

43 Wash.App. 273

Court of Appeals of Washington, Division 3,
Panel Four.

CITY OF SPOKANE, Respondent,

v.

Julie Anne PORT, Petitioner.

No. 6927-3-III.

March 27, 1986.

Reconsideration Denied May 5, 1986.

Synopsis

Defendant was convicted in the Superior Court, Spokane County, Thomas E. Merryman, J., of driving without a driver's license and she appealed. The Court of Appeals, McInturff, J., held that: (1) requirement the one obtain a driver's license does not unconstitutionally infringe on the right to travel, and (2) requirement of a driver's license is not limited to those operating commercial vehicles.

Affirmed.

West Headnotes (5)

[1] **Constitutional Law** 🔑 Freedom of Travel and Movement

Constitutional Law 🔑 Intrastate Travel

Fundamental constitutional right to travel applies to both interstate and intrastate travel.

[1 Cases that cite this headnote](#)

[2] **Automobiles** 🔑 Right to Use Motor Vehicles on Highways

Driving an automobile on the state's public highways is a privilege and not a right because the activity is limited to a certain class of individuals. [West's RCWA 46.20.031, 46.20.120.](#)

[3 Cases that cite this headnote](#)

[3] **Constitutional Law** 🔑 Freedom of Travel and Movement

Mandating driver competence is a public purpose within the police power of the state and does not unconstitutionally infringe on the right to travel. [West's RCWA 46.20.021.](#)

[1 Cases that cite this headnote](#)

[4] **Automobiles** 🔑 Purpose and Necessity

Motorist was not constitutionally entitled to special status of receiving a certificate of competence rather than having to obtain a driver's license simply because she was not engaged in commercial travel.

[1 Cases that cite this headnote](#)

[5] **Automobiles** 🔑 Purpose and Necessity

Requirement of obtaining a driver's license does not apply only to those operating commercial vehicles. [West's RCWA 46.04.370, 46.20.021.](#)

Attorneys and Law Firms

****945 *274** Julie Anne Port, pro se.

James C. Sloane, City Atty. by Michael Nelson, City Pros., Spokane, for respondent.

Opinion

McINTURFF, Judge.

We are asked to determine whether [RCW 46.20.021](#) and Spokane Municipal Code 16.20.021, requiring a motor vehicle operator to be licensed, unconstitutionally restrict one's right to travel.

On July 7, 1984, Spokane police officer Michael Heinen observed a motor vehicle, operated by Julie Anne Port, proceed through a steady red traffic control light in downtown Spokane. The officer stopped the vehicle and asked Ms. Port for her ****946** driver's license no less than six times. After she refused to respond to these requests, Ms. Port was arrested and cited for refusal to give information or

cooperate with an officer, no valid operator's license, and resisting arrest. Spokane Municipal Code 10.07.030, .050, 16.20.021. The first of these charges was dropped prior to trial. After a District Court jury found Ms. Port guilty on both counts, she appealed to the Superior Court, which affirmed the conviction. This court granted discretionary review.

[1] Ms. Port contends RCW 46.20.021 and Spokane Municipal Code 16.20.021 are unconstitutional as applied to her because they improperly restrict her right to travel upon the public highways. It is well settled that the United States Constitution protects an individual's right to travel, although it is not always clear which constitutional provision affords the protection. See *Califano v. Aznavorian*, 439 U.S. 170, 175, 99 S.Ct. 471, 474, 58 L.Ed.2d 435 (1978); *United States v. Guest*, 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 239 (1966); *Kent v. Dulles*, 357 U.S. 116, 78 S.Ct. 1113, 2 L.Ed.2d 1204 (1958).¹ This fundamental constitutional *275 right applies both to interstate and intrastate travel. Compare *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) (interstate travel) with *Macias v. Department of Labor & Indus.*, 100 Wash.2d 263, 272, 668 P.2d 1278 (1983), and *Eggert v. Seattle*, 81 Wash.2d 840, 505 P.2d 801 (1973) (intrastate travel). Freedom of movement is at the heart of our scheme of values, for it may be as keen an interest of the individual as the choice of what he reads, says, eats or wears.

[2] Ms. Port attempts to extend this fundamental rule, alleging she has a right, rather than privilege, to operate a motor vehicle upon public highways and streets. Consequently, she claims RCW 46.20.021 is unconstitutional as it makes the exercise of that purported right a crime. "Right" and "privilege" have assumed a variety of meanings, depending upon the context in which they are used. As used here, "privilege" means a qualified right or a particular advantage enjoyed by a class, beyond the common advantages of other citizens, *Black's Law Dictionary* 1077 (5th ed. 1979); see also R. Pound, *Readings on the History and Systems of the Common Law* 468 (3d ed. 1927), whereas "right" connotes an interest belonging to every person. *Black's Law Dictionary* at 1190; Pound, at 467-68; Compare 72 CJS *Privilege* (1951 & Supp.1985) with 77 CJS *Right* (1952 & Supp.1985). Hence, driving an automobile on our state's public highways is a privilege and not a right because the activity is limited to a certain class of individuals, generally those over the age of 16 years, who have passed a driver's license examination. RCW 46.20.031; .120.² This privilege is always subject to such *276 reasonable regulation and control as the proper authorities see fit to impose under the police power in the

interest of public safety and welfare. See *State v. Scheffel*, 82 Wash.2d 872, 880, 514 P.2d 1052 (1973) (one does not have an absolute constitutional right to a particular mode of travel); **947 *Crossman v. Department of Licensing*, 42 Wash.App. 325, 328 n. 2, 711 P.2d 1053 (1985) (privilege to drive not a "fundamental right"); *State ex rel. Juckett v. Evergreen Dist. Ct.*, 32 Wash.App. 49, 55, 645 P.2d 734 (1982) (driver's license is privilege granted by State). This is because the right to a particular mode of travel is no more than an aspect of the "liberty" protected by the Due Process Clause of the Fifth Amendment.³ See *Reitz v. Mealey*, 314 U.S. 33, 62 S.Ct. 24, 86 L.Ed. 21 (1941). In *Reitz*, the United States Supreme Court examined the privilege to travel on our public streets and highways and concluded, at 314 U.S. 36, 62 S.Ct. 26-27:

Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process.

See also, *Hendrick v. Maryland*, 235 U.S. 610, 35 S.Ct. 140, 59 L.Ed. 385 (1915) (states may rightfully prescribe uniform regulations necessary for public safety and order in the operation upon its highways of motor vehicles and, it may require the licensing of drivers).

[3] Here, RCW 46.20.021 requires a license to drive or operate a motor vehicle upon our state highways. Licensing is a means by which the state may determine whether vehicle operators have acquired a minimal standard of competence. Mandating driver competence is a public purpose *277 within the police power of the state because it furthers the interests of public safety and welfare. It is designed to improve the safety of our highways and to protect and enhance the well-being of the residents and visitors of our state. RCW 46.01.011; 46.20.021. This is a reasonable and justifiable exercise of the police power.

[4] As previously noted, Ms. Port does not allege the license requirement is unconstitutional in all circumstances. She believes the State should issue a "certificate of competence" rather than a driver's license. Ms. Port claims she is constitutionally entitled to this special status because she is not engaged in commercial travel. She relies principally upon quotations from *Thompson v. Smith*, 155 Va. 367, 154 S.E. 579, 72 A.L.R. 604 (1930), and *Chicago v. Banker*, 112 Ill.App. 94 (1904). Although the *Thompson* court declared the right to travel public highways an individual's "common right which he has under his right to enjoy life and liberty," the court also noted that the exercise of such a common right

may be regulated under the City's police power if in the interest of public safety and welfare. *Thompson*, 154 S.E. at 583. The City driver's license revocation ordinance at issue in *Thompson* was upheld except to the extent it granted broad discretion to the City's chief of police to revoke licenses. "The issuance and revocation of such [driving] permits by a city is merely a means of exercising the police power of the State delegated to the city to regulate the use of the public highways in the interest of the public safety and welfare." *Thompson*, 154 S.E. at 583.

Nor do we find persuasive *Chicago v. Banker*, *supra*, where the court determined the requirement of a driver license unfairly burdens one who uses his automobile for private business and pleasure. The court conditioned the ability to drive a motor vehicle upon driving which would not interfere "with the safety of others." *Chicago v. Banker*, *supra* at 99. Furthermore, the issuance of a "certificate of competence" would change only the name, not the substance, of what is currently known as a "driver's license" since one cannot obtain such unless driving proficiency *278 has been demonstrated. Because our State has determined that driver education and licensing examinations enhance the ability of drivers and the safety of our highways, RCW 46.01.011, 46.20.021, we hold that the statute here is a reasonable regulation furthering the public safety and welfare. Only by lifting statements from context **948 and by ignoring difficult language does Ms. Port make *Thompson* and *Banker* and other cases support her position. Providing similar examples from other cases cited by Ms. Port would only unnecessarily lengthen this opinion.

Lastly, Ms. Port claims the State licensing statute applies only to commercial operators of motor vehicles. She claims since

she was not engaged in the business of transportation, she did not violate the act.

An unambiguous statute is not subject to construction; there is no need to resort to dictionary definitions. *Vita Food Prods., Inc. v. State*, 91 Wash.2d 132, 134, 587 P.2d 535 (1978); *Adams v. Department of Soc. & Health Servs.*, 38 Wash.App. 13, 16, 683 P.2d 1133 (1984); *State v. Hayes*, 37 Wash.App. 786, 788, 683 P.2d 237 (1984). An ambiguous term is one that is susceptible to more than one meaning. *Adams*, 38 Wash.App. at 16, 683 P.2d 1133; *Harding v. Warren*, 30 Wash.App. 848, 850, 639 P.2d 750 (1982).

[5] The statute in question, RCW 46.20.021, reads: "No person ... may drive any motor vehicle upon a highway in this state unless the person has a valid driver's license issued under the provisions of this chapter." Ms. Port's argument that this provision requires a license only for those operating commercial vehicles is clearly without merit. RCW 46.04.370 eliminates any alleged ambiguity with respect to the violation here because the section defines an operator or driver as "every person who drives or is in actual physical control of a vehicle." Since Ms. Port was in actual physical control of her vehicle when stopped, *279 she came under the provisions of RCW 46. See, e.g., *In re Arambul*, 37 Wash.App. 805, 807-08, 683 P.2d 1123 (1984).

The judgment of the Superior Court is affirmed.

GREEN, C.J., and THOMPSON, J., concur.

All Citations

43 Wash.App. 273, 716 P.2d 945

Footnotes

- 1 See also, *Edwards v. California*, 314 U.S. 160, 62 S.Ct. 164, 177, 86 L.Ed. 119 (1941) (Douglas, J., concurring); *Twining v. New Jersey*, 211 U.S. 78, 97, 29 S.Ct. 14, 53 L.Ed. 97 (1908); *Williams v. Fears*, 179 U.S. 270, 274, 21 S.Ct. 128, 129, 45 L.Ed. 186 (1900); *Crandall v. Nevada*, 73 U.S. 35, 6 Wall. 35, 18 L.Ed. 744 (1867).
- 2 Virtually every state addressing this issue concludes that the license to drive an automobile is a privilege which may be extended to individuals under certain circumstances. E.g., *State v. Svendrowski*, 692 S.W.2d 348, 349 (Mo.App.1985); *Texas Dept. of Pub. Safety v. Schaejbe*, 687 S.W.2d 727, 728 (Tex.1985); *State v. Coyle*, 14 Ohio App.3d 185, 470 N.E.2d 457, 458 (1984); *Hanson v. State*, 673 P.2d 657, 658 (Wyo.1983); *Mackler v. Alexis*, 130 Cal.App.3d 44, 181 Cal.Rptr. 613, 622-23 (1982); *State ex rel. Hjelle v. A Motor Vehicle etc.*, 299 N.W.2d 557, 562 (N.D.1980); *Smith v. Cox*, 609 P.2d 1332, 1333 (Utah 1980); cf., *Gordon v. State*, 108 Idaho 178, 697 P.2d 1192, 1193 (Ct.App.) *appeal dismissed*, 474 U.S. 803, 106 S.Ct. 35, 88 L.Ed.2d 29 (1985), *reh'g denied*, 474 U.S. 1097, 106 S.Ct. 874, 88 L.Ed.2d 912 (1986) (whether termed right or privilege, one's ability to travel on public highways is subject to reasonable regulation by the state).

3 The fifth amendment to the United States Constitution provides:

“No person shall be ... deprived of life, liberty, or property, without due process of law.”

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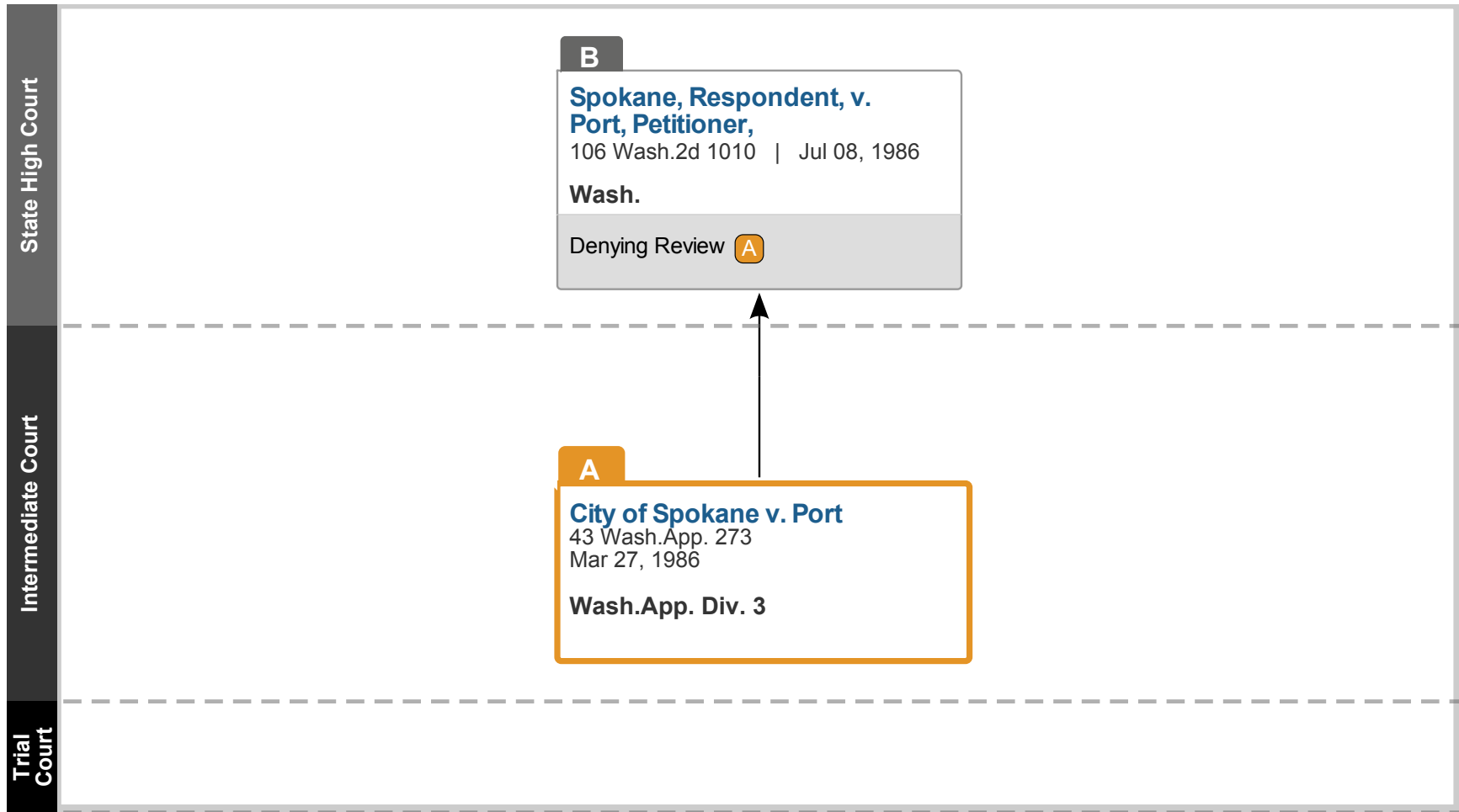
History (2)

Direct History (2)

1. [City of Spokane v. Port](#) 
43 Wash.App. 273 , Wash.App. Div. 3 , Mar. 27, 1986

Review Denied by

2. [Spokane, Respondent, v. Port, Petitioner](#),
106 Wash.2d 1010 , Wash. , July 08, 1986








Citing References (11)

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	 1. State v. Shawn P. 859 P.2d 1220, 1224 , Wash. Driving Privileges. Mandatory revocation of juvenile teenagers' driving privileges due to alcohol consumption does not violate equal protection.	Oct. 21, 1993	Case		2 P.2d
Cited by	2. State v. Yallup 248 P.3d 1095, 1100+ , Wash.App. Div. 3 NATIVE AMERICANS - Crimes. Trial court had jurisdiction over charges against defendant for traffic offenses committed on state highway located on reservation.	Mar. 10, 2011	Case		1 P.2d
Cited by	3. Kirby v. Washington State Dept. of Licensing 1997 WL 530706, *3+ , Wash.App. Div. 3 The Washington Department of Licensing suspended William Kirby's driver's license for failure to complete alcohol treatment after he had been evaluated as having a significant...	Aug. 26, 1997	Case		3 P.2d
Cited by	4. State v. Clifford 787 P.2d 571, 573 , Wash.App. Div. 3 Members of religious organization were charged with driving without drivers' licenses. The District Court, Stevens County, Rebecca Baker, J., held that driver's license...	Mar. 01, 1990	Case		2 P.2d
Cited by	 5. State v. Taylor 734 P.2d 505, 507 , Wash.App. Div. 3 Defendant sentenced in the Superior Court, Columbia County, Jay Jones, J., appealed 17 to 22-month sentence imposed for delivery of controlled substance. The Court of Appeals,...	Mar. 10, 1987	Case		—
Cited by	6. Yoo v. Quitugua  1994 WL 413230, *3 , N. Mariana Islands This is a personal injury action arising from an automobile accident. Judgment in the amount of \$66,105 plus costs was entered against Jeffrey Quitugua, a minor, and his parents...	May 12, 1994	Case		4 P.2d
Mentioned by	7. Clifford v. District Court of Grant County 1996 WL 168706, *1 , Wash.App. Div. 3 THOMPSON, J. Douglas W. Clifford appeals the denial of his petition for writ of prohibition, which challenged the Grant County District Court's exercise of jurisdiction over him in...	Apr. 09, 1996	Case		2 P.2d
—	8. McQuillin The Law of Municipal Corporations § 24:620. Rights, privileges, and duties of persons Vehicular use of public streets, particularly in commercial enterprises, such as the taxicab, motor freight or passenger bus business, is a privilege and not a right. With respect...	2022	Other Secondary Source	—	—

Treatment	Title	Date	Type	Depth	Headnote(s)
—	<p>9. Am. Jur. 2d Automobiles and Highway Traffic s 11, § 11. Motor vehicles, generally Am. Jur. 2d Automobiles and Highway Traffic</p> <p>The operation of a motor vehicle upon the public highways is not a fundamental right, but only a privilege. Because the right to operate a motor vehicle is not a fundamental one,...</p>	2022	Other Secondary Source	—	<p>2 P.2d</p>
—	<p>10. WELCOME TO THE MOUNT RUSHMORE STATE! KEEP YOUR ARMS AND LEGS INSIDE THE VEHICLE AT ALL TIMES AND BUCKLE UP . . . NOT FOR SAFETY, BUT TO PROTECT YOUR CONSTITUTIONAL RIGHTS 47 S.D. L. Rev. 99 , 133</p> <p>Seat belts were invented to provide protection and safety for those who travel in automobiles. With increasingly sophisticated technology, devices such as air bags, hazard lights...</p>	2002	Law Review	—	<p>2 P.2d</p>
—	<p>11. THE FORECLOSURE OF DOUBLE JEOPARDY IN ADMINISTRATIVE LICENSE SUSPENSIONS AND CIVIL ASSET FORFEITURES FOLLOWING UNITED STATES v. URSERY 65 UMKC L. Rev. 104 , 142</p> <p>The Double Jeopardy Clause of the Fifth Amendment provides that no person shall "be subject for the same offence [sic] to be twice put in jeopardy of life or limb." Recent crime...</p>	1996	Law Review	—	—

Table of Authorities (29)

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	<p>1. Adams v. Department of Social and Health Services</p> <p>683 P.2d 1133, Wash.App. Div. 2, 1984</p> <p>Department of social services was granted discretionary review of judgment of the Superior Court, Thurston County, Frank E. Baker, J., which deleted from state personnel board's...</p>	Case			948+
Cited	<p>2. Califano v. Aznavorian</p> <p>99 S.Ct. 471, U.S.Cal., 1978</p> <p>Supplementary Security Income recipient sought judicial review of decision of the Secretary of Health, Education, and Welfare denying her benefits for time when she had been...</p>	Case			946
Discussed	<p>3. City of Chicago v. Banker</p> <p>112 Ill.App. 94, Ill.App. 1 Dist., 1904</p> <p>May 7, 1903, appellee filed a sworn bill against appellant and others "in his own behalf and in behalf of others similarly situated," in which he recites the automobile ordinance...</p>	Case			947+
Cited	<p>4. Crossman v. State Dept. of Licensing</p> <p>711 P.2d 1053, Wash.App. Div. 2, 1985</p> <p>Driver's license was suspended by the Department of Licensing after driver refused to submit to a breathalyzer test when he was arrested for driving while intoxicated. The...</p>	Case			946
Cited	<p>5. Edwards v. People of State of California</p> <p>62 S.Ct. 164, U.S.Cal., 1941</p> <p>Appeal from the Superior Court of the State of California in and for the County of Yuba. Fred F. Edwards was convicted of violating St.Cal.1937, p. 1406, s 2615, making it a...</p>	Case			946
Cited	<p>6. Eggert v. City of Seattle</p> <p>505 P.2d 801, Wash., 1973</p> <p>Action by applicants for city jobs against city and city civil service commission challenging city charter provisions which grant preference in employment for some positions city...</p>	Case			946
Mentioned	<p>7. Gordon v. State</p> <p>697 P.2d 1192, Idaho App., 1985</p> <p>Motorist was convicted in the District Court, Fourth Judicial District, Ada County, Deborah A. Bail, J., of failure to produce vehicle registration and failure to exhibit proof of...</p>	Case			947

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Mentioned	8. Hanson v. State 673 P.2d 657, Wyo., 1983 Defendant was convicted after trial in the justice of the peace court of driving a motor vehicle upon the highways of the state without a valid driver's license, and she appealed...	Case			947
Mentioned	9. Harding v. Warren 639 P.2d 750, Wash.App. Div. 3, 1982 Real estate broker sued for commission. The Superior Court, Walla Walla County, Yancey Reser, J., entered judgment for property owners, and broker appealed. The Court of Appeals,...	Case			948
Cited	10. Hendrick v. State of Maryland 35 S.Ct. 140, U.S.Md., 1915 IN ERROR to the Circuit Court of Prince George's County, State of Maryland, to review a conviction for violating the state motor vehicle law. Affirmed. The facts are stated in the...	Case			947
Cited	11. In re Arambul 683 P.2d 1123, Wash.App. Div. 3, 1984 Defendant was convicted before the Superior Court, Kittitas County, W.R. Cole, J., of negligent homicide by motor vehicle, and she appealed. The Court of Appeals, McInturff, J.,...	Case			948
Mentioned	12. Kent v. Dulles 78 S.Ct. 1113, U.S.Dist.Col., 1958 Separate actions against Secretary of State for declaration, inter alia, that plaintiffs were entitled to passports. The United States District Court for the District of Columbia,...	Case			946
Cited	13. Macias v. Department of Labor and Industries of State of Wash. 668 P.2d 1278, Wash., 1983 Migrant workers filed an administrative appeal from the Department of Labor and Industries' denial of benefits under Workers' Compensation Act, and also filed suit seeking a...	Case			946
Mentioned	14. MacKler v. Alexis 181 Cal.Rptr. 613, Cal.App. 2 Dist., 1982 The Superior Court, Los Angeles County, Laurence J. Rittenband, J., directed issuance of peremptory writ of mandamus commanding Department of Motor Vehicles to permanently refrain...	Case			947

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	<p> 15. Reitz v. Mealey</p> <p>62 S.Ct. 24, U.S.N.Y., 1941</p> <p>Action by George C. Reitz against Carroll E. Mealey, as Commissioner of Motor Vehicles of the State of New York, to restrain the defendant from suspending the plaintiff's driver's...</p>	Case			947+
Discussed	<p> 16. Shapiro v. Thompson</p> <p>89 S.Ct. 1322, U.S.Conn., 1969</p> <p>Appeals from decisions of three-judge District Courts for District of Connecticut, District of Columbia, and Eastern District of Pennsylvania, 270 F.Supp. 331,277 F.Supp. 65,279...</p>	Case			946+
Mentioned	<p>17. Smith v. Cox</p> <p>609 P.2d 1332, Utah, 1980</p> <p>Drivers License Division of Department of Public Safety appealed from order of the Third District Court, Salt Lake County, Peter F. Leary, J., which granted driver's motion to...</p>	Case			947
Mentioned	<p>18. State ex rel. Hjelle v. A Motor Vehicle Described as a 1973 Brockway Tractor License No. 237342, Serial No. 79629, Trailer SN No. 75-2531-LB-150</p> <p>299 N.W.2d 557, N.D., 1980</p> <p>Action was brought to recover charges for extraordinary use of highway by overweight truck. The District Court, Stark County, Lyle G. Stuart, J., entered judgment, and truck...</p>	Case			947
Cited	<p> 19. State ex rel. Juckett v. Evergreen Dist. Court</p> <p>645 P.2d 734, Wash.App. Div. 1, 1982</p> <p>Appeals were taken from order of the Superior Court, Snohomish County, Robert Bibb, J., which vacated orders of the district court dismissing charges of driving while intoxicated. ...</p>	Case			947
Mentioned	<p>20. State v. Coyle</p> <p>470 N.E.2d 457, Ohio App. 9 Dist., 1984</p> <p>Defendant was convicted in the Court of Common Pleas, Wayne County, of reckless operation of a motor vehicle, and he appealed. The Court of Appeals, Baird, J., held that: (1)...</p>	Case			947
Mentioned	<p>21. State v. Hayes</p> <p>683 P.2d 237, Wash.App. Div. 1, 1984</p> <p>Defendant was convicted in the Superior Court, Island County, Howard A. Patrick, J., of driving under the influence of intoxicating liquor in trial de novo following conviction for...</p>	Case			948

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	 22. State v. Scheffel 514 P.2d 1052, Wash., 1973 The Spokane County Superior Court, William H. Williams, J., upheld the validity of the Habitual Traffic Offenders Act, held the defendants to be habitual offenders, revoked their...	Case			946
Cited	23. State v. Svendrowski 692 S.W.2d 348, Mo.App. E.D., 1985 Defendant was convicted in the St. Francois County Circuit Court, Stanley J. Murphy, J., of misdemeanor grade offense of operating a motor vehicle without a license, and he...	Case			947
Mentioned	24. Texas Dept. of Public Safety v. Schaejbe 687 S.W.2d 727, Tex., 1985 Appeal was taken from order of the Department of Public Safety suspending motorist's driver's license. The County Court at Law No. 3, Harris County, Charles Coussons, J., entered...	Case			947
Discussed	 25. Thompson v. Smith 154 S.E. 579, Va., 1930 Appeal from Corporation Court of Lynchburg. Bill by W. L. Thompson against D. C. Smith, Chief of Police of the City of Lynchburg. From a decree dismissing the bill upon demurrer,...	Case		”	947+
Cited	 26. Twining v. State of N.J. 29 S.Ct. 14, U.S.N.J., 1908 IN ERROR to the Court of Errors and Appeals of the State of New Jersey to review a judgment which affirmed a judgment of the Supreme Court of that state, affirming a conviction in...	Case			946
Mentioned	 27. U.S. v. Guest 86 S.Ct. 1170, U.S.Ga., 1966 Prosecution for alleged conspiracy against rights of citizens. The United States District Court for the Middle District of Georgia, Athens Division, sustained defendants' motions...	Case			946
Cited	28. Vita Food Products, Inc. v. State 587 P.2d 535, Wash., 1978 Corporation sought declaratory judgment that it was not an "original receiver" of fish subject to privilege tax. The Superior Court, King County, James Dore, J., granted State's...	Case			948
Mentioned	 29. Williams v. Fears 21 S.Ct. 128, U.S.Ga., 1900 IN ERROR to the Supreme Court of the State of Georgia to review a decision affirming a judgment sustaining a license tax on emigrant agents. Affirmed. See same case below, 35 S....	Case			946

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