt.Br. 1, 15. But this is not an *Anders* case, and the brief does not comply with the requirements of *Anders* and *State v. Clayton*, 639 P.2d 168 (Utah 1981). Most notably, Olola's counsel did not undertake the task of briefing the identified issues and objectively demonstrating that they are frivolous, has not indicated that he furnished a copy of the brief to Olola in time to permit him to present the issues himself, and has not sought to withdraw. *See State v. Prater*, 2017 UT 13, ¶43, n.7, 392 P.3d 398; *Wells*, 13 P.3d at 1058-59. Accordingly, this is not an *Anders* case. *See State v. Balfour*, 2018 UT App 79, ¶20, n.5, 418 P.3d 79 (refusing to consider unbrieffed issues purportedly raised

under *Anders* when appellate counsel does not follow the procedures *Anders* requires), *cert. denied* 429 P.3d 465 (Utah).

Instead, this Court should not address these issues because their one-sentence presentation is inadequate under this Court's briefing rule. *See id.*; *see also Green*, 2005 UT 9, ¶11 ("A brief which does not fully identify, analyze, and cite its legal arguments may be disregarded or stricken by the court."); *Arave*, 2009 UT App 278, ¶12, n.3 (merely "cursorily" raising an issue is inadequate).

Review may also be denied because appellate counsel concedes that the claims lack merit. *See, e.g., State v. Cecil*, 2012 UT App 280, ¶8, n.2, 288 P.3d 22 (declining to address issues defense counsel conceded lacked merit). The record supports that concession. The claims appear to have arisen from Olola's misunderstanding of the proceedings below. *See* R284-89, 299-301 (in Add. B). Before perfecting this appeal, Olola attempted to obtain review of this and another criminal case, arguing what he viewed as "serious unlawful" "irregularities[.]" R284. These included his belief that when his DUI trial supposedly occurred, he was instead subjected to a preliminary hearing, causing his subsequent sentencing for DUI to occur before he was actually tried. R283-86. Having never been tried, Olola claims he was imprisoned "without a 'lawful conviction.'" R300.

But the record conclusively refutes his misunderstanding, showing a preliminary hearing held December 10, 2015, a jury trial held May 4, 2016, and sentencing held August 22, 2016. *See* R34-35 (minutes of preliminary hearing), 193-89 (minutes of jury trial), 273-75 (minutes of sentencing) (in Add. C). Thus, the record supports counsel's concession, and review is not warranted. *See Cecil*, 2012 UT App 280, ¶8, n.2.

### CONCLUSION

For the foregoing reasons, this Court should affirm Olola's DUI conviction.

Respectfully submitted on April 24, 2019.

SEAN D. REYES  
Utah Attorney General

/s/ Kris C. Leonard  
KRIS C. LEONARD  
Assistant Solicitor General  
Counsel for Appellee

## CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(g), Utah Rules of Appellate Procedure, this brief contains 19 pages, excluding the table of contents, table of authorities, addenda, and certificate of counsel. I also certify that in compliance with rule 21(g), Utah Rules of Appellate Procedure, this brief, including the addenda:

☒ does not contain private, controlled, protected, safeguarded, sealed, juvenile court legal, juvenile court social, or any other information to which the right of public access is restricted by statute, rule, order, or case law (non-public information).

☐ contains non-public information and is marked accordingly, and that a public copy of the brief has been filed with all non-public information removed.

/s/ Kris C. Leonard

KRIS C. LEONARD

Assistant Solicitor General

## CERTIFICATE OF SERVICE

I certify that on April 24, 2019, the Brief of Appellee was served upon appellant's counsel of record by ☐ mail ☒ email ☐ hand-delivery at:

Herschel Bullen

369 East 900 South, No. 302  
Salt Lake City, Utah 84111  
herschellaw@gmail.com

I further certify that an electronic copy of the brief in searchable portable document format (pdf):

☒ was filed with the Court and served on appellant by email, and the appropriate number of hard copies have been or will be mailed or hand-delivered upon the Court and counsel within 7 days.

☐ was filed with the Court on a CD or by email and served on appellant.

☐ will be filed with the Court on a CD or by email and served on appellant within 14 days.

/s/ Melanie Kendrick

# Addenda

Addenda

# Addendum A

Addendum A

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

(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.

# Addendum B

Addendum B

OLOLA, JULIUS  
GUNNISON PRISON  
P.O. BOX 550,  
GUNNISON, UTAH 84634

(1)

THIRD DISTRICT COURT  
450 S STATE STREET  
SALT LAKE CITY, UT.  
UTAH- 84111.  
02/02/2017

P.C.  
KINDLY SEND  
A COPY OF THIS  
LETTER BACK  
THANK YOU.

ATTENTION: HON. JUDGE; HRUBY-MILLS

"POST CONVICTION RELIEF"

TO HON. JUDGE; HRUBY-MILLS, I (MR. OLOLA) DO HEREBY CAUSED TO BRING INTO YOUR ATTENTION ON ISSUES REGARDING MY CASE OF D.U.I. CASE (151909925), WHEREBY I WAS EVENTUALLY SENT TO PRISON ON (0-5 YRS) UNDER YOUR ORDER AS THE PRESIDING JUDGE ON THE "PRELIMINARY TRIAL HEARING" ON (05/04/16) AND AT THE SAME TIME PRESIDED THE "JURY TRIAL HEARING" SIMULTANEOUSLY ON BOTH PROCEEDINGS ON THE SAME DAY.

BASED ON THE CONFLICTING DOCUMENTATION OF EVIDENCE FROM THE ADULT PROBATION AND PAROLE (AP&P) AND IN CONTRAST WITH THE DOCUMENTS FROM THE COURT WHICH WAS SENT TO ME (DEFENDANT) IN PRISON BY THE COURT CLERK, HAS EXPLICITLY AND CLEARLY EXPOSED SOME POTENTIAL SERIOUS UNLAWFUL AND IRREGULARITIES ON THIS CASE WHICH CONSTITUTES; PRESUDICIAL, PROSECUTORIAL PLAIN ERRORS AND VIOLATION OF DUE PROCESS OF THE LAW ON THIS D.U.I. CASE.

TO MENTION BUT A FEW -:

JURY TRIAL CONVICTION: ON 05/04/16, THE AP&P DOCUMENTS SHOWS THAT THE COURT HELD "JURY TRIAL" AND THE DEFENDANT (MR. OLOLA) WAS FOUND "GUILTY" ON THE D.U.I. CASE (3<sup>RD</sup> DEG. FELONY) ON (0-5 YRS) IN PRISON. IN THE CONTRARY, COURT PAPERS SHOWS THAT THE COURT HELD PRELIMINARY HEARING AND THE CASE WAS TO PROCEED TO JURY TRIAL HEARING LATER ON.

① "HOW DID THIS CONVICTION TAKES PLACE...?"

② "DID THE GUILTY PLEA OR STATEMENT SIGNED 00284"

NOTE: PROTECTIVE  
ORDER  
#(14190669)

(2)

ON 08/22/16, IN OTHER WORDS, THE COURT (JUDGE-MILLS) POST SENTENCED THE DEFENDANT (MR. OLOLA) SPECIFICALLY, ON THE "VIOLATION OF PROTECTIVE ORDER PROBATION" AND ORDERED THE DEFENDANT TO SERVE "365 DAYS" IN JAIL. BUT IRONICALLY AND SURPRISINGLY, THE DEFENDANT WAS SENT TO PRISON ON (0-5 YRS) ON THE D.U.I. CASE BEFORE CONFIRMING/PROCESSING THE JURY TRIAL HEARING WHICH WAS PENDING ON THIS CRIMINAL CASE.

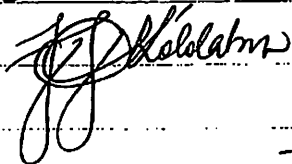
THEREFORE, BASED ON THE <sup>CONTRADICTING</sup> DOCUMENTS AND UNFOLDING OF INCORRECT AND INACCURATE OF ISSUES SURROUNDING THIS CASE, I WOULD KINDLY AND HUMBLY, REQUEST YOU (HON. JUDGE; HRUBY-MILLS) TO "APPOINT" A LEGAL DEFENSE ATTORNEY (L.D.A) TO LOOK INTO THIS CASE SCENARIO BY ALLOWING THE LEGAL FILING OF THE "MOTION OF POST-CONVICTION RELIEF" TO ADDRESS AS WELL AS OTHER BURNING AND PRESSING ISSUE LAWFULLY.

FINALLY, AM HUMBLY AND EAGERLY, LOOKING FORWARD TO RECEIVING YOUR ACCEPTANCE OF GRANT TO THE POST-CONVICTION RELIEF MOTION AND PROCEED ON WITH THE LEGAL PROCESS TO RESOLVE THIS MATTER AMICABLY.

THANK YOU IN ANTICIPATION FOR YOUR SUPPORT TO MAKE THIS PROCESS SUCCESSFUL.

YOURS FAITHFULLY,

OLOLA, JULIUS



02/02/2017.

00286

① of 4

ATTORNEY, PRO SE

17 SEP -6 AM 10:00

08/28/2017

## IN THE STATE OF UTAH COURT OF APPEALS, UTAH

PLAINTIFF

ATTORNEY GENERAL OF UTAH

NOTICE OF APPEAL AND  
THE DESIGNATION OF RECORDS.

DEFENDANT

OLOLA, JULIUS

CASE NO: 151909925

JUDGE:

I, OLOLA, THE DEFENDANT HEREBY PROVIDES THE FOLLOWING NOTICE OF APPEAL AND DESIGNATION OF RECORDS PURSUANT TO UTAH APPELLATE COURT RULES AND PROCEDURE, TO THE DISTRICT COURT OF UTAH AND ATTORNEY GENERAL OFFICE REGARDING TO THE ABOVE MENTIONED CASE AT THIRD DISTRICT COURT OF UTAH.

(a) ALLEGED PLAIN ERROR OF UNLAWFUL OR INDUCED CONVICTION;  
INEFFECTIVE ASSISTANCE OF COUNSEL AND GROUNDS OF APPEAL.

(i) THE TRIAL COURT UNLAWFULLY OBTAINED A CONVICTION THAT WAS INDUCED AND BY USE OF EVIDENCE OBTAINED PURSUANT TO AN UNLAWFUL ARREST, AS THE LAW ENFORCEMENT OFFICER HAD NEGLIGENTLY FAILED TO PERFORM FIELD SOBRIETY TEST TO ESTABLISH A SUBSTANTIAL PROBABLE CAUSE AND INTENTIONALLY IGNORED TO ADMINISTER MIRANDA RIGHTS UPON ARREST.

(ii) THE TRIAL COURT ERRED BY SECURING A CONVICTION WITHOUT KNOWING THE RAMIFICATIONS OF IMMIGRATION CONSEQUENCES. THE PUBLIC DEFENDER DID NOT AT ALL ADVISE THE DEFENDANT OF ANY COLLATERAL IMMIGRATION IMPLICATIONS FOR HIS CRIME ON THE CASE MENTIONED ABOVE. 00299

② of 4

(151909925)

(iii) THERE IS A GROUND WHICH IS MERITORIOUS ON THE BASIS THAT THE PUBLIC DEFENDER HAD MALICIOUSLY FAILED TO PERFORM HIS LEGAL AND CONSTITUTIONAL DUTIES OR RIGHTS WHICH FELL BELOW AN OBJECTIVE STANDARD OF THE REASONABLENESS PERFORMANCE INTO THE EYES OF A REASONABLE OBJECTIVE PERSON; BECAUSE A REASONABLE PERSON OR A COMPETENT PUBLIC DEFENDER WOULD HAVE ANTICIPATED, PUBLIC DEFENDER, ALSO HAD FAILED TO STRATEGIZE, RESEARCH AND INVESTIGATE, TO APPLY A STRONG DEFENCE AND MITIGATING OF RELEVANT EVIDENCE TO COUNTER ATTACK THE PROSECUTION.

(b) PLAIN ERROR OF JUDICIAL AND PROSECUTORIAL MALFEASANCE AND MISFEASANCE OF THE OFFICIALS.

(i) THE TRIAL JUDGE HAD WRONGFULLY ADMITTED AN INAPPROPRIATE RECOMMENDATION FROM THE "PROSECUTOR" THAT THIS PARTICULAR CASE HAD ENTERED INTO A CONVICTION OR VERDICT WAS REACHED BY THE JURORS AT THE TRIAL. HOWEVER, IN THE CONTRARY, THE TRIAL COURT NEVER ALLOWED THIS PARTICULAR CASE TO GO TO JURY TRIAL, HENCE THE COURT UNLAWFULLY INDUCED A CONVICTION WITHOUT JURY TRIAL OR ACTIONS OF GRAND OR PETIT OF JURY, WHICH IS "UNCONSTITUTIONAL".

(ii) THE TRIAL COURT HAD ERRED TO IMPOSE A CONVICTION AND PENALTY OF SENTENCE ON THIS PARTICULAR CASE AND ORDERED THE DEFENDANT TO SERVE IMPRISONMENT WITHOUT A "LAWFUL CONVICTION". THIS VIOLATES DEFENDANT'S SUBSTANTIAL-; STATUTORY RIGHTS, LEGAL PROCEEDING AND THE CONSTITUTIONAL RIGHTS (5<sup>TH</sup> AND 6<sup>TH</sup> AMENDMENTS) FEDERALLY PROTECTED.

(c) DESIGNATION OF RECORDS BY COURT CLERK.

PURSUANT TO THE UTAH APPELLATE RULES, THE CLERK OF THE THIRD DISTRICT COURT OF UTAH WILL PREPARE FOR THE APPELLATE COURT A RECORD OF PLAIN ERROR "de novo" WHICH SHALL INCLUDE:-

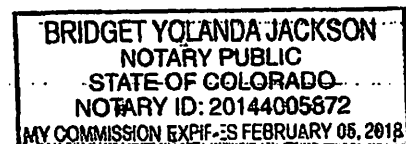
- (a) ALL EXHIBITS RELATING TO THE DEFENDANT'S FILE.
- (b) THE REPORTER'S COMPLETE ORIGINAL TRANSCRIPTS AND "DOCKET" INCLUDING; VERDICT FORM, JURY QUESTIONAIRES, JURY INSTRUCTIONS, LEGAL ARGUMENTS AND OTHER RULINGS OR RECORDS THAT WERE RECORDED IN THE OPEN COURT AND IN CAMERA.
- (c) OFFICIAL RECORDS OF "AUDIOTAPE" OR CD'S THAT WERE AUTOMATEDLY RECORDED ON THE LEGAL PROCEEDINGS AND DURING THE ALLEGED TRIAL.
- (d) THE RULINGS ON VERDICT OR CONVICTION AS ANNOUNCED BY THE TRIAL JUDGE HELD ON, ~~SEPTEMBER 25, 2015~~ AT THE UTAH THIRD DISTRICT COURT. (AUGUST 22, 2016)

PLEASE, PREPARE AND CERTIFY WITH ALL CONVENIENT SPEED TO THE COURT OF APPEALS OF UTAH.

RESPECTFULLY SUBMITTED,

OLOLA, JULIUS.

*[Signature]*  
08/28/2017



*[Signature]*  
8-28-17

# Addendum C

Addendum C

The Order of the Court is stated below:

Dated: December 10, 2015  
02:38:36 PM

At the direction of  
ROYAL I HANSEN  
District Court Judge

by  
/s/ REBECCA RAATAU  
District Court Clerk

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

---

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	PRELIMINARY HEARING
	:	
vs.	:	Case No: 151909925 FS
JULIUS OCHIENG OLOLA,	:	Judge: ROYAL I HANSEN
Defendant.	:	Date: December 10, 2015

---

PRESENT

Clerk: rebeccaf  
Prosecutor: PEHRSON, RICHARD J  
Defendant  
Defendant's Attorney(s): SNOW, JOSHUA C

DEFENDANT INFORMATION

Date of birth: December 10, 1973  
Sheriff Office#: 324107  
Audio  
Tape Number: W49 Tape Count: 2.05-2.34

CHARGES

1. DRIVING UNDER THE INFLUENCE OF ALCOHOL/DRUGS - 3rd Degree Felony
2. DRIVE ON SUSP/REVOCATION/DEN ALC RELATED - Class B Misdemeanor
3. ALCOHOL RESTRICTED DRIVERS - Class B Misdemeanor
4. INTERLOCK RESTRICTED DRIVER OPERATING VEHICLE W/O IL SYSTEM - Class B Misdemeanor

HEARING

2:05-Officer Coggle sworn in and testifies

State's exhibits 1-7 received by the Court and returned to counsel

00034

Case No: 151909925 Date: Dec 10, 2015

---

2:23-Cross examine

Defense exhibit 1 entered and received by the Court and returned to Counsel.

2:34-Witness excused

The Court finds the State has met the burden of proof and binds this matter over.  
CASE BOUNDOVER

This case is bound over. An Arraignment hearing has been set on 12/21/2015 at 9:00 AM  
in courtroom W35 before Judge ELIZABETH A HRUBY-MILLS.

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

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

---

STATE OF UTAH, : MINUTES  
Plaintiff, : 1-DAY JURY TRIAL  
 :  
vs. : Case No: 151909925 FS  
JULIUS OCHIENG OLOLA, : Judge: ELIZABETH A HRUBY-MILLS  
Defendant. : Date: May 4, 2016

---

PRESENT

Clerk: anthonyh  
Prosecutor: DAVIS, ADRIANNA S  
Defendant Present  
Defendant's Attorney(s): JOSHUA C SNOW

DEFENDANT INFORMATION

Date of birth: December 10, 1973  
Sheriff Office#: 324107  
Audio  
Tape Number: W35 Tape Count: 850-333

CHARGES

1. DRIVING UNDER THE INFLUENCE OF ALCOHOL/DRUGS - 3rd Degree Felony  
Plea: Not Guilty - Disposition: 05/04/2016 Guilty
2. DRIVE ON SUSP/REVOCATION/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

TRIAL

The matter comes before the Court for a 1-day jury trial. All parties are present as stated on the record. All parties discuss the stipulated jury instructions.

8:55 AM

Mr. Snow, for defense, addresses the Court regarding proceeding just on the DUI charge only before the jury.

9:10 AM

Jury Pool enters the courtroom.

9:13 AM

Voir Dire oath is administered to the Jury Pool and voir dire examination begins.

10:08 AM

Counsel approach for a bench conference.

10:10 AM

Jury Pool is excused from the courtroom to begin individual voir dire.

10:13 AM

Individual voir dire for Juror 7.

10:17 AM

Individual voir dire for Juror 5. Mr. Snow, for defense, moves to strike juror 5 for cause and gives basis. State objects and gives basis. Court will not strike juror 5.

10:20 AM

Individual voir dire for juror 8.

10:23 AM

State moves to strike for cause and gives basis. Mr. Snow submits. Court strikes juror 8 for cause.

10:24 AM

Individual voir dire for juror 9.

10:27 AM

Mr. Snow moves to strike for cause and gives basis. State objects and gives basis. Court strikes juror 9 for cause.

10:30 AM

Individual voir dire for juror 10.

10:33 AM

Mr. Snow moves to strike for cause and gives basis. State objects and gives basis. Court denies the motion to strike for cause.

10:34 AM

Individual voir dire for juror 11.

10:39 AM

Mr. Snow moves to strike for cause and gives basis. State stipulates. Court strikes juror 11 for cause. Mr. Snow moves to strike for cause and State stipulates. Court strikes juror 17 for cause.

10:41 AM

Individual voir dire for juror 16.

10:44 AM

Mr. Snow moves to strike for cause and gives basis. State stipulates. Court strikes juror 16 for cause.

10:45 AM

Individual voir dire for juror 18.

10:49 AM

Individual voir dire for juror 20.

10:53 AM

Jury Pool enters the courtroom. Peremptory challenges begin.

11:03 AM

Jury is selected. Remaining jurors are excused with a thanks from the court.

11:05 AM

Oath to impanel the jurors is administered.

11:06 AM

Jury is excused for a brief recess.

11:07 AM

Court is in recess.

11:19 AM

Court is back on the record outside the presence of the jury.

11:20 AM

Jury enters the courtroom. Preliminary jury instructions are administered to the jury.

11:28 AM

State begins opening statement.

11:33 AM

Mr. Rickey, for defense, gives opening statement.

11:36 AM

State calls and examines Witness 1, Marcus Barrett, who is placed under oath and testifies.

11:40 AM

Cross-examination by Mr. Rickey.

11:41 AM

Witness 1 is excused from the stand and further proceedings.

11:42 AM

State calls and examines Witness 2, Salt Lake Police Officer Coby Coggle, who is placed under oath and testifies.

11:49 AM

Witness 2 identifies the defendant for the record.

---

12:10 PM

State moves to enter State s Exhibits 2 and 3 into evidence, no objection by Defense, Court receives said exhibits.

12:11 PM

Counsel approach for a bench conference.

12:13 PM

State moves the Court to make findings as the the affidavits for exhibits 1 and 4, Defense has no objection, Court makes affirmative findings for the record.

12:14 PM

State moves to enter State s Exhibits 1 and 4 into evidence, no objection by Defense, Court receives said exhibits.

12:18 PM

Cross Examination by Mr. Snow.

12:40 PM

Redirect by State.

12:42 PM

State rests.

12:43 PM

Jury is excused for lunch recess. Court addresses all parties regarding the jury instructions.

12:44 PM

Court is in recess to reconvene at 1:40 PM

1:42 PM

Back on the record. Counsel and the Court discuss jury instructions.

1:45 PM

Defense moves for directed verdict.

1:46 PM

State's response.

1:47 PM

Court denies the motion and gives basis.

1:48 PM

Defendant waives the right to testify.

1:56 PM

Jury enters the courtroom.

1:57 PM

Court gives final jury instructions.

2:13 PM

State's closing argument.

Case No: 151909925 Date: May 04, 2016

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00196

2:23 PM

Defense's closing argument.

2:33 PM

Counsel approach the bench.

2:36 PM

State's rebuttal.

2:40 PM

Bailiff is sworn in.

2:42 PM

Jury is excused for deliberations.

2:42 PM

Court is in recess.

3:21 PM

Back on the record.

3:23 PM

Jury enters the courtroom.

3:24 PM

Verdict is read. Jury finds the Defendant guilty of Count 1. Jury is polled.

3:24 PM

Counsel approaches.

3:25 PM

Jury is excused.

3:27 PM

State offers Exhibit's 5-8. There are no objections. Court receives Exhibit's 5-8.

3:27 PM

State calls Officer Coggle.

3:30 PM

Witness is excused. Counsel indicates that the Defendant will follow his advice and he will not testify.

3:31 PM

Court finds the Defendant guilty on Counts 2-4.

3:33 PM

Court is in recess.

SENTENCING is scheduled.

Date: 06/27/2016

Time: 09:00 a.m.

Location: THIRD FLOOR - W35

Case No: 151909925 Date: May 04, 2016

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00197

THIRD DISTRICT COURT  
450 SOUTH STATE STREET  
SALT LAKE CITY, UT 84114-1860

Before Judge: ELIZABETH A HRUBY-MILLS

Individuals needing special accommodations (including auxiliary communicative aids and services) should call Third District Court-Salt Lake at (801)238-7500 three days prior to the hearing. For TTY service call Utah Relay at 800-346-4128. The general information phone number is (801)238-7300.

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/REVOCATION/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.

00273

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/REVOCATION/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