

2008

State of Utah, Layton City v. Ronald Charles Barton : Brief of Appellee

Utah Court of Appeals

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Ronald Barton, Pro se.

Clinton R. Drake; Attorney for Appellee.

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UTAH COURT OF APPEALS

APPELLATE CASE # 20080754

STATE OF UTAH, by and through,

LAYTON CITY, a municipal corporation

Plaintiff and Appellee,

v.

RONALD CHARLES BARTON,

Defendant and Appellant.

BRIEF OF PLAINTIFF AND APPELLEE

Appeal from the Second District Court, State of Utah, Layton Department

Judge David Connors

District Court Case # 085603119

Ronald Barton, Pro Se
340 West 100 North
Kaysville, Utah 84037
Defendant and Appellant

Clinton R. Drake
Layton City Attorney's Office
437 North Wasatch Drive
Layton, Utah 84041
Attorney for Plaintiff and Appellee

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STATEMENT OF ISSUES

The Defendant failed to state the standards of review for the four issues he presented. Therefore the City will offer its understanding of the appropriate standards of review. The present appeal is from a criminal bench trial. According to this Court reviews the District Court’s factual determinations under a clearly erroneous standard and legal determinations under a correctness standard. *See State v. Galli*, 967 P.2d 930,933 (Utah 1988).

CONSTITUTIONAL AND STATUTORY PROVISIONS

41-6a-304 Utah Code . Obeying devices -- Effect of improper position, illegibility, or absence -- Presumption of lawful placement and compliance with chapter.

(1) Except as otherwise directed by a peace officer or other authorized personnel under Section **41-6a-209** and except as provided under Section **41-6a-212** for authorized emergency vehicles, the operator of a vehicle shall obey the instructions of any traffic-control device placed or held in accordance with this chapter.

(2) (a) Any provision of this chapter, for which a traffic-control device is required, may not be enforced if at the time and place of the alleged violation the traffic-control device is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

(b) The provisions of this chapter are effective independently of the placement of a traffic-control device unless the provision requires the placement of a traffic-control device prior to its

enforcement.

(3) A traffic-control device placed or held in a position approximately conforming to the requirements of this chapter is presumed to have been placed or held by the official act or direction of a highway authority or other lawful authority, unless the contrary is established by competent evidence.

(4) A traffic-control device placed or held under this chapter and purporting to conform to the lawful requirements of the device is presumed to comply with the requirements of this chapter, unless the contrary is established by competent evidence.

§ 72-6-114 Utah Code. Restricting use of or closing highway -- Penalty for failure to observe barricade, warning light, etc.

(1) A highway authority may close or restrict travel on a highway under their jurisdiction due to construction, maintenance work, or emergency.

(2) If a highway or portion of a highway is closed or restricted to travel, a highway authority shall cause suitable barriers and notices to be posted and maintained in accordance with Section **41-6a-301**.

(3) A person who willfully fails to observe any barricade, warning light, sign, or flagman, used in accordance with this section, is guilty of a class B misdemeanor.

STATEMENT OF THE CASE

The Defendant's "Statement of Facts" wholly lacks citations to the record and assumes facts that are not in the record. Defendant's "Statement of Facts" includes portions described from his point of view; however such facts are not in the record as the Defendant declined to testify and did not present any evidence at trial.

(45:16-22)

On April 18, 2008, the 2200 West to 3200 West portion of Gentile Street in Layton City, Utah was closed due to road construction. (7:15-24) The road was closed pursuant to applicable laws and regulations through the use of barricades and signs. (9:23-38:18-41:13) Residents living within the closed portion of the road were issued permits by the City through the construction contractor. (9:13-17) The permits were issued for the purpose of allowing police officers and construction workers to easily identify drivers that resided within the area. (9:13-17) Officer Jordan Jeppson of the Layton City Police Department observed the Defendant driving within the closed portion of Gentile Street without a permit. (9:11-17) Officer Jeppson stopped the Defendant and issued him a citation for driving on a closed road. (7:7-11)

On August 25, 2008 the Defendant was charged by criminal information in the Second District Court, Layton Department with “Restricted Use of a Closed Highway”, Utah Code §72-6-114. On the same date a bench trial was conducted in which the Defendant was found guilty of violating §72-6-114 UCA. (64:17-18 and 67:20-68:13)

SUMMARY OF THE ARGUMENTS

1. Utah Code §72-6-114 is not unconstitutionally vague because it is clear what the statute as a whole prohibits.

2. The Defendant failed to file a motion to suppress and therefore is precluded from making a claim to suppress.
3. The Officer's traffic stop was based on reasonable suspicion that a traffic violation was being committed and not as part of an administrative checkpoint.
4. The prosecutor did not violate the Defendants rights or the *Shondel* Doctrine by offering a plea bargain.

ARGUMENT

Argument 1

UTAH CODE ANNOTATED §72-6-114 IS NOT UNCONSTITUTIONALLY VAGUE AS THE BARRIERS AND SIGNS CLEARLY INDICATED THE ROAD WAS CLOSED.

In reviewing statutes for vagueness, a court will presume "that the statute is valid, and . . . resolve any reasonable doubts in favor of constitutionality." *State v.*

Morrison, 31 P.3d 547 (UT 2001). Barricades were placed in directly in the roads.

Signs were placed on the barricades that clearly indicated the road was closed and access was limited to "local traffic only". All barricades and signs on and near the closed road conformed to all applicable laws and regulations. (10:6-11:11)

Specifically, Utah Code §72-6-114(2) requires that all barriers and notices must be posted and maintained pursuant to Utah Code §41-6a-301, which states that the standards and specifications shall "correlate with, and where possible conform to,

the system set forth in the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways". Layton City Civil Traffic Engineer Alan Moss testified that the barriers and notices placed at or near the closed road conformed to the *Manual on Uniform Traffic Control Devices* as required by the statute. See Utah Code §41-6a-301 and (39:3-25). It is not enough for a defendant to simply "inject doubt as to the meaning of words where no doubt would be felt by the normal reader." *State v. MacGuire*, 84 P.3d 1171 (UT 2004).

The District Court appropriately noted that "where there is no specific statutory definition of words, the Court is required to interpret the laws just according to the common an ordinary meaning and usage of the words." (65:10-18) The District Court correctly used the common usage of "Local Traffic Only" when it ruled that Defendant, a resident of a neighboring City was not "local traffic". See *Grayned v. City of Rockford*, 408 U.S. 104, 110, (1972) (A statute may be marked by flexibility and reasonable breadth, rather than meticulous specificity so long as the statute is clear what the ordinance as a whole prohibits.); See also *Greenwood v. City of North Salt Lake*, 817 P.2d 816, 820 (Utah 1991).

Argument 2

THE DEFENDANT IS PRECLUDED FROM MAKING AN APPEAL TO SUPPRESS EVIDENCE BECAUSE THE DEFENDANT FAILED TO PROPERLY PRESERVE THIS ISSUE FOR APPEAL.

The Defendant argues that evidence of the traffic stop should be suppressed because Officer Jeppsen lacked reasonable suspicion for making the stop. The Defendant is precluded from presenting the issue of suppression of evidence because pursuant to Utah Rule of Criminal Procedure 12(d), the Defendant failed to make a motion to suppress to the district court. *See also* Ut. R. Crim. Pro. 12(f) (“Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial or at the time set by the court shall constitute waiver thereof, but the court for cause shown may grant relief from such waiver.”)

Notwithstanding the Defendant’s failure to preserve any suppression issues for appeal, Officer Jeppsen lawfully stopped Defendant’s vehicle because he had reasonable suspicion that the Defendant was committing a traffic offense. *See State v. Galvan*, 2001 UT App 329 (Utah Ct. App. 2001)(“A law enforcement officer may stop a vehicle if the officer has a reasonable suspicion the vehicle is being operated in violation of the law.”) In the present case, the road was clearly and lawfully barricaded and marked. (10:6-23) (39:3-25). Permits were issued to drivers that lived within the closed portion of the road. (9:11-17). Officer Jeppsen observed The

Defendant driving within the closed road without a permit. (9:11-17). Officer Jeppsen had reasonable suspicion that the Defendant was operating his vehicle in violation of the law because the Defendant did not have a permit. (9:11-13) Furthermore, Defendant, although not under oath, admitted in his closing argument that he was knowingly “driving in the closed area of - - beyond the barricaded area”. (49:15-17).

Based on fact that the Defendant failed to make a motion to suppress, the Defendant waived any right to argue that evidence should have been suppressed. Additionally, the record supports that Officer Jeppsen had a reasonable and individualized suspicion that the Defendant was committing a traffic offense and as such the District Court’s ruling was correct.

Argument 3

THE DISTRICT COURT CORRECTLY RULED THAT THE TRAFFIC STOP INITIATED BY OFFICER JEPPESEN WAS NOT AN ADMINISTRATIVE TRAFFIC STOP BECAUSE THE STOP RESULTED FROM HIS ARTICULATED REASONABLE SUSPICION THAT THE DEFENDANT WAS COMMITTING A TRAFFIC OFFENSE.

The Layton City Police Officers’ actions on the date in question did not amount to an administrative checkpoint. Utah Code §77-23-102 specifically defines an “administrative traffic checkpoint” as a “roadblock procedure where enforcement

officers stop *all*, or a *designated sequence* of, motor vehicles traveling on highways and roads and subject those vehicles to inspection or testing and the drivers or occupants to questioning or the production of documents.” (emphasis added). The Layton Officers were not stopping all vehicles, nor were they stopping a designated sequence of vehicles. (24:15-17). Rather, Layton Police Officers were only stopping vehicles for which they had reasonable suspicion to stop because they did not display a permit to travel in the closed area. (24:15-17).

Based on the forgoing information the record clearly supports the District Court’s determination that the traffic stop was not an administrative checkpoint stop.

Argument 4

THE PROSECUTOR DID NOT VIOLATE THE SHONDEL DOCTRINE BECAUSE THE TWO STATUTES ARE NOT IDENTICAL.

The prosecutor’s actions in this matter were nothing more than an offer for a plea bargain to plead to a lesser offense. The United States Supreme Court has recognized plea bargaining as both an essential and desirable part of the criminal justice system. *See Santobello v. New York*, 404 U.S. 257, 261 (1971). A plea bargain to plead to separate offense with a less severe punishment does not violate the equal protection and the uniform application of laws doctrine of the Fourteenth Amendment of the United States Constitution.

The *Shondel* Doctrine does not apply because the two statutes are not identical. See *State v. Williams* 175 P.3d 1029 (UT 2007) (The *Shondel* Doctrine does not apply if two statutes do not fully overlap, i.e. the elements are identical.) *Shondel* only applies when “two statutes are *wholly duplicative* as to the elements of a crime.” *State v. Bryan*, 709 P.2d 257, 263 (Utah 1985) (emphasis added). The statutes in question are Utah Code §41-6a-304 “Failure to Obey a Traffic Control Device” and Utah Code §72-6-114 “Driving on a Closed Road”. They are not wholly duplicative. They do not have identical elements and they have very different penalties, the former with a recommended bail amount of under \$100.00 and the latter with a recommended bail amount in excess of \$500.00. Of particular interest in this matter is the distinction that Utah Code §41-6a-304 carries a presumption that a traffic-control device is lawful while Utah Code §72-6-114 places a heavier burden on the prosecution to prove that a highway is closed lawfully and that the barriers and/or signs are posted in accordance with applicable law. This is important to note because an offer was made by the prosecution to unconditionally amend the charge to Utah Code §41-6a-304 “Failure to Obey Traffic Control Device” rather than Utah Code §72-6-114 “Driving on Closed Road”. (61:11-25) The Defendant refused to accept this unconditional offer to amend, presumably because “Driving On Closed Road” carries a heavier burden of proof because there is no presumption that a

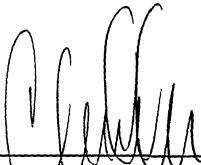
traffic-control device conforms to lawful requirements. See Utah Code §41-6a-304(4).

Because the two statutes are not “wholly duplicative” as required by the *Shondel* Doctrine and that an offer to amend the charge without condition was made by the Prosecutor but declined by the Defendant, the District Court correctly ruled that the Defendant’s rights were not violated.

CONCLUSION

The District Court’s decisions were correct in all respects and for the reasons more fully set forth above, Plaintiff and Appellee respectfully requests that this Court affirm the conviction of Defendant.

Respectfully submitted,



CLINTON R. DRAKE (11155)
COUNSEL FOR PLAINTIFF AND APPELLEE

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing **APPELLEE BRIEF** was mailed to the Utah Court of Appeals and to the following persons, postage prepaid, on this 4th day of Feb., 2009.

Utah Court of Appeals
450 South State Street
P.C. Box 140230
Salt Lake City, Utah 84114-0230

Ronald C. Barton
340 West 100 North
Kaysville, Utah 84037

