

2006

Walter Noel Stewart v. Bountiful City : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

BOUNTIFUL CITY

:

Plaintiff-Appellee.

:

vs.

:

WALTER NOEL STEWART.

:

Case No. 20060047

Defendant-Appellant.

:

BRIEF OF APPELLEE

Appeal from the Judgment of the
Second District Court of
Davis County, State of Utah
The Honorable Thomas L. Kay
District Court Judge

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IN THE UTAH COURT OF APPEALS

BOUNTIFUL CITY, :
Plaintiff-Appellee, : **BRIEF OF APPELLEE**
vs. :
WALTER NOEL STEWART, :
Defendant-Appellant. : Case No. 20060047

Statement of Jurisdiction

This is an appeal from the final judgment and imposition of sentence in a bench trial heard in the Second District Court of Davis County, Utah. Jurisdiction is based upon Utah Code Annotated (Utah Code Ann.) § 78-2a-3(2)(e). There have been no prior appeals.

Statement of the Issues

1. Did Defendant adequately brief the issues that he has raised on appeal? The requirements for an appellant's brief are set forth in Rule 24 of the Utah Rules of Appellate Procedure (Utah R.App.P.). When an appellant's brief is inadequate an appellate court should affirm the trial court's rulings. *State v. Lucero*, 2002 UT App. 135; 47 P.3d 107.
2. Did Defendant marshal evidence in support of Judge Kay's findings? Rule 52(a) of the Utah Rules of Civil Procedure (Utah R.Civ.P.)

provides that findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. Rule 24(a)(9), Utah R.App.P., provides that a party challenging a fact finding must first marshal all record evidence that supports the challenged finding. The consequence of failing to marshal evidence requires that the appellate court accept the trial court's findings as accurate and reviews the trial court's conclusions based upon those facts. State v. Larsen, 2000 UT App. 106; 999 P.2d 1252.

3. Was there substantial evidence presented at trial, and in the appellate record, to support Judge Kay's conviction Defendant? When reviewing a bench trial for sufficiency of evidence, an appellate court must sustain the trial court's judgment unless it is "against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made." State v. Reed, 839 P.2d 878, 879 (Utah Ct. App. 1992). "For a reviewing court to find clear error, it must decide that the factual findings made by the trial court are not adequately supported by the record, resolving all disputes in the evidence in a light most favorable to the trial court's determination." Joufflas v. Fox Television Stations, 927 P.2d 170, 174 (Utah 1996) (quoting State v. Pena, 869 P.2d 932, 935-36 (Utah 1994)). However, before an appellate court can uphold a conviction it must be supported by a quantum of evidence concerning each element of the crime as charged from which the fact finder may base its conclusion of guilt beyond a reasonable doubt. In addition, a guilty verdict is not legally valid if it is based solely on inferences that give

rise to only remote or speculative possibilities of guilt. *State v. Layman*, 953 P.2d 782, 786 (Utah Ct. App. 1998); *Spanish Fork v. Bryan*, 1999 UT App 61; 975 P.2d 501; and, *State v. Larsen*, 2000 UT App 106; 999 P.2d 1252.

Determinative Provisions and Statutes

The following provisions are determinative or of central importance to this appeal: Rule 24, Utah Rules of Appellate Procedure (Utah R. App. P.) which is included in Appendix F of this brief.

Statement of the Case

(a) The Nature of the Case.

This is an appeal from the final judgment and imposition of sentence in a bench trial conducted in the Second District Court of Davis County, Utah.

(b) The Course of Proceedings.

On 8 July 2005 Defendant was charged with two (2) counts of violating the Bountiful Traffic Code. The charges were Speeding, 39 miles per hour in a 30 miles per hour zone, a class C misdemeanor, in violation of Bountiful Traffic Code §41-6a-601; and Failure to Stop for an Emergency Vehicle, a class C misdemeanor, in violation of Bountiful Traffic Code §41-6a-904(1)(a). (R-1).

On 7 October 2005 the prosecuting attorney filed an Amended Information charging Defendant with Speeding, 45 miles per hour in a 30 miles per hour zone, an Infraction, in violation of Bountiful Traffic Code §41-6a-601, and Failure to Yield to an Emergency Vehicle, an Infraction, in violation of Bountiful Traffic Code §41-6a-904(1)(a). (R-12-13, 22 at

page 1, lines 11-15; page 2, lines 1-14).

(c) Disposition in the Court Below.

On 10 November 2005 a bench trial was conducted. The trial court heard from three (3) witnesses: Bountiful Police Officer Kerry Bell (“Officer Bell”); Defendant’s son, Collin Stewart; and, Defendant. At the conclusion of the trial, Judge Kay found that the City had proved beyond a reasonable doubt that Defendant was guilty as charged; and, imposed sentence, i.e., a fine of one hundred fifty-two dollars (\$152.00). (R-14-17).

On 7 December 2005 Defendant appealed Judge Kay’s ruling. (R-18).

(d) Statement of the Facts.

The Appellant’s Statement of Facts is inadequate, substantially irrelevant and suffused with argument thereby requiring that the following Statement of Facts be submitted by Plaintiff. Additionally, it is Plaintiff’s position that the actual facts of this case should never be reached because the Appellant has failed to adequately brief the case or marshal evidence. Nevertheless, in the event that the Court does reach the facts, this Statement is provided.

1. On 8 July 2005 Officer Kerry Bell (“Officer Bell”), a ten (10) year veteran (R-22 at page 4, lines 15-20; page 9, lines 23-25; page 22, lines 16-17; page 23, lines 24-25; page 24, line 4-5; page 25, line 1), was working as a Bountiful City Police Officer. (R-22 at page 4, lines 19-21). At about 7:04 p.m., she was on routine patrol, westbound, in the area of 500 South and 1000 East in Bountiful, Utah (R-22 at page 4, lines 24-25; page 25, lines 1-3; page 9, lines 5-6) where the speed limit is (30) miles per hour. (R-22 at page 1, lines 13-15, 19-20; page 2, lines 1-3).

2. At about 7:04 p.m., Officer Bell observed a truck being driven eastbound on 500 South, at approximately 800 East toward her position. There were no vehicles in front of the truck that she was observing. (R-1, 22 at page 5, lines 6-8; page 12, lines 7 and 24).

3. Officer Bell observed that the truck's emergency lights were flashing and visually estimated the speed at which the truck was being driven at about forty-five (45) miles per hour. (R-22 at page 5, lines 6-8). She did not know why the truck's emergency lights had been activated or why the driver of the truck was speeding. (R-22 at page 9, lines 18-22; page 16, lines 15-23; page 21, lines 22-25; page 22, lines 1-13; page 25, lines 11-23; page 27, lines 23-25).

4. Officer Bell confirmed her visual estimate by using a Doppler radar speed detection device that gave a reading of forty-five (45) miles per hour. The Doppler radar unit had been previously tested and was operating correctly. (R-22 at page 5, lines 9-25).

5. Based upon her observations that the driver of the truck was traveling in excess of the posted speed limit, Officer Bell turned her patrol car around - so that she was traveling eastbound on 500 South - activated her overhead lights, and followed the driver of the truck for approximately three (3) blocks. (R-22 at page 6, lines 2 - 8).

6. There were no vehicles between Officer Bell and the driver of the truck as she followed eastbound on 500 South. (R-22 at page 9, lines 10-12).

7. The driver of the truck testified that he observed Officer Bell, "pull into traffic . . . and then . . . she activated her lights." (R-22 at page

42, lines 10-17).

8. With Officer Bell following him, with her overhead lights activated, the driver of the truck refused to pull the truck to the right hand side of the roadway and stop but continued to proceed eastbound on 500 South. (R-22 at page 6, lines 9-12; page 25, lines 16-17; page 42, line 20).

9. At this point in time, Officer Bell activated her siren. (R-22 at page 6, lines 12-13).

10. At about the intersection of 500 South and 1100 East, the driver of the truck, that Officer Bell was following, stopped in the middle of the intersection and attempted to make a U-turn. (R-22 at page 6, lines 13-15; page 12, line 25; page 13, line 1; page 14, lines 1-2, 5-6, 9-10; page 43, lines 3-5). At this time, the driver of the truck testified that he observed Officer Bell's patrol car behind him for a second time with her overhead lights flashing and her siren sounding. (R-22 at page 43, lines 10-12; page 53, lines 12-25; page 54, lines 16-25).

11. At this point in time, Officer Bell turned off her siren and maneuvered her patrol car so that it was alongside and parallel to the truck, which was now westbound on 500 South. (R-22 at page 6, lines 15-21).

12. Officer Bell identified the driver of the truck, as a white, adult male, and told him that he needed to pull the truck to the side of the roadway and stop. (R-22 at page 6, lines 15-16, 18-19, 25; page 7, lines 1-14; page 11, lines 18-19, 25; page 12, lines 1-2; page 13, lines 21-23; page 43, lines 16, 19-20).

13. In response to Officer Bell's verbal directive, the driver of the truck told her that he needed to "get to the hospital," finished making a U-

turn, and drove the truck westbound, down 500 South, away from Officer Bell's position. (R-22 at page 6, lines 16-21; page 11, lines 22-23; page 12, lines 1-2; page 13, lines 21-23; page 20, lines 16-17; page 43, lines 17-18, 21-22; page 44, lines 6-7).

14. At this point in time, Officer Bell deactivated her overhead lights, turned her patrol vehicle around, and followed the driver of the truck down 500 South to Lakeview Hospital (R-22 at page 6, lines 22-24; page 7, lines 1-4; page 9, line 9; page 11, lines 8-14).

15. At Lakeview Hospital, Officer Bell observed the driver of the truck pull into the emergency room area and the space reserved for ambulances, park, get out of the truck and walk to the door of the Lakeview Emergency Room. (R-22 at page 7, lines 19-20; page 16, lines 24-25; page 17, lines 3-5; page 43, lines 24-25).

16. At this time, Officer Bell observed, for the first time, that the driver of the truck was holding something to his leg and that he was bleeding. (R-22 at page 8, lines 1-2; page 17, lines 19-23; page 44, lines 13-14).

17. Based upon her observations, Officer Bell issued the driver of the truck, later identified as Walter Noel Stewart ("Stewart"), a citation charging him with one (1) count of Speeding and one (1) count of Failure to Yield to Emergency Vehicle.

Summary of Arguments on Appeal

1. Because Defendant failed to adequately brief the issues that he has raised, if any, the Court should decline to review them.

Defendant has failed to comply with the provisions of Rule 24, Utah

R.App.P. It is a well established that a reviewing court will not address arguments that are not adequately briefed.

2. Defendant challenges the trial court's findings of fact, but, on appeal, does not marshal evidence in support of the trial court's findings. Therefore, the trial court's findings are accepted as valid.

Following the trial of this case, the trial court issued oral Findings of Fact. (R-22 at page 61, lines 22-25; page 62, lines 1-7). In his appeal, Defendant challenges Judge Kay's findings. Pursuant to Rule 52(a), Utah R.Civ.P., and Rule 24, Utah R.App.P., Defendant has a duty to marshal evidence. However, Defendant has failed to carry his burden. The consequence of Defendant's failure to marshal evidence is that the trial court's Findings of Fact should be accepted as valid.

3. There is substantial evidence in the record to support the trial court's verdict.

There was admissible and un rebutted evidence presented at trial establishing each element of each crime with which Defendant was charged. This constitutes substantial evidence in the appellate record sufficient to support the trial court's verdict.

Arguments on Appeal

1. Because Defendant failed to adequately brief the issues that he has raised, if any, the Court should decline to review them.

Rule 24, Utah R. App.P., sets forth both the required form and contents of appellate briefs. Pursuant to sub-part (2)(a)(5)(A), an appellant's brief must contain a statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and, citation to the record showing that the issue was preserved in the trial court. In addition to this provision, sub-part

(2)(a)(9) requires that the argument shall 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. In State v. Lucero, 2002 UT App 135, 47 P.3d 107, ¶13, this Court concluded that,

“[t]o permit meaningful appellate review, briefs must comply with the briefing requirements sufficiently to enable us to understand . . . what particular errors were allegedly made, where in the record those errors can be found, and why, under applicable authorities, those errors are material ones necessitating reversal or other relief.”

In the present case, after a bench trial, Judge Kay found that there was no question that Defendant was speeding and that Defendant failed to yield to an emergency vehicle. (R-15-16; 22 at page 62, lines 2-7).

Defendant appealed Judge Kay’s findings stating, “[t]he basis of the appeal is interpretation of facts and relevant conclusions of law by the trial officer.” (R-18). In his brief, Defendant frames the issue as, “[d]id the District Court err in its November 10, 2005 ruling, both as to the evidence and the law?” *See Appellant’s Brief at page 1, Statement of Issues*. However, Defendant has failed to cite where in the record the issues concerning insufficiency of evidence were preserved for appeal as required by Rule 24(a)(5)(A), Utah R.App.P. Defendant has also failed to set forth the proper standard of review for these and other issues that he might have raised with citations for each standard of review. Finally, the “Argument” section of Defendant’s Appellate Brief fails to include any relevant citation, authority, or meaningful legal

analysis that would support his allegations that the evidence presented in support of his speeding and failure to yield to an emergency vehicle convictions was insufficient; or, that Judge's Kay's interpretation and application of the law was deficient.

In effect, Defendant's Brief shifts the burden of determining what his appealable issues actually are to Plaintiff and also requires that this Court assume the role of presiding over Defendant's appeal as though it were a trial de novo.

In the event that the Court reaches Defendant's issues notwithstanding his non-compliance with Rule 24, Utah R.App.P., Plaintiff offers the following as rebuttal.

Defendant does make reference to Utah Code Ann. §41-6a-212 in his "Table of Authorities," and draws the Court's attention to Bountiful City Police Department Pursuit Driving Policy, General Order 92-1; and, two (2) Utah appellate court decisions, i.e., *Day v. State et. al.*, 1999 UT 46, 980 P.2d 1171; and, *Utah Department of Public Safety v. Utah Career Service Review Board*, 2004 UT App 171; 92 P.3d 776. However, Defendant fails to establish how any of this information is relevant, authoritative, or meaningful to his appeal. In fact, to do so would undermine Defendant's current position.

Utah Code Ann. §41-6a-212, "Emergency Vehicles"

Defendant argues that, because of his "emergency," he should be allowed to disregard and violate traffic laws so as to arrive at a hospital

and receive emergency services.

Judge Kay recognized the confusion that accepting Defendant's position would create for other members of the driving public. (R-22 at page 58 lines 24-25; page 59, lines 1-4) Officer Bell, a veteran officer with ten (10) years of experience, testified that Defendant had activated his emergency flashers. (R-22 at page 9 lines 18-22).

However, Defendant argues that he should have been considered as though he were an emergency vehicle. (R-22 at page 41 lines 20-22; page 59, lines 1-4) And, that Officer Bell was in violation of Utah Code Ann. §41-6a-212.

Utah Code Ann. §41-6a-212, "Emergency Vehicles" provides that an operator of an authorized emergency vehicle may exceed maximum speed limit and required regulation when in pursuit or returning in specified directions when in pursuit of an actual or suspected violator of the law.

In the present case, Defendant did not provide any evidence that his condition or conduct qualified him as the operator of an emergency vehicle or his truck as an emergency vehicle. However, Officer Bell was in pursuit of Defendant's emergency vehicle. (R-22 at page 4 lines 15-20; page 9, lines 23-25; page 12, lines 22, lines 16-17, page 23, lines

¹ Defendant's contention that he was facing an "emergency" must be read against the evidence that he refused emergency ambulance services from the Davis County Sheriff's Dispatch (R-22 at page 40, lines 13-17); and, after arriving at the hospital, he refused to allow emergency room personnel to treat him for approximately (40) minutes while he waited for a second opinion as to how the cut on his leg would finally be treated (R-22 at page 44, lines 15-25; page 45, lines 1-6).

24-25; page 24, line 1; page 25, line 1). She observed and detected Defendant speeding in violation of the City's traffic code. (R-22 at page 5, lines 9-25). In an effort to apprehend him, Officer Bell negotiated an immediate U-turn (R-22 at page 6, lines 2-8) and followed Defendant with overhead lights flashing and siren sounding (R-22 at page 6, lines 2-13). Later, Officer Bell negotiated a second U-turn to follow Defendant to the hospital. (R-22 at page 6, lines 22-24; page 7, lines 1-4; page 9, line 9; page 11, lines 8-14). Officer Bell complied with Utah Code Ann. §41-6a-212 et. seq.

Bountiful City Pursuit Driving Policy

Judge Kay recognized that, pursuant to the facts he was presented at trial, Bountiful City Police Department General Order 92-1, known as the "Pursuit Driving Policy," was inapplicable because this was not the kind of high speed pursuit that the policy was created to deal with. Rather, Judge Kay recognized that in this case Officer Bell was making a routine traffic stop. (R-22 at page 20, lines 1-25; page 21, lines 1-18; and, page 56, lines 18-24). However, in the event that this Court determines to evaluate the applicability of the Pursuit Driving Policy, Plaintiff submits the following argument.

The Pursuit Driving Policy establishes that all vehicles operated by Bountiful police are authorized emergency vehicles. (Addendum, Appendix H at page 43, Section III, Sub-part A). It establishes guidelines and sets policy for the operation and use of an authorized emergency vehicle including the pursuit for apprehension of suspected law violators. (Addendum, Appendix H at page 43, Section I). A

“pursuit” is defined as,

“An event involving one or more law enforcement officers attempting to apprehend a suspect operating a motor vehicle while the suspect is trying to avoid arrest by using high speed driving or other evasive tactics, such as driving off a highway, turning suddenly or *driving in a legal manner but willfully failing to yield to the officer’s signal to stop.*” Emphasis not in original. (Addendum, Appendix H at page 44, Section III, Sub-part C).

For “pursuits” in Bountiful, an officer would immediately engage both emergency lights and siren, and as soon as practical notify the Communications Officer of location, direction of travel, estimated speed, description of suspect vehicle and license number, description of suspect vehicle’s occupants, and the reason for the pursuit. Addendum, Appendix H at page 48, Section V, Sub-part A). When a “pursuit,” in Bountiful, is being conducted, the Communications Officer’s duty is to,

“...clear the frequency for emergency traffic and instruct the initiating pursuit unit, and assigned backup unit to change to the Statewide One Radio Channel. The Communications Officer will announce the pursuit and notify the supervisor or officer in charge. The Communications Officer will also run registration and want information on the suspect vehicle if license # is available and have that information immediately available upon request, but will not be broadcast.” Addendum, Appendix H at page 49, Section V, Sub-part E).

“Pursuits” can terminate when the suspect stops or the identity of the suspect is known and the offense is not a forcible felony. (Addendum, Appendix H at page 50, Section VI, Sub-part A, 1 and 3).

In the present case, Defendant is confused and angered by the fact that his cellular 911 emergency telephone call, that was received by the Davis County Sheriff’s Dispatch Center (“Davis County Dispatch”), was not broadcast to and received by the Bountiful City Police Dispatch

Center (“Bountiful Dispatch”) and relayed to Officer Bell. (R-22 at page 23, lines 18-22; page 26, lines 6-7).

But, Defendant’s confusion and anger do not change the fact that Officer Bell fully complied with the Pursuit Driving Policy. Officer Bell was operating an authorized emergency vehicle. (R-22 at page 4, lines 15-20; page 9, lines 23-25; page 22, lines 16-17; page 23, lines 24-25; page 24, line 1; page 25, line 1). She observed and detected Defendant speeding. (R-22 at page 5, lines 9-25). She followed Defendant with her overhead lights flashing and siren sounding. (R-22 at page 6, lines 2-13]. Defendant willfully failed to yield to Officer Bell’s signals to stop. (R-22 at page 6, lines 2-13). Officer Bell contacted Bountiful Dispatch and advised them that Defendant was failing to yield to her signal to pull over and stop. (R-22 at page 10, lines 10-13). Officer Bell identified Defendant and the destination to which he was going and terminated the “pursuit,” turning off her overhead lights and siren (R-22 at page 6, lines 15-21]; but, continued to follow Defendant and issued him a citation. (R-22 at page 6, lines 22-24; page 7, lines 1-4; page 9, line 9; page 11, lines 8-14). Officer Bell completely and reasonably complied with the Driving Pursuit Policy.

Defendant would also have this Court rule, in contravention to Judge Kay, that once Officer Bell discontinued her “pursuit” she was precluded from making further contact with him and citing him for violating the traffic code. Such a position fails to account for the balancing of interests that Officer Bell made between continuing to follow a traffic law violator against sending an emergency signal to the

rest of the driving public and hospital personnel which might create confusion and a hazzard.

Defendant's use of appellate decisions

(a) Day v. State et. al.

In the present case, Defendant cites the Day decision, *supra*, and concludes that it stands for the proposition that, "the duty of police officers to apprehend is not absolute . . . such as driving ten miles over the speed limit." See *Appellant's Brief* at page 10, Paragraph 13. But, the Day Court did not make such a ruling; and, Judge Kay's refusal to apply the Day decision, *supra*, in this case was appropriate. (R-22 at page 19, lines 16-25; page 20, lines 1-25; page 21, lines 1-20). The Day v. State decision, *supra*, provides, among other things, an explanation of law enforcement's duty during a "high speed emergency pursuit." Judge Kay ruled that the Pursuit Driving Policy was not applicable to this case; therefore, it is consistent that a Utah Supreme Court decision establishing law enforcement's duty during a high speed pursuit would also not be applicable to this case.

In Day, *supra*, the Utah Supreme Court ruled that the Motor Vehicle Code did impose on police officers engaged in the pursuit of a suspect a duty of care to third parties on the highway. However, the Day decision, *supra*, has no application to the present case because no third party was involved or hurt in this incident. The Day Court did not rule on the duty of an officer to pursue; rather, the Day Court ruled that an officer conducting a pursuit must act reasonably and with appropriate care for the safety of others in light of all of the circumstances. The

Court listed a set of factors that can be considered in determining whether an officer acted with reasonable care.

Assuming *arguendo* that Judge Kay's decision was not appropriate and that the Day decision, *supra*, does have some bearing on this case, Defendant has failed to establish that Officer Bell's conduct in trying to stop him, while he had a cut in his leg, was unreasonable; and, he cannot establish that it was unreasonable because Officer Bell did not know that he was actually injured until she arrived at the hospital. (R-22 at page 8, lines 1-2; page 17, lines 19-23; page 44, lines 13-14; page 57, lines 9-14).

(b) Utah Dep. of Public Safety v. Utah Career Service Review Board

Defendant also cites Utah Department of Public Safety v. Utah Career Service Review Board, *supra*. Like the Day decision, *supra*, Judge Kay recognized that this decision had no application at the trial of this case. However, the Utah Department of Public Safety v. Utah Career Service Review Board decision, *supra*, is interesting for one reason. In footnote 3, the author of the opinion provides the relevant parts of the statutory definition of "evading." That statutory definition could easily be applied in this case as Defendant operated his truck in willful or wanton disregard of Officer Bell's signal and interfered with or endangered the operation of other vehicles or persons; and, attempted to flee or elude Officer Bell. (R-22 at page 23, lines 2-25].

Pursuant to Rule 24, Utah R.App.P., and State v. Lucero, *supra*, because Defendant failed to adequately brief the issues that he has raised in his appeal the Court should decline to review any and all of

them and affirm Judge Kay's findings of fact and entry of conviction.

2. Defendant challenges the trial court's findings of fact, but, on appeal, does not marshal evidence in support of the trial court's findings. Therefore, the trial court's findings are accepted as valid.

Rule 52(a), Utah R. Civ. P., provides the standard by which findings of fact are to be reviewed. The Rule states, in part, that, "... Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses..." Therefore, the standard of review is "clearly erroneous." Rule 24(a)(9), Utah R. App. P., states that, "[a] party challenging a fact finding must first marshal all record evidence that supports the challenged finding." Finally, the consequence of failing to marshal evidence has been thoroughly established: the appellate court accepts the trial court's findings of fact as accurate and reviews the trial court's conclusions based on those findings. *State v. Larsen*, 2000 UT App 106, 999 P.2d 1252.

In the present case, after a bench trial, Judge Kay found that there was no question that Defendant was speeding and that he failed to yield to an emergency vehicle. (R-15-16; page 61, lines 22-25; page 62, lines 1-7). However, Defendant has not marshaled evidence as required by Rule 24(a)(9), Utah R. App. P.

Some examples of evidence that Defendant could have marshaled with regard to the Speeding charge include, but are not limited to: 1) there were no vehicles in front of Defendant's truck as Officer Bell was observing it travel up 500 South (R-22 at page 12, line 24); 2)

Defendant, “may have at times not been watching [his] speedometer” (Emphasis not in original). (R-22 at page 49, lines 18-19); 3) Officer Bell established the speed at which Defendant was traveling by using a speed detection device that had been tested and was operating correctly; and, 4) that Officer Bell had no bias, prejudice or prior dealings with Defendant prior to this traffic incident (R-22 at page 8, lines 9-16).

Some examples of evidence that Defendant might have marshaled with regard to the Failing to Yield to an Emergency Vehicle charge include, but are not limited to: 1) Officer Bell did not know why Defendant was speeding. (R-22 at page 9, lines 18-22; page 15, lines 15-23; page 21, lines 22-25; page 22, lines 1-13; page 25, lines 11-23; page 27, lines 23-25); 2) initially, after observing Defendant speeding, Officer Bell turned her patrol car around, activated her overhead lights, and followed Defendant for approximately three (3) blocks. (R-22 at page 6, lines 2-8); 3) there was no traffic between Officer Bell and Defendant as she followed him eastbound on 500 South. (R-22 at page 9, lines 10-12); 4) Defendant observed Officer Bell’s patrol car and overhead lights flashing. (R-22 at page 42, lines 10-17]; 5) Defendant refused to pull his truck to the right hand side of the roadway and stop (R-22 at page 6, lines 9-12; page 25, lines 16-17; page 42, line 20); 6) Officer Bell activated the siren (R-22 at page 6, lines 12-13); 7) Defendant stopped in the middle of an intersection to get directions to the hospital and attempted to make a U-turn; but, did not stop for Officer Bell’s signals to stop (R-22 at page 6, lines 13-15; page 12, line 25; page 13, line 1; page 14, lines 1-2, 5-6, 9-10; page 43, lines 3-5); 8) Defendant

noticed Officer Bell's patrol car a second time while he was stopped in the middle of the intersection trying to get directions to the hospital and making a U-turn (R-22 at page 43, lines 10-12; page 52, lines 12-25; page 54, lines 16-25); 9) Officer Bell told Defendant that he needed to pull to the side of the roadway. (R-22 at page 6, lines 15-16, 18-19, 25; page 7, lines 1-14; page 11, lines 18-19, 25; page 12, lines 1-2; page 13, lines 21-23; page 43, lines 16, 19-20); 10) in response to Officer Bell's verbal directive, Defendant drove away from Officer Bell's position. (R-22 at page 6, lines 16-21; page 11, lines 22-23; page 12, lines 1-2; page 13, lines 21-23; page 20, lines 16-17; page 42, lines 17-18, 21-22; page 44, lines 6-7).

Defendant may have inadvertently made mention of some of the facts that supported Judge Kay's findings of fact. However, by mingling argument with his statement of the facts, Defendant has not extricated himself to fully assume the Plaintiff's position. In order to properly discharge the duty of marshaling the evidence, Defendant must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings he resists. After constructing this array of supporting evidence, Defendant is required to ferret out a fatal flaw in the evidence. The gravity of the flaw must be sufficient to convince this Court that Judge Kay's findings, resting upon the received evidence, is clearly erroneous. West Valley City v. Majestic Investment Company, 818 P.2d 1311, 1315 (Utah Ct. App. 1991). The Defendant has failed to meet this requirement.

Because Defendant has failed to marshal evidence the Court should

accept Judge Kay's findings as valid.

3. There is substantial evidence in the record to support the trial court's verdict.

The ordinances relevant to Defendant's appeal are Bountiful Traffic Code §41-6a-601, Speeding ("the Speeding ordinance")²; and, Bountiful Traffic Code §41-6a-904(1)(a), Failing to Yield Right of Way to an Emergency Vehicle ("the Failing to Yield Right of Way ordinance")³.

Substantial and un rebutted evidence was presented at the bench trial establishing each element of each offense with which Defendant was charged. Specifically, the elements of Speeding are: 1) a speed limit established by a supervising entity, in this case a municipality; 2) a person; 3) operating a motor vehicle; 4) at a speed greater than that established by the municipality. At the bench trial of this case, Judge Kay heard the following testimony from Officer Bell concerning Defendant's violation of the Speeding ordinance: 1) the speed limit on 500 South in Bountiful is thirty (30) miles per hour (R-22 at page 1, lines

²The relevant portions of the Speeding ordinance provide in part that, "[a] person may not operate a vehicle at a speed greater than is reasonable and prudent under the existing conditions, giving regard to the actual and potential hazards then existing, . . . any speed in excess of the limits . . . established [by a municipality] is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful."

³The relevant portions of the Failing to Yield Right of Way ordinance provide in part that, "[e]xcept when otherwise directed by a peace officer, the operator of a vehicle, upon the immediate approach of an authorized emergency vehicle using audible or visual signals . . . shall: (a) yield the right-of-way and immediately move to a position parallel to, and as close as possible to, the right-hand edge or curb of the highway, clear of any intersection; and, (b) then stop and remain stopped until the authorized emergency vehicle has passed

13-15, 19-20; page 2, lines 1-3); 2) on 8 July 2005, Officer Bell observed Defendant operate his truck on 500 South in Bountiful; 3) at the speed of forty-five (45) miles per hour. (R-22 at page 5, lines 16-22).

The elements of a Failure to Yield Right of Way charge are: 1) a person; 2) operating a motor vehicle; 3) being immediately approached by an authorized emergency vehicle using audible or visual signals; 4) the person failing to yield the right-of-way and immediately move to a position parallel to, and as close as possible to, the right-hand edge or curb of the highway, clear of any intersection; and, 5) then stopping and remaining stopped until the authorized emergency vehicle has passed.

Specifically, Judge Kay heard the following testimony from Officer Bell concerning Defendant's violation of the Failure to Yield Right of Way ordinance: 1) based upon her observations, that Defendant was speeding she activated her overhead lights, and followed Defendant for approximately three (3) blocks. (R-22 at page 6, lines 2-8); 2) there was no traffic between Officer Bell and Defendant as she followed (R-22 at page 9, lines 10-12); 3) Defendant observed Officer Bell's patrol car in his rear view mirror (R-22 at page 42, lines 10-17); 4) Defendant refused to pull his truck to the right hand side of the roadway (R-22 at page 6, lines 9-12; page 25, lines 16-17; page 42, line 20); 5) eventually Officer Bell activated her siren (R-22 at page 6, lines 12-13); 6) at about the intersection of 500 South and 1100 East Defendant stopped in the middle of the intersection to get directions to the hospital and attempted to make a U-turn; but, did not stop for Officer Bell; (R-22 at page 6, lines 13-15; page 12, line 25; page 13, line 1; page 14, lines 1-2, 5-6, 9-

10; page 43, lines 3-5); 7) Defendant noticed Officer Bell's patrol car a second time while he was trying to get directions to the hospital and making a U-turn. (R-22 at page 43, lines 10-12; page 53, lines 12-25; page 54, lines 16-25]; 8) Officer Bell told Defendant that he needed to pull to the side of the roadway. (R-22 at page 6, lines 15-16, 18-19, 25; page 7, lines 1-14; page 11, lines 18-19, 25; page 12, lines 1-2; page 13, lines 21-23; page 43, lines 16, 19-20); 9) in response to Officer Bell's verbal directive, Defendant drove away from Officer Bell's position. (R-22 at page 6, lines 16-21; page 11, lines 22-23; page 12, lines 1-2; page 13, lines 21-23; page 20, lines 16-17; page 43, lines 17-18, 21-22).

In contravention of this substantial and unrebutted evidence that was presented at the bench trial and that is contained in the appellate record, Defendant also alleges that Judge Kay interpreted the facts incorrectly. Pursuant to Rule 52(a), Utah R. Civ. P. this Court should not reassess Judge Kay's assessment of the witnesses' credibility. In *ProMax Development Corporation v. Mattson*, 943 P.2d 247, 255, 257 (Utah Ct. App. 1997), this Court explained that, "it is the trial court's role to assess witness credibility, given its advantaged position to observe testimony firsthand, and normally, we will not second guess the trial court's findings in this regard . . . We emphasize, . . . that this court does not sit as a fact finder." And, in *State v. Pena*, 869 P.2d 932 (Utah 1994), the Utah Supreme Court held that a trial court's determination that the factual evidence before it substantially complies with a particular statute is a discretionary ruling involving the application of facts to law. Trial courts are granted discretion in making such a

determination, which is accorded "some degree of deference" by the appellate court and reviewed "with far less rigor" than conclusions of law.

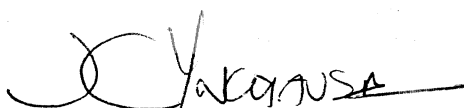
Judge Kay's decision that Defendant should be convicted of Speeding and Failing to Yield Right of Way to an Emergency Vehicle was not based solely upon inferences that gave rise to only remote or speculative possibilities of guilt; rather, they were based upon a quantum and quality of evidence which led him to conclude that Defendant was guilty beyond a reasonable doubt.

Assuming arguendo that Defendant has raised disputes in the evidence those should be resolved in a light most favorable to the trial court's determination and Judge Kay's verdict should be affirmed.

CONCLUSION

Defendant has failed to adequately brief the issues that he has raised on appeal and the Court should refuse to review them affirming Judge Kay's rulings. Defendant has failed to marshal evidence and the Court should find Judge Kay's findings of fact are valid and affirm his ruling. There is substantial evidence in the record before the Court supporting Judge Kay's findings of fact and the Court should affirm Defendant's convictions.

DATED this 27 day of September 2006.

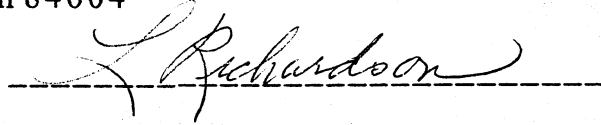


John C. Ynchausti
Attorney for Plaintiff City

MAILING CERTIFICATE

I hereby certify that two (2) true and correct copies of the foregoing APPELLEE'S BRIEF were mailed, postage pre-paid, this 27 day of September 2006 to the following:

Walter Noel Stewart
Appellant Pro Se
4730 Mile High Drive
Provo, Utah 84604



ADDENDUM

APPENDIX A

41-6a-601

Bountiful Speeding ordinance

SPEED RESTRICTIONS

41-6a-601. Speed regulations — Safe and appropriate speeds at certain locations — Prima facie speed limits — Emergency power of the governor.

(1) A person may not operate a vehicle at a speed greater than is reasonable and prudent under the existing conditions, giving regard to the actual and potential hazards then existing, including when:

- (a) approaching and crossing an intersection or railroad grade crossing;
- (b) approaching and going around a curve;
- (c) approaching a hill crest;
- (d) traveling upon any narrow or winding roadway; and
- (e) approaching other hazards that exist due to pedestrians, other traffic, weather, or highway conditions.

(2) Subject to Subsections (1) and (4) and Sections 41-6a-602 and 41-6a-603, the following speeds are lawful:

- (a) 20 miles per hour in a reduced speed school zone as defined in Section 41-6a-303;
- (b) 25 miles per hour in any urban district; and
- (c) 55 miles per hour in other locations.

(3) Except as provided in Section 41-6a-604, any speed in excess of the limits provided in this section or established under Sections 41-6a-602 and 41-6a-603 is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful.

(4) The governor by proclamation in time of war or emergency may change the speed limits on the highways of the state.

APPENDIX B

41-6a-904(1)(a)-(b)

Bountiful Failing to Yield to Emergency Vehicle ordinance

41-6a-904. Approaching emergency vehicle — Necessary signals — Stationary emergency vehicle — Duties of respective operators.

(1) Except when otherwise directed by a peace officer, the operator of a vehicle, upon the immediate approach of an authorized emergency vehicle using audible or visual signals under Section 41-6a-212 or 41-6a-1625, shall:

(a) yield the right-of-way and immediately move to a position parallel to, and as close as possible to, the right-hand edge or curb of the highway, clear of any intersection; and

(b) then stop and remain stopped until the authorized emergency vehicle has passed.

APPENDIX C

Transcript of trial court's oral decision

1 it's possible he would get his desired escort to the hospital
2 but Officer Bell doesn't know if he yells out the window when
3 he's already been evading her that he's not going to just
4 keep driving off. She doesn't know that he actually has an
5 injury and Mr. Stewart makes a fatal assumption and that is
6 every time you call 9-1-1 you're speaking with every
7 policeman on the planet. You're not. In Davis County, you
8 call 9-1-1 on a cell phone, you go to the Davis County
9 Dispatch Center in Farmington.

10 That's what Mr. Stewart wants to have happen but
11 it's not what happened in fact. He's trying to create a
12 justification based on necessity, Your Honor, and regardless
13 of the cases he cites, necessity is a justification to a
14 criminal charge unless it's created by the defendant and in
15 this case, Mr. Stewart created his own necessity. He had a
16 choice to make. Is this serious enough so I get emergency
17 help or can I get there myself obeying all the traffic rules
18 required of me? He made that choice and now it's been to his
19 detriment. We believe that the burden has been met for both
20 charges. We request the Court enter a conviction for both
21 charges.

22 THE COURT: Okay, the issues in this case are
23 really two issues. The first one is whether or not there was
24 speeding. There is no question, I don't see any - I didn't
25 see the defendant testify that he was not speeding. I think

1 his testimony was that with everything going on, he wasn't
2 looking at his speedometer. I don't think that there's any
3 question that he was going what was stated, 45 miles an hour
4 in a 30 miles an hour zone and there's no question that he
5 failed to yield to an emergency vehicle. He stated that he
6 saw the flashing lights and didn't know what she was going
7 but did not yield.

8 The question is, was there any sort of exception,
9 whether necessity or otherwise that would justify this
10 behavior? I guess it really gets down to this, we can
11 justify and rationalize anything in our own minds. I think
12 my brother a long time ago pointed out the word rationalize
13 to me, he says that if you cut it down into two words is
14 rationing lies and I think we kind of look at things from our
15 own prospective and sometimes when we look from our own
16 prospective, we're wondering why the rest of world, why
17 doesn't the rest of the world understand what I'm doing and,
18 why - it's clear to me, why isn't it clear to everyone else?
19 I have to say taking judicial notice of 500 South and knowing
20 that it is a very, very, very busy road and at certain times
21 of the day it's busier than other times of the day but the
22 fact of the matter is, it's a 30 miles an hour speed limit
23 for a reason. There are traffic lights, about five traffic
24 lights from 500 West up to Orchard Drive and anybody moving
25 up back and forth with all the people and all the

1 intersection and traffic and people walking, that's what it
2 is. If people start to drive beyond it - you know it always
3 gets me that if we say that, okay, if everybody murdered and
4 I murdered it wouldn't be a problem or if everybody raped and
5 I committed a rape, that wouldn't be a problem because
6 everybody does it an unfortunately, if we did that, we would
7 not have a society, we would not have a civilization because
8 we could always justify that what everybody does and nobody
9 lives the standards that we set as a society.

10 So in this case maybe, you know, I'm not faulting
11 the officer for pursuing you, Mr. Stewart. I'm not faulting
12 the officer for making sure that the speeding limits in
13 Bountiful are enforced and I think what occurred is simply
14 this, you didn't stop, she got mad, you had an attitude and
15 she was going to show you who was boss and I don't think
16 that's an abnormal reaction to the situation. We'd like
17 everybody to be perfect, you know, it's kind of hard to be
18 perfect under pressure. It's kind of hard to be perfect
19 under a situation that is a stressful situation for all
20 parties. So I am finding you guilty of both of these
21 infractions. You have the right to be sentenced in a period
22 of not less than two nor more than 45 days but whereas these
23 are basically on the 2005 bail schedule as to the amounts,
24 it's probably not going to change what the maximum would be.
25 So what do you wish to do?

APPENDIX D

78-2a-3(2)(e), Utah Code Annotated

78-2a-3. Court of Appeals jurisdiction.

- (1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:
 - (a) to carry into effect its judgments, orders, and decrees; or
 - (b) in aid of its jurisdiction.
- (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
 - (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;
 - (b) appeals from the district court review of:
 - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
 - (ii) a challenge to agency action under Section 63-46a-12.1;
 - (c) appeals from the juvenile courts;
 - (d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
 - (e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;
 - (f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;
 - (g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;
 - (h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;
 - (i) appeals from the Utah Military Court; and
 - (j) cases transferred to the Court of Appeals from the Supreme Court.
- (3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.
- (4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

APPENDIX E

Rule 52(a), Utah Rules of Civil Procedure

Rule 52. Findings by the court.

(a) *Effect.* In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A; in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. The trial court need not enter findings of fact and conclusions of law in rulings on motions, except as provided in Rule 41(b). The court shall, however, issue a brief written statement of the ground for its decision on all motions granted under Rules 12(b), 50(a) and (b), 56, and 59 when the motion is based on more than one ground.

APPENDIX F

Rule 24(a)(5)(A), Utah Rules of Appellate Procedure

Rule 24. Briefs.

(a) *Brief of the appellant.* The brief of the appellant shall contain under appropriate headings and in the order indicated:

(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or

(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

APPENDIX G

Rule 24(a)(9), Utah Rules of Appellate Procedure

Rule 24. Briefs.

(a) *Brief of the appellant.* The brief of the appellant shall contain under appropriate headings and in the order indicated:

(a)(9) An argument. The argument shall 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. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

APPENDIX H

Bountiful Police Department General Order 92-1

Pursuit Driving Policy

BOUNTIFUL POLICE DEPARTMENT

General Order	92-1	Date Effective	September 1, 1996
Subject:	Pursuit Driving Policy	Revision Dates	

Purpose

To provide a pursuit policy for the Bountiful Police Department which establishes guidelines and regulations pertaining to the operation of police vehicles during a pursuit.

I. Objective

To establish guidelines and set policy for the operation and use of motor vehicles by Bountiful Police Officers during emergency vehicle operation, to include the pursuit for apprehension of suspected law violators.

II. Legal Disclaimer

This policy is for departmental use only and does not apply to any criminal or civil proceeding. This policy shall not be construed as creating a higher legal standard of care or safety in an evidentiary sense with respect to third party claim. Violations of this policy will form the basis of departmental administrative sanctions only.

III. Definitions

A. Authorized Emergency Vehicle

All vehicles operated by the police department to carry out the mission, goals and objectives of this agency. 41-6-1 (3) U.C.A.

B. Emergency warning equipment required on emergency vehicles.

1. Siren
2. Emergency Lights
 - a. Emergency vehicles shall be equipped with some type of emergency lights, either overheads for marked units, grille lights, dash lights or combination thereof. Most commonly, the vehicle shall have a combination of red and blue emergency lights installed as equipment on the designated emergency vehicle.

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C. **Pursuit**

An event involving one or more law enforcement officers attempting to apprehend a suspect operating a motor vehicle while the suspect is trying to avoid arrest by using high speed driving or other evasive tactics, such as driving off a highway, turning suddenly or driving in a legal manner but willfully failing to yield to the officer's signal to stop.

D. **Roadblock**

1. **Total Roadblock**

Is a physical blockage of the entire highway using vehicles, materials or other devices, leaving no room for an approaching vehicle to avoid the barrier.

2. **Partial Roadblock**

Is an incomplete blockage of the roadway, leaving room for an approaching vehicle to avoid the barrier.

E. **Ramming**

The deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop.

F. **Supervisor**

For the purpose of this policy, a supervisor is the Chief of Police, Lieutenant, Sergeant, Corporal or Senior Officer in charge of the shift.

G. **Forcible Felony**

76-2-402 (3) Utah Code Annotated - For purposes of this section, a forcible felony includes, but is not limited to aggravated assault, mayhem, murder in the first and second degree, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, and aggravated sexual assault, as they are defined in Chapter 5 of this code. Also includes arson, robbery, and burglary as defined in Chapter 6 of this code. Any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury also constitutes a forcible felony. Burglary of a vehicle, as defined in Section 76-6-204 shall not constitute a forcible felony except where the vehicle is occupied at the time unlawful entry is made or attempted.

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IV. Policy

The major objective of the Bountiful Police Department is the protection of life and property. Vehicle pursuits are recognized as a valid enforcement activity performed by officers attempting to apprehend fleeing suspects under certain circumstances. Pursuits are only justified when there is a necessity of immediate apprehension.

Officers are obligated to continuously weigh the gravity of the offense, or the emerging circumstances, against the potential dangers the pursuit poses to their self or to others. It is also recognized that what started as a minor traffic offense may become a serious crime and threat to the community as the pursuit continues.

The supervisor or officer in charge is responsible for assuming management control by monitoring the pursuit, weighing significant facts available at the time, and terminating the pursuit if apprehension cannot be effected with reasonable safety.

This policy does not preclude the pursuing officers from terminating a pursuit at their discretion.

The policy and procedure set forth in this document is intended to serve as guidelines on which to base sound decisions. State law does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor does the law protect the driver from the consequences of an arbitrary exercise of these privileges. (Ref. 41-6-76 U.C.A.).

A. Consideration of Police Pursuits

The decision to initiate a pursuit must be based on good judgment, tempered with common sense and foresight of potential hazards.

Officers directly involved in a pursuit will be accountable for the decision to continue the pursuit in light of the considerations listed below.

1. Criminal misdemeanors and traffic violations do not warrant prolonged pursuit or the operation of the police vehicle at excessive speeds.

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2. Felony criminal violations may require pursuit if the officer is to apprehend the suspect. However, in initiating and continuing the pursuit, an officer will be required to justify the pursuit based on the following considerations:
 - a. The nature of violation and hazard that it creates.
 - b. The likelihood of successful apprehension.
 - c. The nature of the location (residential, business, school zone, etc.).
 - d. The weather, and road conditions and associated factors.
 - e. The officer's driving skills and the condition of the police vehicle.
 - f. When the driver of the pursued vehicle displays a willful and wanton disregard for passengers, and/or other drivers by unnecessarily endangering their safe passage, it may be proper to continue the pursuit, utilizing emergency lights and siren for the purpose of serving as a warning to these drivers and the public at large.
3. Considerations for continuing the pursuit are not restricted to only those regarding the initial offense. Every factor must be evaluated as it occurs.

B. Restrictions of Police Pursuit Involvement

1. Assisting Police Units

Only the police unit initiating the pursuit and any assigned secondary unit shall pursue the suspect vehicle. **No More** than **Two** units shall be involved in the actual pursuit **unless assigned** by the supervisor on duty.

Other police units close to the pursuit should attempt to position themselves at strategic points to assist the pursuing police units in the event the suspect is stopped or the original pursuing police unit loses the suspect vehicle. Police units assisting may parallel or trail behind a pursuit only at the direction of the supervisor.

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C. Unmarked Police Vehicles

If a pursuit is initiated by an unmarked police vehicle, the pursuing officer shall abandon the pursuit when a marked police vehicle is in a position to assume the pursuit. The unmarked police unit shall remain available to respond to the scene of apprehension.

D. Striking or Forcing Vehicles Off The Road

Ramming, striking, or forcing a fleeing vehicle off the road must be considered potential deadly force and the guidelines for use of force and deadly force apply. The pursuing officer may strike or force the suspect vehicle off the road only if:

1. The suspect is wanted for a forcible felony and all other attempts to stop the pursuit have failed and continued pursuit poses an immediate danger.
2. Continued pursuit poses an immediate and substantial threat to public safety and such action is the only reasonable alternative. In such case, the danger must be clearly imminent and recognizable.

If the pursued vehicle is a motorcycle, officers shall not attempt to dislodge the rider unless deadly force is justified.

E. Roadblocks

Barricading a roadway must be considered a force likely to result in death or serious injury. Therefore, the use of force and use of deadly force policy applies.

F. Use of Firearms in Vehicle Pursuits

The use of a firearm during a pursuit will be very carefully examined and must conform to the Department Firearms Policy.

G. One-Way Roads

Pursuing a vehicle the wrong way on a one-way road is extremely dangerous and may end in tragedy. Freeway traffic and speeds enhance that danger. As a general rule officers will not pursue a vehicle traveling the wrong way on a one-way road. If such an endeavor is undertaken a detailed explanation of the circumstances must be included in the report. The following options are available to the pursuing officers and should be considered.

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1. Maintaining visual contact with the suspect vehicle from a parallel road or side of freeway.
2. Monitoring the suspect from Freeway on and off ramps if possible.

V. Procedures

A. Pursuits Within Bountiful

1. Upon initiating a pursuit, the initiating officer will immediately engage both emergency lights and siren, and as soon as practical notify the Communications Officer of:
 - a. The location, direction of travel, and estimated speed.
 - b. The description of suspect vehicle and license number.
 - c. The reason for the pursuit.
 - d. The description of the vehicle's occupants.
2. The back up or assigned secondary police unit, when in position, will be responsible to:
 - a. Call the pursuit; locations, directions, etc. This will be done constantly, so that Communications Officers and other police units will be informed of the progress of the pursuit.
 - b. Watch for hazards, etc., that the primary car may not be observing, and relay that information.

B. Pursuits Entering Into Other Jurisdictions

If a pursuit initiated by officers of this department enters into another jurisdiction or enters the freeway, the dispatcher will immediately notify the affected law enforcement agency.

Only the initiating police unit and assigned backup unit will cross jurisdictional boundaries to continue the pursuit. The supervisor or officer in charge will evaluate the pursuit and determine if continuing is within the guidelines of this policy.

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In the event the pursuit terminates outside of the originating officers jurisdiction, the supervisor or officer in charge shall determine if there is additional personnel required and will request such units to be sent to the scene. Personnel other than those officers involved as the initial and secondary unit will not respond to a termination scene outside of the originating jurisdiction without permission of their supervisor.

C. Pursuits Entering From Another Jurisdiction

Upon receiving information about a pursuit initiated by another agency entering Bountiful the Communications Officer will broadcast description, location, direction of travel and any other significant information. If possible the reason for the pursuit should be considered before becoming involved in a pursuit that is progressing from another jurisdiction.

No more than two police units from our department should actively become involved in the pursuit unless more help is requested by the outside agency or assigned at the request of the supervisor. However, police units close to the pursuit will prepare to offer necessary assistance at the conclusion of the pursuit.

The Bountiful Officers assisting the unit involved in the outside agency's pursuit will terminate participating in such pursuit at our city boundary. If circumstances justify continued pursuit by a Bountiful Police Officer the on-duty supervisor may grant approval.

D. Pursuits Initiated by Officers While They Are In Another Jurisdiction

Officers from this agency who initiate a pursuit while in another jurisdiction shall notify the agency having jurisdiction of the pursuit. The provisions of this policy will then be followed, unless otherwise directed by that jurisdiction.

E. Communications Officers Duties

1. Pursuits Occurring Within Bountiful

The dispatcher will clear the frequency for emergency traffic and instruct the initiating pursuit unit, and assigned backup unit to change to the Statewide One Radio Channel. The Communications Officer will announce the pursuit and notify the supervisor or officer in charge. The Communications Officer will also run registration and want information on the suspect vehicle if license # is available and have that information immediately available upon request, but will not be broadcast.

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2. Pursuits Entering From Another Jurisdiction

The Communications Officer will immediately broadcast description, location, direction of travel and the reason for the pursuit and any other significant data to the field police units. If the reason of the pursuit is not known, the Communications Officer will immediately attempt to ascertain the reason for the pursuit from the originating agency and relay that information to the police field units.

VI. Termination of Pursuits

A. Pursuits Will be Terminated When

1. The suspect vehicle stops.
2. When the initial police unit or secondary unit terminates the pursuit due to the futility of the pursuit, or declares termination based on other information available to those officers.
3. The identity of the suspect is known, and the offense is not a forcible felony.
4. The risks of the pursuit are not warranted by the nature of the offense.
5. The pursuit is terminated by order of the on duty supervisor, or the officer in charge.

B. Post Pursuit Discipline

1. Safety is critical at the termination of a pursuit. At no time will the need for decisive action, self control, and strict personal discipline be more essential. The responsibility for maintaining control and directing activities at the termination point remains with the senior officer involved in the pursuit until relieved by a supervisor.
2. Plainclothes officers will ensure they are readily identifiable as police officers by affixing proper identification on their outer garments.

VII. Required Reports

- A. The initiating officer(s) and the secondary unit officer(s) shall submit an offense report of the pursuit.

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- B. Each officer who became involved by assisting with traffic, blocking an intersection or otherwise involved during the pursuit, or was present at the point of termination is required to submit a report.
- C. In addition to the required arrest and incident reports, the initiating officer will be required to fill out a Vehicular Pursuit Report and submit it along with the arrest and incident reports. See attached sample of pursuit report form.
- D. A copy of all reports submitted will be forwarded to the Patrol Division Commander and Chief of Police for their review.

VIII. Pursuit Review

A critique of each pursuit will be conducted by the Patrol Division Commander and supervisor of the officers participating in the pursuit. The critique will include review of the pursuit, receive feedback from the officers regarding suggestions for policy improvement and if policy and procedures were followed.

By order of:

Paul Rapp - Chief of Police

I have read the above order and fully understand it:

Employee's Signature

Date