

1995

# Utah v. Gregory Lee Farrow : Brief of Appellant

Utah Court of Appeals

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John. O. Christiansen.

Jan Graham.

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UTAH COURT OF APPEALS  
BRIEF

IN THE UTAH COURT OF APPEALS

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DOCKET NO. 950432-CA

\_\_\_\_\_  
STATE OF UTAH,

Plaintiff/Respondent,

vs.

GREGORY LEE FARROW,

Defendant/Appellant.  
-----

Case No. 950432-CA

\* \* \* \* \*

APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT  
OF BEAVER COUNTY, STATE OF UTAH

HONORABLE ROBERT T. BRAITHWAITE  
DISTRICT JUDGE

\* \* \* \* \*

APPELLANT'S APPEAL BRIEF

\* \* \* \* \*

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ARGUMENT CLASSIFICATION No. 2

**FILED**  
Utah Court of Appeals  
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## JURISDICTION OF APPELLATE COURT

The Defendant was convicted in the District Court for assault, a class B misdemeanor, possession of controlled substance, a third degree felony, and possession of handgun by felon, a third degree felony. In the course of the proceeding, he filed a Motion to Suppress which was denied. He appeals the denial of his Motion to Suppress and his convictions.

The Utah Court of Appeals has jurisdiction of this appeal under Section 78-2a-3(2)(f), Utah Code Annotated, 1953, as amended.

## ISSUES FOR REVIEW

The issues in this case for review on appeal are the following:

1. Whether or not the District Court committed error in refusing to grant Defendant's Motion to Suppress for the reason that the arrest of Defendant on November 6, 1994, was unlawful. The standard of review is the correction of legal error, *State v. Ramirez*, 817 P.2d 774 (Utah Ct. App. 1991).

2. Whether or not the District Court committed error by refusing to grant Defendant's Motion to Suppress because of the illegality of the seizure by the police of the motor vehicle in the possession of Defendant at the time of his arrest on November 6, 1994. The standard of review is the correction of legal error, *State v. Ramirez*, 817 P.2d 774 (Utah Ct. App. 1991).

3. Whether or not the District Court committed legal error in refusing to grant Defendant's Motion to Suppress because the inventory search by the police of the motor vehicle seized from Defendant at the time of his arrest extended further than was reasonable for an inventory of the contents of the vehicle. The standard of review is correction of a legal error, *State v. Ramirez*, 817 P.2d 774 (Utah Ct. App. 1991)

4. Whether or not the District Court committed error in admitting into evidence the results of the laboratory tests of the controlled substance found in the vehicle. The standard of review is correction of legal error, *State v. Ramirez*, 817 P.2d 774. (Utah Ct. of Appeals).

5. Whether or not the District Court committed legal error in admitting the handgun into evidence. The standard of review is the correction of legal error, State v. Ramirez, 817 P.2d 774 (Utah Ct. App. 1991).

6. Whether or not the jury verdict adjudging Defendant guilty of the offense of Assault is supported by sufficient evidence to overcome a reasonable doubt. The standard of review is an analysis of the evidence to see if verdict is justified, State v. Kalisz, 735 P.2d 60 (Utah, 1987).

7. Whether or not the jury verdict adjudging Defendant guilty of the offense of Possession of Controlled Substance is supported by sufficient evidence to overcome a reasonable doubt. The standard of review is an analysis of the evidence to see if verdict is justified, State v. Kalisz, 735 P.2d 60 (Utah, 1987).

#### STATEMENT OF THE CASE

##### I.

1. This is a criminal case in which defendant, Gregory Lee Farrow, was charged by five counts in the Information, namely: Count 1, Aggravated Assault, a third degree felony, occurring on October 10, 1994; Count 2, Assault, a class B misdemeanor, occurring on October 21, 1994; Assault, a class B misdemeanor, occurring on April 14, 1994; Count 4, Possession of Controlled Substance (methamphetamine), a third degree felony; and Count 5, Possession of Handgun by felon, a third degree felony, this and Count 4 occurring on November 6, 1994.

2. A preliminary examination was held in which Count 1, Aggravated Assault, was dismissed for lack of probable cause,

but Defendant was held to answer on all of the remaining charges. Defendant filed a Motion to Suppress, seeking to suppress evidence of his arrest, the seizure of the motor vehicle which was in his possession at the time of the arrest, and the search of the vehicle. A hearing was had and the motion was denied in total. A jury trial was held on the two remaining class B assaults and the Possession of Controlled Substance charges, and a verdict of guilty was returned on the assault occurring on April 14, 1994, and the Possession of Controlled Substance charge and a verdict of not guilty on the assault allegedly occurring on October 21, 1994. The remaining charge of Possession of Handgun by Felon was subsequently tried to the court and a judgment of guilty was entered.

3. By reason of the aforementioned convictions, judgment and sentence were entered by the District Court.

Supporting documents for the foregoing factual statements are the Bindover Order, Order Denying Motion to Suppress, Jury Verdict and Judgment, Sentence and Commitment.

## II.

1. Defendant and Angalee Farrow were husband and wife and they resided in Beaver City, Utah. (Trial Record (T-R) P. 46). During the month of April, 1994, Defendant was employed as the manager of Tri-Valley Distributing. Angalee was pregnant but she and Defendant were temporarily separated because of some marital difficulties. Angalee and Defendant's mother came to the business where Defendant was employed on April 14, 1994, as Angalee wished to discuss some matters with Defendant. An argument ensued, mostly about money, and some minor physical confrontation took place at the vehicle in which Angalee

and the mother had arrived. Angalee testified that Defendant struck her but Defendant testified that he did not and that the only physical action that took place between them was each pulling on a purse to obtain possession of it. The mother did not see all that went on.

2. Between April 14, 1994, and October 21, 1994, the baby was born to Angalee and the parties reconciled and resumed living together at their apartment in Beaver City, Utah. However, on or about October 21, 1994, a dispute arose between them and Angalee moved out and began to reside in Cedar City, Utah where her parents lived. She spent some time at Defendant's parents home in Summit, Utah, some time with her parents, some time in an apartment and finally went to a shelter home. No confrontations or disputes occurred between Defendant and Angalee after October 21 when Angalee left the home in Beaver.

3. On November 5, 1994, Officer Cameron Noel, of the Beaver City Police Department, received information concerning some alleged domestic problems between Defendant and his wife Angalee, and he went to Cedar City and interviewed her. The interview centered on three alleged assaults occurring on April 14, 1994, October 10, 1994, and October 21, 1994. (Preliminary Examination Record, Pr-Ex-R, P. 21 and Suppression Hearing Record, Sup-R, P. 8). As to the incident occurring on October 10, 1994, with respect to which the aggravated assault charge was lodged but dismissed at the preliminary examination (Pr-Ex-R P. 61) the officer was told by Angalee Farrow in the interview that Defendant got a pistol in his hand and threatened to kill himself but he never pointed the gun at



Angalee or threatened to shoot her. (Pr Ex-R P. 8 Sup-R P. 14).

4. On the basis of the interview with Angalee Farrow, Officer Noel returned to Beaver and informed other officers that he wanted to have Defendant arrested for assault. On the evening of November 6, 1994, Deputy Sheriff John B. Chambers saw Defendant come out of the Beaver Post Office on Main Street in Beaver City and approach his vehicle, (Sup-R P.32). Relying on Officer Noel's request, Officer Chambers detained Defendant just as Defendant was about to enter his vehicle, (Sup-R P. 32). Officer Chambers told Defendant that he, Defendant, would have to be taken to the sheriff's office and that defendant's vehicle would be towed to the sheriff's office, (Sup-R P. 34). Defendant was formally arrested upon his arrival at the sheriff's office by Officer Noel for assault, (Sup-R P. 22). Defendant protested at that point and after arriving at the sheriff's office about having his vehicle towed to the sheriff's office because it was a rental car and he did not want it taken into custody and offered to call his assistant manager at the business to come and take possession of the vehicle, but the police refused to allow him to provide for the car in that manner and had the vehicle towed to the sheriff's office over Defendant's objection, (Sup-R P. 38 and 39). Officer Chambers testified at the suppression hearing that his department has a policy of taking vehicles into custody whenever they are in the immediate possession of persons arrested as a protection for the police agency and for the vehicle although he did'nt specify any danger to the vehicle in this case had it been turned over to some

person that Defendant would have designated (Sup-R P. 42).

5. Officer Chambers and Noel conducted an extensive "inventory" search of defendant's vehicle. The officer inside the vehicle found a folder between the two front bucket seats which had the appearance of a folder for the keeping of an owners manual, and the officer opened the folder and found an owners manual and a small package containing what he identified to be methamphetamine, (Pr Ex-R P. 48). The officers also found a handgun on the passenger seat of the vehicle, (Pr Ex-R P. 48). Defendant had been previously convicted of the commission of a felony.

6. The supposed methamphetamine was later transported to Cedar City to a chemistry crime laboratory for testing. The substance was left at the laboratory but there was no hand-to-hand delivery of the substance from the transporting officer to any other person, (Tr-R P. 173). There was also a period of time when the vehicle of Defendant's was left on the street when he was being taken to the sheriff's office and before the tow truck arrived when it was not under continuous surveillance, (Tr-R P. 168). Defense counsel objected to the test report of the substance being received in evidence at the trial as there having been an inadequate chain of evidence between the time that Defendant was taken from his vehicle and the time that the substance was actually received by the lab technician, but the trial judge overruled the objection, (Tr-R P. 173).

7. Defendant testified at the trial that he was not a user of methamphetamine, that the vehicle was a rental car from Las Vegas, Nevada, and that he had no knowledge of the presence of the substance in the vehicle, (Tr-R P. 214-253).

## SUMMARY OF LEGAL ARGUMENTS

### I.

#### ARREST OF DEFENDANT UNLAWFUL.

The arrest of Defendant was not lawful because the officer did not have reasonable cause to believe that a misdemeanor had been committed in the officer's presence or that a felony had been committed by Defendant. The officer was not responding to a domestic violence call as anticipated by statute because the arrest of Defendant was too remote in time and place from any domestic problem actual or known to the officer.

### II.

#### SEIZURE OF DEFENDANT'S VEHICLE UNLAWFUL.

The seizure of Defendant's vehicle was unlawful because the vehicle had no relevance to the cause for the arrest and Defendant was able and desirous of providing for the safe keeping of the vehicle otherwise thereby relieving the police from all risk of liability.

### III.

#### SEARCH OF VEHICLE WAS UNREASONABLE AND EXCESSIVE.

Even if the seizure of the vehicle was lawful, the inventory of the contents of the vehicle process was unreasonable and excessive in that it went so far as to open the owners manual cover.

#### IV.

ADMISSION INTO EVIDENCE OF THE LABORATORY REPORT ON THE CONTROLLED SUBSTANCE UNLAWFUL.

The admission into evidence of the laboratory report on the testing of the controlled substance was unlawful because there was not continuous surveillance of Defendant's vehicle between the time of his arrest and the time of the inventory of the vehicle and because there was not an unbroken chain of evidence of the possession of the controlled substance between the inventory of the vehicle and the testing by the technician at the laboratory.

#### V.

ADMISSION INTO EVIDENCE OF HANDGUN UNLAWFUL.

The admission into evidence of the handgun found in Defendant's vehicle was unlawful because there was not continuous surveillance of Defendant's vehicle between the time of his arrest and the time of the inventory of the vehicle.

#### VI.

CONVICTION FOR ASSAULT AGAINST WEIGHT OF EVIDENCE.

The jury verdict of assault should be set aside as not being supported by the evidence.

#### VII.

CONVICTION FOR POSSESSION OF CONTROLLED SUBSTANCE AGAINST WEIGHT OF EVIDENCE.

The jury verdict of possession of controlled substance should be set aside as not being supported by the evidence. In view of Defendants testimony, there was clearly a reasonable doubt.

## LEGAL ARGUMENTS

### I.

#### ARREST OF DEFENDANT UNLAWFUL.

The record does not disclose the issuance of a warrant for the arrest of Defendant, so the arrest must be sustained, if at all, as a warrantless arrest. The claimed justification for the arrest was assault. (Sup-R P. 22). There are only two possible statutory bases that deserve analysis:

(1) Section 77-7-2, UCA, 1953, quoted in the Addendum, empowers peace officers to affect a warrantless arrest under certain circumstances. Sub-Section (1) does not apply as the record does not disclose the commission of any misdemeanor in the officer's presence. Sub-Section (2) would apply only if the officer had reasonable cause to believe that a felony had been committed and that defendant had committed it. The felony apparently relied on was the alleged aggravated assault occurring on October 10, 1994, (which was dismissed at the preliminary examination for lack of probable cause) and the only evidence of that which the officer had was obtained from his interview with Angelee Farrow on November 5, 1994, and that evidence, as testified to by Officer Noel at the suppression hearing, was to the effect that Defendant threatened to use the gun on himself but did not threaten Angelee Farrow with the gun in any manner. (Sup-R P. 14). Sub-Section (3) has no application because there was no evidence that Defendant was attempting to flee or conceal himself to avoid arrest, or that he was going to destroy or conceal evidence, or that he

was about to injure any person or damage any property belonging to another. He was just stopping his vehicle on Main Street to get his mail. (Sup-R P. 32). The record does not disclose any contact by Defendant with his wife since October 21, 1994, with the alleged aggravated assault occurring on October 10, 1994, and the arrest was made on November 6, 1994. (Sup-R P. 22).

(2) Section 77-36-2, UCA, 1953, quoted in the Addendum, provides officers with additional warrantless arrest powers by Sub-Section (3) in domestic violence cases, but the clear intent of the statute, as indicated by Sub-Sections (2) and (3), is to provide a remedy for immediate and urgent situations involving domestic violence. However, Section 77-36-3 is not intended to be a substitute for the general arrest powers contained in Section 77-7-2 in cases arising out of domestic violence but not needing urgent attention. In the instant case, at least 16 days had elapsed since the last contact between the parties so far as the record indicates and there had been more than ample time to procure an arrest warrant. Indeed, in view of the continued presence of Defendant in the small community and the fact that the alleged victim was residing in a shelter for safety in Cedar City, Utah, more than 50 miles away, there was ample time to obtain an arrest warrant after the interview with the alleged victim on November 5, 1994.

In view of the foregoing, the arrest of Defendant should have been suppressed by reason of the hearing on the Motion to Suppress, as well as all evidence obtained as a result of the unlawful arrest.

## II.

### SEIZURE OF DEFENDANT'S VEHICLE UNLAWFUL.

Even if the arrest of Defendant was lawful, the officer had no right to seize his vehicle under the circumstances of this case. The officer testified at the hearing on the Motion to Suppress that the reason for the policy of taking vehicles into custody that had been in the possession of a person arrested is to protect the vehicle from damage in being left unattended thereby eliminating liability to the police and loss to the owner of the vehicle. (Sup-R P. 42). It is conceded that such a policy has merit where the arrest is made in certain districts of large cities or when there is otherwise risk in leaving a vehicle unattended. The liability of the police is rooted in the fact that they are taking the arrested person away from his vehicle and thereby creating a risk of loss to him. In the instant case, Defendant desired and urged to assume his own responsibility and also the responsibility of the police by delivering the vehicle over to a reliable person and thereby avoid the lack of accessibility to his business of the vehicle and the fees involved in the impoundment. (Sup-R P. 42). As the arrest was for assault, the vehicle had no relevance and the police did not claim that it had any evidenciary value. The objective of the police, especially where they searched even to the extent of looking into an owners manual, was an obvious pretext for an opportunity to search the vehicle but not to protect it.

### III.

#### INVENTORY OF VEHICLE UNREASONABLE AND EXCESSIVE.

Even if the seizure of the vehicle was lawful and necessary for its protection, the inventory of the contents, which the officer insisted upon calling it rather than a "search", (Sup-R P. 42). extended beyond what was necessary to itemize the contents for the protection of the police. The list could have included an "owners manual" rather than whatever might have been inside the cover. The "inventory" was an obvious pretext search, and one might wonder how far the "inventory" would have gone had the officers not found what they were looking for in the manual. One whose vehicle is taken from him upon his arrest is entitled to have the property handled with a view of protecting his privacy rather than to exploit his belongings to the world. While the vehicle was found to contain a prohibited substance, the officers had no right to violate Defendant's constitutional right of privacy in order to locate something which the officers no doubt had a hunch was present.

### IV.

#### ADMISSION INTO EVIDENCE OF LABORATORY TEST RESULTS OF CONTROLLED SUBSTANCE UNLAWFUL.

At the trial, evidence was offered as to the test results on the examination by the chemist of the substance seized from Defendant's vehicle in the course of the "inventory". The officer testified that he transported the substance to the



laboratory in Cedar City, Utah, for analysis where he placed it in a locker to be presumably obtained by the chemist who would perform the test. (Tr-R P. 112). The evidence was incomplete and insufficient as to the laboratory's procedure, in any, to control the access to the locker. The trial judge stated in the presence of the jury that he believed the procedure to be adequate but his belief was apparently from sources outside the trial record which the defense had no opportunity to evaluate. (Tr-R P. 173). The defense objection to admitting the test result should have been sustained and the evidence rejected. An additional reason for rejecting the test result is that there was a period of time between the time that Defendant was arrested and taken from his vehicle and the time of the "inventory" when the vehicle was not under continuous surveillance thereby allowing an opportunity for some other person to place the substance into the vehicle. (Tr-R P. 168).

## V.

### ADMISSION INTO EVIDENCE OF HANDGUN UNLAWFUL.

Evidence was presented at the subsequent portion of the trial to the court without a jury, (the trial was bifurcated in order to avoid the prejudicial effect of having the jury learn that Defendant had been previously convicted of a felony), that a handgun had been located in Defendant's vehicle in connection with the inventory, together with evidence that Defendant had been previously convicted of a felony prior to his arrest in the instant case. By reason of the lack of

continuous surveillance of the vehicle as set forth in the preceeding Point "IV" of this argument, the handgun evidence should have been excluded. Because of the exclusion of the handgun evidence, the evidence of the former conviction of a felony would have been irrelevant and should also have been excluded.

## VI.

### CONVICTION OF ASSAULT AGAINST WEIGHT OF EVIDENCE.

The jury's verdict of guilty of assault, a class B misdemeanor, occurring on April 14, 1994, is not supported by sufficient evidence to overcome Defendant's presumption of innocence beyond a reasonable doubt. Although Angelee Farrow testified that Defendant struck her, Defendant testified with equal believability that he did not strike her which should have left a reasonable doubt in the minds of the jurors as to his guilt. The anxiety and confusion surrounding the incident would have clouded her impressions as much as his. (Tr-R P. 50).

## VII.

### CONVICTION OF POSSESSION OF CONTROLLED SUBSTANCE AGAINST WEIGHT OF EVIDENCE.

One of the essential elements of the offense of possession of controlled substance is that it be had "knowingly and intentionally". (Section 58-37-8).

Defendant testified that the vehicle was a rental car from Las Vegas, Nevada, and that he had not had occasion to look into the owners manual and that he was not aware of the presence of the controlled substance. The State had no evidence on the point. (Tr-R P.214-253) In view of the lack of evidence to the contrary, the jury had no basis for finding against Defendant's testimony. The jury was in error in assuming, without evidence, that the mere presence in an unobvious place in the vehicle of the substance should not overcome the reasonable doubt created by his testimony.

## CONCLUSION

1. The ORDER DENYING MOTION TO SUPPRESS entered by the District Court should be vacated, and the evidence of the arrest of Defendant, together with all evidence resulting from his arrest, should be suppressed.

2. The evidence obtained by reason of the seizure, search and inventory of the contents of Defendant's vehicle should be suppressed, even if the evidence of the arrest of Defendant is not suppressed.

3. The evidence of the result of the test by the chemist of the substance seized from Defendant's vehicle should be ruled as inadmissible and suppressed.

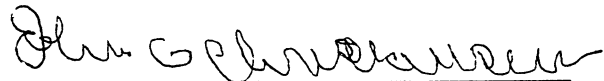
4. The evidence of the handgun found in Defendant's vehicle and the evidence of his having been previously convicted of a felony should be ruled inadmissible and suppressed.

5. The conviction of Defendant for assault, a class B misdemeanor, should be set aside.

6. The conviction of Defendant for possession of controlled substance, a third degree felony, should be set aside.

7. The conviction of Defendant for possession of handgun by felon, a third degree felony, should be set aside.

Dated November 13, 1995.

  
John O. Christiansen,  
Attorney for Defendant-  
Appellant

# ADDENDUM

UTAH CODE ANNOTATED, § 77-7-2 (1953, as amended) copy attached.  
UTAH CODE ANNOTATED, § 77-36-2 (1953, as amended) copy attached.  
ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS, copy attached.  
Order admitting sample of controlled substance (Exhibit 1)  
into evidence. Jury trial record P. 173-175.  
JURY VERDICT.  
Order finding Defendant guilty. Record of hearing held  
April 20, 1995, P. 16.

- 77-16. Authority of peace officer to frisk suspect for dangerous weapon — Grounds.
- 77-17. Authority of peace officer to take possession of weapons.
- 77-18. Citation on misdemeanor or infraction charge.
- 77-19. Appearance required by citation — Arrest for failure to appear — Transfer of cases — Motor vehicle violations — Disposition of fines and costs.
- 77-20. Service of citation on defendant — Filing in court — Contents of citations.
- 77-21. Proceeding on citation — Voluntary forfeiture of bail — Parent signature required — Information, when required.
- 77-22. Failure to appear as misdemeanor.
- 77-23. Delivery of prisoner arrested without warrant to magistrate — Transfer to court with jurisdiction — Violation as misdemeanor.

#### 77-1. "Arrest" defined — Restraint allowed.

An arrest is an actual restraint of the person arrested or submission to custody. The person shall not be subjected to any more restraint than is necessary for his arrest and detention.

1980

#### 77-2. By peace officers.

A peace officer may make an arrest under authority of a warrant or may, without warrant, arrest a person:

- (1) for any public offense committed or attempted in the presence of any peace officer; "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses;
- (2) when he has reasonable cause to believe a felony has been committed and has reasonable cause to believe that the person arrested has committed it;
- (3) when he has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:
  - (a) flee or conceal himself to avoid arrest;
  - (b) destroy or conceal evidence of the commission of the offense; or
  - (c) injure another person or damage property belonging to another person.

1986

#### 77-3. By private persons.

A private person may arrest another:

- (1) For a public offense committed or attempted in his presence; or
- (2) When a felony has been committed and he has reasonable cause to believe the person arrested has committed it.

1980

#### 77-4. Magistrate may orally order arrest.

A magistrate may orally require a peace officer to arrest anyone committing or attempting to commit a public offense in the presence of the magistrate, and, in the case of an emergency, when probable cause exists, a magistrate may orally authorize a peace officer to arrest a person for a public offense, and thereafter, as soon as practical, an information shall be filed against the person arrested.

1980

#### 77-5. Issuance of warrant — Time and place arrests may be made — Contents of warrant — Responsibility for transporting prisoners — Court clerk to dispense restitution for transportation.

(1) A magistrate may issue a warrant for arrest upon finding probable cause to believe that the person to be arrested has committed a public offense. If the offense charged is:

(a) a felony, the arrest upon a warrant may be made at any time of the day or night; or

(b) a misdemeanor, the arrest upon a warrant can be made at night only if:

(i) the magistrate has endorsed authorization to do so on the warrant;

(ii) the person to be arrested is upon a public highway, in a public place, or in a place open to or accessible to the public; or

(iii) the person to be arrested is encountered by a peace officer in the regular course of that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for arrest.

(2) (a) If the magistrate determines that the accused must appear in court, the magistrate shall include in the arrest warrant the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

(b) (i) The law enforcement agency identified by the magistrate under Subsection (a) is responsible for providing inter-county transportation of the defendant, if necessary, from the arresting law enforcement agency to the court site.

(ii) The law enforcement agency named on the warrant may contract with another law enforcement agency to have a defendant transported.

(c) (i) The law enforcement agency identified by the magistrate under Subsection (a) as responsible for transporting the defendant shall provide to the court clerk of the court in which the defendant is tried, an affidavit stating that the defendant was transported, indicating the law enforcement agency responsible for the transportation, and stating the number of miles the defendant was transported.

(ii) The court clerk shall account for restitution paid under Section 76-3-201 for governmental transportation expenses and dispense restitution monies collected by the court to the law enforcement agency responsible for the transportation of a convicted defendant.

1993

#### 77-7-5.5. Repealed.

1991

#### 77-7-6. Manner of making arrest.

(1) The person making the arrest shall inform the person being arrested of his intention, cause, and authority to arrest him. Such notice shall not be required when:

(a) there is reason to believe the notice will endanger the life or safety of the officer or another person or will likely enable the party being arrested to escape;

(b) the person being arrested is actually engaged in the commission of, or an attempt to commit, an offense; or

(c) the person being arrested is pursued immediately after the commission of an offense or an escape.

(2) (a) If a hearing-impaired person, as defined in Subsection 78-24a-1(2), is arrested for an alleged violation of a criminal law, including a local ordinance, the arresting officer shall assess the communicative abilities of the hearing-impaired person and conduct this notification, and any further notifications of rights, warnings, interrogations, or taking of statements, in a manner that accurately and effectively communicates with the hearing-impaired person including qualified interpreters, lip reading, pen and paper, typewriters, computers with print-out capability, and telecommunications devices for the deaf.

(b) Compliance with this subsection is a factor to be considered by any court when evaluating whether statements of a hearing-impaired person were made knowingly, voluntarily, and intelligently.

1995

ending state Renunciation of this com-  
 will be by the same authority which exe-  
 by sending a six-month notice in writing  
 cution to withdraw from the compact to  
 states party hereto 1980

## CHAPTER 35

## RULES OF CRIMINAL PROCEDURE

enacted by Laws 1989, ch. 187, § 15.)

## CHAPTER 36

## DOMESTIC VIOLENCE PROCEDURES ACT

## Definitions

Law enforcement officers' training,  
 duties, and powers — Reports —  
 Records

Court's powers and duties in domestic  
 violence actions — Order restrain-  
 ing defendant — Penalty for viola-  
 tion

Conditions for release after arrest for  
 domestic violence

Repealed

Appearance of defendant required —  
 Determinations by court

Sentencing — Restricting contact  
 with victim — Counseling — Cost  
 assessed against defendant

Enforcement of orders restricting con-  
 tact with victim

Prosecutor to notify victim of decision  
 as to prosecution

Peace officers' immunity from liabil-  
 ity

Separability clause

## Definitions.

In this chapter

"Cohabitant" has the same meaning as in  
 Section 30-6-1

"Domestic violence" includes any of the fol-  
 lowing crimes when committed by one cohabitant  
 against another

(a) assault, as described in Section 76-  
 5-102,

(b) aggravated assault, as described in  
 Section 76-5-103,

(c) mayhem, as described in Section 76-  
 5-105,

(d) criminal mischief, as described in Sec-  
 tion 76-6-106,

(e) burglary, as described in Section 76-  
 5-202,

(f) aggravated burglary, as described in  
 Section 76-6-203,

(g) criminal trespass, as described in Sec-  
 tion 76-6-206,

(h) aggravated kidnapping, as described  
 in Section 76-5-302,

(i) unlawful detention, as described in Sec-  
 tion 76-5-304, or

(j) sexual offenses, as described in Title  
 76, Chapter 5, Part 4, and Title 76, Chapter  
 6.

"Victim" means a cohabitant who has been  
 subjected to domestic violence 1993

77-36-2. Law enforcement officers' training, du-  
ties, and powers — Reports —  
Records.

(1) All training relating to the handling of domes-  
 tic violence complaints by law enforcement officers  
 shall stress protection of the victim, enforcement of  
 criminal laws in domestic situations, and availability  
 of community resources. Law enforcement agencies  
 and community organizations with expertise in do-  
 mestic violence shall cooperate in all aspects of that  
 training.

(2) The primary duty of peace officers responding  
 to a domestic violence call is to protect the parties  
 and enforce the laws allegedly violated.

(3) (a) In addition to the arrest powers described in  
 Section 77-7-2, when a peace officer responds to a  
 domestic violence call and has probable cause to  
 believe that a crime has been committed, the  
 peace officer shall arrest without a warrant or  
 issue a citation to any person that he has proba-  
 ble cause to believe has committed any of the  
 offenses described in Subsections 77-36-1(2)(a)  
 through (i).

If the peace officer has probable cause to be-  
 lieve that there will be continued violence  
 against the alleged victim, or if there is evidence  
 that the perpetrator has either recently caused  
 serious bodily injury or used a dangerous weapon  
 in the domestic violence offense, the officer shall  
 arrest and take the alleged perpetrator into cus-  
 tody, and may not utilize the option of issuing a  
 citation under this section. For purposes of this  
 section "serious bodily injury" and "dangerous  
 weapon" mean the same as those terms are de-  
 fined in Section 76-1-601.

(b) If a peace officer does not immediately ex-  
 ercise arrest powers or initiate criminal proceed-  
 ings by citation or otherwise, he shall notify the  
 victim of his or her right to initiate a criminal  
 proceeding and of the importance of preserving  
 evidence.

(c) A peace officer responding to a domestic vi-  
 olence call shall prepare an incident report in-  
 cluding an officer's disposition of the case. That  
 report shall be made available to the victim,  
 upon request, at no cost.

(4) The peace officer shall offer, arrange, or faci-  
 litate transportation for the victim to a hospital for  
 treatment of injuries, or to a place of safety or shelter.

(5) The law enforcement agency shall forward the  
 incident report to the appropriate prosecutor within  
 ten days of making the report, unless the case is un-  
 der active investigation.

(6) Each law enforcement agency shall, as soon as  
 practicable, make a written record and maintain  
 records of all incidents of domestic violence reported  
 to it.

(7) Records made and kept pursuant to Subsections  
 (3) and (6) shall be identified by a law enforcement  
 agency code for domestic violence 1991

77-36-3. Court's powers and duties in domestic  
violence actions — Order restraining  
defendant — Penalty for violation.

(1) Because of the serious nature of domestic vi-  
 olence, the court, in domestic violence actions

(a) may not dismiss any charge or delay dispo-  
 sition because of concurrent divorce or other civil  
 proceedings,

(b) may not require proof that either party is  
 seeking a dissolution of marriage before instiga-  
 tion of criminal proceedings,

FILED

JUL 13 1995

*Paul B. Barty* Clerk

John O. Christiansen  
Attorney for Defendant  
P. O. Box 1468  
Beaver, Utah 84713  
Tel. 801-438-5412

THE FIFTH JUDICIAL DISTRICT COURT FOR BEAVER COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

GREGORY LEE FARROW,

Defendant

ORDER DENYING DEFENDANT'S

MOTION TO SUPPRESS

No. 94-CR-90

Defendant having filed in this action his Motion to Suppress Evidence arising from the arrest of Defendant, the seizure of the motor vehicle which was in his possession at the time of the arrest, and the inventorying of the contents of said vehicle, all occurring on November 6, 1994, and the suppression of all evidence obtained by reason of such arrest, seizure and inventorying, and said Motion having come on for hearing before the court on the 9th day of March, 1995, the State being represented by Leo G. Kanell, Beaver County Attorney, and the Defendant being present and represented by his assigned legal counsle, John O. Christiansen, and said arrest, seizure and inventorying having been done without a warrant, and the State having presented evidence and legal argument against the granting of said Motion and Defendant having presented legal argument in favor of said Motion and the court having duly considered the same, and it appearing:

1. That the arresting officer had reasonable cause to believe a felony had been committed and had reasonable cause to believe that the Defendant had committed it;

2. That the arresting officer had reasonable cause to believe




that the Defendant had committed a public offense, and there was reasonable cause for believing that the Defendant may have fled to avoid arrest or may injure another person; and

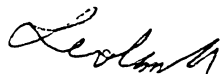
3. That there was an ongoing threat of domestic violence by Defendant against his spouse, Angelee Farrow:

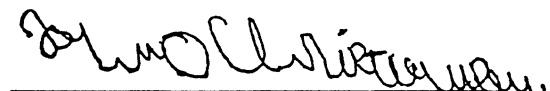
IT IS HEREBY ORDERED: That said Motion to suppress should be and is hereby denied.

Dated 7-6-95

  
\_\_\_\_\_  
Robert T. Braithwaite,  
District Court Judge

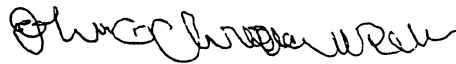
APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Leo G. Kanell,  
Beaver County Attorney,  
Attorney for State

  
\_\_\_\_\_  
John O. Christiansen,  
Attorney for Defendant

PROOF OF SERVICE

I hereby certify that I served the foregoing Appellant's Appeal Brief upon the Plaintiff/Respondent by mailing two copies thereof, postage prepaid, to the Attorney for the Plaintiff/Respondent on the 16th day of November, 1995, addressed as follows: Ms. Jan Graham, Attorney General, State of Utah, 236 State Capital, Salt Lake City, Utah 84114.



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Attorney for Defendant/Appellant  
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Beaver, Utah 84713