

2006

# The State of Utah v. Jack Wilkinson : Reply Brief

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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STATE OF UTAH,

Plaintiff / Appellee

vs.

JACK WILKINSON,

Defendant / Appellant

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Case No. 20060904-CA

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**REPLY BRIEF OF APPELLANT**

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APPEAL FROM THE FOURTH DISTRICT JUDICIAL COURT, UTAH COUNTY,  
STATE OF UTAH, FROM A CONVICTION OF  
CONTROLLED SUBSTANCE VIOLATIONS AND FALSE INFORMATION,  
BEFORE THE HONORABLE LYNN W. DAVIS

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**UTAH APPELLATE COURTS**

**DEC 27 2007**

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	i
ARGUMENT	
The Trial Court Erred in Denying Wilkinson’s Motion to Suppress. ....	1
CONCLUSION AND PRECISE RELIEF SOUGHT .....	4

## TABLE OF AUTHORITIES

### Cases Cited

<i>Illinois v. Caballes</i> , 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005).	2, 3, 4
<i>State v. Godina-Luna</i> , 826 P.2d 652 (Utah App. 1992) . . . . .	3, 4
<i>State v. Johnson</i> , 805 P.2d 761 (Utah 1991) . . . . .	2, 4
<i>State v. Lopez</i> , 873 P.2d 1127 (Utah 1994) . . . . .	2
<i>State v. Schlosser</i> , 774 P.2d 1132 (Utah 1989). . . . .	2, 3
<i>Terry v. Ohio</i> , 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) . . . . .	1, 2
<i>United States v. Harris</i> , 528 F.2d 1327 (8th Cir.1975) . . . . .	2
<i>United States v. Hunter</i> , 471 F.2d 6 (9th Cir.1972) . . . . .	2

IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,	:	
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Plaintiff / Appellee	:	
	:	
vs.	:	Case No. 20060904-CA
	:	
JACK WILKINSON,	:	
	:	
Defendant / Appellant	:	
	:	

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APPELLANT’S REPLY BRIEF

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ARGUMENT

**I. The Trial Court Erred in Denying Wilkinson’s Motion to Suppress**

Defendant herein did not and does not dispute that the initial traffic stop was justifiable; concomitantly, the State does not dispute that Wilkinson was detained and that the question is therefore whether the detention ““was reasonably related in scope to the circumstances which justified the interference in the first place.”” Answer Brief, p. 7, *quoting Terry v. Ohio*, 392 U.S. 1, 19, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889, 905 (1968). The State then argues that, because the use of a drug-detection dog during the routine traffic stop did not prolong the stop beyond the time reasonably required to complete it, Wilkinson’s Fourth Amendment right to be free of unreasonable searches and seizures was not violated.

The State's argument would hold more weight had Wilkinson been the driver of the vehicle – but he was the backseat passenger, against whom there was no articulable suspicion of anything before the drug-sniffing dog arrived.

“[W]hen an officer stops a vehicle for a traffic violation, he may **briefly** detain the vehicle and its occupants while he examines the vehicle registration and the driver's license.” *State v. Schlosser*, 774 P.2d 1132, 1135 (Utah 1989) (emphasis added, citation omitted). Even post-*Cabelles*<sup>1</sup>, the “length and scope of the detention must be ‘strictly tied to and justified by’ the circumstances which rendered its initiation permissible.” *State v. Johnson*, 805 P.2d 761, 762 (Utah 1991), *quoting Terry*, 392 U.S. at 19-20, 88 S.Ct. at 1879.

A police officer is justified in further detaining a car “and its occupants when the driver fails to produce identification or is not the owner.” *Johnson*, 805 P.2d at 762, *citing United States v. Harris*, 528 F.2d 1327, 1330 (8th Cir.1975) and *United States v. Hunter*, 471 F.2d 6, 7 (9th Cir.1972). That is not the case here. The driver of the vehicle in which Wilkinson was riding produced identification (albeit suspended), and her ownership of the car was never disputed. She was issued a citation but not arrested (R. 208:13 ll. 4-6). Thus, there was no justification to find an alternative driver or to run a warrants check on the other two passengers' driver's licenses. “Running a warrants check without reasonable suspicion of criminal activity beyond the traffic offense itself arguably exceeds the reasonable scope of a traffic stop.” *State v. Lopez*, 873 P.2d 1127, 1132 (Utah

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<sup>1</sup> *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005).

1994). Furthermore, the officer admittedly at that time had no reason to believe that narcotics were present (R. 208:14 ll. 1-3). Yet, the officer extended the length *and scope* of the detention, ultimately resulting in Wilkinson's arrest. "Once a Fourth Amendment seizure has occurred, any detention for reasons exceeding the scope of the original stop and not reasonably related to the circumstances justifying the stop in the first place, is illegal." *State v. Godina-Luna*, 826 P.2d 652, 654 (Utah App. 1992).

The State focuses heavily on the negligible amount of time it took to secure and utilize the drug-sniffing dog. Answer Brief, pp. 10-20. However, it is undisputed that the officer took *some* time to summon the K9 unit and to convey "what was happening" once the other officer and his dog arrived. Necessarily, then, the routine traffic stop was extended "beyond the time reasonable required to complete [it]"<sup>2</sup> – even if only by a few seconds or minutes. "A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Id.* Because this officer prolonged the traffic stop long enough to summon another officer, Wilkinson's detention became at that point unlawful. "[E]ven a small intrusion beyond the legitimate scope of an initially lawful search is unlawful under the Fourth Amendment." *Schlosser, supra*, 774 P.2d at 1135.

*Caballes*, therefore, is distinguishable from the instant case on two critical points. First, *Caballes* concerned the use of a drug-detection dog on the driver of

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<sup>2</sup> *Caballes*, 543 U.S. at 407, 125 S.Ct. at 837.

a vehicle who was speeding, rather than on a passenger such as Wilkinson – against whom there was no articulable suspicion. Second, in *Caballes*, the officer with the drug-sniffing dog arrived at the scene without being summoned by the officer initiating the traffic stop, whereas here, the original officer took the additional time to send for the other officers. Where someone is being unlawfully detained, even the *Caballes* Court acknowledged that productive dog sniff would constitute an unconstitutional seizure. *Caballes*, 543 U.S. at 407-08, 125 S.Ct. at 837, citing *People v. Cox*, 202 Ill.2d 462, 270 Ill.Dec. 81, 782 N.E.2d 275 (2002).

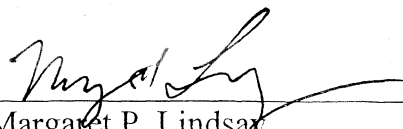
This Court “cannot condone unconstitutional police conduct simply because it yields favorable results.” *Godina-Luna*, 826 P.2d 655 at fn. 2. Here, as in *Johnson*, “the officer’s detention of the passenger beyond what was reasonably related in scope to the traffic stop was not justified by an articulable suspicion that defendant had committed a crime. Defendant’s fourth amendment rights were violated, and the evidence obtained pursuant to the arrest is to be suppressed.” *Johnson*, 805 P.2d at 764.

### **CONCLUSION AND PRECISE RELIEF SOUGHT**

Wilkinson asks that this Court reverse the trial court’s denial of his motion to suppress, vacate his conviction, and remand this case to the Fourth District Court for further proceedings.

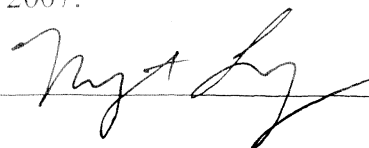


RESPECTFULLY SUBMITTED this 21 day of December, 2007.

  
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**CERTIFICATE OF MAILING**

I hereby certify that I delivered four (4) true and correct copies of the  
foregoing Brief of Appellant to Marian Decker, Assistant Attorney General,  
Appeals Division, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake  
City, UT 84114, this 21 day of December, 2007.

  
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