

1996

West Valley City v. Randy Burton : Brief of Appellant

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 960465-CA

WEST VALLEY CITY,
Appellant,

vs.

RANDY BURTON,
Appellee.

Appellate Court No.: 960465 CA

Priority No. 02

~~Priority no.: 15~~

BRIEF OF APPELLANT

Appeal from the final judgment of the Third Circuit Court, State
of Utah, in and for Salt Lake County, West Valley Department.
The Honorable Carlos A. Esqueda.

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,
Appellant,

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RANDY BURTON,
Appellee.

Appellate Court No.: 960465 CA

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IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,
Appellant,

vs.

RANDY BURTON,
Appellee.

Appellate Court No.: 960465 CA

Priority no.: 15

BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

Because this appeal is from the final judgment in a misdemeanor prosecution, the Utah Court of Appeals has jurisdiction. UTAH CODE ANN. § 78-2a-3(2)(e) (Supp. 1996).

STATEMENT OF THE ISSUE AND STANDARD OF REVIEW

ISSUE: Did the trial judge correctly suppress evidence by ruling that the arresting officer conducted an illegal search by inserting his head into the compartment of a vehicle?

STANDARD OF REVIEW: Correction of Error. "[T]his court will not disturb the trial court's findings of fact unless they are clearly erroneous. . . . In reviewing a trial court's conclusions of law, however, we apply a correction of error standard." State v. Naisbitt, 827 P.2d 969, 971 (Utah App. 1992); *see also* State v. Brown, 853 P.2d 851, 854-55 (Utah 1992); State v. Stewart, 806 P.2d 213, 215 (Utah App. 1991).

DETERMINATIVE CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTIONAL PROVISIONS

U.S. Constitution amend. IV

STATUTES

Utah Code Ann. § 41-6-44 (Supp. 1995)

RULES

There are no procedural rules at issue in this appeal.

STATEMENT OF THE CASE

This appeal concerns the trial judge's suppression of evidence that led to dismissal of a DUI charge against Appellee, Randy Burton (Burton). The trial judge held that the arresting officer conducted an illegal search in violation of the Fourth Amendment to the U.S. Constitution by inserting part of his head into the compartment of Appellee's vehicle, and suppressed all evidence including field sobriety tests. Without the suppressed evidence, the DUI charge was dismissed. The trial judge suppressed the evidence based on an incorrect interpretation of the Fourth Amendment.

RELEVANT FACTS

On February 15, 1996, Burton was arrested and charged with violating §§ 41-6-44 and 41-6-117 of the Utah Code, driving under the influence of alcohol (DUI), and operating an unsafe vehicle. Burton was stopped because he was driving late at night without

headlights. (See Transcript of Hearing on Defendant's Motion to Suppress, West Valley City v. Burton, Case no. 96502627 at 8) (hereinafter "Transcript"). As part of the stop, Officer James L. Schmidt ("Schmidt") approached the driver's side window and spoke to Burton. From outside of the window, Schmidt detected the odor of alcohol on Burton's breath. (Transcript at 12, 14, 27, and 32). Because the officer was taller than the vehicle, he bent over to see and hear Burton more clearly. (Transcript at 10-11). Schmidt testified that he attempted to lean closer to Burton, and may have inserted part of head into the vehicle. (Transcript at 12-13). Schmidt ordered Burton out of the car and performed field sobriety tests. The tests confirmed that Burton was intoxicated, so Schmidt placed him under arrest.

Burton moved to suppress the field sobriety tests and his arrest, on the basis that they were obtained as a result of an illegal search in violation of the Fourth Amendment to the U.S. Constitution. Burton argued that Schmidt conducted an illegal search when he apparently inserted part of his head into the vehicle compartment. (Transcript at 26). The court considered testimony from Schmidt and also viewed a videotape of the stop.¹ On the videotape, Burton voluntarily admitted that he was drunk. The trial judge found that the officer had inserted a portion of his head into Burton's vehicle, but also held that the officer had a reasonable articulable suspicion that Burton was intoxicated

¹ A video camera was installed in the officer's patrol car, and all traffic stops were videotaped.

prior to inserting his head into the vehicle. The judge ruled that the Fourth Amendment prohibited Schmidt from inserting a portion of his head into the vehicle, and so he suppressed the evidence. (Transcript at 33-34). The exclusion of the evidence prevented prosecution of the DUI charge. (Transcript at 38-39).

SUMMARY OF THE ARGUMENT

I. THE OFFICER DID NOT CONDUCT AN UNREASONABLE SEARCH, BECAUSE THE FOURTH AMENDMENT ALLOWS INVESTIGATION TO QUICKLY CONFIRM OR DISPEL REASONABLE ARTICULABLE SUSPICIONS OF CRIMINAL ACTIVITY.

The officer did not conduct an unreasonable search because his reasonable articulable suspicion that Burton was intoxicated justified further investigation. The trial judge found that Officer Schmidt had a reasonable articulable suspicion that Burton was drunk when he detected the odor of alcohol on the outside of Burton's vehicle. The trial judge also found that Schmidt had this reasonable suspicion before inserting any part of his head into the vehicle. This suspicion allowed Schmidt to diligently pursue a further investigation which quickly dispelled or confirmed the suspicion. Officer Schmidt quickly confirmed that Burton had been drinking heavily by smelling his breath. This quickly confirmed the officer's suspicions. In addition, smelling Burton's breath was within the scope of investigation justified by Schmidt's reasonable articulable suspicions.

II. EVEN IF THE "SEARCH" WAS UNREASONABLE THE OFFICER HAD PROBABLE CAUSE TO CONDUCT SOBRIETY TESTS AND ARREST BURTON WITHOUT THE INFORMATION OBTAINED FROM THE "SEARCH."

Even if the "search" was unreasonable, the officer still had

probable cause to require field sobriety tests and arrest Burton based on information obtained independently from the "search." Evidence ordinarily subject to the exclusionary rule may be admissible if police had a legitimate, independent source for the discovery. The trial judge found that Officer Schmidt had a reasonable articulable suspicion that Burton was intoxicated prior to inserting any part of his head into the vehicle. Furthermore, Burton voluntarily admitted that he was drunk. This alone gave the officer probable cause to require field sobriety tests and arrest Burton. The so-called "search" did not affect the admissibility of that evidence.

III. EVEN IF THE "SEARCH" WAS UNREASONABLE UNDER THE FOURTH AMENDMENT, THE EVIDENCE OF THE FIELD SOBRIETY TESTS AND BURTON'S ARREST SHOULD NOT HAVE BEEN SUPPRESSED BECAUSE IT WAS NOT OBTAINED FROM THE "SEARCH."

Even if the "search" was unreasonable, the field sobriety tests and Burton's arrest were admissible because they were not obtained because of the "search." The exclusionary rule only prohibits evidence obtained through exploitation of an illegal search. The field sobriety tests and the arrest were not obtained by the "search." The trial judge found that Officer Schmidt had a reasonable articulable suspicion prior to inserting his head into the vehicle, so the officer was justified in requiring the sobriety tests. Furthermore, Burton voluntarily admitted that he was drunk. In short, the "search" yielded no new evidence, so there is no evidence to suppress.

ARGUMENT

I. THE OFFICER DID NOT CONDUCT AN UNREASONABLE SEARCH, BECAUSE THE FOURTH AMENDMENT ALLOWS INVESTIGATION TO QUICKLY CONFIRM OR DISPEL REASONABLE ARTICULABLE SUSPICIONS OF CRIMINAL ACTIVITY.

The officer did not conduct an unreasonable search because his reasonable articulable suspicion that Burton was intoxicated justified further means of investigation. The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures." U.S. CONST. amend. IV. However, the Constitution only prohibits unreasonable searches, not all searches. State v. Lopez, 873 P.2d 1127, 1131 (Utah 1994); Terry v. Ohio, 392 U.S. 1, 9 (1968). Since Schmidt's alleged search was reasonable under the circumstances, it does not offend the Fourth Amendment.

The "search" was reasonable because Schmidt was justified both in stopping Burton and detaining him. "To determine whether a search or seizure is constitutionally reasonable, we make a dual inquiry: (1) Was the police officer's action `justified at its inception'? and (2) Was the resulting detention `reasonably related in scope to the circumstances that justified the interference in the first place'?" Lopez, 873 P.2d at 1131-32 (quoting Terry, 392 U.S. at 19-20). As to the first inquiry, there is no question that the stop was legitimate. The officer testified that he initially stopped Burton because he was driving late at night with no headlights. (Transcript at 8). Burton eventually pled guilty to that offense. (Transcript at 39). Thus, the stop was legitimate,

and the officer's action was justified at its inception.²

The detention was reasonable because the officer had articulable suspicions that Burton was drunk. A routine traffic stop is ordinarily limited to "the circumstances which rendered its initiation permissible." *Lopez*, 873 P.2d at 1132; *see also Terry*, 392 U.S. at 19-20; *State v. Robinson*, 797 P.2d 431, 435 (Utah App. 1990) (other citations omitted). However, the limits of such a stop expand when an officer has reasonable articulable suspicions that a more serious crime has been committed. "Investigative questioning that further detains the driver must be supported by reasonable suspicion of more serious criminal activity. Reasonable suspicion means suspicion based on specific, articulable facts drawn from the totality of the circumstances facing the officer at the time of the stop." *Lopez*, 873 P.2d at 1132 (citations omitted).

The trial judge concluded that the officer had a reasonable articulable suspicion that Burton was intoxicated, because, as the officer obtained the necessary information pursuant to the stop, he detected the odor of alcohol. Significantly, the judge held that Schmidt detected the odor prior to inserting a portion of his head into the vehicle. (Transcript at 32, 34). On the videotape of the stop, Burton voluntarily admitted that he was drunk. Therefore, the officer was justified in further investigation to determine the

² "[A] police officer is constitutionally justified in stopping a vehicle if the stop is incident to a traffic violation committed in the officer's presence." *Lopez* 873 P.2d at 1132; *See also Delaware v. Prouse*, 440 U.S. 648, 661 (1979); *State v. Talbot*, 792 P.2d 489, 491 (Utah App. 1990).

extent of Burton's intoxication.

The officer's investigation was reasonable, because it quickly confirmed the suspicion that Burton had been drinking heavily. "If reasonable suspicion of more serious criminal activity does arise, the scope of the stop is still limited. The officers must "diligently [pursue] a means of investigation that [is] likely to confirm or dispel their suspicions quickly" *Lopez*, 873 P.2d at 1132; quoting *State v. Grovier*, 808 P.2d 133, 136 (Utah App. 1991); see also *United States v. Sharpe*, 470 U.S. 675, 686 (1985).

The officer quickly confirmed his suspicion that the alcohol odor emanated from Burton by moving his head closer to Burton, and smelling the air around him. In so doing, a small portion of the officer's head may have briefly entered the vehicle's window. This action was not a search, but the officer's diligent pursuit of a legitimate investigation that would confirm or dispel his suspicions quickly. Because it quickly confirmed the suspicion that Burton was drunk, the action was reasonable under the Fourth Amendment.

Furthermore, the "search" was within the scope of the permitted investigation. As has been stated, the trial judge concluded that Officer Schmidt detected the odor of alcohol prior to inserting a portion of his head into the vehicle. (Transcript at 32). The presence of the odor was a reasonable articulable suspicion that Burton was drunk. (Transcript at 34). Burton also volunteered

that he was drunk. Because of that suspicion, the officer could have ordered Burton out of the vehicle, performed sobriety tests, or obtained breath and blood samples. The officer could also bring his head closer to Burton to confirm the extent of the odor, and to determine if sobriety tests were appropriate. The "search" was therefore reasonable, because it was within the scope of the investigation that the officer could have conducted.

To conclude, Officer Schmidt did not conduct an unreasonable "search" by slightly inserting a portion of his head into Burton's vehicle. The trial judge found that Schmidt had a reasonable articulable suspicion that Burton was drunk prior to inserting any part of his head into the vehicle. Furthermore, Burton voluntarily admitted that he was drunk. The officer was allowed to investigate further, provided the investigation was diligent and quickly confirmed or dispelled the suspicion. The officer quickly confirmed that Burton had been drinking heavily by smelling Burton's breath. Since this was within the allowable scope of the officer's investigation, and quickly confirmed his suspicion, the "search" was reasonable, and the Fourth Amendment was not violated. The evidence should therefore have been admitted.

II. EVEN IF THE "SEARCH" WAS UNREASONABLE THE OFFICER
HAD PROBABLE CAUSE TO CONDUCT SOBRIETY TESTS AND
ARREST BURTON WITHOUT THE INFORMATION OBTAINED FROM
THE "SEARCH."

Even if the "search" was unreasonable, the officer still had probable cause to conduct field sobriety tests and arrest Burton. "[E]vidence which would be subject to the exclusionary rule may be

admissible if the police had an 'independent source' for discovery of the evidence." State v. Northrup, 756 P.2d 1288, 1293 (Utah App. 1988); see also Segura v. United States, 468 U.S. 796, 799 (1984). Since the officer had probable cause independent of any "search" he may have conducted by inserting his head into the vehicle, the field sobriety tests and Burton's arrest are admissible.

As has been stated, the trial judge found that Schmidt detected the odor of alcohol from Burton before he inserted his head and supposedly "searched" the vehicle by smelling the air near Burton's mouth. (Transcript at 32-33). The trial judge specifically stated that the presence of the odor outside of the vehicle constituted a reasonable articulable suspicion that Burton was drunk. (Transcript at 34). Thus, before any alleged "search," the officer had a reasonable suspicion that Burton was drunk, and could have required field sobriety tests. (Transcript at 33).

As shown on the videotape, Burton voluntarily admitted that he was drunk. Thus, before the officer inserted his nose or any other portion of his body into the vehicle, Burton stated that he was drunk. This alone gave the officer probable cause to arrest Burton. In other words, even if the "search" was unreasonable, Burton's voluntary admission, which did not derive from the alleged "search," was more than enough probable cause for the officer to conduct sobriety tests and arrest Burton. Because the tests and the arrest are justified from evidence independent of any unreasonable "search," they are therefore admissible under the

independent source doctrine.³

In conclusion, the field sobriety tests and Burton's arrest did not derive from the alleged "search" of Burton's vehicle. The officer had a reasonable articulable suspicion that Burton had been drinking prior to inserting any part of his head into the vehicle. Furthermore, Burton voluntarily admitted that he was drunk. This information was obtained independent of the alleged "search," and is thus admissible. Suppression of evidence should not "put the government in a worse position, because the police would have obtained the evidence if no misconduct had taken place." *Northrup*, 756 P.2d at 1294; see also *Nix v. Williams*, 467 U.S. 431, 444 (1984).

III. EVEN IF THE "SEARCH" WAS UNREASONABLE UNDER THE FOURTH AMENDMENT, THE EVIDENCE OF THE FIELD SOBRIETY TESTS AND BURTON'S ARREST SHOULD NOT HAVE BEEN SUPPRESSED BECAUSE IT WAS NOT OBTAINED FROM THE "SEARCH."

Even if the alleged "search" was unreasonable under the Fourth Amendment, the evidence of the field sobriety tests and Burton's arrest should not have been suppressed because it was not obtained from the "search." The exclusionary rule only suppresses "evidence obtained by searches and seizures in violation of the Constitution.

³ The trial judge rejected the argument that the officer's reasonable suspicion was obtained independent of any alleged "search," and thus the field sobriety tests were justified. At the hearing, the City prosecutor argued that the evidence was admissible under the inevitable discovery rule. The argument made is more correctly the independent source doctrine. (Transcript at 35-37).

. . ." Mapp v. Ohio, 367 U.S. 643, 655 (1961).⁴ Thus, the exclusionary rule requires the suppression of only the evidence obtained because the officer inserted his head into Burton's vehicle.

The trial judge found that the officer detected the odor of alcohol before he inserted his head into Burton's vehicle. Therefore, the officer formed a reasonable articulable suspicion that Burton was drunk without any questionable search. In addition, Burton voluntarily admitted he was drunk. In short, the officer obtained no new evidence by inserting his head into Burton's vehicle. At most, the action merely confirmed what Schmidt had already discovered. Since the "search" yielded no new evidence, there is no evidence to suppress.

CONCLUSION

The trial judge improperly granted Burton's motion to suppress, because there was no unreasonable search of Burton's vehicle. The arresting officer stopped Burton for operating a vehicle at night without headlights. The trial judge found that the officer detected the odor of alcohol prior to inserting his head into the vehicle to confirm that Burton had alcohol on his breath. The officer had a reasonable articulable suspicion that Burton was drunk, which allowed the officer to pursue a means of

⁴ See also Wong Sun v. United States, 371 U.S. 471, 488 (1963) (stating that evidence is excluded only if it was obtained "by exploitation of [the] illegality" *Id.*).

investigation that would quickly confirm or dispel the suspicion. *Lopez*, 873 P.2d at 1131-32.

The officer quickly confirmed that Burton had been drinking heavily by smelling the air near him. This was within the scope of his investigation, because the officer could have requested that Burton exit the vehicle and perform sobriety tests, or required breath and blood samples. Since the investigation was within the officer's permitted authority, and since it quickly confirmed the suspicion that Burton was drunk, the "search" was reasonable and did not offend the Fourth Amendment.

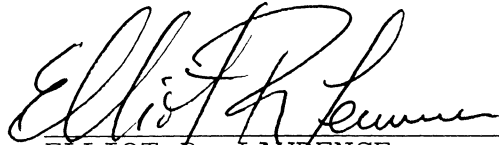
Furthermore, even if the alleged "search" was unreasonable, the field sobriety tests and arrest of Burton are admissible. The officer could have required the sobriety tests and arrested Burton based on the odor of alcohol and Burton's voluntary admission that he was drunk. The officer obtained that information before inserting a portion of his head into the vehicle. Since the officer had probable cause to require the tests and make the arrest independent of any information obtained from inserting his head into Burton's vehicle, the evidence was admissible. *Northrup*, 756 P.2d at 1293.

Finally, the only evidence that should have been suppressed was that obtained by the officer from inserting his head into the vehicle. As has been stated, the trial judge held that the officer had a reasonable articulable suspicion that Burton was drunk before the officer inserted his head into the vehicle. In addition, Burton voluntarily admitted he was drunk. This evidence was not

obtained because the officer inserted his head into the vehicle, and was more than enough probable cause for the officer to require sobriety tests and arrest Burton. The officer obtained no new evidence from inserting his head into the vehicle, so no evidence should be suppressed because of it. *Mapp*, 367 U.S. at 655; *Wong Sun*, 371 U.S. at 444.

For these reasons, the trial judge incorrectly concluded that the evidence of the field sobriety tests and Burton's arrest should be suppressed. West Valley City respectfully asks that the Court reverse the trial judge's decision and remand the case for prosecution.

RESPECTFULLY SUBMITTED this 14th day of November, 1996.


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CERTIFICATE OF MAILING

This certifies that two copies of the foregoing Brief of Appellant were mailed to the following address:

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DATED this 14th day of November, 1996.

A handwritten signature in cursive script, reading "Elliot R. Ramm", is written over a horizontal line. The signature is fluid and stylized, with a long, sweeping underline that extends to the right.