

1995

Utah v. Wallace : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Utah v. Wallace*, No. 950772 (Utah Court of Appeals, 1995).

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UTAH

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

: DOCKET NO. 950772-CA

Plaintiff/Appellee,

: Case No. 950772-CA

v.

:

PENNY JO WALLACE

: Priority No. 2

Defendant/Appellant.

:

BRIEF OF APPELLEE

- - - - -

THIS IS AN APPEAL FROM A CONVICTION OF UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, MARIJUANA, WITH INTENT TO DISTRIBUTE IN VIOLATION OF UTAH CODE ANN. § 58-37-8 (1994), A THIRD DEGREE FELONY; UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, METHAMPHETAMINE, WITH INTENT TO DISTRIBUTE, IN VIOLATION OF UTAH CODE ANN. § 58-37-8 (1994), AND POSSESSION OF DRUG PARAPHERNALIA IN VIOLATION OF UTAH CODE ANN. § 58-37a-5(1) (1994), IN AND FOR CACHE COUNTY, STATE OF UTAH, THE HONORABLE GORDON J. LOW, PRESIDING.

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FILED

DEC - 4 1996

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
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UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff/Appellee, :
v. : Case No. 950772-CA
PENNY JO WALLACE : Priority No. 2
Defendant/Appellant. :

BRIEF OF APPELLEE

JURISDICTIONAL STATEMENT

This is an appeal from a conviction of unlawful possession of a controlled substance, marijuana, with intent to distribute in violation of Utah Code Ann. § 58-37-8 (1994), a third degree felony; unlawful possession of a controlled substance, methamphetamine, with intent to distribute, in violation of Utah Code Ann. § 58-37-8 (1994), a second degree felony; and possession of drug paraphernalia, in violation of Utah Code Ann. § 58-37a-5(1) (1994). This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(f) (1994).

STATEMENT OF ISSUES

1. Is a valid warrantless inventory search of an automobile rendered invalid because the officer also had probable cause to search the automobile for contraband?

2. Alternatively, did exigent circumstances exist thereby justifying the warrantless search of defendant's automobile?

STANDARD OF REVIEW

A trial court's factual findings underlying its decision to deny a motion to suppress are reviewed under a clearly erroneous standard. State v. Brown, 853 P.2d 851, 854 (Utah 1992). Factual findings are clearly erroneous only if the trial court's factual findings are not adequately supported by the record, "resolving all disputes in the evidence in a light most favorable to the trial court's determination." State v. Pena, 869 P.2d 932, 935-36 (Utah 1994). A trial court's legal conclusions based on its factual findings, are reviewed for correctness, being afforded no deference. Pena, 869 P.2d at 939; Brown, 853 P.2d at 855.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

United States Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Utah State Constitution, Article I, Section 14

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

STATEMENT OF THE CASE

Defendant, Penny Jo Wallace, was charged in an information with two counts of unlawful possession of a controlled substance with intent to distribute in violation of Utah Code Ann. § 58-37-8 (1994), second and third degree felonies; one count of possession of drug paraphernalia in violation of Utah Code Ann. § 58-37a-5(a) (1994), a class B misdemeanor; one count of failure to affix a drug stamp, in violation of Utah Code Ann. § 59-19-105 (1992), a third degree felony; one count of operating or being in actual physical control of a vehicle while under the influence of alcohol and/or drugs in violation of Utah Code Ann. § 41-6-44 (1993 & Supp. 1995), a class A misdemeanor; and one count of unsafe lane travel in violation of Utah Code Ann. § 41-6-69 (1993), a class C misdemeanor (R. 01-03).

Defendant moved to suppress all evidence discovered as the result of a warrantless search of her automobile by a police officer (R. 33). After hearing brief testimony from the police officer, the parties stipulated to the facts as set forth in their respective memoranda and as set forth in the police officer's written incident report (T. 4-5, 33). Upon hearing argument from all the parties, the trial court found and concluded that the search was a valid inventory search and that it was conducted pursuant to policy (T. 33-34). The trial court also found that the vehicle had been left in the officer's custody and possession and that he had an obligation and duty to conduct the inventory search (T. 33-34). The trial court therefore denied defendant's motion to suppress (T. 33-34).

After a trial on August 23, 1995, a jury convicted defendant of unlawful possession of a controlled substance with intent to distribute, marijuana, a third degree felony; unlawful possession of a controlled substance, methamphetamine, with intent to distribute, a second degree felony; possession of drug paraphernalia, a class B misdemeanor; and unsafe lane travel, a class C misdemeanor (R. 110-111).

On October 5, 1995, defendant was sentenced to two prison terms for the possession convictions, one not to exceed five

years and the other from one-to-fifteen years (R. 143-46). Defendant was also ordered to pay \$27,750.00 in fines and surcharges for the possession convictions (R. 143-46). For the possession of drug paraphernalia conviction, defendant was sentenced to serve not more than six months in the county jail and to pay a \$1,850.00 fine and surcharge (R. 143-46). Defendant was sentenced to no more than 90 days in the county jail and to pay \$1,387.50 in fines and surcharges for the unsafe lane conviction (R. 143-46). All sentences were ordered to run concurrently, however, the sentences were stayed and defendant was placed on probation (R. 143-46).

Defendant filed a timely notice of appeal from the two convictions for possession of a controlled substance with intent to distribute and from the conviction for possession of drug paraphernalia (R. 148).

STATEMENT OF FACTS

On April 17, 1995, defendant, Penny Jo Wallace, as driver, and her co-defendant, Roland H. Wheeler, as passenger, were involved in a one vehicle accident on SR-30 (R. 89). Trooper Arlow Hancock of the Utah Highway Patrol responded to the scene of the accident and found defendant wrapped in a blanket and sitting on the ground near her car (R. 89). Wheeler, also

wrapped in a blanket, reported to the trooper that he was in pain (R. 89). Trooper Hancock assured defendant and Wheeler that an ambulance was on its way (R. 89).

After requesting that a witness to the accident provide a written statement, Trooper Hancock asked defendant for a driver's license, registration, and proof of insurance (R. 90). Defendant told the trooper that the requested documents were in her car (R. 90). Trooper Hancock attempted to retrieve the documents from the car, but found the car doors locked, the engine running, and the keys in the ignition (R. 90). The officer informed defendant of this and Wheeler provided the trooper with a set of keys to the car (R. 90). Defendant then told the officer that her driver's license was in a brown wallet in her purse and that her purse was between the seats (R. 90).

Trooper Hancock returned to the car, unlocked the door, and retrieved defendant's purse (R. 90). He took the purse to defendant and opened it in front of her (R. 90). Defendant repeated that her license was in her brown wallet and the officer took the wallet out of the purse and opened it to find defendant's Utah driver's license (R. 90). Trooper Hancock asked if defendant had a registration and proof of insurance, to which defendant replied, "It's in the glove box, you should be able to

find it" (R. 90).

The officer again returned to the car to look for the registration and proof of insurance (R. 90). Trooper Hancock entered the car through the passenger front door and opened the glove compartment (R. 90). At this time, the trooper smelled what he believed to be burnt marijuana (R. 90). While the officer was looking for a registration and proof of insurance, defendant and Wheeler were transported by ambulance to the Logan Regional Hospital (R. 90).

Trooper Hancock then returned to his patrol car and completed an accident report form (R. 90). Trooper Hancock requested that Trooper Kendrick, who had arrived earlier, complete a field diagram of the accident (R. 90).

Before leaving in the ambulance, defendant asked that the police call a towing company from Honeyville in Box Elder County (R. 90). The officers complied with that request, and a private tow truck was en route to the accident scene (R. 90-91). After completing the accident report, Trooper Hancock asked Trooper Kendrick to assist him in completing an inventory of the contents of defendant's car so that the car "could be released to the wrecker" (R. 90-91).

While Trooper Kendrick obtained an inventory form, Trooper Hancock once again entered defendant's car through the front passenger car and again smelled burnt marijuana (R. 91). Trooper Hancock opened a small wooden box on the floor in front of the seat (R. 91). The box contained a marijuana pipe, fine screen material, and rolling papers (R. 91).

Trooper Hancock told Trooper Kendrick of his discovery and then requested dispatch to send an officer to the hospital to arrest defendant for driving under the influence of drugs and to obtain a blood test on defendant (R. 91). Trooper Hancock also asked that Wheeler be arrested (R. 91).

The officers decided to start their inventory at the trunk so as to complete the inventory in an orderly fashion (R. 91). In the trunk, the officers discovered a white plastic bottle with a metal tube in the side (R. 91). It had residue in it and appeared to be a marijuana pipe (R. 91). The trunk contained other drug paraphernalia such as syringes, pipes, glass and metal spoons, and a butane torch (R. 91). Located in the same box as the marijuana pipe was a chart of measurements and street terms for drugs (R. 91). The trunk also held a basket of men's clothing in which the officers found approximately fourteen baggies of marijuana (R. 91). There were also metal containers

containing numerous paper bindles, which contained a white powder believed to be cocaine or methamphetamine (R. 91).

Trooper Hancock then called for a supervisor who witnessed the rest of the inventory (R. 91-92). After completing the inventory of items in the trunk, the officers moved to the interior of the car where they found papers containing a white powder that appeared to be cocaine, and several pornographic magazines from which the paper bindles appeared to be cut (R. 92). The officers also found various other personal items and effects in the car (R. 64).

The officers canceled the wrecker from Honeyville and called another company to tow the car for a State Impound (R. 92). The car was removed from the scene upon completion of the inventory and the wrecker driver was asked to keep the car in a secured area because of all the personal effects inside (R. 92). In completing the inventory, the officers followed written procedures of the Utah Highway Patrol (T. 10-12) and they completed a vehicle inventory form listing all the items, both legal and illegal, found in the car (R. 64).

Defendant complied with a request to take a blood test and was found to be under the influence of drugs (R. 92). Both defendant and Wheeler were then booked into the Cache County Jail

on charges of possession of illegal drugs (R. 92).

SUMMARY OF ARGUMENT

1. The trial court correctly denied defendant's motion to suppress because the evidence in question was discovered pursuant to a valid inventory search. Before the trial court, defendant affirmatively waived her argument that the inventory search was not justified under the circumstances. Even if defendant did not waive her argument, the warrantless search was valid because it met the criteria of a valid inventory search: 1) it was justified under the circumstances and 2) the officers followed standardized written policy in conducting the inventory. The fact that the officer had probable cause to search the car did not in and of itself make the otherwise valid inventory search a mere pretext for an illegal warrantless search. This Court should reject a "pretext" analysis in inventory search cases and rely only on objective criteria in determining whether a warrantless inventory search is valid.

2. The officer could also legally search defendant's car because he had probable cause to believe that there was contraband in the car and exigent circumstances existed at the time the search was performed. Defendant concedes that the officer had probable cause to search the car. Exigent

circumstances existed at the time of the search because a private tow truck was on its way to remove the car from the control of the police officers.

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY DENIED DEFENDANT'S MOTION TO SUPPRESS BECAUSE THE EVIDENCE WAS DISCOVERED PURSUANT TO A VALID INVENTORY SEARCH

Defendant first challenges the trial court's denial of her motion to suppress on the ground that the trial court incorrectly ruled that the search was a valid inventory search conducted pursuant to Utah Highway Patrol [UHP] policy and procedure. Defendant essentially argues that the inventory search was invalid because 1) the inventory search was not authorized by statute or justified by the circumstances surrounding the initial stop as required in State v. Hygh, 711 P.2d 264 (Utah 1985), (Brief of Appellee [Br. App.] at 7, 9, 11), and 2) the police officer had probable cause to search her car, thereby rendering the inventory search invalid as a mere pretext to illegally search the car without a warrant (Id. at 11-12).¹

¹Defendant's basic argument is that "the warrantless search of defendant's vehicle was an investigatory search for which a warrant was required and that the officer's failure to obtain a warrant prior to conducting a search of defendant's vehicle

It is well established that an inventory search is an exception to the warrant requirement of both the Utah and federal constitutions. South Dakota v. Opperman, 428 U.S. 364, 96 S. Ct. 3092 (1976); Cady v. Dombrowski, 413 U.S. 433, 445-47, 93 S. Ct. 2523, 2530-31 (1973); State v. Hygh, 711 P.2d 264, 267 (Utah 1985); State v. Gray, 851 P.2d 1217, 1220-21 (Utah App. 1993).

violated article I, section 14 of the Utah Constitution." (Br. App. at 6). As a general rule, this Court will not engage in a separate state constitutional analysis in the absence of an argument for a different analysis under both the state and federal constitutions. State v. Lafferty, 749 P.2d 1239, 1247 n. 5 (Utah 1988); State v. Ham, 910 P.2d 433, 438 n.6 (Utah 1996); State v. Carter, 812 P.2d 460, 462 n.1 (Utah App. 1991). Although defendant argues that article I, section 14 of the Utah Constitution affords her more protection from illegal searches than the Fourth Amendment, she provides no analysis or rationale for that proposition. She cites to the plurality opinion in State v. Larocco, 794 P.2d 460 (Utah 1990), and to State v. Naisbitt, 827 P.2d 969 (Utah App. 1992) to support her argument, however, she does not explain why those cases require the result she desires.

It is important to note that Larocco, which did not garner a majority of the Court, does not apply to inventory searches. State v. Gray, 851 P.2d 1217, 1222 (Utah App. 1993). Furthermore, to date, the Utah Supreme Court has only employed the same analysis as that used under the Fourth Amendment in determining whether an inventory search is valid under the Utah Constitution. State v. Hygh, 711 P.2d 264, 267-69 (Utah 1985); see also State v. Gray, 851 P.2d 1217, 1221 (Utah App. 1993). Because defendant has not proposed that her case should be analyzed any differently under the Utah Consitution, she has waived the right to have this Court apply a separate or different state constitutional analysis. See Lafferty, 749 P.2d at 1247 n. 5; Ham, 910 P.2d at 438 n.6; State v. Carter, 812 P.2d at 462 n.1.

Both constitutions permit a warrantless search of a legitimately impounded vehicle to 1) protect the private property of the owner while the vehicle remains in police custody, 2) protect the police from claims of theft, loss, or vandalism, and 3) detect dangerous conditions or instrumentalities contained within the vehicle. State v. Johnson, 745 P.2d 452, 454 (Utah 1987); Hygh, 711 P.2d at 267; State v. Gray, 851 P.2d at 1221; State v. Sterger, 808 P.2d 122, 125 (Utah App. 1991).

For a warrantless inventory search to be valid, there must first be a reasonable and proper justification to impound the vehicle. Hygh, 711 P.2d at 268; Sterger, 808 P.2d at 124-25. That justification may come either from explicit statutory authority, Hygh, 711 P.2d at 268, or from the circumstances surrounding the initial stop or impoundment, id.; State v. Johnson, 745 P.2d 452, 454 (Utah 1987); Sterger, 808 P.2d at 124. Once it has been determined that proper justification exists for the impoundment, the warrantless inventory is valid only if there is a regular set of procedures in place to adequately guard against arbitrariness and only if that procedure is followed in making the inventory. Hygh, 711 P.2d at 269; Sterger, 808 P.2d at 125.

Defendant does not argue that the inventory was not conducted pursuant to or in conformance with a regular set of procedures of the UHP. She argues only that there was no explicit statutory authority or other reasonable justification for police to inventory her car.

A. Defendant is precluded from challenging whether the inventory search was justified under the circumstances because she affirmatively waived that point below.

Before the trial court, defendant abandoned the issue of whether the inventory search was justified under the circumstances. In her memorandum in support of her motion to suppress, defendant appears to have challenged the validity of the inventory search on the ground that it had no statutory or other legal basis. However, at the suppression hearing, defendant conceded that if Trooper Hancock had not smelled burnt marijuana in the car, he could have legally conducted an inventory search (T. 6-7). The following exchanges between the trial court and defendant's counsel took place at the suppression hearing:

COURT: What if Trooper Hancock had not noticed the odor of marijuana, did not have any reasonable suspicion or probable cause, . . . that there was some contraband in the vehicle; but in fact was conducting an inventory search because the vehicle had been essentially turned over to him to turn over, again, to a towing company, since the driver and passenger were transported, I believe, by ambulance to the

hospital. I believe those are the facts. He did have possession of the vehicle, he did call a tow truck, it did arrive and he conducted a search of the vehicle (T. 6-7).

Now, absent any notice of marijuana or contraband, could he have conducted an inventory search of the vehicle legally (T. 7)?

DEFENSE COUNSEL: I think so (T. 7).

.

COURT: Was the marijuana, or the contraband allegedly found, found in some manner inconsistent with an inventory search (T. 11)?

DEFENSE COUNSEL: No (T. 11).

.

COURT: It seems to me what you're saying is the officer may legally conduct an inventory search unless he thinks there's some criminality involved, and then he can't do it unless he gets a warrant (T. 12)?

DEFENSE COUNSEL: You know, I think that's fairly close to what I'm saying, yes (T. 12).

(Emphasis added.) (See attached Appendix A).

As evidenced by the foregoing, defendant acknowledged below that but for Trooper Hancock's reporting that he had smelled burnt marijuana, the inventory search was valid. Having conceded that point, defendant solicited the trial court to suppress the evidence solely on the proposition that probable cause precludes an inventory search from being valid, not on the theory she raises on appeal that there was no justification for the

inventory in the first place. In other words, defendant affirmatively waived the issue of whether there was a legal justification for the inventory search. She invited the trial court to not even address that issue, and to base its decision solely on whether the existence of probable cause made the inventory search a mere pretext for conducting a warrantless search, thereby invalidating the inventory.

Having made that argument below, and the trial court having made its ruling based at least in part on defendant's concession, defendant should be prohibited from arguing now that the inventory itself was invalid. See State v. Parsons, 781 P.2d 1275, 1285 (Utah 1989) (defendant not permitted to seek to vacate sentence by alleging on appeal prejudicial error which he had affirmatively, knowingly, and intentionally waived at sentencing hearing); State v. Medina, 738 P.2d 1021, 1023 (Utah 1987) (court would not review appropriateness of jury instruction where defense counsel affirmatively stated at trial she had no objection to that instruction).

B. The inventory search was justified under the circumstances surrounding the search and the officers followed an established reasonable procedure for conducting the inventory.

Even if defendant did not affirmatively waive her argument

that the inventory search had no legal basis, the warrantless inventory search was still valid under the criteria set forth in Hygh, 711 P.2d at 268. The defendant correctly states that there is no express statutory authority that permits a police officer to inventory the contents of a car left at the side of a highway as the result an accident. Therefore, the issue is whether the circumstances of this case justified the inventory.

This case presents a somewhat unique fact scenario in that unlike most warrantless inventory searches, the police had not actually impounded defendant's car before beginning the inventory search. Rather, the police had been given possession and custody of the car by the defendant while they awaited the arrival of a tow truck, which police had called at defendant's request, to remove the car to a private garage. The police had been given the keys to defendant's car and had entered the car twice at defendant's request to search for her driver's license and registration.

Even though defendant's car had not technically been impounded when the inventory search was conducted, the same policies that justify a warrantless inventory search of impounded vehicles apply in these circumstances. See State v. Sterger, 808 P.2d 122, 125 (Utah App. 1991). Because the police received

custody of the car and its keys from defendant, and because the defendant was unavailable to remove her car from the roadway, the police were made responsible for the contents of the vehicle. Thus, the police were potentially liable for claims of loss or theft should any of the vehicle's contents be lost or destroyed.

This Court, in circumstances similar to those presented in this case, upheld a warrantless inventory search as proper and appropriate. State v. Sterger, 808 P.2d 122 (Utah App. 1991). In Sterger, the defendant was involved in a serious one car accident in a remote area of southern Utah. Defendant left his car to find help. A police officer arrived soon after the accident. The passengers, who were critically injured, were transported to the nearest hospital. A tow truck then arrived to remove the inoperative vehicle from the road. As the car was locked, the police officer used a "slim jim" to open one of the car doors. He then began to inventory the contents of the defendant's car. During the inventory, the officer found a green leafy substance that appeared to be marijuana. The police officer had the vehicle towed to his home where he planned to finish the inventory. The day following the accident, the car was towed to a state certified impound yard, where the inventory was completed two days after the accident. Id. at 123-24.

The defendant in Sterger argued that there was no need for the police officer to take the car into custody, but that the car could have simply been locked and left it where it was. Id. at 124. This Court disagreed and held that the surrounding circumstances justified the police officer's inventory. Id. Specifically, the Court pointed to the fact that defendant's car was partially blocking the road, the front windshield was shattered, the car was inoperable, and all the occupants had been taken away for medical attention. Id. The Court noted that because the police were authorized under those circumstances to take custody of the defendant's vehicle, "a concomitant right existed to examine and inventory its contents." Id. at 125.

In the instant case, although defendant's car was not partially blocking the road, it was left off to the side of a state road and created a potential nuisance. There was no one to remove the car because all its occupants had been transported to the hospital for medical attention. The record does not reflect whether or not the car was inoperable, but a tow truck was called, at defendant's request, to remove the car from the side of the road. In short, the police were left with the care and custody of defendant's car and its contents.

In addition to these facts, and as defendant acknowledges in her brief, UHP written policy clearly states that vehicles should be towed or impounded "[w]hen removal is necessary in the interest of public safety because of fire, flood, storm, snow or other emergency reasons or for the safety of the vehicle and its contents." Utah Highway Patrol General Order No. 83-9, Revised July 1991, p. 2 (emphasis added) (R. 75-82, **see attached Appendix B**). Defendant has not argued that her car or its contents should have been left at the side of the road. In fact, she requested the officers to make arrangements for its removal. The accident and the subsequent removal of defendant and her passenger to the hospital constituted an emergency and the safety of the car and its contents necessitated its removal.

Under these circumstances, the police were justified in following standard written procedure and taking possession of defendant's car and completing an inventory of its contents to protect defendant's possessions and to protect themselves from any claims of theft or loss. See Sterger, 808 P.2d at 124-26.

C. The mere presence of probable cause does not invalidate an otherwise valid inventory.

Defendant's second argument is that because Trooper Hancock had probable cause to search her car, the inventory search was no

more than a pretext to conduct a warrantless search and as such the inventory search was invalid.

The Utah Supreme Court has held that an inventory search of an automobile is invalid when it is "merely 'a pretext concealing an investigatory police motive.'" State v. Hygh, 711 P.2d 264, 268 (Utah 1985) (quoting South Dakota v. Opperman, 428 U.S. 364, 376, 96 S. Ct. 3092, 3100 (1976)); State v. Rice, 717 P.2d 695, 696 (Utah 1986) (per curiam). In Hygh, the Utah Supreme Court refused to uphold a warrantless inventory search on the ground that the inventory was no more than a "pretext" for a warrantless search. 711 P.2d at 270. In conducting an inventory pursuant to an impound, the police officer in Hygh did not use an inventory sheet or make a list of the items found. The officers in Hygh did not follow any of their regular policies or procedures for conducting an inventory. It was clear from the facts in that case that the officer had impounded the car simply so that he could search the car for evidence that the defendant was involved in a reported robbery.

Similarly, the Utah Supreme Court in Rice, refused to uphold an officer's inventory search which was obviously nothing more than a sham to cover for a warrantless search. 717 P.2d at 696-97. The officers in Rice suspected the defendant of drug

dealing, but they had insufficient evidence to arrest him or to obtain a search warrant. Knowing that the defendant did not have a driver's license, the police waited outside the defendant's parents' home until the defendant got into his truck and drove away. The police signaled for the defendant to pull over and the defendant pulled into an office parking lot, which was located only a few blocks from his parents' home. Police refused to let the defendant leave his locked truck in the parking lot or to call his parents to retrieve the truck. Instead, the police impounded the truck and conducted an inventory search at the police station. Id. at 696. The officers in Rice had no written standards or procedures for impoundment of the defendant's vehicle and the State conceded the invalidity of the inventory search on the ground that the officers had no reasonable basis for impounding the defendant's vehicle. Id.

Although the Utah Supreme Court has refused to uphold inventory searches that are obviously no more than a pretext to conduct an illegal search without a warrant, it has never held, as defendant argues here, that an otherwise validly conducted inventory search becomes invalid merely because the officer has probable cause to search the vehicle. In fact, in at least one case, the Utah Supreme Court appears to have rejected that

proposition. State v. Earl, 716 P.2d 803 (Utah 1986). In Earl, the defendant was arrested and his car was impounded at the police station. Prior to arresting the defendant, the arresting officer smelled a strong odor of marijuana coming from the interior of the car. The police officers discussed the possibility of obtaining a warrant to search the car, but learned that both justices of the peace were out of town. The officers determined that they would be following correct UHP policy and procedures if they conducted an inventory search. Id. at 804. The defendant argued that although the police officer had probable cause to search the car at the time of the arrest, the police could not search the car without a warrant after the automobile was impounded. Id. at 805. The Court summarily rejected defendant's assertion that an inventory search under such circumstances was pretextual in nature and that the discovered evidence must be suppressed under the Fourth Amendment. Id.

The Utah Court of Appeals relied on Earl in upholding an inventory search conducted after police tried unsuccessfully to contact the county attorney to obtain a search warrant. State v. Gray, 851 P.2d 1217, 1221 (Utah App. 1993). The officer in Gray, like the officer in Earl, had probable cause to search the car in

that he had observed property that was reported stolen in plain view in the car that he had pulled over. Id. at 1210. This Court held that the fact that the officers had previously attempted to secure a search warrant did not invalidate the otherwise proper inventory search. Id. at 1221. See also State v. Strickling, 844 P.2d 979, 987 (Utah App. 1992) (assuming, but not deciding that even if pretext doctrine applied to inventory search, the officer's subjective motivation in wanting to search defendant's vehicle for evidence of a burglary was irrelevant).

The fundamental problem with a "pretext inventory search" analysis as argued by defendant is that it focuses only on the subjective intent of the police officer, while ignoring the true issue of whether the inventory search is constitutionally reasonable. See State v. Lopez, 873 P.2d 1127, 1136-38 (Utah 1994). Thus, under defendant's argument, an inventory search that is legal in every way is rendered invalid simply because the officer may have also had an ulterior motive to investigate a crime he suspects has been committed.

The Utah Supreme Court has rejected the application of "pretext analysis" to roadside detentions, Lopez, 873 P.2d at 1140, and to warrantless arrests, State v. Harmon, 910 P.2d 1196, 1204-06 (Utah 1995). The Court reasoned in those cases that the

validity of a stop or an arrest must be analyzed on objective criteria, and not on the subjective motivation or suspicions of a police officer. Harmon, 910 P.2d at 1206; Lopez, 873 P.2d at 1136-38.

There is no sound reason, policy or otherwise, for applying a different analysis in inventory search cases. Thus, the primary focus of the court should be on whether the inventory search was properly conducted pursuant to the objective criteria set forth in Hygh, i.e., whether it is authorized by statute or justified by the circumstances and whether it is conducted pursuant to and in compliance with standarized procedures. There is no need to look at the subjective motivation of the police officer because when an inventory search is properly conducted pursuant to standarized procedures, the search is constitutionally reasonable. See State v. Gray, 851 P.2d 1217, 1221 (Utah App. 1993). This rule is consistent with Hygh which invalidated the inventory search because the police did not follow the regularized set of procedures adopted by his department. Id. at 269-70. The subjective intent of the officer to search for evidence in Hygh, although alluded to by the Court, was therefore unnecessary to the result reached.

In this case, the objective, undisputed facts point to a valid inventory search properly motivated by the underlying purposes for doing an inventory search. The defendant was involved in an accident which resulted in her car being left at the side of a road and in the custody of the police until it could be moved. Defendant does not dispute that the police in this case followed their regularly established procedures and filled out an inventory form and listed all items, both legal and illegal, found in the car. The officers even asked the towing company they called after impounding the car to place the vehicle in a secure area because of the possessions that remained inside. All these factors support the trial court's ruling that this was a valid inventory search. The fact that Trooper Hancock also subjectively had probable cause to search the car does not change the validity of the inventory search. See Harmon, 910 P.2d at 1206; Lopez, 873 P.2d at 1136-38.

Because the inventory search in this case was justified under the circumstances and was conducted in compliance with the applicable police policy, it was proper. The trial court's judgment on this point should be affirmed.

POINT II

ALTERNATIVELY, THE OFFICER'S SEARCH OF DEFENDANT'S CAR WAS VALID BECAUSE HE HAD PROBABLE CAUSE TO SEARCH THE CAR AND THERE WERE EXIGENT CIRCUMSTANCES

Although the trial court upheld the search of defendant's car as a valid inventory search, the trial court's ruling may also be sustained on the alternative basis that the officer had probable cause to search the car and there were exigent circumstances at the time the car was searched. An appellate court can uphold a trial court's ruling on any proper legal basis. State v. South, 298 Utah Adv. Rep. 4, 5-6, 924 P.2d 354, 356 (Utah 1996); State v. Gallegos, 712 P.2d 207, 209 (Utah 1985).

Under article I, section 14 of the Utah Constitution, a warrantless search of an automobile must be justified by a showing of both probable cause and exigent circumstances. State v. Anderson, 910 P.2d 1229, 1236-37 (Utah 1996). Defendant concedes that Trooper Hancock had probable cause to search her car because he smelled burnt marijuana (App. Br. at 12, 14). Defendant argues, however, that Trooper Hancock had to obtain a warrant before searching the car because there were no exigent circumstances.

In Anderson, the Utah Supreme Court held that "exigent circumstances exist when 'the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained.'" 910 P.2d at 1237 (quoting State v. Limb, 581 P.2d 142, 144 (Utah 1978) (quoting Chambers v. Maroney, 90 S. Ct. 1975, 1981 (1970))).

In this case, exigent circumstances clearly existed at the time Trooper Hancock conducted the inventory search. A private tow truck requested by defendant was en route to remove defendant's car from the control of the police. See State v. Morck, 821 P.2d 1190, 1194 (Utah App. 1991). There simply was not time for Trooper Hancock to obtain a warrant before the tow truck was to arrive and remove the car. Once the car was removed from the accident scene, the contraband that Trooper Hancock had probable cause to believe was in the car could have been removed and might never had been found again. There was nothing to prevent defendant and her passenger from going to pick the car up later that day or to remove the contraband from the car or to call someone to remove the contraband for them. Id.

Because exigent circumstances were present at the time of the search, the warrantless search of defendant's car was

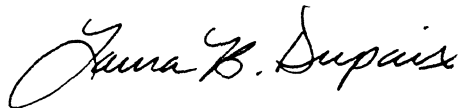
constitutionally reasonable.²

CONCLUSION

The trial court's denial of defendant's motion to suppress should be affirmed because the inventory search was justified under the circumstances and conducted pursuant to written, standarized policy and procedures. In the alternative, the search should be held valid because the officer had probable cause and there were exigent circumstances at the time of the search.

RESPECTFULLY SUBMITTED THIS 4th day of December, 1996.

JAN GRAHAM
Utah Attorney General



LAURA B. DUPAIX
Assistant Attorney General

² Defendant suggests at the end of her brief that Trooper Hancock should have been required to obtain a telephonic warrant. The State is not required to show that the officers could not get a telephonic warrant; it need only demonstrate that exigent circumstances justified the search. State v. Morck, 821 P.2d 1190, 1194 (Utah App. 1991).

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Appellee was mailed by first class mail, postage prepaid to Barbara King Lachmar, Post Office Box 4432, Logan, UT 84323-4432, this 4th day of December, 1996.

Laura B. Dupais

Appendices

Appendix A

ORIGINAL

IN THE FIRST JUDICIAL DISTRICT COURT

CACHE COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

PENNY JO WALLACE
and ROLAND WHEELER,

Defendants.

Case Nos. 951000078 and
951000077.

(Transcript of a Videotaped
Hearing.)

Cache County Hall of Justice
Honorable Gordon J. Low presiding
Logan, Utah
August 14, 1995

APPEARANCES:

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First District Court
P. O. Box 873

Brigham City, UT 84302-0873 Utah Court of Appeals

FILED

JUL 8 - 1996

Marilyn M. Branch
Clerk of the Court

1 Essentially the position of the defense is
2 that Trooper Hancock apparently detected the odor of
3 marijuana on his initial entry into this vehicle.
4 That at that point he had probable cause to believe
5 that there may have been contraband in the vehicle and
6 needed to proceed to obtain a warrant.

7 The Supreme Court of Utah has indicated
8 that, in terms of the Utah Constitution, they would
9 not parallel the federal constitution as it relates to
10 warrantless searches of vehicles; and that they would
11 require both probable cause and exigent circumstances;
12 and that the exigent circumstances would involve the
13 safety of the officer or destruction of the evidence.

14 THE COURT: Let me digress for a minute. Let me
15 ask you a question. I think I agree that that's the
16 Utah Supreme Court's position, and this court's
17 position, of course, because that's the state of the
18 law.

19 What if Trooper Hancock had not noticed
20 the odor of marijuana, did not have any reasonable
21 suspicion or probable cause, whatever it rises to,
22 that there was some contraband in the vehicle; but in
23 fact was conducting an inventory search because the
24 vehicle had been essentially turned over to him to
25 turn over, again, to a towing company, since the

1 driver and passenger were transported, I believe, by
2 ambulance to the hospital. I believe those are the
3 facts. He did have possession of the vehicle, he did
4 call a tow truck, it did arrive and he conducted a
5 search of the vehicle.

6 Now, absent any notice of marijuana or
7 contraband, could he have conducted an inventory
8 search of the vehicle legally?

9 MS. LACHMAR: I think so.

10 THE COURT: Why, then, does the presence of
11 contraband, or an indicia of contraband, change the
12 scenario?

13 MS. LACHMAR: Because then you are conducting the
14 search in order to investigate criminal conduct.

15 THE COURT: How do you know? The question --
16 this is the gremlin in the case. If he figures,
17 because he smells marijuana, that there may be
18 contraband, then is his right or obligation to conduct
19 an inventory search vitiated? He can conduct
20 inventory searches only in the absence of any evidence
21 of criminality?

22 MS. LACHMAR: But sequentially here you have him
23 detecting the odor of marijuana, burnt marijuana, and
24 those facts were before him and only later did the
25 scenario unfold with respect to them being transported

1 to the hospital and the vehicle remaining there. So
2 it seems to me that he needed to -- once those facts
3 arose, he needed to act on those. Yes, later on the
4 issue arose as to what to do with the car.

5 THE COURT: When did he have to act on those?
6 Because an officer is aware -- has a suspicion of
7 criminal conduct, why, then, does he have to act on
8 that?

9 MS. LACHMAR: Well, I think because the
10 individual's Fourth Amendment rights are triggered.
11 In other words, if I as a police officer suspect that
12 I've got someone who is involved in criminal conduct
13 and I want to search their personal property, in this
14 instance their vehicle, I think I need to jump through
15 the hoops and obtain a warrant that the State
16 requires.

17 I have individuals here whose property may
18 -- the search of whose property may result in the
19 filing of criminal charges. We require that the
20 State, or the police, obtain a warrant before they do
21 that. Otherwise, because an inventory search is
22 supposed to be free of and not done for the purpose of
23 investigating criminal conduct at all. That is not
24 part of it. It is done merely to protect a person's
25 property and to protect the police from accusations of

1 theft.

2 It is not in any way intended to be used
3 or to discover evidence which may ultimately result in
4 the filing of criminal charges against a citizen.
5 Therefore, they're not required to obtain a warrant.
6 That's why there is no requirement for a warrant
7 because they don't suspect and are not investigating
8 criminal conduct.

9 THE COURT: You used the term the rights are
10 triggered. Aren't the rights always present? Does
11 someone who is suspected of criminal conduct have
12 greater rights than someone who is not suspected of
13 criminal conduct?

14 MS. LACHMAR: No. But it seems to me that -- I
15 respect the fact that this is a difficult case,
16 because what the court is saying is, look, it would
17 have inevitably been discovered any way if he would
18 have proceeded along and done the inventory search.

19 THE COURT: I suppose ultimately that's a
20 concern. If in fact there's an awareness of a
21 possible criminality, does that require an officer to
22 act in conjunction with that or can the officer act as
23 if there were no criminality, but upon other rights or
24 obligations, such as an inventory search? Does the
25 presence of possible criminality somehow enhance the

1 rights of the owner of the vehicle?

2 For example, let's say these people
3 crashed this vehicle, no involvement with marijuana or
4 anything else. Their car would be subject to an
5 inventory search given the facts of this case, right?

6 MS. LACHMAR: Right. Well, possibly, yes.

7 THE COURT: Once the car is turned over to the
8 officer and said please have it towed, doesn't the
9 officer have an obligation to conduct an inventory
10 search at that time?

11 MS. LACHMAR: I think they do, yes. Pursuant to
12 their own rules, yes.

13 THE COURT: Okay. If that's the case, then how
14 is this scenario changed by the mere fact that there
15 may be some suspicion of criminal conduct?

16 MS. LACHMAR: Well, again, I point out that the
17 inventory search -- those inventory searches are not
18 there to allow an officer to get around or skirt the
19 requirement to obtain a warrant. They're not --
20 there's no exception there for that purpose, to enable
21 an officer to go ahead and search without a warrant
22 when they suspect criminal conduct.

23 Those inventory searches are narrowly, in
24 my opinion, set out to allow an officer to protect
25 property and to protect the police from theft charges.

1 Because they're not investigating criminal conduct, no
2 warrant is required, so they should be limited to
3 those purposes.

4 If you suspect, and initially here, I
5 mean, the first awareness that this officer has in
6 coming upon this accident is that he detects the odor
7 of burnt marijuana. At that point -- I mean, let's
8 say that there was no request to tow the vehicle, that
9 there was someone there to remove the vehicle from the
10 scene. Let's say that she had a friend driving
11 perfectly sober and legitimate and could drive. Would
12 Trooper Hancock have released that vehicle to that
13 individual and said go on home, I have no concerns
14 about this vehicle?

15 THE COURT: Perhaps not, but I think the State
16 may agree that there may be more of a requirement to
17 seek a warrant, unless there's an exigent circumstance
18 as under the Utah Supreme Court cases. But that's not
19 the circumstance here, is it?

20 MS. LACHMAR: No.

21 THE COURT: Was the marijuana, or the contraband
22 allegedly found, found in some manner inconsistent
23 with an inventory search?

24 MS. LACHMAR: No.

25 THE COURT: Had the officer smelled marijuana,

1 but decided he wasn't going to say anything, or wasn't
2 sure about it, or decided to keep it quiet, he could
3 have conducted the search and would have found the
4 same stuff legally.

5 MS. LACHMAR: In other words, if he hadn't
6 reported in his police report that he hadn't detected
7 the odor of marijuana, if he'd just left that out of
8 his report --

9 THE COURT: It seems to me what you're saying is
10 the officer may legally conduct an inventory search
11 unless he thinks there's some criminality involved,
12 and then he can't do it unless he gets a warrant?

13 MS. LACHMAR: You know, I think that's fairly
14 close to what I'm saying, yes.

15 THE COURT: Doesn't that protect people who are
16 suspected of criminality and criminal conduct moreso
17 than those who aren't?

18 MS. LACHMAR: No. I think that that protects
19 citizens from searches and seizures when they're being
20 investigated for criminal conduct. It requires the
21 officer to go and obtain a warrant when they are
22 investigating criminal conduct.

23 To me, inventory searches are not in the
24 realm of -- they're not in the realm of protecting
25 anybody except the police from theft. In other words,

Appendix B

GENERAL ORDER NO. 83-9
(Revised July 1991)

TO: All Personnel

SUBJECT

JUL 15 1995

Vehicles and contents:

1. Handling abandoned, stolen, seized, hold-for-evidence, improperly registered vehicles. Vehicles in a hazardous place or position, vehicles in an unsafe condition.
2. Custodial care of such vehicles and contents.

PURPOSE

1. To establish procedures to be used when discovering vehicles as described in item one above and the proper care of such vehicles.
2. To establish procedures for custodial care of the contents in, on or towed by any vehicle as described under subject, item two.

AUTHORITY

1. Under the existing Utah statutes peace officers are authorized to remove and/or cause to be removed vehicles under the following conditions:
 - a. When any vehicle is parked, stopped or standing on a roadway, whether attended or unattended, where it was practical to stop off the roadway (U.C.A. 41-6-101).
 - b. When any vehicle is illegally left standing on any highway, bridge, causeway or tunnel where such vehicle constitutes an obstruction to traffic (U.C.A. 41-6-102[b]).
 - c. When an officer has indications that the vehicle had been stolen or taken without the owner's consent (U.C.A. 41-6-102[c][1] and 41-1-115).
 - d. When a vehicle on a roadway is so disabled as to be a hazard to traffic and the person or persons in charge of such vehicle are unable to provide for its custody or removal (U.C.A. 41-6-102[2]).
 - e. When the person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take a person immediately before a magistrate (U.C.A. 41-6-102[c][3]).

- f. When the vehicle is being operated with improper registration (U.C.A. 41-1-115).
- g. When any manufacturer's mark or identification mark has been altered, defaced or obliterated (U.C.A. 41-1-115).
- h. When a vehicle is found being driven on a highway in unsafe mechanical condition (U.C.A. 41-6-157).
- i. When a vehicle has been left unattended on a highway for more than 24 hours, it is presumed to be abandoned (U.C.A. 41-6-116[10]).
- j. When a vehicle has been left unattended on other public or private property for more than seven days, it is then presumed to be abandoned (U.C.A. 41-6-116[10]).
- k. When removal is necessary in the interest of public safety because of fire, flood, storm, snow or other emergency reasons or for the safety of the vehicle and its contents.

DEFINITIONS

- 1. Towed away: When a wrecker service removes the vehicle for the purpose of storage or safekeeping.
- 2. Impound: When a vehicle is being held for legal reasons and the owner must fulfill certain legal requirements before he regains possession.
- 3. Hold-for-owner: When a vehicle has been removed at the direction of an officer and the owner may regain possession at his discretion by assuming obligations incurred for towing and storage.
- 4. Seized: When an officer takes custody of a vehicle which has been used in transporting any contraband items and legal ownership could be transferred to the State of Utah by appropriate legal action.
- 5. Hold-for-evidence: When an officer takes custody of a vehicle and such vehicle is needed as evidence in any pending criminal action.

6. Urban area: For purposes of this policy, urban area shall be defined as the following:

I-15 from the southern Utah County line to the northern Weber County line. I-80 from the west Summit County line (Parley's Summit) to 7200 West in Salt Lake County. All other highways within the above described Wasatch Front area.
7. Rural area: All other highways within the State of Utah.
8. Road shoulder: A road shoulder is that portion of the road, contiguous with the roadway (trafficway) for accommodation of stopped vehicles, for emergency use and for lateral support of the roadway structure. By definition, this will include freeway emergency lanes.

PROCEDURE

1. When a vehicle is taken to any police parking lot, impound lot or to any commercial storage lot, a case number shall be assigned and a written inventory shall be made of the contents of the vehicle, the trunk and any package, container or compartment. Such record shall become a part of the case file. When custody of the vehicle changes from one person to another, the person taking custody of the vehicle shall also assume custody of the contents by placing his signature on the inventory list.
2. When a vehicle is removed on a hold-for-owner basis, immediate steps shall be taken to locate the owner and inform him of the location of the vehicle and how he may regain possession. If the owner cannot be located within 24 hours, the vehicle shall be impounded.
3. When a vehicle is impounded for improper registration, stolen; abandoned or seized and impounded under provisions of 41-6-44.30 (Driving Under the Influence), the officer shall immediately complete a Utah State Tax Commission impound report, place the Commission copy in the appropriate envelope and mail to the State Tax Commission. After the impound report has been mailed, the officer shall not authorize the release of the vehicle without the express consent of the State Tax Commission.

4. When an officer takes custody of a vehicle for hold-for-evidence, the officer shall cause a notice to be placed on the vehicle stating that the vehicle is being held as evidence and also inform the storage lot attendant of this fact. The officer shall immediately inform the prosecuting attorney. Such vehicle shall be released only on approval of the prosecuting attorney or at the direction of the court.
5. When a vehicle has been seized, the officer shall proceed in accordance with current procedure and law.
 - a. Department of Public Safety form DPS 100 (Seized Vehicle Report Form) shall be completed and forwarded to the Commissioner's Office through the chain of command.
6. An entry shall be made in the officer's daily log recording information as to location and disposition of all such vehicles and a separate entry with the same information shall become part of the case file.
7. Costs of towing and storage of vehicles shall be the responsibility of the owner except for hold-for-evidence and seized vehicles. In such cases financial arrangements for storage charges should be made through the prosecuting attorney.
8. All vehicle keys shall remain with the vehicle and shall be surrendered to the owner or driver at the time the vehicle is released.

METHODS TO BE USED

1. Physically arrested persons
 - a. In the event the driver or person in control of a vehicle is arrested and taken from the scene, the vehicle shall be under the control of the arresting officer and handled in the following manner:
 - 1) If permission is obtained from the owner or driver and if other manpower is readily available, the vehicle may be driven to the impound lot, police parking lot or the owner's residence, whichever is the most practical, keeping in mind the safety of the vehicle and its contents; or

- 2) The officer may have the vehicle towed away on a hold-for-owner basis. The towing service will then assume responsibility for the vehicle; or
- 3) The vehicle may be released to a responsible person designated by the arrestee after proper identification of persons and vehicle has been established.
- 4) When the driver of a vehicle is arrested for driving under the influence, the officer shall comply with the provisions of 41-6-44.30 which says:
 - a) If a category I Peace Officer arrests or cites the driver of a vehicle for violating 41-6-44 or 41-6-44.10....The officer shall seize and impound the vehicle except as provided under subsection (2).
 - b) If a registered owner of the vehicle, other than the driver, is present at the time of the arrest, the officer may release the vehicle to that registered owner, but only if the registered owner:
 - (1) Requests to remove the vehicle from the scene;
 - (2) Presents to the officer a valid driver license and sufficient identification to prove ownership of vehicle;
 - (3) Complies with all restrictions of his driver license, and
 - (4) Would not, in the judgment of the officer, be in violation of Section 41-6-44 or 41-6-44.10..., if permitted to operate the vehicle and if the vehicle itself is legally operable.

2. Stolen vehicle

- a. Determine if the vehicle is to be held for evidence by contacting the police agency reporting the vehicle stolen. If practical, act according to the request of the reporting agency in determining disposition.
- b. If the vehicle is towed away or otherwise retained in custody by the officer, it shall immediately be impounded.

3. Vehicles parked on highway

a. Vehicles in traffic lane

- 1) Have the person in charge immediately remove the vehicle to the nearest place of safety. If unable to do so, the vehicle may be immediately towed away.
- 2) Take appropriate enforcement action.

b. Vehicles on or adjacent to shoulder

- 1) When an officer finds any vehicle parked on or adjacent to the shoulder of any interstate highway or any other highway which has a posted speed of 55 m.p.h., he shall take immediate steps to determine why the vehicle was parked at that location and the approximate time of its intended removal. If in the opinion of the officer the position of the vehicle does not constitute an obstruction of the normal movement of traffic, the vehicle may be left for a reasonable length of time not to exceed two hours in urban areas and four hours in rural areas. If in his opinion it does constitute an obstruction to traffic, snow removal or highway maintenance, he may immediately have the vehicle towed away.
- 2) Any vehicle not in violation of subsection 1) above left unattended for a period in excess of 24 hours shall be presumed to have been abandoned. After reasonable attempts to have the owner remove the vehicle, and the owner cannot or does not respond, the vehicle shall be impounded.

4. Vehicles parked on private property
 - a. No officer shall remove or cause to be removed any vehicle parked on private property unless such vehicle has been found to have been stolen, abandoned or to be used for evidentiary purposes. A vehicle is presumed to be abandoned if left unattended on private property without the express or implied consent of the owner for a period in excess of seven days.
 - b. In the event a vehicle is abandoned on private property, an officer should impound the vehicle only after having secured a signed request from the owner or person in lawful control of such property on Utah Highway Patrol Form HPF-5, "Request to Remove Vehicle from Private Property." Such request shall become part of the case file.
5. Vehicles on highway with improper registration
 - a. Vehicle being operated with expired registration.
 - 1) Issue a uniform complaint and summons.
 - 2) Instruct the driver to remove the vehicle from the highway until the proper registration is obtained.
 - 3) If, in the officer's opinion, the violation is flagrant, the vehicle should be impounded.
 - b. Vehicle being operated with no registration or with registration issued for another person or vehicle.
 - 1) Issue a uniform complaint and summons.
 - 2) If, in the officer's opinion, the violation is flagrant, the vehicle should be impounded; if it is not impounded, follow a.2) above.
 - 3) If impounded, all improper plates and certificate of registration shall be removed and sent to the State Tax Commission with the impound notice--if not to be used as evidence.
 - c. Vehicles parked with expired or no registration displayed.
 - 1) After reasonable efforts have been made to have owner remove the vehicle, handle in the same manner as abandoned vehicles.

6. Vehicles being operated in unsafe mechanical condition.
 - a. Take appropriate enforcement action.
 - b. When, in the opinion of the officer, continued operation would be unreasonable and excessively dangerous, the officer may require the owner or operator to remove the vehicle by means other than by being driven. If the vehicle is towed away, it may be taken to any location as directed by the owner or operator (U.C.A. 41-6-157 [c]).

REVIEW

This order shall be reviewed before December 31, 1995.

Effective date March 1, 1989.

Colonel S. Duane Richens
Superintendent