

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20070139-CA
v.	)	
	)	F I L E D
Jeff Brian Harker,	)	(December 11, 2008)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2008 UT App 455</span>

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Second District, Farmington Department, 061700791  
The Honorable Darwin C. Hansen

Attorneys: Scott L. Wiggins, Salt Lake City, for Appellant  
Mark L. Shurtleff and Kenneth A. Bronston, Salt Lake  
City, for Appellee

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Before Judges Bench, Billings, and Orme.

BENCH, Judge:

Defendant Jeff Brian Harker appeals his convictions for possession or use of a controlled substance, see Utah Code Ann. § 58-37-8(2)(a)(i) (Supp. 2008), and possession of drug paraphernalia, see Utah Code Ann. § 58-37a-5(1) (Supp. 2008), arguing that the trial court erred in denying his motion to suppress because the search of his person was not incident to a lawful arrest. More specifically, Defendant asserts that his arrest for operating a vehicle without insurance and for providing false evidence of insurance was not supported by probable cause because he did not commit the offenses in the presence of the arresting officer (the Officer). "In search and seizure cases, we review the district court's factual findings under a clearly erroneous standard" and "[w]e review the trial court's legal conclusions for correctness, giving no deference to the court's application of the law to the facts." State v. Ranquist, 2005 UT App 482, ¶ 5, 128 P.3d 1201 (internal quotation marks omitted).

An arrest underlying a search "is lawful if it is supported by probable cause and authorized by statute." State v. Trane, 2002 UT 97, ¶ 25, 57 P.3d 1052. An officer has probable cause to justify an arrest where the "facts and circumstances within the officer's knowledge . . . are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." Id. ¶ 27 (internal quotation marks omitted). "In making [a probable cause] determination, a police officer is entitled to rely on information gained from other police officers." State v. Alvarez, 2005 UT App 145, ¶ 17, 111 P.3d 808 (internal quotation marks omitted).

Additionally, Utah Code section 77-7-2(1) authorizes an officer to make an arrest without a warrant "for any public offense committed or attempted in the presence of any peace officer." Utah Code Ann. § 77-7-2(1) (2003). This section specifically defines "presence" as including "all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses." Id. "The meaning of 'acts committed in the presence of the arresting officer' [also includes] . . . the arresting officer's knowledge of them, such knowledge being obtained through his sight, hearing, or other senses, or by the offender's admission of the facts made before his arrest." Utah Liquor Control Comm'n v. Wooras, 97 Utah 351, 93 P.2d 455, 461 (1939).

Here, the Officer had probable cause and statutory authorization to arrest Defendant for driving without insurance. Although the Officer did not observe Defendant driving, the Officer responded to a traffic accident that was blocking the lanes of travel on Highway 89 and saw two damaged vehicles, one of which belonged to Defendant. At the scene, the Officer heard Defendant and the other driver admit that they had been involved in the accident. The Officer asked for Defendant's driver license, insurance information, and registration, all of which Defendant provided. The Officer then ran a computer check and saw the computer report indicating that confirmation of insurance coverage was not found for Defendant's vehicle. The Officer also heard an assisting officer state that Defendant's insurance policy had been cancelled at a prior date. Defendant's admission, as well as the information the Officer saw and heard, reasonably led the Officer to believe that Defendant had been driving a vehicle without insurance. Because the offense of

driving without insurance had been committed in the Officer's presence, the Officer had probable cause to arrest Defendant.<sup>1</sup>

Accordingly, we affirm.

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Russell W. Bench, Judge

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WE CONCUR:

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Judith M. Billings, Judge

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Gregory K. Orme, Judge

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<sup>1</sup>Because Defendant was properly arrested for operating a vehicle without insurance, we need not address whether Defendant was also justifiably arrested for providing false evidence of security.