

1987

# The State of Utah v. Dale Lynn Baumgaertel : Brief of Appellant

Utah Court of Appeals

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James C. Bradshaw, Elizabeth A. Bowman; Salt Lake Legal Defender Assoc.; Attorneys for Appellant. David L. Wilkinson; Attorney General; Dan R. Larsen; Assistant Attorney General; Attorneys for Respondent.

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BRIEF

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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0 THE STATE OF UTAH, :  
 CKET NO. 870330-CA Plaintiff/Respondent, :  
 v. :  
 DALE LYNN BAUMGAERTEL, : Case No. 870330-CA  
 Defendant/Appellant. : Priority No. 2

---

BRIEF OF APPELLANT

Appeal from a conviction and judgment of burglary, a felony of the third degree, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Homer F. Wilkinson, Judge, presiding.

JAMES C. BRADSHAW  
ELIZABETH A. BOWMAN  
SALT LAKE LEGAL DEFENDER ASSOC.  
333 South Second East  
Salt Lake City, Utah 84111  
Attorney for Appellant

DAVID WILKINSON  
ATTORNEY GENERAL  
236 State Capitol Building  
Salt Lake City, Utah 84114  
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF UTAH

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THE STATE OF UTAH, :  
Plaintiff/Respondent, :  
v. :  
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Salt Lake City, Utah 84111  
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236 State Capitol Building  
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STATEMENT OF ISSUES

1. Did the officer have a reasonable suspicion based on objective facts sufficient to detain Mr. Baumgaertel?

JURISDICTIONAL STATEMENT

Jurisdiction is conferred on this Court pursuant to Utah Code Ann. §77-35-26(b)(1)(1953 as amended) and Utah Code Ann. §78-2a-3(2)(e) whereby a defendant in a district court criminal action may take an appeal to the Court of Appeals from a final judgment of conviction of any crime other than a first degree felony or capital case. Appellant was convicted of burglary, a third degree felony. The Honorable Homer F. Wilkinson, Judge, Third Judicial District Court in and for Salt Lake County, State of Utah, rendered final judgment and conviction (See Addendum A).

TEXT OF STATUTES AND CONSTITUTIONAL PROVISIONS

Utah Code Ann. §77-7-15 (1953 as amended):

Authority of peace officer to stop and question suspect--Grounds. A peace officer may stop any person in a public place when he has a reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.



IN THE COURT OF APPEALS OF THE STATE OF UTAH

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THE STATE OF UTAH,	:	
	:	
Plaintiff-Respondent	:	
	:	
v.	:	
	:	
DALE LYNN BAUMGAERTEL,	:	Case No. 870330-CA
	:	Category No. 2
Defendant-Appellant	:	

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BRIEF OF APPELLANT

STATEMENT OF THE CASE

Appellant, Dale Lynn Baumgaertel, appeals from a judgment and conviction of burglary, a third degree felony in violation of Utah Code Ann. §76-6-202 (1953 as amended). Appellant was convicted after submission of stipulated facts in addition to facts from his Motion to Suppress hearing in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Homer F. Wilkinson, Judge, presiding.

STATEMENT OF FACTS

On February 2, 1987 at 4:30 a.m. Salt Lake County Sheriff's Deputy Duane Jensen was, as a part of his routine patrol duties, driving westbound on 3500 South (T.<sup>1</sup> 16, 17). At about 8120 West Deputy Jensen observed a pickup truck pull onto 3500 South and head eastbound (T. 35). Deputy Jensen made a U-turn and followed the vehicle eventually stopping it at a private residence (T. 14). At

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<sup>1</sup> "T" now and hereafter refers to Transcript of Motion to Suppress Hearing held March 20, 1987.

the time the deputy first observed the vehicle it was pulling onto the roadway, (T. 19) and moving with its lights on (T. 35). It appeared to the deputy that the truck had pulled onto the roadway from approximately the middle of a large parking lot (T. 19). The parking lot had been a car dealership many years prior, but the deputy testified it was abandoned on February 2, 1987 and not used by any business at the time of this incident (T. 17). The parking lot was immediately south of Ernies Automotive, the business which was later discovered to have been burglarized that evening (T. 17).

Immediately upon observing the pickup truck, Deputy Jensen made the decision to stop the vehicle (T. 20). He cited as reasons for his decision: the lateness of the hour (T. 20), the deputies belief that there had been a rash of burglaries in the area (T. 20), and the fact that he had just been in the area fifteen minutes earlier and had not seen this particular pickup truck (T. 20). Deputy Jensen also indicated he had a "hunch" that this truck was involved with criminal activity (T. 25). After making the decision to stop the truck Deputy Jensen made a U-turn and pursued the vehicle. The deputy testified that the pickup accelerated faster than a "normal vehicle" would. The deputy also indicated this "acceleration" occurred after he had already made his decision to stop the vehicle and did not enter into that decision (T. 21). He also testified he did not observe the vehicle speeding or violating any traffic laws (T. 22). Deputy Jensen eventually stopped the vehicle by turning on his bright lights, and possibly his felony spot light (T. 31) and he pulled behind the vehicle (T. 23). He testified he took these actions so that the occupants of the vehicle

would know that he was a police officer that wanted to stop them and talk to them (T. 23). The officer indicated it was his "hunch" there was criminal activity and not the way the suspect drove that prompted the stop (T. 24-25).

A hearing was held on a motion to suppress based upon Mr. Baumgaertel's belief that the stop was illegal. The motion was denied. Based upon both parties belief that the only issue in the case was the legality of the stop, the case was then submitted to the court without testimony. The court, based upon the evidence presented at the suppression hearing and supplemented by the stipulations of counsel, then found Mr. Baumgaertel guilty of burglary, a third degree felony.

#### SUMMARY OF ARGUMENT

The trial court erred by not suppressing all evidence found pursuant to an illegal stop.

#### ARGUMENT

##### POINT I. THE OFFICER DID NOT HAVE A REASONABLE SUSPICION, BASED ON OBJECTIVE FACTS, SUFFICIENT TO LEGALLY DETAIN MR. BAUMGAERTEL.

In Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889, (1968) the United States Supreme Court first carved out a limited exception to the general probable cause requirement. That exception which allows for a brief investigatory detention of a person under specific circumstances has been codified in Utah Code Ann. §77-7-15 (1953 as amended) which provides:

Authority of peace officer to stop and question suspect -- Grounds. A peace officer may stop any person in a public place when he has a reasonable

suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

Based upon that statute and the Terry decision the courts of this state have framed the specific requirements which must exist before a person can lawfully be detained for the brief investigatory purposes outlined in Terry. The officer must be able to point to "specific articulable facts which together with rational inferences drawn from those facts would lead a reasonable person to conclude [the suspect] had committed or was about to commit a crime. State v. Trujillo, 739 P.2d 85, 88 (Utah App. 1987) quoting from Florida v. Royer, 460 U.S. 491, 499, 103 S.Ct. 1319, 1325, 75 L.Ed. 2d 229 (1983). The corollary to that standard is that a "mere hunch" is not sufficient to justify a detention. State v. Swanigan, 699 P.2d 718, 719 (Utah 1985).

The following three factors were offered in the case at bar to justify the stop of Mr. Baumgaertel: (1) the lateness of the hour; (2) the deputy's belief that there had been a rash of recent burglaries in the area; and (3) the absence of that pickup in that neighborhood prior to the time observed. In State v. Carpena, 714 P.2d 674 (Utah 1986) our Supreme Court was presented with factors almost identical to those presented by Deputy Jensen in the present action. In that case an officer on routine patrol followed a car into a driveway after he had observed the car driving late at night, in an area in which a rash of burglaries had recently occurred. As in the case before the court, the officer in Carpena did not observe any criminal or traffic offense and no report of a burglary had been

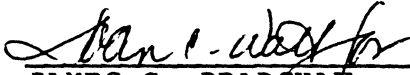
reported to the police that night. In every important detail the facts which were presented to the Supreme Court in Carpena are identical to those offered by Deputy Jensen. And as in Carpena the testimony of Deputy Jensen in the case at bar presents "no objective facts on which to base a reasonable suspicion that they were involved in criminal activity." Id. at 675. See also State v. Trujillo, 739 P.2d 85 (Utah App. 1987).

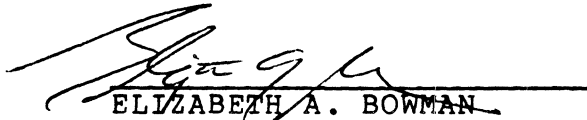
Deputy Jensen testified that it was his "hunch" that the pickup he saw on February 2, 1987 was involved with criminal activity (T. 25). The stop that followed was based on that hunch and the factors which the officer cited as the basis for his hunch are the same factors rejected by the courts in Carpena and Trujillo. Appellant was stopped in this case based upon a mere hunch which is unsupported by objective articulable facts. As a result all evidence which was seized pursuant to that stop is inadmissible. Wong Sun v. United States, 371 U.S. 471 83 S.Ct. 407 9 L.Ed. 441 (1963). Appellant respectfully asks this Court to reverse the trial court's decision denying Mr. Baumgaertel's Motion to Suppress.

#### CONCLUSION

Appellant Baumgaertel seeks reversal of his conviction with a remand to the District Court for a new trial with the evidence suppressed.

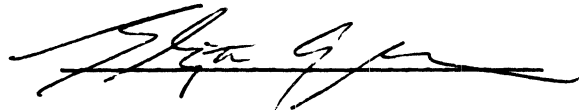
DATED this \_\_\_\_ day of January, 1988.

  
\_\_\_\_\_  
JAMES C. BRADSHAW  
Attorney for Appellant

  
ELIZABETH A. BOWMAN  
Attorney for Appellant

CERTIFICATE OF DELIVERY

I, JAMES C. BRADSHAW, hereby certify that eight copies of the foregoing will be delivered to the Utah Court of Appeals, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102, and four copies to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Utah 84114 this 4<sup>th</sup> day of January, 1988.



DELIVERED by \_\_\_\_\_ this \_\_\_\_ day of  
January, 1988.

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ADDENDUM A

87/242

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IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

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THE STATE OF UTAH, )  
)  
Plaintiff, )  
)  
vs. )  
)  
DALE LYNN BAUMGAERTEL, )  
)  
Defendant. )

FILMED

Criminal No. CR 87-242

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BE IT REMEMBERED, that the above-entitled cause came on regularly for trial before the Honorable Homer F. Wilkinson, a Judge of the Third Judicial District Court of the State of Utah, at Salt Lake City, Salt Lake County, State of Utah, on the 30th day of April, 1987, at 3:35 p.m., and that the following proceedings were had:

A P P E A R A N C E S:

For the Plaintiff: Robin Reese  
Deputy County Attorney  
Courtside Office Building  
231 East 400 South, 3rd Floor  
Salt Lake City, Utah 84111

For the Defendant: James C. Bradshaw  
Salt Lake Legal Defender Assn.  
333 So. 2nd East  
Salt Lake City, Utah 84111

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

FILED

SEP 15 1987

SEP 22 1987

H. Dixon Hindley, Clerk 3rd Dist. Court  
By *[Signature]* Deputy Clerk

ALAN P. SMITH, CSR  
185 BRAHMS DRIVE #4107 RES. 266-0320  
COURTS, 4th FLOOR 4 S.W. 401 535-7372  
231 JUDGE BUILDING, OFF. 533-0800  
SALT LAKE CITY, UTAH 84111





1 State would, based on what evidence the Court heard at the  
2 motion to suppress and admissions of Mr. Baumgaertel to the  
3 Salt Lake County Deputies that he had participated in the  
4 burglary of the business of Ernies Automotive, Magna, Utah  
5 to the evidence showing that he entered the building unlaw-  
6 fully, the Court remembering, maybe I should further proffer,  
7 Your Honor, that Ernie Gust would testify that he is the owner  
8 of Ernies Automotive;

9 That the building had been entered without consent  
10 and property taken without consent.

11 And so the State would argue, based on that, that  
12 the building was entered without consent; that it was entered  
13 with the intention to commit a theft, and that the defendant  
14 was identified as one who was in possession of the stolen  
15 property shortly after the burglary. And further, that the  
16 defendant admitted he had participated in the burglary, and  
17 that at least that he had assisted the defendant Smith in  
18 removing property from the business.

19 Therefore, Your Honor, the State would submit that  
20 the crime of burglary, a third degree felony, has been proven  
21 against the defendant, Baumgaertel, and would dismiss Count 2  
22 to the theft.

23 MR. BRADSHAW: We would stipulate and would not  
24 contest those facts, Your Honor.

25 THE COURT: The Court does find based on the

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stipulation of counsel and does grant the State's motion to dismiss Count 2, theft, a second degree felony.

The Court would further find based on the stipulation that the defendant is guilty of Count 1, burglary, a third degree felony.

MR. BRADSHAW: That would be fine.

THE CLERK: June 26 at 10:00 o'clock.

MR. REESE: Thank you, Your Honor, for taking this hearing.

MR. BRADSHAW: Yes, thank you, Your Honor.

THE COURT: Court will be in recess.

(Court adjourned 3:47 p.m.).

