1986

Utah v. Trujillo : Brief of Respondent

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	Case No. 860203-CA
v.	:	
JOSEPH GREG TRUJILLO,	:	Category No. 2
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

APPEAL FROM CONVICTION OF POSSESSION OF A DANGEROUS WEAPON BY A RESTRICTED PERSON, A THIRD-DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-10-503 (1978), IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE KENNETH RIGTRUP, PRESIDING.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	Case No. 860273-CA
v.	:	
JOSEPH GREG TRUJILLO,	:	Category No. 2
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STATEMENT OF THE ISSUES PRESENTED ON APPEAL

1. In light of all the facts known to the police officer at the time, was defendant stopped and frisked in violation of the Fourth Amendment?

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
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v.	:	
JOSEPH GREG TRUJILLO,	:	Category No. 2
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STATEMENT OF THE CASE

Defendant, Joseph Greg Trujillo, was charged with Possession of a Dangerous Weapon by a Restricted Person, a third-degree felony, in violation of Utah Code Ann. § 76-10-503 (1978).

Defendant was convicted of Possession of a Dangerous Weapon by a Restricted Person in a non-jury trial held April 16, 1986, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Kenneth Rigtrup, presiding. Judge Rigtrup sentenced defendant on April 16, 1986 to not more than five yars in the Utah State Prison.

STATEMENT OF THE FACTS

As Officer Michael Beesley patrolled downtown Salt Lake City in the early morning hours of February 28, 1986, he noticed defendant and two other men walking between 300 and 400 South State Street (R. 33-34). It was 3:30 a.m. and the men were walking slowly, stopping occasionally to peer into windows (R. 34, 47). Defendant carried a nylon knapsack at his side but when he looked over and saw Officer Beesley watching him, he moved the knapsack in front of his body, concealing it from view (R. 36-37).

Officer Beesley pulled over and got out of his patrol car (R. 37). As he did so, he watched defendant walk over to a garbage container and place the knapsack on the ground next to the container as if to "stash" it (R. 37-38). The men seemed nervous and became increasingly so as the officer approached (R. 38, 51-52). Officer Beesley asked them what they were doing and asked for identification (R. 38-39, 54). Only one of the men produced identification and Beesley took down their names in his notebook (R. 54).

Defendant did all of the talking for the group and stated that they were on their way to his cousin's house (R. 39, 54, 55). Their attitude appeared evasive and they looked nervous to Beesley (R. 55). In Beesley's experience, people were not usually this nervous when approached by a police officer but were usually cooperative (R. 55). Beesley had been patrolling the downtown area for a couple of years and knew it to be a high crime area with numerous recent reports of vehicle break-ins(R. 35, 44).

When a back-up officer arrived, Beesley decided to frisk the men for weapons (R. 39-40, 113-115). Since the men were so nervous, he thought they might use a weapon on him if they had any (R. 40). Beesley told defendant to put his hands on the car and spread his legs; but after he did so, defendant pulled his hands back and reached for his coat (R. 115). Each officer grabbed a hand (R. 115).

As he frisked defendant, outside his clothing, Beesley felt a bulge in the upper chest area (R. 40-41). It felt like a

knife and defendant volunteered that it was a knife (R. 41). Beesley handcuffed defendant and reached inside his coat to retreive an 8 to 10 inch knife from a sheath strapped to defendant's chest (R 41-43). Beesley arrested defendant, who was a convicted felon, for carrying a concealed weapon (R. 43, 73).

Defendant moved to suppress the knife based upon alleged violations of Art. I § 14 of the Utah Constitution and the Fourth Amendment of the United States Constitution (R. 14). Judge Rigtrup denied the motion and found defendant guilty of possession of a dangerous weapon by a restricted person (R. 17).

SUMMARY OF ARGUMENT

Based upon the facts known to him at the time, the officer was justified in detaining and frisking defendant for weapons. The officer's initial approach was not a "stop" but was an encounter that is allowable between police officers and individuals without any basis whatsoever to believe the individuals are involved in criminal activity. Once the officer had approached defendant and his companions and amassed enough information to create a reasonable suspicion that defendant was armed, the officer was acting within fourth amendment bounds in frisking defendant for weapons.

POINT I

DEFENDANT WAS NOT UNLAWFULLY DETAINED OR FRISKED IN VIOLATION OF THE FOURTH AMENDMENT.

Defendant moved to suppress the knife found on his person claiming that he was unlawfully stopped and detained in violation of Art. I § 14 of the Utah Constitution and the Fourth Amendment of the United States Constitution (R. 14). On appeal,

defendant argues that the trial court erred in denying his motion to dismiss because his fourth amendment rights were violated. Because defendant does not claim or analyze any Art. I § 14 violation on appeal, the State's response is also limited to fourth amendment concerns.

First, it must be recognized that not every encounter between a police officer and a citizen is a seizure. Police officers are free to approach individuals "at anytime and pose questions so long as the citizen is not detained against his will . . . " United States v. Merritt, 736 F.2d 223, 230 (5th Cir. 1984); see also Florida v. Royer, 460 U.S. 491, 498-499 (1983). An officer who is rightfully in a public place and who poses questions to an individual has not engaged in a seizure, detention or investigatory stop. State v. Christensen, 676 P.2d 408 (Utah 984). A mere request for identification is not likely to result in a seizure of the person, Immigration & Naturalization Service v. Delgado, 466 U.S. 210 (1984); because the individual normally need not answer and may simply leave, State v. Belanger, 677 P.2d 781 (Wash. App. 1984). Such an encounter, however, matures into a seizure only when "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." United States v. Mendenhall, 446 U.S. 544 (1980).

In this case, defendant apparently assumes that he was "seized" from the moment Officer Beesley exited his patrol car because he fails to enumerate as factors contributing to reasonable suspicion any of the facts discovered by the officer

after this point in time and prior to the pat-down of defendant. See Appelalnt's Brief at 6. Nevertheless, it is clear that Officer Beesley did not seize defendant by walking up to him and asking him and his companions what they were doing and requesting identification. Merritt, 736 F.2d at 230; Delgado, 466 U.S. at 210. See also Belanger, 677 P.2d at 781 (appearance of two men in high crime area at 6:15 a.m. Sunday gave officer limited duty and authority to approach and inquire about suspicious circumstances); G.R. v. State, 638 P.2d 191 (Alaska App. 1981) (approach of three men standing by parked car on deserted road at 1:30 a.m. and questioning on nervous behavior without show of authority not a "stop"). On the other hand, defendant was clearly detained at the time he was frisked for weapons. At this point, the encounter escalated to a detention because no reasonable person would think he was free to leave rather than submit to the pat-down. The only remaining question is whether the pat-down of defendant was based on a reasonable suspicion that defendant was armed. Terry v. Ohio, 392 U.S. 1 (1968); State v. Roybal, 716 P.2d 291 (Utah 1986); Utah Code Ann. § 77-7-16 (1978).

By the time Officer Beesley patted-down defendant's clothing, he was armed with the following information:

1. Defendant and two companions were walking slowly down State Street between 300 and 400 South, stopping to gaze into windows at 3:30 a.m. on February 28, 1986 (R. 34).

2. Numerous car prowls had been recently reported in this area and investigated by himself and other officers (R. 35, 44, 51-52).

3. When defendant noticed the officer watching from the patrol car after he looked at the officer, he moved a nylon knapsack he held from a position at his side to a position in front of his body where it was concealed from the officer's view (R. 36, 48-49).

4. When the officer got out of his patrol car, defendant walked over a few feet from where he and his companions stood and put the knapsack down beside a garbage can and walked away (R. 37-38).

5. The group appeared nervous (R. 38, 55).

6. When the officer asked what they were doing, they seemed evasive, with defendant finally offering that they were going to his cousin's house (R. 38-39, 54).

7. Only one of the three had any identification.

8. In Officer Beesley's experience, people are not usually nervous when approached by a police officer but are cooperative (R. 55).

While defendant goes to great lengths to treat these factors individually and to discount each factor's value, the law requires this Court to consider defendant's claim of unconstitutionality in light of all the facts, with no one factor determinative of the outcome, United States v. Trullo, 809 F.2d 108, 111 (1st Cir. 1987); State v. Carter, 707 P.2d 656, 659 (Utah 1985); State v. Houser, 669 P.2d 437, 439 (Utah 1983). In light of all the facts known to Officer Beesley, he was also justified in performing a pat-down of defendant for weapons, Trullo, 809 F.2d at 113. This knowledge was reinforced by

defendant's attempt to avoid the pat-down by pulling his hands from the car and reaching for his coat (R. 115). The intrusion was limited in scope to a pat-down outside of defendant's clothing until the officer felt a bulge that defendant identified to him as a knife (R. 41). Terry, 392 U.S. at 25, approved this type of pat-down based upon a reasonable suspicion that the individual was armed. It is not necessary that the officer actually have experienced fear, only that a reasonable person under the circumstances would have believed himself or others to be in danger. See also Roybal, 716 P.2d at 293.

The appearance of these three men at 3:30 a.m. in a high crime area gave the officer not only the right but the duty to question them. Belanger, 677 P.2d at 783; State v. Whittenback, 621 P.2d 103, 105 (Utah 1980). While location alone is insufficient to justify a Terry stop, "[t]he reputation of an area for criminal activity is an articulable fact upon which a police officer may legitimately rely." United States v. Gomez, 633 F.2d 999, 1005 (2d Cir. 1980); see also Trullo, 809 F.2d at 111, and cases cited therein. Their apparent evasiveness and nervousness, coupled with their inadequate responses to the request for identification and purpose for being there, and with defendant's attempts to conceal the bag he carried and to "ditch" it were sufficient grounds for the officer to graduate from mere conversation to a frisk for weapons. Because these factors, taken together, justify the officer's actions, there was no fourth amendment violation and the trial court properly refused to suppress the evidence. Although the behavior of defendant and

his companions might also be tortured into innocent interpretations, as defendant attempts to do, it is rare that an officer would observe behavior consistent only with guilt. Trullo, 809 F.2d at 112. For this reason, the Terry standard is whether the conduct gives "risk to an articulable, reasonable suspicion of criminal activity and not whether [it] can be construed as innocent through speculation." Trullo, 809 F.2d at 112.

CONCLUSION

The State requests this Court to affirm the trial court's refusal to suppress the evidence and deny defendant's requests for dismissal or a new trial.

DATED this 16th day of March, 1987.

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CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Respondent were mailed, postage prepaid, to Kendall S. Peterson, Attorney for Appellant, 333 South Second East, Salt Lake City, Utah 84111 this 16th day of March, 1987.