

1995

Utah v. Wallace : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 950772-CA

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff-Appellee,

Case No. 950772-CA

v.

PENNY JO WALLACE,
Defendant-Appellant

Category No. 2

BRIEF OF APPELLANT

APPEAL FROM A CONVICTION OF POSSESSION OF A
CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE,
A SECOND DEGREE FELONY, POSSESSION OF A CONTROLLED
SUBSTANCE WITH INTENT TO DISTRIBUTE, A THIRD
DEGREE FELONY, AND POSSESSION OF DRUG PARAPHERNALIA
A CLASS B MISDEMEANOR

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FILED
Utah Court of Appeals

SEP 30 1996

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Clerk of the Court

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff-Appellee,

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CONSTITUTIONAL PROVISIONS

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CASES CITED

State v. South, 885 P.2d 795 (Utah App. 1994)

State v. Delaney, 869 P.2d (Utah App. 1994)

State v. Dudley, 847 P. 2d (Utah App. 1993)

State v. Strickling, 844 P. 2d 979, 986 (Utah App. 1992)

State v. Naisbitt 827 P.2d 969 (Utah App. 1992)

State v. Larocco, 794 P.2d 460, 469 (Utah 1990)

State v. Johnson, 745 P.2d 452 (Utah 1987)

State v. Hygh, 711 P.2d 264 (Utah 1985)

STATUTES AND RULES

Section 41-1-115 Utah Code Annotated, 1953, as amended.

Section 41-1a-1101, Utah Code Annotated, 1953, as amended.

Section 41-6-43 (1) Utah Code Annotated, 1953, as amended.

Section 41-6-101 Utah Code Annotated, 1953, as amended.

Section 41-6-102 (b) Utah Code Annotated, 1953, as amended.

Section 41-6-102 (c) (i) Utah Coded Annotated, 1953, as amended.

Section 41-6-102 (c) (3) Utah Code Annotated, 1953, as amended.

Section 41-6-116 (10) Utah Code Annotated, 1953, as amended.

Section 41-6-116 Utah Code Annotated, 1953, as amended.

Section 41-6-157 Utah Code Annotated, 1953, as amended.

OTHER

Utah Highway Patrol General Order No. 89-3 (Revised July 1991)

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff-Appellee,

Case No. 950772-CA

v.

PENNY JO WALLACE

Defendant-Appellant

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of Possession of a Controlled Substance With Intent to Distribute, a Second Degree Felony, in violation of Section 58-37-8 U.C.A. 1953, as amended, Possession of a Controlled Substance With Intent to Distribute, a Third Degree Felony, in violation of Section 58-37-8 U.C.A. 1953, as amended, and Possession of Drug Paraphernalia, a Class B Misdemeanor, in violation of Section 58-37a-5(1) U.C.A. 1953, as amended. This Court has jurisdiction to hear this appeal under Section 78-2-2(3) U.C.A., 1953 as amended, because this is an appeal from a District Court in a criminal case involving a felony.

STATEMENT OF ISSUES PRESENTED AND STANDARDS OF REVIEW

Did the trial court err in denying defendant's Motion to Suppress? Trooper Hancock's warrantless search of defendant's vehicle was an investigatory search for which a warrant was required. Trooper Hancock's failure to obtain a warrant prior to conducting a search of defendant's vehicle, violated

Article 1, Section 14 of the Utah State Constitution.

STANDARD OF REVIEW: "In reviewing a trial court's ruling on a motion to suppress, we accord no deference to the trial court's legal conclusions and review them for correctness. State v. Beavers, 859 P.2d 9, 12 (Utah App. 1993). However, we will disturb the trial court's underlying factual findings "only if those findings are clearly erroneous." Id. State v. South 885 P. 2d 795 (Utah App. 1994).

STATEMENT OF FACTS

The incident report of Arlow T. Hancock, Utah Highway Patrolman, sets forth a detailed set of facts surrounding the initial contact and subsequent search of the vehicle in which the Defendant was riding. Those details are set forth below in numerical order:

1. On April 17, 1995, I was dispatched to a one vehicle accident on State Road 30. Upon arrival I located a female by the name of Penny Jo Wallace. She was sitting on the ground beside her vehicle. Several people who had stopped had given her a blanket that she had around her.

2. I also spoke to a man who said he was injured. He is Roland H. Wheeler. He also had a blanket around him. I asked him to sit down and try to stay calm. He indicated that he was in a lot of pain. I advised both people that an ambulance was on the way.

3. A Tim Potter walked up to me and told me that he was traveling directly behind this vehicle and saw it wreck. I asked

him to walk back to my patrol car to give me a written statement.

4. I returned to talk to the victims. I asked Penny Jo Wallace if she had a driver's license, registration and proof of insurance. She told me it was all in her car. I went to the car and found it locked. I went back and informed Penny Wallace the car was locked. I also told her the key was in the ignition and the car was running. Roland H. Wheeler got another set of keys out of his pocket and handed them to me. Penny Wallace then told me, "my driver's license is in a brown wallet in my purse. My purse is between the seats."

5. I went back to the car, unlocked the door and retrieved the purse. I brought the purse to Penny Wallace and opened it in front of her. She said, "my license is in that brown wallet." I took a brown wallet out of the purse and found a Utah driver license. (License No. 150776018). I asked if she had a registration and proof of insurance. She said "It's in the glove box, you should be able to find it."

6. I went to the vehicle and unlocked the passenger door. At this time both victims were loaded into the ambulance and transported to Logan Hospital.

7. I located a registration and proof of insurance in the glove box. The vehicle had a large amount of personal belongings in it. I could smell what I believed to be burnt marijuana in the vehicle.

8. I returned to my vehicle and filled out the accident report form. Trooper Kendrick had arrived earlier and I asked him

if he would do a field diagram.

9. The driver, Penny Wallace, had requested wrecker from Box Elder County. We called Bryce's Auto Body from Honeyville. When I finished with the accident form I requested Trooper Kendrick to assist me in doing an inventory of the vehicle's contents so it could be released to the wrecker.

10. Trooper Kendrick got an inventory form from his patrol vehicle. I returned to the passenger side of the Wallace vehicle. I opened the front passenger door and could once again smell burnt marijuana. I noticed a small wooden box on the floor in front of the seat. It contained a marijuana pipe, fine screen material and rolling paper.

11. I told Trooper Kendrick what I had found. I also notified dispatch and had them send Trooper Robert Sheffer to the hospital. I requested him to place Penny Wallace under arrest for driving under the influence of drugs and request a blood test. I asked him also to place Roland H. Wheeler under arrest.

12. Trooper Kendrick and myself decided to start at the trunk so we could do the inventory in an orderly fashion. As we opened the trunk I saw a white plastic bottle with a metal tube in the side. It had residue in it and appeared to be a marijuana pipe. We also located numerous other drug paraphernalia items. (see attached evidence list). Located were syringes, pipes, glasses and metal spoons and a butane torch. We also found several scales including an RCBS scale in a box. Also located in the same box was a marijuana pipe and a chart of measurements and street terms for

drugs.

13. I'd located a basket of what looked like mens clothing. In with the clothing we found a black case which contained approximately fourteen (14) baggies of what appeared to be marijuana. Also found were metal containers which contained numerous paper bindles. The paper bindles contained a white powder believed to be cocaine. Some of the bindles appeared to have a lump in them that could be methamphetamines.

14. I called dispatch again and requested a supervisor. Sergeant Larry Swanger responded. We informed him as to what we had found and he witnessed the trunk inventory and the rest of the car. We finished the inventory of the trunk and moved to the interior of the car. In the rear seat of the vehicle we found more paper that contained a white paper that appeared to be cocaine. Also in the back seat were numerous pornographic magazines.

15. The wrecker from Honeyville was cancelled and Wolford's Auto Body was sent for a state impound. The vehicle was removed from the scene upon completion of the inventory. The wrecker driver was asked to keep the vehicle in a secured area because of all the personal effects inside.

16. I transported the evidence we had found to the Highway Patrol Office. Detective Troy Nielson of the Cache County Sheriff's Office looked over the items we had found. Items were then placed in our evidence safe by myself.

17. Trooper Ryan Bauer responded to the Sheriff's office. Trooper Bauer being a drug recognition expert requested Penny

Wallace to do some tests. She complied with his request and was found to be under the influence of drugs.

18. Penny Wallace and Roland Wheeler were both booked into the Cache County Jail on numerous charges. (All of the facts set down heretofore were taken from the Utah Highway Patrol Instant Report filed by Officer Hancock pages 1-6.)

19. Penny Jo Wallace was issued a citation number D179047 by Trooper A.T. Hancock of the Utah Highway Patrol and although the citation was a D.U.I. Summons and Citation Form it lists the following violations: D.U.I. Class A with injuries, Possession of Marijuana with Intent to Distribute, a third degree felony, Possession of Cocaine with Intent to Distribute, a second degree felony, Unsafe Lane Travel, Drug Paraphernalia, and No Drug Stamp, a third degree felony.

20. The arresting officer, A.T. Hancock, filed a D.U.I. Report form D179047, a copy of which is attached hereto, made no observations at the scene and indicates that Penny Jo Wallace consented to a chemical test, however, there is other evidence that Trooper Hancock was not present when the consent was given and the blood was drawn.

SUMMARY OF ARGUMENT

Trooper Hancock's warrantless search of defendant's vehicle was an investigatory search for which a warrant was required. Trooper Hancock's failure to obtain a warrant prior to conducting a search of defendant's vehicle, violated Article 1, Section 14 of

ARGUMENT

Trooper Hancock's report states that he commenced the search of defendant's vehicle in order to inventory its contents to prepare it for release to a private wrecker. The defendant had requested that Bryce's Autobody in Honeyville be summoned to tow her car. Trooper Hancock called Bryce's Autobody for that purpose. He then commenced a search of defendant's vehicle.

In order to determine whether the search of defendant's vehicle constituted a valid inventory search, the court must determine whether Officer Hancock possessed a "reasonable and proper justification to impound the defendant's vehicle, either through explicit statutory authorization or by the circumstances surrounding the initial stop." State v. Strickling, 844 P. 2d 979, 986 (Utah App. 1992)

Utah Code Annotated Section 41-1a-1101, 1953, as amended, provides that a peace officer may take possession of a vehicle under the following circumstances:

(1) The division or any peace officer, without a warrant, may seize and take possession of any vehicle, vessel, or outboard motor:

(a) that is placed on water or is being operated with improper registration;

(b) that the division or the peace officer has reason to believe has been stolen;

(c) on which any identification number has been defaced, altered, or obliterated;

(d) that has been abandoned on the public highways;

(e) for which the registration or title fees have not been paid; or

(f) for which the applicant has written a check for registration or title fees that has not been honored by the applicant's bank and that is not paid within 30 days.

None of these sections provided Trooper Hancock with statutory authorization to inventory and impound the defendant's vehicle.

The Utah Highway Patrol vehicle inventory sheet prepared in this case indicates that the basis for the inventory was DUI. See attached inventory form. Utah Code Annotated Section 41-6-44.30, 1953, as amended, provides that under certain circumstances, vehicles may be impounded if the driver is arrested for driving under the influence of intoxicants:

"The Legislature finds that under this section it is contrary to the safety of the public to leave vehicles unattended on highways.

(1) If a peace officer arrests or cites the operator of a vehicle for violating Section 41-6-44 or 41-6-4410, or a local ordinance similar to Section 41-6-44, which complies with Subsection 41-6-43 (1), the officer shall seize and impound the vehicle,....."

According to Trooper Hancock's report, he arrived at the accident scene at 13:35. He obtained the driver's license, registration and proof of insurance out of the defendant's vehicle and at that time detected the odor of burnt marijuana. He then

filled out the accident report form and immediately thereafter commenced searching the vehicle, "so that it could be released to the wrecker." When he opened the door to begin the inventory, he again smelled marijuana. He noticed a wooden box on the floor in front of the seat. He opened it and found a marijuana pipe and rolling papers. He notified dispatch of this discovery and asked that Trooper Robert Sheffer go to the hospital and place Penny Jo Wallace and Roland Wheeler under arrest for DUI. The attached warrantless arrest and probable cause statement prepared by Trooper Sheffer indicates that at 14:30 the defendant was placed under arrest for DUI, Possession of Drug Paraphernalia, Possession of Cocaine with Intent to Distribute, Possession of Marijuana with Intent to Distribute and No Drug Tax Stamp. The defendants could not have been charged for the drug related offenses at that time unless the search had already been completed. The search provided evidence which lead to the driver's arrest for DUI. Because the search was commenced prior to the driver's arrest and citation for DUI, U.C.A 41-6-43 (1) could not have provided the authorization for the search and impound.

Because no statutory basis existed for this impound, the court must look to the circumstances of the stop to determine whether an inventory search was justified. See State v. Hygh, 711 P.2d 264 (Utah 1985):

"In order to support a finding that a valid inventory search has taken place, the court must first determine whether there was a reasonable and proper justification for the impound of the vehicle. This justification, and thus lawful impoundment, can be had either through explicit statutory authorization or by the circumstances surrounding the initial stop. If impoundment was

neither authorized nor necessary, the search was unreasonable." Hygh at 268.

The Utah Highway Patrol in its general order No. 83-9 (Revised July 1991) outlines those circumstances under which vehicles should be towed and/or impounded:

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) (i) 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).

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.

Arguably, subsection k applies to the current situation, However, this particular subsection is not authorized by statute. Accordingly, it does not provide statutory authorization for inventory and impound. Further, there was no emergency caused by fire, flood, storm, snow or other emergency and the driver of the vehicle did make arrangements to provide for the safety of her own vehicle. She requested that the Trooper contact Bryce's Autobody and have the vehicle towed. However, even though the defendant requested arrangements for her own vehicle, it is doubtful Trooper Hancock would have allowed the vehicle to be released without a search, as he had detected the odor of burnt marijuana in the vehicle. The Utah Court of Appeals has stated in State v Strickling, supra, that inventory searches are constitutional because they are not conducted to investigate criminal activity:

"Inventory searches of impounded vehicles' contents constitute an exception to the warrant requirement because such a search is not conducted to investigate criminal activity and no variant of individualized suspicion is necessary to permit one. Instead,

police conduct such inventory searches to protect property in the car, to protect police against the claim of theft, and to protect police from potential danger." Strickling at 986.

In the instant case, Trooper Hancock detected the order of burnt marijuana when retrieving the vehicle's registration from the glove box. At that time, he had probable cause to believe that the vehicle contained contraband. The basis for searching the vehicle at that point became investigatory and required individualized suspicion of criminal activity. As stated in State v. Hygh, 711 P.2d 264, 268 (Utah 1985), investigatory searches do not become constitutional, merely by labeling them inventory searches:

"However, the inventory exception does not apply when the inventory is merely "a pretext concealing an investigatory police motive". Fundamental constitutional guarantees against unreasonable searches cannot be evaded by labeling them "inventory" searches."

Under federal law as applied in recent Utah cases, the plain smell of burnt marijuana provides probable cause to search a vehicle without a warrant. See State v. Naisbitt, 827 P. 2d 969, 973 (Utah App. 1992) The Court of Appeals noted in a footnote to that decision that the Utah Constitution may not parallel the federal standard as it relates to "plain smell":

"Defendant does not challenge the search under Article I, Section 14 of the Utah Constitution. We, therefore, are precluded from analyzing the search under the Utah constitution. See State v. Belgard 811 P. 2d 211, 215-16 (Utah App. 1991)

We note however, the standard required by the Utah Constitution may not parallel the federal standard. Recently, in considering the automobile exception to the warrant requirement, the Utah Supreme Court [in State v. Larocco, 794 P.2d 460 (Utah 1990)] disagreed with federal decisions holding no showing of exigent circumstances is necessary to search a vehicle without a warrant. See, e.g. Carney, 471 U.S. 386, 105 S. Ct. 2066. Reasoning the federal decisions "cannot be squared with the oft-stated principle that warrants-when-practicable is the best

policy." (Citation to Larocco supplied)

In State v. Larocco, 794 P.2d 460, 469 (Utah 1990), the Utah Supreme Court expressed frustration at the inconsistencies and disagreements as to when a warrant will be required for search of an automobile. The Court states that it does not agree with the federal interpretation of the standard for warrantless search of a vehicle:

"The Supreme Court's Chambers-through-Carney line of cases cannot be squared with the oft-stated principle that warrants-when-practicable is the best policy.These cases expand the automobile exception by ignoring the mobility factor and implementing the rationale of diminished expectation of privacy. This expansion and the vacillation between the warrant approach and the reasonableness approach have resulted in significant confusion about federal search and seizure law regarding automobiles." Larocco at 469.

The Court states that the time has come to establish a separate state constitutional analysis as it relates to the warrantless searches of automobiles:

"The time has come for this court, in applying an automobile exception to the warrant requirement of article I, section 14 of the Utah Constitution, to try to simplify, if possible, the search and seizure rules so that they can be more easily followed by the police and the courts and, at the same time, provide the public with consistent and predictable protection against unreasonable searches and seizures. This can be accomplished by eliminating some of the confusing exceptions to the warrant requirement that have been developed by federal law in recent years. See *id.* Specifically, this court will continue to use the concept of expectation of privacy as a suitable threshold criterion for determining whether article I, section 1 is applicable. Then if article I, section 14 applies, warrantless searches will be permitted only where they protect the safety of police or the public or to prevent the destruction of evidence." Larocco at 470.

The Court, citing Justice Zimmerman in State v. Hygh, 711 P.2d at 272, explains that warrants will be required once the safety of the officers and evidence is assured:

"As Justice Zimmerman explained in Hygh: "Once the threat that the suspect will injure the officers with concealed weapons or will destroy evidence is gone, there is no persuasive reason why the officers cannot take the time to secure a warrant. Such a requirement would present little impediment to police investigations, especially in light of the ease with which warrants can be obtained under Utah's telephonic warrant statute, U.C.A., 1953, Section 7-23-4(2)."

The Court of Appeals in Naisbitt, supra, reasoned that this same analysis would apply to a plain smell situation, "The considerations requiring a showing of exigent circumstances under the automobile exception seem to apply with equal force to the search of a vehicle based on an officer detecting the odor of marijuana." State v. Naisbitt, 827 P.2d 969, 973 (Utah App. 1992)

The Court of Appeals emphasized that arguments regarding the Utah Constitution should be briefed and argued in cases involving plain smell:

"We are troubled that when existing law demonstrates a difference between federal and state law, parties fail even to mention, much less brief, state constitutional issues. Until and unless parties brief search and seizure questions under the state constitution, Utah's citizens will remain at the mercy of the "labyrinth of rules built upon a series of contradictory and confusing rationalizations and distinctions" marking federal search and seizure law. State v. Hygh, 711 P.2d 264; 271-72 (Utah 1985) (Zimmerman, J., concurring)." Id. at 973.

In the instant case, probable cause existed to search the vehicle pursuant to Trooper Hancock's detection of the odor of burnt marijuana. However, no exigent circumstances existed which prevented him from obtaining a warrant. At the time Trooper Hancock commenced the search, the driver and passenger of the vehicle had been transported to the hospital thereby eliminating any concern for officer safety or for the destruction of evidence. Accordingly, Trooper Hancock should have secured the vehicle and

obtained a telephonic warrant. His failure to do so violated the Utah State Constitution as it relates to warrantless searches of vehicles.

CONCLUSION

Wherefore, it is respectfully requested that all evidence seized as a result of this unlawful search be suppressed.

Respectfully submitted this 19th day of September, 1996.

BK Lachmar

Barbara King Lachmar
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Appellant were mailed, postage prepaid, to Jan Graham, Utah Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114, Attorneys for Appellees, this 19th day of September, 1996.

BK Lachmar

Barbara King Lachmar

ADDENDA

**DUI
SUMMONS AND CITATION**

STATE OF UTAH
☒ COUNTY OF CACHE
☐ CITY OF _____

THE DEFENDANT IS HEREBY
 GIVEN NOTICE TO APPEAR IN:

COURT OF 1st Circuit
 LOCATED AT MO North 100 West
Logan, Utah 84321

Not less than (5) nor more than (14) days after issuance
 of this citation.

FOR COURT USE ONLY

DATE OF CONVICTION _____

FINE _____ SUSPENDED _____

JAIL _____ SUSPENDED _____

DISPOSITION

Plea Guilty ☐ No Contest

☐ Trial Guilty ☐ Not Guilty

Final Charge _____

Prosecuting Agency _____

ISSUING
 ENFORCEMENT AGENCY Utah Highway Patrol

Case
 NO. 0195-428

CITATION NO.
D179047

NAME (Last) <u>Wallace</u> (First) <u>Reidy</u> (Middle) <u>Jo</u>			DOB <u>12-23-73</u>	
ADDRESS (City) <u>6985 North 2550 West</u> (State) <u>Honeyville, Utah</u> Zip <u>84314</u>				
Driver License No. <u>150776018</u>	Class <u>D</u>	Expires <u>99</u>	State <u>UT</u>	Restriction <u>B</u>
Height _____	Weight _____	Eyes _____	Sex _____	Vehicle License No. <u>338 HAD</u>
Vehicle Make <u>Mercury</u>	Vehicle Type <u>Truck</u>	Year <u>87</u>	Color <u>Gold</u>	Accident <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Comm. Vehicle <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Haz. Material <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Direction of Travel <u>N S E (W)</u>	Social Security No. _____	
Motorcycle <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Expires <u>95</u>		

THE ABOVE NAMED DEFENDANT IS CHARGED WITH VIOLATING:

☒ UTAH CODE ☐ COUNTY CODE ☐ CITY CODE NO.: _____
 ON THE 17th DAY OF April 1995 MILITARY TIME 1335

LOCATION SR30 3000 West MILE POST NO. 113

VIOLATION(S): DUI class A 1st offense Pass of marijuana 3rd degree felony
Pass of Cocaine 1st offense 2nd degree felony Unlawful Lane travel Drug paraphernalia

WITHOUT ADMITTING GUILT I PROMISE TO APPEAR AS DIRECTED HEREIN 6 No drug TAX Stamp 3rd February

SIGNATURE Injured, Busted into Cache Co Jail

I CERTIFY THAT A COPY OF THIS SUMMONS AND CITATION WAS DULY SERVED UPON THE DEFENDANT
 ACCORDING TO LAW ON THE ABOVE DATE AND I KNOW OR BELIEVE AND SO ALLEGE THAT THE ABOVE
 NAMED DEFENDANT DID COMMIT THE OFFENSE HEREIN SET FORTH CONTRARY TO LAW. I FURTHER CER-
 TIFY THAT THE COURT TO WHICH THE DEFENDANT HAS BEEN DIRECTED TO APPEAR IS THE PROPER
 COURT PURSUANT TO SECTION 77-7-19, U.C.A.

OFFICER A.T. Hansen BADGE NO. 321

COMPLAINANT _____ DATE OF CITATION _____

DLD	COURT COPY ONE		DATE SENT TO DLD	DOCKET NO.
-----	-----------------------	--	------------------	------------

READ CAREFULLY

This citation is not an information and will not be used as an information without your consent. If an information is filed you will be provided a copy by the court. You **MUST** appear in court on or before the time set in this citation. IF YOU FAIL TO APPEAR AN INFORMATION WILL BE FILED AND THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST. **NOTICE OF INTENT TO DENY, SUSPEND, OR REVOKE:**

OFFICER, CHECK APPROPRIATE BOX

(ARREST UNDER 41-6-44 UCA)

☒ You are hereby notified that thirty (30) days from the date of this notice your driving privilege in the State of Utah will be suspended pursuant to 53-3-223 UCA for ninety (90) days for a first offense or for one (1) year for subsequent offenses, or revoked for one (1) year pursuant to 41-6-44.10 UCA for a first refusal to submit to a chemical test, or for eighteen (18) months for subsequent refusals after July 1, 1993.

(ARREST UNDER 32A-12-209) (JUVENILE)

☐ You are hereby notified that thirty (30) days from the date of this notice your driving privilege in the State of Utah will be denied pursuant to 41-6-44.4 UCA for ninety (90) days for a first offense, or suspended for one (1) year for a subsequent offense within three (3) years, or suspended for one (1) year or until age seventeen (17), whichever is longer, if you have not been issued an original operator license, or revoked for one (1) year pursuant to 41-6-44.10 UCA for a first refusal to submit to a chemical test or for eighteen (18) months for subsequent refusals after July 1, 1993. **COMPLETION OF AUTHORIZED SUBSTANCE ABUSE PROGRAM REQUIRED FOR REINSTATEMENT.**

RIGHT TO HEARING: The Division will grant you opportunity for a hearing but only if you submit a **WRITTEN REQUEST** within **TEN (10) DAYS** of your arrest to. Driver License Division at 4501 South 2700 West, P.O. Box 30560, Salt Lake City, Utah 84130-0560 (ATTN: D.U.I. Section). Upon your timely request you will be notified of the time and place of the hearing. The hearing is **not** for purpose of granting a limited license but only to determine if your driving privilege is to be denied, suspended, or revoked. The administrative hearing is civil in nature and does not satisfy the requirement for you to appear in court when required. **FAILURE TO REQUEST A HEARING OR FAILURE TO APPEAR FOR A HEARING** may result in loss of your driving privilege.

*COMMERCIAL DRIVER LICENSE HOLDERS SEE REVERSE SIDE

This is **VALID** ☒ **NOT VALID** ☐ as a temporary license for up to thirty (30) days from the date of this notice

OPERATOR ☒ **COMMERCIAL** ☐ **CLASS** D **ENDORSEMENTS** ND

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DUI REPORT FORM

I. CASE IDENTIFICATION:

Date 04-17-95 Day Monday Accident Yes Case # 01956-4210 Time Prepared 1559
 Subject's Name Perry Jo Wallace Address 6985 North 2550 West, Marysville, UT 84314
 Place of Employment _____ Address _____
 Home Telephone Number _____ Work Telephone Number _____
 D.O.B. 12-23-73 Driver License # 150776018 Time of Arrest 1520
 Place of Arrest Cannon Regional Hospital Charges Drunk driving, cocaine possession
 Arresting Officer Robert Sheffer Assisting Officers A.T. Harwick, Tara Kendra
 Arresting Agency Utah Highway Patrol

II. VEHICLE

Year 1987 Color Gold Make Mercury Model Topaz
 License # and state 338 HAD Utah Disposition State Impound # A249189
 Registered Owner Perry Jo Wallace Address 6985 North 2550 West

III. WITNESSES: (If passengers, indicate specifically)

Name	Address	Tele. #	Age/DOB
1. Tim Potter	840 North 350 East Thermon, UT	801-257-3856	
2.			
3.			
4.			
5.			

IV. ACTUAL PHYSICAL CONTROL:

The facts establishing the subject's actual physical control of a motor vehicle are: Witness saw her run off road. She told investigating officer she was driving and provided driver license.

V. DRIVING PATTERN:

Subject's location when first observed on ground beside car with blanket on her.
 The facts observed regarding driving pattern: Vehicle hit its broken and left the road to the right for no apparent reason.

VI. PRE-ARREST STATEMENTS OF SUBJECT:

VII. PHYSICAL CHARACTERISTICS:

Odor of alcoholic beverage None
 Speech _____
 Balance See D.R.E. Report
 Signs or complaints of injury or illness _____
 Other physical characteristics _____

1. SEE D.R. T. REPORT.
2. _____
3. _____
4. _____
5. _____

Were tests demonstrated by officer? _____ Subject's ability to follow instructions _____

IX. SEARCHES

A. Vehicle:

Was subject's vehicle searched? Yes Where? at scene, SR30, 3000 ft
When? 1425 hours Evidence (See inventory) Drug paraphernalia, Drugs
including marijuana & cocaine.
Person who performed the search A.T. Marwick, J. Kendrick, B. Anderson

B. Subject:

Was subject's person searched? Yes Where? Utah Highway Patrol office
When? 1630 hrs Evidence Found 2 red pills inside wallet
Person who performed the search P. Manghu, Carla G. Jell

X. CHEMICAL TESTS:

Mr. or Ms. Penny T. Wallace, do you understand that you are under arrest for

☒ driving under the influence of alcohol (drugs)? (41-6-44 UCA)

☐ driving with a detectable amount of alcohol in your body while under age 21 (32A-12-209)

Response, (if any) I know that fine, I asked them to take a B.A.C. I asked them
I hereby request that you submit to a chemical test to determine the alcohol (drug) content of your blood/breath. I

request that you take a BLOOD test. when I first got here to take a B.A.C.
(blood - breath - urine) because I'm clean, I know I have

to because I'm the driver.

☐ The following admonition was given by me to the subject before the chemical test was administered:

Results indicating an unlawful amount of alcohol in your breath/blood in violation of 41-6-44 or 41-6-44.4 UCA may, or the presence of alcohol and/or drugs sufficient to render you incapable of safely driving a motor vehicle may, result in denial or suspension of your driving privilege or refusal to issue you a license.

What is your response to my request that you submit to a chemical test? Response: Do it, what
am do you want it in, left or right

Did subject submit to a chemical test? Yes Type of test Blood
Test Administered by Lab tech. name with blood specimen Where? Logan Regional Hospital
Time: _____ Results _____ Was subject notified of results? _____

Serial No. of test machine: _____

(if the subject refuses the test, read the following)

☐ The following admonition was give by me to the subject:

If you refuse the test, it will not be given, however I must warn you that if you refuse, your driving privilege may be revoked for one year for a first refusal or 18 months for a subsequent refusal after July 1, 1993, with no provision for limited driving. After you have taken the test, you will be permitted to have a physician of your own choice administer a test at your own expense, in addition to the one I have requested, so long as it does not delay the test or tests requested by me. I will make the test results available to you, if you take the test.

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(if the subject claims the right to remain silent or the right to counsel, read the following)

- ☐ The following admonition was given by me to the subject:

Your right to remain silent and your right to counsel do not apply to the implied consent law which is civil in nature and separate from the criminal charges. Your right to remain silent does not give you the right to refuse to take the test. You do not have the right to have counsel during the test procedure. Unless you submit to the test I am requesting, I will consider that you have refused to take the test. I warn you that if you refuse to take the test, your driver's license can be revoked for one year with no provision for a limited license.

XI. CONSTITUTIONAL RIGHTS:

Was subject advised of the following rights? Yes When _____
By Whom? Thay Nielsen Where? Cache Co. Sheriff's office

- ☒ 1. You have the right to remain silent.
☒ 2. Anything you say can and will be used against you in a court of law.
☒ 3. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.
☒ 4. If you decide to answer questions now without having counsel present, you may stop answering questions at any time. Also, you may request counsel at any time during questioning.

Were the following waiver questions asked? YES

☒ 1. Do you understand each of these rights I have explained to you?
Response I want to talk to my lawyer

☐ 2. Having these rights in mind, do you wish to talk to us now?
Response _____

INTERVIEW:

Were you operating a vehicle? _____

Where were you going? _____

What street or highway were you on? _____

Direction of travel? _____

Where did you start from? _____

When? _____ What time is it now? _____

What is today's date? _____ Day of week? _____

(Actual time _____ Date _____ Day _____)

What city or county are you in now? _____

What were you doing during the last three hours? _____

Have you been drinking? _____

What? _____ How much? _____

Where? _____

When did you have your first drink? _____ Last drink? _____

Are you under the influence of an alcoholic beverage (drugs) now? _____

Are you taking tranquilizers, pills, medicines or drugs of any kind? _____

(What kind? Get sample) _____

When did you have the last dose? _____

Are you ill? _____

(If subject was in an accident, ask these questions:)

Were you involved in an accident today? _____

Have you had any alcoholic beverage or drugs since the accident? _____

If so, what? _____ When? _____

How much? _____

0011

XII. OTHER OCCURRENCES OR FACTS:

XIII. ATTACHED DOCUMENTS:

I have attached the following documents to this report:

1. ☒ Copy of citation/temporary license
2. ☐ Subject's Utah driver's license or driver's permit
3. ☒ Traffic accident report
4. ☐ Other documents (specify) _____

I hereby certify that I am a sworn Utah Peace Officer and that the information contained above in this report form and attached documents is true and correct to my knowledge and belief and that this report form was prepared in the regular course of my duties. It is my belief the subject was in violation of section 41-6-44 U.C.A. or 32A-12-209 at the time, and place specified in this report.

Travis A. T. Hansen
Signature of Peace Officer
Law Enforcement Agency: Utah Highway Patrol
Date: 04-18-95 Time: 1120 am

The original of this form and the Driver License copy of the Citation must be sent within five (5) days of the arrest of the subject to:

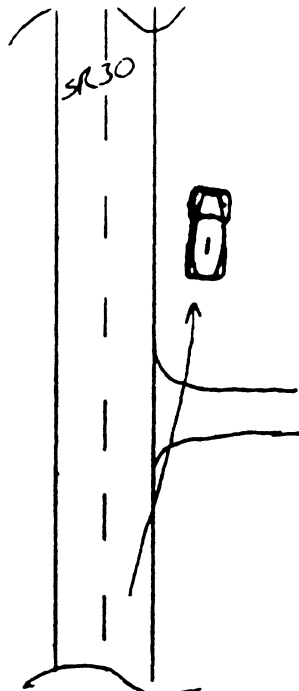
Driver License Division
4501 South 2700 West
P.O. Box 30560
Salt Lake City, Utah 84130-0560

0011.

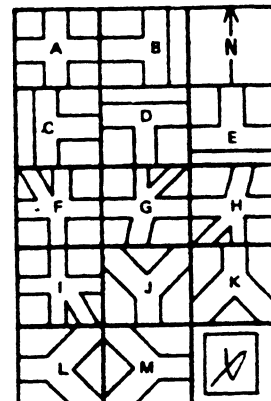
TIME	MONTH	DAY	YEAR	DAY OF WEEK	2	3	4	5	6	7	MILITARY TIME	095C-U0283	17		
	04	17	95	T	W	T	F	S	S		334		16		
LOCATION	PLACE WHERE ACCIDENT OCCURRED: COUNTY <u>CACHE</u> CITY OR TOWN <u>LOGAN</u>												FOR AGENCY USE		
	Accident was outside city limits Indicate distance from city limits or nearest town <u>2</u> MILES NORTH <input type="checkbox"/> SOUTH <input type="checkbox"/> EAST <input type="checkbox"/> WEST <input checked="" type="checkbox"/> of <u>LOGAN</u> CITY OR TOWN												D.L.D. USE ONLY		
	ROAD ON WHICH ACCIDENT OCCURRED: <u>SR 30</u> RAMP NO. <input type="checkbox"/>												STATE/LOCAL		
	1. AT ITS INTERSECTION WITH <input type="checkbox"/>														
1	2 IF NOT AT INTERSECTION <u>100</u> FEET NORTH <input type="checkbox"/> SOUTH <input type="checkbox"/> EAST <input type="checkbox"/> WEST <input checked="" type="checkbox"/> of <u>3000 West, DWR, Coal Range</u> NEAREST INTERSECTION, STREET, HOUSE NO. LANDMARK												STATE/LOCAL		
	2. IF NOT AT INTERSECTION <u>113</u> OF MILE POST <u>113</u> BE SURE TO COMPLETE IF ROAD HAS MILE POST														
8	VEHICLE	YEAR	MAKE	MODEL	BODY STYLE/TYPE CODE	VEHICLE COLOR	G.V.W.R.	DESC. OF CARGO CODE	COMMERCIAL VEHICLE (Reg 12,000 lbs. or more)	INTERSTATE <input type="checkbox"/>	INTRASTATE <input type="checkbox"/>	NO. OF AXLES (EXCLUDING ALL TRAILERS)	DIR. OF TRAVEL	20	
	1	1987	Mercury	Topaz	4dr	Gold						2	West	21	
	VEHICLE IDENTIFICATION NUMBER <u>1MEB M3657HK 648182</u> DISPOSITION OF VEHICLE <u>Wolfsdorf</u>														
	US DOT <u>ICC MC</u> LICENSE PLATE INFO <u>95 09 ut</u> STATE <u>ut</u> NUMBER <u>338HAD</u> PARTS DAMAGED <u>1,2</u> COST OF REPAIR <u>500.00</u>														
1	OWNER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.								PHONE ()	25	
	OPERATOR	<u>Perry Jo</u>				<u>6985 North 2550 West</u>									26
	CARRIER	<u>Wallace</u>				<u>Moreyville, Int 84314</u>									27
	DRIVER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.								PHONE ()	28	
X	<u>Same</u>				<u>Same</u>									29	
	DRIVER'S LICENSE	STATE	NUMBER	DATE OF BIRTH	MONTH	DAY	YEAR	AGE	SEX	SAFETY EQUIP. TYPE	INJURY	EXTRA CAUTION	EJECTION	THROUGH WHAT AREA EJECTED?	30
	<u>ut</u>	<u>150776018</u>	<u>12-23-73</u>												31
															32
1	DRIVER'S EDUCATION	1. PUBLIC	3. NONE	2. COM'L	4. UNKN	YEARS DRIVE EXP.	LICENSE CLASS	ENDORSEMENT	RESTRICTIONS	POLICY NUMBER					33
	<u>05</u>	<u>D</u>	<u>NO</u>	<u>B</u>	<u>21 F</u>	<u>342201</u>	<u>4237310-0</u>					34			
	INSURANCE COMPANY <u>Guaranty National</u> EFFECTIVE DATE <u>02-13-95</u> EXPIRATION DATE <u>08-13-95</u>												35		
	INSURANCE APPEARS VALID <u>YES</u> AGENCY THAT SOLD POLICY <u>First Security Ins Co.</u> ADDRESS <u>695 So. Main St Brigham, Ut 84302</u> PHONE ()												36		
5	VEHICLE	YEAR	MAKE	MODEL	BODY STYLE/TYPE CODE	VEHICLE COLOR	G.V.W.R.	DESC. OF CARGO CODE	COMMERCIAL VEHICLE (Reg 12,000 lbs. or more)	INTERSTATE <input type="checkbox"/>	INTRASTATE <input type="checkbox"/>	NO. OF AXLES (EXCLUDING ALL TRAILERS)	DIR. OF TRAVEL	37	
	VEHICLE IDENTIFICATION NUMBER <u>1MEB M3657HK 648182</u> DISPOSITION OF VEHICLE <u>Wolfsdorf</u>												38		
	US DOT <u>ICC MC</u> LICENSE PLATE INFO <u>95 09 ut</u> STATE <u>ut</u> NUMBER <u>338HAD</u> PARTS DAMAGED <u>1,2</u> COST OF REPAIR <u>500.00</u>												39		
													40		
4	OWNER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.								PHONE ()	41	
	OPERATOR	<u>Perry Jo</u>				<u>6985 North 2550 West</u>									42
	CARRIER	<u>Wallace</u>				<u>Moreyville, Int 84314</u>									43
	DRIVER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.								PHONE ()	44	
1	<u>Same</u>				<u>Same</u>									45	
	DRIVER'S LICENSE	STATE	NUMBER	DATE OF BIRTH	MONTH	DAY	YEAR	AGE	SEX	SAFETY EQUIP. TYPE	INJURY	EXTRA CAUTION	EJECTION	THROUGH WHAT AREA EJECTED?	46
	<u>ut</u>	<u>150776018</u>	<u>12-23-73</u>												47
															48
1	DRIVER'S EDUCATION	1. PUBLIC	3. NONE	2. COM'L	4. UNKN	YEARS DRIVE EXP.	LICENSE CLASS	ENDORSEMENT	RESTRICTIONS	POLICY NUMBER					49
	<u>05</u>	<u>D</u>	<u>NO</u>	<u>B</u>	<u>21 F</u>	<u>342201</u>	<u>4237310-0</u>					50			
	INSURANCE COMPANY <u>Guaranty National</u> EFFECTIVE DATE <u>02-13-95</u> EXPIRATION DATE <u>08-13-95</u>												51		
	INSURANCE APPEARS VALID <u>YES</u> AGENCY THAT SOLD POLICY <u>First Security Ins Co.</u> ADDRESS <u>695 So. Main St Brigham, Ut 84302</u> PHONE ()												52		
1	VEHICLE	YEAR	MAKE	MODEL	BODY STYLE/TYPE CODE	VEHICLE COLOR	G.V.W.R.	DESC. OF CARGO CODE	COMMERCIAL VEHICLE (Reg 12,000 lbs. or more)	INTERSTATE <input type="checkbox"/>	INTRASTATE <input type="checkbox"/>	NO. OF AXLES (EXCLUDING ALL TRAILERS)	DIR. OF TRAVEL	53	
	VEHICLE IDENTIFICATION NUMBER <u>1MEB M3657HK 648182</u> DISPOSITION OF VEHICLE <u>Wolfsdorf</u>												54		
	US DOT <u>ICC MC</u> LICENSE PLATE INFO <u>95 09 ut</u> STATE <u>ut</u> NUMBER <u>338HAD</u> PARTS DAMAGED <u>1,2</u> COST OF REPAIR <u>500.00</u>												55		
													56		
1	OWNER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.								PHONE ()	57	
	OPERATOR	<u>Perry Jo</u>				<u>6985 North 2550 West</u>									58
	CARRIER	<u>Wallace</u>				<u>Moreyville, Int 84314</u>									59
	DRIVER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.								PHONE ()	60	
1	<u>Same</u>				<u>Same</u>									61	
	DRIVER'S LICENSE	STATE	NUMBER	DATE OF BIRTH	MONTH	DAY	YEAR	AGE	SEX	SAFETY EQUIP. TYPE	INJURY	EXTRA CAUTION	EJECTION	THROUGH WHAT AREA EJECTED?	62
	<u>ut</u>	<u>150776018</u>	<u>12-23-73</u>												63
															64
1	DRIVER'S EDUCATION	1. PUBLIC	3. NONE	2. COM'L	4. UNKN	YEARS DRIVE EXP.	LICENSE CLASS	ENDORSEMENT	RESTRICTIONS	POLICY NUMBER					65
	<u>05</u>														

Reason For No Diagram _____

- 1 Officer not at scene
- 2 Vehicles moved
- 3 Other _____

INDICATE DIRECTION
OF NORTHVEHICLE NO. 1 NO. _____

ESTIMATED TRAVEL SPEED	<u>50</u>
ESTIMATED IMPACT SPEED	<u>30</u>
POSTED SPEED	<u>55</u>
ADVISORY SPEED	<u>55</u>



INDICATE INTERSECTION TYPE

DESCRIBE WHAT HAPPENED
(Refer to Vehicle by Number)

Vehicle hit its backer and went off the right side of the road. It crossed a driveway and came to rest in the ditch.

If Hazardous Materials were involved list the placard number from off the commercial vehicle:

DAMAGE TO PROPERTY
OTHER THAN VEHICLESNone known

Name object and state nature and amount of damage

ESTIMATE

Name and address of
owner of object struck

WITNESSES

Name Tim PotterAddress 840 North 350 East, Tremonton, UT Phone 801-257-3856

Name _____ Address _____ Phone _____

FIRST AID ADMINISTERED BY

- | | |
|-------------------------|--------------------------|
| 1 - Policeman | 6 - Private Individual |
| 2 - Fireman | 7 - Hospital |
| 3 - Ambulance Personnel | 8 - Helicopter Personnel |
| 4 - Paramedics | 9 - Name Administered |
| 5 - Doctor | 0 - Unknown |

RHS REPORT NO.

RHS REPORT NO.

INJURED TAKEN BY

- | |
|------------------------|
| 1 - Ambulance, Private |
| 2 - Ambulance, Fire |
| 3 - Paramedics |
| 4 - Private Vehicle |
| 5 - Helicopter |
| 6 - Other |

TIME Amb Called: _____ Arrived _____

INJURED TAKEN TO Logan Regional Hospital

POLICE ACTIVITY

04-17-95 Date Notified of Accident
Month Day Year

Date Notified of Accident

1335 Time Notified of Accident

Time Notified of Accident

(USE
MILITARY
TIME)1338 Arrived at Scene

Arrived at Scene

Investigation of accident
Completed at1500

of _____

the same day

☐

the _____ day following

Source of Information

Officer at scene Wallcock

Driver No. _____ Contacted station

Other _____

PHOTO(S) TAKEN
YES ☐ NO ☒
VIDEO TAKEN
YES ☐ NO ☒
FIELD DIAGRAM
YES ☒ NO ☐

Name Penny Jo WallaceCharge DUI, drug related with injuries

Name _____ Charge _____

CVSA Inspection Yes _____ No X If Yes, Report Number _____

Other action taken _____

PRINT <u>A. T. Wallcock</u>	<u>321</u>	<u>1-A</u>	<u>UHP</u>	<u>04-17-95</u>
OFFICER'S RANK AND NAME	ID NO	PATROL DIVISION	DEPARTMENT	SUPERVISORS APPROVAL

00148

WARRANTLESS ARREST PROBABLE CAUSE STATEMENT

The undersigned, Jason P. Kendrick, of the Utah Highway Patrol, under oath states that there existed probable cause for the arrest without warrant of the person named below based upon the following:

Name of person arrested: Roland H. Wheeler DOB: 09-06-53
Date of arrest: 04-17, 1995 Time: 1430 (P.m.)
Place of arrest: Logan Regional Hospital, Logan, Cache County, Utah

The above-named person is currently being detained on the following charges:

<u>Offense</u>	<u>Date</u>	<u>Code No.</u>	<u>Class</u>	<u>Bail (per Schedule)</u>
1. Poss. of Drug Paraph.	<u>04-17-95</u>	<u>58-37A-5</u>	<u>B</u>	<u>\$ 100.00</u>
2. Poss. of marijuana w/intent	<u>same</u>	<u>58-37-8(1)</u>	<u>3rd</u>	<u>\$ 5000</u>
3. Poss. of cocaine w/intent	<u>same</u>	<u>58-37-8(1)</u>	<u>2nd</u>	<u>\$ 10,000</u>
4. No drug tax stamp	<u>same</u>	<u>69-19-106(2)</u>	<u>3rd</u>	<u>\$ 5,000</u>

The undersigned believes that probable cause existed for this warrantless arrest and the continued detention of the above-named person based upon the following information which was either known by the undersigned personally or was obtained by the undersigned in his/her capacity as a peace officer:

The above listed person was the passenger in a single car accident on SR 30 at MP 113 on Monday April 17, 1995 at 1335 hrs. Upon inventory of the vehicle a marijuana pipe was found on the floor of the passenger side. The car smelled of marijuana also. Upon further inventory several items of paraphernalia were found. (pipes - scales - syringes - glass tubes - spoons - etc.) also found were 14 individual baggies of marijuana, several suspected blades of cocaine 3 meth-amphetamines, a Torch and cooking utensils were also found.

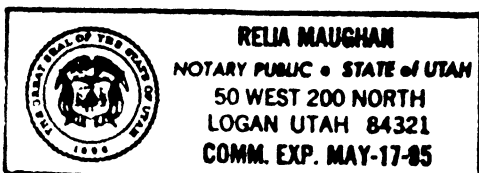
The undersigned requests the magistrate to whom this statement is presented to execute an order determining that probable cause existed for the above-described warrantless arrest, authorizing the continued detention of the above-named person on the stated charges, and setting appropriate bail, if any.

Jason P. Kendrick
Officer

STATE OF UTAH)
COUNTY OF CACHE)

Sworn to before me this 18 day of April, 1995.

Relia Maughan
Judge/Notary



0013

WARRANTLESS ARREST PROBABLE CAUSE STATEMENT

The undersigned, Jason P. Kendrick, of the Utah Highway Patrol, under oath states that there existed probable cause for the arrest without warrant of the person named below based upon the following:

Name of person arrested: Penny Wallace DOB: 12-23-73
Date of arrest: 04-17, 1995 Time: 1430 (P.m.)
Place of arrest: Logan Regional Hospital, Logan, Cache County, Utah

The above-named person is currently being detained on the following charges:

Offense	Date	Code No.	Class	Bail (per Schedule)
1a. DUI w/injury	04-17-95	41-6-44-3(A)	3 rd	-
1b. Poss. drug paraphernalia	same	58-37A-5	B	\$ 100
2. Poss marijuana w/intent	same	58-37-8(1)	3 rd	\$ 5000
3. Poss cocaine w/intent	same	58-37-8(1)	2 nd	\$ 10,000
4. No drug tax stamp	same	59-19-106(2)	3 rd	\$ 5000
- unsafe lane travel	same	41-6-61(1)	B	

The undersigned believes that probable cause existed for this warrantless arrest and the continued detention of the above-named person based upon the following information which was either known by the undersigned personally or was obtained by the undersigned in his/her capacity as a peace officer:

The above listed person was involved in a single car accident. at 1336 hrs on Monday April 17, 1995. This person was driving the vehicle which left the roadway on SR-30 at MP 113, westbound, for no apparent reason. The driver and passenger were transported to Logan Regional hospital. Upon inventory of the vehicle to be released to the wrecker a marijuana pipe was found on the passengers side front floor. The vehicle smelled of marijuana smoke. Upon further inventory several paraphernalia items were found. (pipes - scales - syringes - glass tubes) also found were 14 individual baggies of marijuana. several bindles of cocaine 3 methamphetamine. a torch and cooking utensils were found.

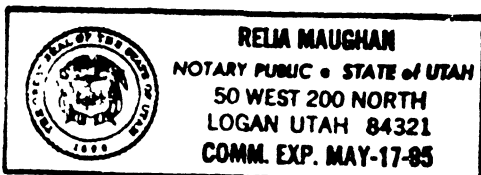
The undersigned requests the magistrate to whom this statement is presented to execute an order determining that probable cause existed for the above-described warrantless arrest, authorizing the continued detention of the above-named person on the stated charges, and setting appropriate bail, if any.

Jason P. Kendrick
Officer

STATE OF UTAH)
COUNTY OF CACHE)

Sworn to before me this 18 day of April, 1995.

Gelia Hughes
Judge/Notary



0016

UTAH HIGHWAY PATROL
VEHICLE INVENTORY

Time 1429 Date 4-17-95

Reason for Impound: ☒ State Tax ☒ Hold for Owner ☐ Other (specify) out (0 tolerance)

Location SR-30 mp. 113.01

Vehicle year 87 Make mercury Color tan Body Style 4dr

V.I.N. 1MEBM3G57HK648182 Registration 338 NAD State UT

State Tax Commission Impound Report No. A249189

Registered owner Jane Address Honeyville

Driver Penny Wallace Address _____

Glove box: Locked ☒ Yes ☒ No

contents: misc garbage

interior contents:				
misc personal hygiene products) brown box	canned goods	Radio	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
weather bag	Thread.	Tape Deck	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
41 cassettes	1 clip	C.B. Radio	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no
40 cassettes	misc garbage	Tachometer	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
several porno magazing	1 pioneer cassette deck			

Trunk contents:	12 pks. cmeis	scales	Key used to open	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
pillow	misc beverages	Torch	Spare	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
bag (garment)	misc tools	misc. paraphernalia	Jack	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
box (personal hygiene)	metal box - beads	misc crafts	Lug Wrench	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
1 igloo (misc bottles)	misc clothes				
1 basket clothes					

Body damage:
windshield
small
misc. dents.

Vehicle and contents stored at: _____

I hereby certify that those items listed above were released to my custody by Jason P. Hancock

Witness to inventory Arlow Hancock

Signature of person receiving
the vehicle and contents

Disposition:

- Original retained by trooper
- 1st copy to wrecker driver
- 2nd copy to remain with vehicle
- 3rd copy to division file

List all items retained by trooper:

several drug items (paraphernalia)
misc. drugs / scales / pipes

Utah State Tax Commission
Vehicle Impound Report

No. **A 249189**

Impound date 04-17-95	Vehicle year 87	Make Mercury	Model Tupaz	Type 4dr	Color tan
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Vehicle identification or serial number **1MEBM3657HK648182**

License plate number 338 HAD	State UT	Decal number	Year of decal	Month/Year of expiration 9/95
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Where was vehicle removed from? **SR-30 mp 113**

Where is vehicle stored? _____ Yard number _____

Reason for impound
☐ Improper registration ☐ No Utah registration ☐ Expired registration ☐ Theft ☒ DUI ☐ Abandoned possible theft ☐ Other (see remarks)

Owner/lessee **Penny wallace** Address **Honeyville**

Driver's name **sane** Address **—**

Accessories on vehicle
☐ Radio ☐ Hub caps/Special rims ☐ Mirrors ☐ Mats ☐ Other (see remarks)

Property in vehicle _____

Visible damage **see inventory**

Remarks _____

Officer's signature x Jason Kech	Agency UHP	ORI number	Case number 0195C40284
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WHITE - Motor Vehicle Division, 1085 Motor Avenue, SLC, Utah 84116, Telephone 538-8300 YELLOW - Impound Yard PINK - Driver of vehicle GOLDENROD - Impound officer's record TC-540 Rev 10/82

0051

UTILITY

JHJ

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

TO: All Personnel

SUBJECT

JUL 11 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]).

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- 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.

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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.

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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

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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