

1987

# The State of Utah v. Timothy Joe : Brief of Appellant

Utah Court of Appeals

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**BRIEF**

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DOCKET NO. **870537-CA**

IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH,	:	
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Plaintiff- Respondent,	:	
	:	
vs	:	Case No. 870537-CA
	:	
TIMOTHY JOE,	:	
	:	
Defendant-Appellant.	:	

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BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF THE TWELFTH CIRCUIT IN AND FOR  
SAN JUAN COUNTY, MONTICELLO DEPARTMENT, STATE OF UTAH  
HONORABLE, BRUCE K. HALLIDAY, JUDGE

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ARGUMENT PRIORITY CLASSIFICATION

**RECEIVED**  
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COURT OF APPEALS

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ARGUMENT PRIORITY CLASSIFICATION: 2

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BRIEF OF APPELLANT

JURISDICTION OF COURT OF APPEALS

Jurisdiction of this Court is Invoked pursuant to Utah Code Annotated 78-29-3 (2)(c) 1953 as amended.

NATURE OF THE PROCEEDINGS

This Appeal is from a final Judgment and Verdict of the Twelfth Circuit Court following a trial to the Court and from rulings on Motion during trial.

## ISSUES

Whether the trial court erred in denying Appellant's Motion to Suppress evidence as a result of a constitutionally defective roadblock stop.

## DETERMINATIVE PROVISIONS

1. United States Constitution, Amendment IV-Addendum I
2. United States Constitution, Amendment XIV-Addendum II
3. Constitution of the State of Utah, Article I, Section 14
4. Utah Code Annotated

## STATEMENT OF THE CASE

### A. NATURE OF THE CASE

An appeal from conviction by the Court of driving under the influence of alcohol in violation of Utah Code Annotated 41-6-44 and driving while license is revoked in violation of Utah Code Annotated 41-2-88.

### B. COURSE OF THE PROCEEDINGS

Appellant was found guilty on June 26, 1986 in a trial to the Court of driving under the influence of alcohol and

driving while his license was revoked. His Motion to Suppress, evidence on grounds of unconstitutional roadblock stop made during trial, was denied.

Appellant was sentenced August 21, 1986 and Certificate of Probable Cause was entered that date. Judgment and Order were entered November 19, 1987. Notice of Appeal was filed November 24, 1987.

#### C. DISPOSITION AT TRIAL COURT

Appellant was found guilty of Counts I and II of the Information.

#### FACTS

On March 29, 1986 Appellant was stopped in what the reporting officer described as "routine traffic control stop" at 2:15 A.M. (TR-34, 1.4,5). The roadblock was set up 100 feet from the border of an Indian Reservation (TR-39, 1.11-13).

The roadblock was organized by Sergeant Cook of the San Juan Sheriff's Office. (TR-37, 1.3). Sargeant Cook's superior officer is the Sheriff of San Juan County who did not personally authorize the roadblock. (TR-37, 1.16,18) and a civilian (TR-37, 1.25).



The purpose of the roadblock was to deter intoxicated drivers (TR-41, 1.21-22). Lighting at the scene consisted of lights from a motel and trading post (TR-42, 1.23). The roofs of those buildings are level with the road on which the roadblock was set (TR-43, 1.10-14). There is a street light 40 to 60 feet away from roadblock location (TR-45, 1.19).

There were no road markers placed (TR-45, 1.22-24). There were no signs nor advance public notice (TR-46, 1.1-6).

The stop was affected by turning on a side mounted red light as Appellant's vehicle approached. The officer said the light was activated at 1000 feet (TR-46, 1.13-16). Appellant testified that the light was activated as he approached to within 40 to 45 feet of the police cars which were parked on either side of the road (TR-71, 1.15-18). An officer with a flashlight stood near the car (TR-65, 1.5-6).

Appellant testified that two cars left with him from their mutual starting place (TR-79, 1.12-15) and were traveling ahead of him (TR-72, 1.6-14) and that those vehicles were not stopped (TR-73, 1.12-14).

The Court found, applying the test of "good faith" of the officer, that the roadblock was with full authority; that there was no point in placing warning lights, that the red

light on the police car would warn a 1000 ft. away  
TR-52, 1.10-15).

#### SUMMARY OF ARGUMENT

The roadblock stop and detention of Appellant constituted a seizure within the meaning of the Fourth Amendment of Constitution of the United States and Article I Section 14 of the Constitution of the State of Utah. Constitutional protection against unreasonable seizure prohibits discretionary stops. The roadblock in the case at bar did not comply with the guidelines established to protect Appellant's rights under the State and Federal Constitutions.

#### ARGUMENT

A vehicle stop constitutes a "seizure" within the meaning and within the protection of the Fourth Amendment to the Constitution of the United States<sup>1</sup> and Article I, Section 14 of the Constitution of the State of Utah. In order to justify intrusion into a citizen's expectation of privacy the interest of the State must be weighed against the

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1. Delaware v. Prouse, 440 U.S. 648, 59 LEd2d 660 (1979); United States v. Felix Humberto Brignoni Ponce, 422 U.S. 873, 45LEd2d 607, 95 S.Ct. 2574 (1975); State v. Cole, 674 P2d 119, Utah (1983).

Constitutional right of the individual.

In the case at bar the stated purpose of the roadblock was to "deter intoxicated drivers" (TR-41, 1.21, 22). Before such purpose can be used to justify an invasion of privacy empirical data to support the State's claim that a roadblock is a deterrent must be in evidence<sup>3</sup> in order that the court may weigh that claim as against a person's civil rights. In the Court below no empirical evidence was offered to support the witness' inference that a roadblock deters intoxicated drivers. In actuality, absent advance notice, a roadblock would only deter those few drivers who were intoxicated at the time they were stopped.

The Courts of various states have developed procedural requirements which must be met by police agencies seeking to set up a roadblock which is not violative of one's Constitutional rights. These conditions are set forth by the Supreme Court of Kansas in a 1983 decision, State v. Deskins, 673 P2d 1174:

Among the factors which should be considered are: (1) The degree of discretion, if any, left to the officer in the field; (2) the location designated for the roadblock;

2. Delaware v. Prouse, Supra, State Ex. Rel. Ekstrom v. Justice Ct. of State, 663 P2d 992, Ariz. (1983).
3. State Ex. Rel. Ekstrom v. Justice Ct. of State, Supra.

(3) the time and duration of the roadblock; (4) standards set by superior officers; (5) advance notice to the public at large; (6) advance warning to the individual approaching motorist; (7) maintenance of safety conditions; (8) degree of fear or anxiety generated by the mode of operation; (9) average length of time each motorist is detained; (10) physical factors surrounding the location, type and method of operation; (11) the availability of less intrusive methods for combating the problem; (12) the degree of effectiveness of the procedure; and (13) any other relevant circumstances which might bear upon the test. Not all factors need to be favorable to the state but all which are applicable to a given roadblock should be considered. at 1185. 4

At trial the evidence before the Court as it applies to Deskings standard was as follows:

1. Appellant's testimony that the two vehicles immediately proceeding and traveling with him were not stopped was un rebutted.

2. That location of the roadblock was not well lighted and inherently questionable because of its proximity to the boundaries of an Indian Reservation.

3. No standards were set by superior officers who did not respond to the field officers "call in" to request authorization from his superior (TR-37, 1.3-11).

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4. c.f., State v. Super. Ct. in and for County of Pima, 691 P2d 1073 (Ariz. 1984).

4. There was no advance public notice.
5. There was no advance warning to an approaching motorist.
6. No safety precautions were taken.
7. The sudden (not continuous) flashing of a red light on an approaching motorist must necessarily generate fear and anxiety.
8. There was no "method of operation."
9. There was no evidence of the effectiveness of the procedure; on the contrary, the officer testified that although the roadblock usually began after 1:00 A.M. "We encounter more tourists than anything else." (TR-50,1.13,14).

#### CONCLUSION

The roadblock as constituted on March 29, 1986 which resulted in the seizure of Appellant did not afford the procedural protections and safeguards necessary to preserve Appellants rights under the Constitution of the United States and the State of Utah.

Appellant's conviction should be reversed.

DATED this 24 day of February, 1988.

24  
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A D D E N D U M



ADDENDUM I

United States Constitution

Amendment IV

[Unreasonable searches and seizures.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ADDENDUM II

United States Constitution

Amendment XIV

Section I

[Citizenship - Due Process of Law - Equal Protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

ADDENDUM III  
CONSTITUTION OF UTAH  
ARTICLE I  
SECTION 14

[Unreasonable searches forbidden - Issuance of warrant.]

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.