

No. 23-126,350-AS

**IN THE
SUPREME COURT OF THE
STATE OF KANSAS**

STATE OF KANSAS
Plaintiff-Appellee

vs.

BRIAN BECK
Defendant-Appellant

**APPELLANT'S RESPONSIVE
SUPPLEMENTAL BRIEF**

Appeal from the District Court of Geary County, Kansas
Honorable Courtney D. Boehm, Judge
District Court Case No. 21 CR 131

Kasper Schirer #26860
Kansas Appellate Defender Office
Jayhawk Tower
700 Jackson, Suite 900
Topeka, Kansas 66603
(785) 296-5484
(785) 296-2869 fax
adoservice@sbids.org
Attorney for the Appellant

Table of Contents

Nature of the Case 1

Statement of the Issue..... 1

Statement of the Facts..... 1

Arguments and Authorities 1

Issue: Brian did not violate Kansas’ license plate display statute, a position he has maintained since pretrial litigation. Brian’s compliance with the statute – and the lawfulness of the seizure based on a purported tag violation – are now squarely before this Court..... 1

K.S.A. 8-133(c)..... 1

Supreme Court Rule 8.03(b)(6)(C)(i) 3

Matter of Adoption of Baby Girl G., 311 Kan. 798, 466 P.3d 1207 (2020) 3

State v. Messner, 55 Kan.App.2d 630, 419 P.3d 642 (2018) 3

Conclusion 5

Nature of the Case

Brian Beck files this responsive supplemental brief pursuant to Supreme Court Rule 8.03(i)(3)(A).

Statement of the Issue

Issue: Brian did not violate Kansas’ license plate display statute, a position he has maintained since pretrial litigation. Brian’s compliance with the statute – and the lawfulness of the seizure based on a purported tag violation – are now squarely before this Court.

Statement of the Facts

The facts have been provided in the parties’ earlier filings.

Arguments and Authorities

Issue: Brian did not violate Kansas’ license plate display statute, a position he has maintained since pretrial litigation. Brian’s compliance with the statute – and the lawfulness of the seizure based on a purported tag violation – are now squarely before this Court.

Brian did not violate Kansas’ license plate display statute.

K.S.A. 8-133(c) only requires that a “license plate shall be fastened in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible.” Uncontroverted evidence showed that Brian Beck’s Illinois license plate was both visible and legible. The officer who stopped Brian both saw the plate *and* read the plate out loud to dispatch before he ever left his patrol car.

(R. XXV, State’s Ex. 1 at 00:10 to 00:30) (body cam video).¹

¹ State’s Trial Exhibit 1 (Electronic Volume XXV) contains numerous videos. Counsel cites exclusively to the body cam footage of the officer who stopped Brian on I-70 in this brief. Here is the folder path to find this video within Volume XXV: BradleyRose 202103021337 WFC1053024 32837509 > Stream 1 > BradleyRose_202103021337_WFC1053024_32837509.mp4.

The district court erred by applying the wrong legal standard to determine whether Brian's plate was clearly legible. Brief of Appellant at 7-18. The standard is not: "clearly legible by an officer at a safe following distance." See (R. I, 105) (district court's ruling). The Court of Appeals erred first by affirming the district court, and second by finding that Brian's plate was not clearly visible. Appellant's Petition for Review at 1-5. Not only does the Court of Appeals' analysis go far beyond what the district court found, its conclusions are directly contrary to the district court evidence. Appellant's Petition for Review at 3-5; (R. XXV, State's Ex. 1 at 00:10 to 00:30).

Law enforcement unlawfully seized Brian based on a clearly legible license plate with a wholly unremarkable license plate frame. For the reasons advanced in Brian's earlier filings, both the district court and the Court of Appeals erred by finding this unjustified seizure to be lawful. Brief of Appellant at 7-18; Appellant's Reply Brief at 1-3; Appellant's Petition for Review at 3-11. This Court should reverse.

The preservation arguments raised in the State's Supplemental Brief are not only unpersuasive, but also unsupported by the history of this case.

The State dedicates the bulk of its supplemental briefing to raising an array of perceived procedural bars. Supplemental Brief of Appellee at 3-6. These eleventh-hour attempts to bar the courtroom doors to Brian are not grounded in the law. More importantly, the State ignores the consistent efforts Brian has made over the life of this case – both in the district court and on appeal – to ensure the preservation of his challenge to this unlawful seizure. (R. I, 91-97) (motion to suppress); Brief of Appellant at 7-18; Appellant's Petition for Review at 3-11.

Supreme Court Rule 8.03(b)(6)(C)(i) requires an appellant to specify his appellate challenges in a petition for review, but “[t]his rule is not simply a ‘gotcha’ from the appellate courts.” *Matter of Adoption of Baby Girl G.*, 311 Kan. 798, 803, 466 P.3d 1207 (2020) (quoting *State v. Messner*, 55 Kan.App.2d 630, 641, 419 P.3d 642 (2018)). The purpose of the rule is to “enourage[] litigants to fully present their cases to the trial court” so that “[a]ll issues and claims are then tested by the adversarial process.” *Baby Girl G.*, 311 Kan. at 803 (quoting *Messner*, 55 Kan.App.2d at 641).

In its supplemental briefing, State seeks a “gotcha.” While acknowledging that Brian maintained his challenge to the district court’s suppression ruling in his petition for review, it insists that “those errors were not adopted by the Court of Appeals,” and that “Beck never addresses how the Court of Appeals erred.” Supplemental Brief of Appellee at 4. This hyperfocus on the form of Brian’s petition is contrary to the stated purpose of Rule 8.03(b)(6)(C)(i). Substance must trump form, particularly when Brian has steadfastly maintained his legal challenge from pretrial litigation through petition.

Furthermore, the State glides over Brian’s numerous explicit challenges to the Court of Appeals’ analysis in his petition for review. For example:

- “Both the district court and the Court of Appeals ignore uncontroverted evidence that Brian’s plate was *both* clearly visible *and* clearly legible. The officer who stopped Brian on I-70 called Brian’s license plate into dispatch – identifying it as an Illinois tag – *while the officer was still in his patrol car.*” Appellant’s Petition for Review at 1 (citations omitted, emphasis original to petition).
- “The Court of Appeals wrongly found that Brian’s license plate ‘was neither clearly visible nor clearly legible even from 2 feet away.’ ... The photographic evidence says otherwise. ... Furthermore, the uncontroverted testimony plainly established that an officer accurately read Brian’s tag from

a patrol car 30-40 feet away from Brian's car before making contact with Brian." Appellant's Petition for Review at 3-4 (citations omitted).

In short, the district court erred by finding that Brian's license plate was not "clearly legible." Brief of Appellant at 7-18. Then: "To affirm, the Court of Appeals took things a step further by finding that [Brian's] plate is not merely illegible, but not even 'clearly visible.'" Appellant's Petition for Review at 1. This challenge is now properly before this Court.

In a final attempt to limit this Court's review, the State argues that Brian has waived any constitutional vagueness issues with the district court's interpretation of the license plate display statute. Appellee's Supplemental Brief at 6. Brian incorporated his vagueness arguments into his petition for review, by citing to his original brief. Appellant's Petition for Review at 4 (citing to Brief of Appellant at 16-18). The State insists that this is inadequate. Appellee's Supplemental Brief at 6. However, in the single paragraph devoted to the merits of Brian's challenge in its supplemental brief, the State relies on the very same technique to incorporate arguments from its own original brief. Appellee's Supplemental Brief at 7. Brian has done what is required to ensure the preservation of his arguments. If he has not, then neither has the State.

Conclusion

Law enforcement unlawfully detained Brian Beck on I-70. This Court should reverse the district court and Court of Appeals, reverse Brian’s drug conviction, and order all fruit of the illegal seizure suppressed. Brian respectfully renews all earlier requests for relief.

Respectfully submitted,

 /s/ Kasper Schirer
Kasper Schirer #26860
Kansas Appellate Defender Office
Jayhawk Tower
700 Jackson, Suite 900
Topeka, Kansas 66603
(785) 296-5484
(785) 296-2689 fax
adoservice@sbids.org
Attorney for the Appellant

Certificate of Service

Counsel served this Responsive Supplemental Brief on the Geary County Attorney and on the Kansas Attorney General by notice of electronic filing pursuant to Supreme Court Rule 1.11(b), with courtesy copies emailed to the Geary County Attorney at krista.blaisdell@gearycounty.org, and to the Kansas Attorney General at ksagappealsoffice@ag.ks.gov, on October 3, 2024.

 /s/ Kasper Schirer
Kasper Schirer #26860