

1996

# The State of Utah v. Angelo Giron : Unknown

Utah Court of Appeals

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J. Kevin Murphy; Assistant Attorney General; Jan Graham; Utah Attorney General; Richard D. Hamp; Deputy Salt Lake District Attorney; Attorneys for Appellant.

Linda M. Jones; Attorneys for Appellee.

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**SALT LAKE LEGAL DEFENDER ASSOCIATION**

**FILED**

F. John Hill  
Director

424 EAST FIFTH SOUTH, SUITE 300  
SALT LAKE CITY, UTAH 84111  
(801) 532-5444  
FAX (801) 532-0330

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March 21, 1997

**UTAH COURT OF APPEALS  
BRIEF**

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DOCKET NO. 960203-CA

Ms. Marilyn M. Branch  
Clerk of the Court  
Utah Court of Appeals  
230 South 500 East, Suite 400  
Salt Lake City, Utah 84102

Dear Ms. Branch:

Re: State v. Giron  
Case No. 960203-CA

Pursuant to Rule 24(i), Utah Rules of Appellate Procedure, Appellee Angelo Giron responds to the letter of supplemental authority addressed to the Court from Kenneth A. Bronston, counsel for the state, as follows:

United States v. Vasey, 834 F.2d 782, 787-88 (9th Cir. 1987) (vehicle search undertaken "at the place of arrest" was not justified as "contemporaneous" where *facts reflected* 30 to 45 minutes elapsed between the arrest and the warrantless search; "the Belton Court's fear of forcing officers to make split second legal decisions during the course of an arrest evaporated and took with it the right of the officers to enter the vehicle under the guise of a search incident to arrest"; officers originally attempted to justify search as an inventory, not as incident to arrest);

State v. Pena, 869 P.2d 932, 939 (Utah 1994) (in an area such as search and seizure law, "the facts to which the legal rule is to be applied are so complex and varying").

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In further response to the supplemental letter, and the issue of whether this Court may infer from the facts in Mr. Giron's case that the "search undertaken at the place of arrest" was sufficiently similar to "all [other] cases" that have "overcome any problems as to temporal proximity" (see State's Supplemental Letter dated March 18, 1997) so as to justify the search, the cases set forth below are relevant. The cases are also relevant to the issue raised in oral argument concerning whether the Court may infer from the facts that the state presented sufficient evidence to demonstrate that no significant time elapsed to justify the search as incident to arrest.

State v. Moosman, 794 P.2d 474 (Utah 1990) (in challenging findings of fact, "the appellant must marshal all of the evidence in support of the trial court's findings of fact and then demonstrate that the evidence, including all reasonable inferences drawn therefrom, is insufficient to support the findings against an attack");

West Valley City v. Majestic Inv. Co., 818 P.2d 1311 (Utah App. 1991) (this Court will view the evidence "in the light most favorable" to the trial court's construction of the findings; in doing so, the court will consider appellant's obligation to marshal the evidence, which "is not unlike becoming the devil's advocate. Counsel [for appellant] must extricate [himself] from the client's shoes and fully assume the adversary's position. In order to properly discharge the duty of marshaling the evidence, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists");

State v. Wells, 928 P.2d 386 (Utah App. 1996) (where state's evidence was ambiguous with regard to factor establishing the incident-to-arrest exception, state failed to sustain its burden).

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The above cited cases pertain to the following portion of  
Mr. Giron's Brief of Appellee, dated December 9, 1996:

Point I.A. THE STATE FAILED TO PRESENT EVIDENCE IN  
SUPPORT OF THE "INCIDENT TO ARREST" EXCEPTION TO THE  
WARRANTLESS SEARCH, beginning at page 12.

Respectfully yours,

A handwritten signature in cursive script that reads "Linda M. Jones".

Linda M. Jones  
Attorney at Law

CERTIFICATE OF SERVICE

I, LINDA M. JONES, hereby certify that I have caused the original and seven copies of the foregoing to be hand-delivered to the Utah Court of Appeals, 230 South 500 East, Suite 400, Salt Lake City, Utah 84102, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 21st day of March, 1997.

  
\_\_\_\_\_  
LINDA M. JONES

DELIVERED this \_\_\_\_\_ day of March, 1997.

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