

1988

Salt lake City, a muncipal corporation v. Artis Brent Bulla : Brief of Respondent

Utah Court of Appeals

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BRIEF

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DOCKET NO. 880075-CA

IN THE UTAH COURT OF APPEALS
STATE OF UTAH

SALT LAKE CITY, a)
municipal corporation,)
)
Plaintiff/Respondent,)
)
vs.)
)
ARTIS BRENT BULLA,)
)
Defendant/Appellant.)

Case No. 880075-CA
Appeal Priority 2

BRIEF OF RESPONDENT SALT LAKE CITY

Appeal from Convictions of Running a Red Light
and False Information to a Police Officer in the
Fifth Circuit Court (now Third Circuit Court)
for Salt Lake City
Honorable Michael Hutchings, Judge

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Utah Court of Appeals

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)	Appeal Priority 2
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Defendant/Appellant.)	
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STATEMENT OF THE NATURE OF THE PROCEEDINGS
AND APPELLATE AUTHORITY

This is an appeal from a criminal conviction after a jury trial in the then Fifth Circuit Court (now Third Circuit Court) for Salt Lake City, the Honorable Michael Hutchings, Judge, presiding on the charges of running a red light and false information to a police officer. Authority for this appeal is provided in Section 78-2-3, Utah Code Annotated.

ISSUES PRESENTED

I: Whether defendant Bulla established that his Fifth Amendment right against self-incrimination was violated by Salt Lake City Police Officers investigation subsequent to a traffic violation.

II. Whether there were any procedural errors requiring reversal.

GOVERNING LAW

Utah Code of Criminal Procedure

77-7-15 - 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.

Utah Code of Criminal Procedure

77-35-19. Rule 19 -- Instructions.

(a) At the close of the evidence or at such earlier time as the court reasonably direct, any party may file written request that the court instruct the jury on the law as set forth in the request. At the same time copies of such requests shall be furnished to the other parties. The court shall inform counsel of its proposed action upon the request; and it shall furnish counsel with a copy of its proposed instructions, unless the parties stipulate that such instructions may be given orally, or otherwise waive this requirement.

(b) Upon each written request so presented and given, or refused, the court shall endorse its decision and shall initial or sign it. If part be given and part refused, the court shall distinguish, showing by the endorsement what part of the charge was given and what part was refused.

(c) No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury is instructed, stating distinctly the matter to which he objected and the ground of his objection. Notwithstanding a party's failure to object, error may be assigned to instructions in order to avoid a manifest injustice.

(d) The Court shall not comment on the evidence in the case, and if the court refers to any of the evidence, it shall instruct the jury that they are the exclusive judges of all questions of fact.

(e) Arguments of the respective parties shall be made after the court has instructed the jury. Unless otherwise provided by law, any limitation upon time for argument shall be within the discretion of the court.

STATEMENT OF THE CASE¹

Defendant Bulla was charged by Count I of an information with violating Section 84 of the Traffic Code of Salt Lake City, by unlawfully running a red light while riding a bicycle. He was also charged in Count II of the same information with violating Section 32-10-1, Revised Ordinances of Salt Lake City, by giving a false name to a police officer. (R. 7-8.)

The facts are as follows:

1. At 9:30 p.m. on June 20, 1987, at 275 East 200 South, Salt Lake City, defendant Brent Bulla was observed riding his bicycle westbound on 200 South approaching 300 East. Salt Lake City Police Officer Guest was southbound on 300 East approaching 200 South in his marked police car. Officer Guest, having the green light, continued through the intersection, and looked over his shoulder. The officer's light was still green (the defendant's therefore red) and the defendant proceeded partially through the intersection

¹ Defendant Bulla's Brief fails to comply with Rule 24 of the Rules of the Utah Court of Appeals by not citing at all to the record. Instead his entire brief is just a self-serving recitation of his own testimony. Of course, on appeal, this Court must review the facts in the light most favorable to supporting the jury's verdict. Green v. Tri-O-Inc., 667 P.2d 1320 (Utah 1983).

westbound stopping only after seeing the police car. (T. 54.)

2. Officer Guest stopped the defendant and "pointed out to him that he made a violation we needed to talk about." (T. 54.)² Officer Guest also indicated the defendant crossed in front of other southbound traffic after Officer Guest had passed. (T. 70.)

3. Officer Guest asked the defendant for identification and the defendant replied that he had none. (T. 54, l. 24-25.)

4. When Officer Guest asked the defendant his last name, the defendant looked around, paused, and said, "Jones". When asked his first name, he paused and said, "Paul". When asked his middle name, he paused and said, "Arthur".³ When asked his date of birth, the officer recalled the defendant's response as 7-20-1950. (T. 55, l. 1-6.)⁴

² On cross-examination, defendant subsequently admitted the red light violation. (T. 91.)

³ The defendant maintained in his testimony and brief that his response was "John Paul Jones". This self-serving recitation of the "facts" is not properly before this Court in light of the jury verdict of guilty. Snyderville Transport Co., Inc. v. Christiansen, 609 P.2d 939 (Utah 1980).

⁴ The defendant's booking sheet shows a DOB of 8-2-48. (R. 1.)

5. Officer Guest asked the defendant for a social security number and the defendant responded with a 278 prefix. The Officer had never heard of such a number and inquired where the defendant was living when this number was issued. Then the defendant "got all upset" and said he was taking the Fifth Amendment. Officer Guest stated ". . . you have committed a traffic violation, and I'm going to give you a ticket for it, I have to know who you are." (T. 55, l. 21.)

6. Because the defendant was "very upset", Officer Guest called for a backup. Officer Cribbs arrived and defendant continued in falsely identifying himself as "Jones" (T. 55.) for a period of five minutes. (T. 64, l. 21.)

7. When the defendant was frisked for officer protection, a video store card was found in his pocket with the name Artis Bulla. (The defendant has never challenged the validity of the pat-down search which produced the video card.)

8. When asked if his name was Artis Bulla, the defendant responded yes and explained, ". . . well, I have several warrants out for my arrest, and I didn't want you to know who I was." Officer Guest verified that two warrants were outstanding. Guest then arrested the defendant for running the red light, giving false information to a police officer and the two outstanding warrants. (T. 55-56.)

9. The defendant admitted at trial to using a false name and also to making up a phony Social Security number. (T. 90.)

10. Upon the City's close of its case in chief, the defendant moved to dismiss based on an alleged violation of his Fifth Amendment rights. (T. 76-82.) This motion was denied by the court. Based on the evidence the Court ruled that the defendant was not in a custodial interrogation situation, or a post-arrest situation and was therefore not required to have been given his Miranda rights prior to making his false statements. (T. 83.) The defendant argued his Fifth Amendment privilege to the jury in his closing statement. (T. 107-110.)

11. At no point did the defendant object to the instruction which he now raises before the Court of Appeals. (R. 18-32, Instruction 2.)

12. At the conclusion of trial, the jury returned a verdict of guilty on the charges of running the red light and of providing false information to a police officer.

SUMMARY OF ARGUMENT

(1) The Fifth Amendment "Miranda" rights against self-incrimination which defendant relies on are inapposite given the facts of this case. Miranda dealt with a post-arrest, station house interrogation over a substantial period of time. The case before this Court deals with the brief stop of an observed traffic violator with the questioning

incident thereto specifically authorized by statute and case law.

(2) There was no error committed by the Court concerning the credibility of the witnesses. Nor were there any procedural errors on the part of the trial court preserved for this appeal. The Instruction questioned on appeal is simply stock and wrongly interpreted by the defendant.

ARGUMENT

POINT I

DEFENDANT FAILED TO ESTABLISH THAT HIS RIGHT AGAINST SELF-INCRIMINATION WAS VIOLATED BY A POLICE OFFICER'S INVESTIGATION INCIDENT TO A TRAFFIC STOP.

This case is couched by the defendant in terms of a Fifth Amendment privilege against self-incrimination and the 1956 Miranda case requiring custodial interrogation warnings. He suggests that, at the point when he was stopped after having been observed running a red light, he was under arrest, therefore Miranda warnings were required and since they were not given, none of his subsequent false statements (and the basis for his conviction) were admissible.

A. THE POLICE OFFICER'S STOP OF THE DEFENDANT FOR A CRIME COMMITTED IN HIS PLAIN VIEW WAS APPROPRIATE.

Neither statute nor case law support the defendant's contention. Section 77-7-15, U.C.A., specifies that a peace

officer may stop a person in a public place when the officer has a reasonable suspicion to believe the person has committed or is committing a crime. Clearly defendant Bulla was committing the red light violation in plain sight of Officer Guest. Section 77-7-15 goes on to give the peace officer the right to demand the person's "name, address and an explanation of his action."

No Utah case has been found challenging this statute and similar statutes in other jurisdictions have not only been upheld but have been considered a right extended to the police under the common law. See, United States v. Thomas, 250 F.Supp. 771 (1966).

Further,

The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, [Terry v. Ohio, 392 U.S. 1 (1968)] recognizes that it may be the essence of good police work to adopt an intermediate response A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

Adams v. Williams, 407 U.S. 143, 144 (1972). (Emphasis added.)

B. THE NON-CUSTODIAL INTERROGATION DID NOT REQUIRE A MIRANDA WARNING.

The Utah Supreme Court has clarified the standards for determining whether interrogation is custodial or investigatory for purposes of the Miranda warning in Salt Lake City v. Carner, 664 P.2d 1168, 1171 (1983). The Court held that factors to be considered in making that determination are:

1. The site of interrogation;
2. Whether the investigation focused on the accused;
3. Whether objective indicia of arrest were present, and;
4. The length and form of interrogation.

The issue in Carner involved field sobriety tests for suspected drunk drivers. The Court applied the four factor test and found that administering the tests was investigatory and not custodial. Miranda warnings were therefore not required:

. . . Applying that test to the instant case, the field sobriety tests were requested and taken on a public street. Moreover, no indicia of arrest such as readied handcuffs, locked doors or drawn guns were present when the officer asked the defendant to perform the field sobriety tests. Also, the length of the performance of the tests was only minutes, a relatively short period of time. These factors do not suggest a custodial setting. The environment may have been authoritative but it certainly was not coercive or compelling. It is true that the investigation had focused on the accused. However, that was true at the point of initial observation; and, no one would argue

that a Miranda warning was obligatory at that point.

Carner, supra, at 1171.

This subject has been further addressed and clarified by the Utah Supreme Court in stating that there are three levels of police-citizen encounters:

- (1) [A]n officer may approach a citizen at anytime [sic] and pose questions so long as the citizen is not detained against his will;
- (2) an officer may seize a person if the officer has an "articulable suspicion" that the person has committed or is about to commit a crime; however the "detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop;"
- (3) an officer may arrest a suspect if the officer has probable cause to believe an offense has been committed or is being committed.

State v. Deitman, 739 P.2d 616, 617-18 (Utah 1987) (quoting United States v. Merritt, 736 F.2d 223, 230 (5th Cir. 1984)) (citation omitted). This Court reiterated quoted these cases in the recent case of State v. Baird, 94 Utah Ad. Rep. 40 (Nov. 1988).

There is no question but that the public offense by the defendant committed in plan view of the officer caused a focus on the defendant. However, the conversation between Officer Guest and defendant Bulla, was as in Carner, conducted on the public street; likewise, there were no handcuffs, locked doors or drawn guns; similarly Officer Guest at one point indicated the defendant's repeated representations of himself as "Jones" lasted for about five minute.

Based on these factors the trial judge's express determination that this was a non-custodial stop is clearly correct and Miranda warnings were not required. (T. 84.)

It was not by any coercion by the officers, as the defendant would like to portray it, but rather the defendant's own choices which warranted the further investigation and constituted the separate violation of false information.

Further, the defendant could have chosen to remain silent and avoided entirely the false information charge and conviction. (See, United States v. Bonanno, 180 F.Supp. 71, 86 n. 21 (S.D.N.Y. 1960):

It must be borne in mind that the defendants in this case had a constitutional right to remain silent when questioned by police or other investigatory agents or bodies, but they chose not to do so. Had they chosen such a course, they would have suffered no penalty.

POINT II

THERE WERE NO PROCEDURAL ERRORS AT TRIAL
REQUIRING REVERSAL.

The defendant's second area of concern alleges various irrelevant, theologically-based references as errors requiring this Court to set aside the jury's findings of guilt. The defendant also raises for the first time on this appeal, an objection to the following jury instruction:

It is the duty of the court to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as the court states it to you, regardless of

what you personally believe the law is or ought to be. On the other hand, it is your exclusive province to determine the facts in this case, and to consider and weigh the evidence for that purpose.

(R. 18-32, Instruction #2)

The defendant did not object to this instruction prior to the jury being instructed as required under Rule 19, Utah Rules of Criminal Procedure,

(c) No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury is instructed, stating distinctly the matter to which he objects and the ground of his objection.

Although this pro se defendant was graciously allowed many indulgences by the trial court, he is bound by the same procedural rules as is the City on appeal.

It is elementary that when a party does not raise objections below when he had notice and opportunity to object, he may not be heard to complain for the first time on appeal. We hold, therefore, that defendant waived all of these defects, if any there were, by failing to object below and we shall not further consider them.

Huber v. Newman, 145 P.2d 780, 783. The instruction objection should appropriately be dismissed as waived.

Waiver, however, may not apply if the instruction works a manifest injustice:

Notwithstanding a party's failure to object, error may be assigned to instructions in order to avoid a manifest injustice.

(Rule 19(c) U.R.C.P.)

Even if the objection to the instruction was not waived the instruction was appropriate. Case law supports the instruction. "Determination of facts is left exclusively to the jury." Lemmon v. Denver and R.G.W.R.Co., 341 P.2d 215 (1944).

The defendant's argument seems to read the instruction as requiring the jurors to come to a conclusion which was illegal. This is not a correct reading of the instruction. The challenged instruction is merely the standard, or "stock", instruction routinely given by trial courts in accordance with subsection (d) of Rule 19 U.R.C.P. which specifies the jury as the exclusive trier of fact (and by corollary the court as the determinor of the applicable law):

(d) The court shall not comment on the evidence in the case, and if the court refers to any of the evidence, it shall instruct the jury that they are the exclusive judges of all questions of fact.

CONCLUSION

This issue on this appeal is not about Fifth Amendment rights and Miranda warnings. Neither came into play because the interrogation was non-custodial. The officer had a statutory right and duty to stop and question the defendant as he did for a violation the officer personally observed. The defendant made his own choice to speak falsely and compounded his problem. Now he seeks to dress his behavior in the armor of constitutional protection and avoid responsibility for lying.

That failing, the defendant then (untimely) seeks to blame the judge, jury and trial procedures for his conviction. The stock instruction was appropriate and guilt was adequately established by the witnesses.

The defendant's appeal should be dismissed in its entirety.

Respectfully submitted this 21st day of November, 1988.



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DG:cc

CERTIFICATE OF SERVICE

I hereby certify that I mailed ^{four}~~two~~ copies of the foregoing Brief to Artis Brent Bulla, 349 West 300 South, Provo, Utah 84601, by depositing the same in the U.S. mail, postage prepaid, this 21st day of November, 1988.

Don George
