

1985

# The State of Utah v. George T. Carpena and George Aguilar : Brief of Appellant

Utah Supreme Court

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## Recommended Citation

Brief of Appellant, *Utah v. Carpena*, No. 198520830.00 (Utah Supreme Court, 1985).

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IN THE SUPREME COURT OF THE STATE OF UTAH

**1985** **20830**

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THE STATE OF UTAH, :  
Plaintiff-Appellant, :  
v. :  
GEORGE T. CARPENA and : Case No. 20830  
GEORGE AGUILAR, : 20831  
Defendants-Respondents. :  
:

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BRIEF OF APPELLANT

APPEAL FROM A RULING SUPPRESSING EVIDENCE AND DISMISSAL OF POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE FOR VALUE, A FELONY, VIOLATION OF UTAH CODE ANN. SUBSECTION 58-37-8 (1)(a)(ii), IN THE SECOND JUDICIAL DISTRICT COURT, IN AND FOR WEBER COUNTY, STATE OF UTAH, THE HONORABLE DAVID E. ROTH, JUDGE PRESIDING.

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**FILED**  
NOV 27 1985

IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH, :  
Plaintiff-Appellant, :

v.

GEORGE T. CARPENA AND : Case No. 20830  
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APPEAL FROM A RULING SUPPRESSING EVIDENCE AND DISMISSAL OF POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE FOR VALUE, A FELONY, VIOLATION OF UTAH CODE ANNOTATED, SUBSECTION 58-37-8 (1)(a)(ii), SECOND JUDICIAL DISTRICT COURT, IN AND FOR WEBER COUNTY, STATE OF UTAH, THE HONORBLE DAVID E. ROTH, JUDGE PRESIDING.

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STATEMENT OF THE ISSUE PRESENTED ON APPEAL

Did the police have reasonable suspicion to stop defendants' vehicle for investigation?

CONSTITUTIONAL AND STATUTORY PROVISIONS

Utah Code of Criminal Procedure 77-7-15:

"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 SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH,

Plaintiff-Appellant, :

v. :

GEORGE T. CARPENA AND :

GEORGE AGUILAR, :

Case No. 20830

20831

:

Defendants-Respondents.

---

BRIEF OF APPELLANT

- - - - -

STATEMENT OF THE CASE

Defendants were charged with possession of a controlled substance (marijuana) with intent to distribute for value.

In a pre-trial hearing in District Court on July 10, 1985, the court ordered that evidence concerning the discovery by the police of the marijuana be suppressed. Thereupon the Court dismissed the informations against defendants upon defense counsels' motions, since the State had no other evidence against defendants.

STATEMENT OF THE FACTS

While patrolling around 3:00 A.M. in a residential neighborhood which had a rash of recent burglaries, the police sergeant in charge of the shift spotted defendants' vehicle proceeding at a slow pace. The vehicle had Arizona license plates. Sgt. Malmberg followed said vehicle for three blocks,

then turned on his red lights. There had been no report to the police of a vehicle burglary prior to the stop nor was there a criminal or traffic offense observed involving said vehicle. In response to the red light, the three occupants of the vehicle began moving about, and turning around, continued on for a short distance, then pulled into a driveway of one of the occupants' residence.

A pistol was spotted on the floor of the vehicle by one of the officers after a few questions on the scene and when none of the three occupants would say who owned the vehicle, the sergeant opened the trunk and found thirty (30) pounds of marijuana therein in a garment bag.

#### SUMMARY OF ARGUMENT

The sergeant in charge of the night shift had reasonable suspicion to make an investigative stop because of:

1. The lateness of the hour (3:00 A.M.),
2. The rash of recent vehicle burglaries in that neighborhood,
3. The slow pace of suspect vehicle, and
4. The out-of-state license plate.

A slow moving vehicle in such circumstances is suspicious to an experienced officer who is mindful of the spate of recent vehicle burglaries in that neighborhood. Such vehicle may be casing the neighborhood or is being extra cautious to avoid the watchful eye of the law.

The United States Supreme Court in similar situations sanctioned police action that did not involve the unconstrained exercise of discretion.

#### ARGUMENT

The sergeant in charge of the night shift had reasonable suspicion to make an investigative stop based on the following factors:

1. The lateness of the hour coupled with
2. The rash of recent vehicle burglaries in the neighborhood coupled with
3. The suspect vehicle proceeding at a slow pace coupled with
4. The Arizona license plate.

A slow moving vehicle in such circumstances is suspicious to an experienced officer who is mindful of the spate of recent burglaries in that neighborhood. Such vehicle may be casing the neighborhood or may be careful to avoid the watchful eye of the law.

The Court did not reach the issue of the finding of the weapon in the vehicle nor the on-the-scene questioning leading to the opening of the trunk containing the marijuana. The Court ruled that the stop by the police was not justified so all incriminating evidence gained therefrom was suppressed. So only the reasonableness of the stop itself is before this court to decide.

U.S. v. Sharpe, 470 U.S. \_\_\_\_\_, 85 L. Ed. 2d 605, is dispositive of the issue before this court. In that case, decided in March 1985, the U.S. Supreme Court upheld an investigative stop when factors constituting reasonable suspicion were skimpier than in this case. In SHARPE, a drug enforcement agent for the DEA was on patrol surveilling an area for suspected drug trafficking at 6:30 A.M. The agent then noticed a blue pickup truck with a camper shell traveling on the highway in tandem with a blue Pontiac Bonneville. Observing that the truck was riding low in the rear and that the camper did not bounce or sway appreciably when the truck drove over bumps or around curves, the agent concluded that it was heavily loaded. His suspicions were sufficiently aroused to follow the vehicles for twenty miles when he decided to make an investigative stop.

Terry v. Ohio, 392 U.S. 1 (1968) recognized a "narrowly drawn" exception to the probable cause requirement of the Fourth Amendment for certain seizures of the person that do not rise to the level of the full arrests. Thus, when the intrusion is minimal, and when law enforcement interests outweigh the privacy interests infringed in a TERRY encounter, a stop based on objectively reasonable and articulable suspicions, rather than on probable cause, is consistent with the Fourth Amendment.

In SHARPE, Justice Blackman in a concurring opinion voices his concern over the sufficiency of reasonable suspicion to make

a stop of defendants' vehicles. He states, "Perhaps the stop of a particular type of truck would be reasonable in some areas and not others, which is why evidence was submitted on the number of such trucks in this area; ...but the Court seems to suggest that pickup trucks with camper shells are always, anywhere items engendering reasonable suspicion." The Justice, however, agreed with the decision.

The U.S. Supreme Court in Delaware v. Prouse, 440 U.S. 648, 59 L. Ed. 2d 660 (1979) held the random stop of a driver unconstitutional because the police simply wanted to check for driver's license and registration. The policeman in that case stated, "I saw the car in the area and wasn't answering any complaints, so I decided to pull them off." The Court sanctioned in its decision actions "that do not involve the unconstrained exercise of discretion... We hold only that persons in automobiles on public roadways may not for that reason above have their travel and privacy interfered with at the unbridled discretion of police officers."

#### CONCLUSION

In light of the statutory provision and the Fourth Amendment interpretation, the Court should overrule the District Court ruling that the stop was not justified.

DATED this 26th day of November, 1985.

DAVID L. WILKINSON

ATTORNEY GENERAL



---

LES DAROCZI  
Deputy Weber County Attorney

CERTIFICATE OF MAILING

I certify I mailed four true and exact copies of the foregoing Brief, postage prepaid to Randy Richards, Attorney for Respondent Carpena, 2568 Washington Blvd., Ogden UT 84401 and Deirdre Gorman, Aattorney for Respondent Aguilar, 205 26th Street, Ogden UT 84401 this 26<sup>th</sup> day of November, 1985.

Les Dawg

ADDENDUM

APPENDIX "A"  
APPLICABLE STATUTE

Utah Code of Criminal Procedure, Section 77-7-15:

"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."

APPENDIX "B"

MINUTE ENTRY ORDERING  
SUPPRESSION AND DISMISSAL

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

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STATE OF UTAH,	*	DAVID E. ROTH, Judge
	*	
Plaintiff,	*	Case No. 16802
	*	
vs.	*	Date: 07/10/85
	*	
GEORGE CARPENA,	*	James N. Jones, Reporter
	*	
Defendant.	*	Fran Lund, Court Clerk

---

This is the time set for suppression hearing.

CHARGE: POSSESSION OF CONTROLLED SUBSTANCE, a felony.

Les Daroczi, Esquire, appears for the State.

Randy Richards, Esquire, appears for the defendant.

Defendant appears in person.

Statement presented by Randy Richards.

Response by State's counsel.

Upon Court suppressing the evidence the defendant's  
counsel moves to have the matter dismissed.

Court granted the motion and dismissed the information.