

1998

Utah v. William J. Chevre : Brief of Appellee

Utah Court of Appeals

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Jim R. Scarth; Scarth and Dent; Attorney for Appellant.

Joanne C. Slotnik; Assistant Attorney General; Jan Graham; Attorney General; Colin R. Winchester; Kane County Attorney; Attorneys for Appellee.

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IN THE UTAH COURT OF APPEALS

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CKET NO.

981375

STATE OF UTAH, :
Plaintiff/Appellee, :
v. : Case No. 981375-CA
WILLIAM J. CHEVRE, : Priority No. 2
Defendant/Appellant. :

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A CONDITIONAL PLEA OF GUILTY TO
ONE COUNT OF POSSESSION OF A CONTROLLED
SUBSTANCE (MARIJUANA), A THIRD DEGREE FELONY,
IN VIOLATION OF UTAH CODE ANN. § 58-37-
8(2)(a)(i) (1996), IN THE SIXTH JUDICIAL
DISTRICT COURT IN AND FOR KANE COUNTY, THE
HONORABLE K. L. McIff, PRESIDING

JOANNE C. SLOTNIK (4414)
Assistant Attorney General
JAN GRAHAM (1231)
Attorney General
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114
Telephone: (801) 366-0180

COLIN R. WINCHESTER
Kane County Attorney

Attorneys for Appellee

JIM R. SCARTH (2870)
Scarth & Dent
150 North 200 East, Suite 203
St. George, Utah 84770

Attorney for Appellant

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Utah Court of Appeals
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Julia D'Alesandro
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Attorney General
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114
Telephone: (801) 366-0180

COLIN R. WINCHESTER
Kane County Attorney

Attorneys for Appellee

JIM R. SCARTH (2870)
Scarth & Dent
150 North 200 East, Suite 203
St. George, Utah 84770

Attorney for Appellant

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	Case No. 981375-CA
WILLIAM J. CHEVRE,	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a conditional plea of guilty to one count of possession of a controlled substance (marijuana), a third degree felony. This Court has jurisdiction over the appeal pursuant to Utah Code Ann. § 78-2a-3(2) (e) (1996).

STATEMENT OF THE ISSUE ON APPEAL AND

STANDARDS OF APPELLATE REVIEW

1. Did the trial court properly determine that the police officer, who was following defendant down a hill and who observed a malfunctioning brake light on defendant's tractor trailer, had reasonable suspicion to stop defendant?

"[W]hether a specific set of facts gives rise to reasonable suspicion is a determination of law and is reviewable nondeferentially for correctness[.]" State v. Pena, 869 P.2d 932, 939 (Utah 1994). This standard, however, "conveys a measure of discretion to the trial judge," falling short of a de novo

review. Id.

2. Did the trial court properly determine that the scope of the stop was justified beyond its original purpose where the officer observed that the driver of the tractor trailer was so nervous that his foot clattered noticeably against the brake pedal, he was unable to coherently answer even simple questions, and he exhibited a significant physical disability?

3. Was the officer's search of the sleeper area of the tractor trailer, conducted immediately after defendant's arrest for driving under the influence of a central nervous system stimulant, justified as a search incident to arrest?

The standard of review articulated in State v. Pena, above, also applies to these issues.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The fourth amendment to the United States Constitution provides:

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.

U.S. Const. amend. IV.

STATEMENT OF THE CASE

Following a traffic stop near Kanab in July of 1995, defendant was charged with one count each of unlawful possession of a controlled substance (over 100 pounds of marijuana), a second degree felony; driving under the influence of drugs, a class B misdemeanor; possession of more than one commercial driver's license, a class C misdemeanor; falsifying a log book, a class C misdemeanor; and driving with a defective stop light, a class C misdemeanor (R. 18-20).

After a preliminary hearing, the magistrate bound defendant over on all charges except falsifying a log book (R. 16-17).

Defendant filed a motion to suppress (R. 24-25, 28-29).

Following an evidentiary hearing, the trial court denied the motion, entering written findings of fact and conclusions of law to support its ruling (R. 100-01, 103-08 or addendum A).

Defendant then entered a conditional plea agreement, in which he pled guilty to one count of possession of a controlled substance (more than one pound of marijuana), a third degree felony, in exchange for the State's dismissal of the remaining misdemeanor charges (R. 115-19). The court then entered a conviction on the felony and eventually sentenced defendant to zero to five years in the Utah State Prison (R. 121-22, 142-43). Defendant filed a timely notice of appeal (R. 124).

STATEMENT OF THE FACTS

Utah Highway Patrol trooper Stanley Fox, assigned to the state safety inspection program, was patrolling eastbound out of Kanab when defendant passed him driving a tractor trailer in the opposite direction (R. 131: 8, 10, 11). Fox noticed that in addition to the driver, a passenger was also seated in the front seat (Id. at 11). Fox reversed directions "because [he] saw the driver and a co-driver, both seated in the front seats, which would require . . . the co-driver to have his log book current to the last change of duty status" (Id. at 12). While following the vehicle and looking for a suitable place to pull it over to check the log book, Fox noticed that the left rear brake light on the trailer was not functioning (Id. at 12, 77).¹ Both to check the log book and to inform defendant of the equipment malfunction, Trooper Fox activated his lights and stopped defendant (Id. at 21, 78).

Trooper Fox approached defendant and asked to see his log book and registration permits (Id. at 13). He also asked where defendant was going, where he had been, and what he was hauling (Id. at 13-14). Describing defendant's response to this encounter, Fox stated: "He - in answering the questions that I asked him, while he was looking for his documents and so forth,

¹ Trooper Fox noticed the brake light malfunction when defendant applied the brakes going downhill in front of him (R. 131 at 20, 78).

he was quite broken in his answers. They seemed to be, ah, not really answers to the questions I was asking him or the things that I was asking him for" (Id. at 13). Characterizing defendant's behavior as "strange" and "spacey," Fox observed "[t]he inability to carry on a good conversation, the cotton mouth, dry lips, dry mouth, his very nervous condition, his foot was - was virtually bouncin' off the floor while he was seated in the vehicle. It was - in fact, I remember it clattering against the brake pedal and fuel feed. . . ." (Id. at 17; 45). Fox also noticed that defendant's left arm was "kind of unresponsive . . . almost limp. There seemed to be a physical defect there of some type" (Id. at 14).

After some searching, defendant produced the requested documentation. Trooper Fox then asked defendant to get out of his vehicle so that he could point out the defective brake light as well as a leaking axle seal he had later noticed (Id. at 15, 16, 79). The pair then walked back to the trooper's vehicle to review the log book.

The log book stated that defendant was traveling from the Flagstaff/Grey Mountain area. According to Trooper Fox, however, "[t]he period of time that had lapsed . . . was not consistent with the amount of time it should have taken. . . . [T]here was quite a bit more time there than what would have been reasonable" (Id. at 17-18). After some further discussion about the log

book, Fox suspected a "false fix" of the books (Id. at 71-73).²

Based on defendant's "very nervous condition" and his "somewhat inconsistent answers on his whereabouts," Fox decided to administer a drug recognition evaluation (Id. at 17).³ Of the eight field tests administered, defendant exhibited significant difficulties on five of them (Id. at 20-35). After questioning defendant about the status of his health and his physical condition, Trooper Fox concluded that defendant was under the influence of a central nervous system stimulant.⁴ Accordingly, he arrested defendant for driving under the influence (Id. at 37-38).

² Fox also learned from defendant that the passenger, whom defendant identified as Mike Hobbs, was not a co-driver (Id. at 43). Defendant stated that he had known Hobbs for six months, and that he had picked him up in Tucson on the 16th of the month (Id. at 44). Trooper Fox then approached the passenger, who was still seated in the stopped vehicle. In response to Fox's questions, the passenger identified himself as Carlos Gracia and told Fox that he barely knew defendant, having only hitched a ride with him the night before, which was the 17th of the month (Id. at 45-46). It is unclear from the record, however, exactly when in the sequence of events Fox received this conflicting information.

³ Trooper Fox had previously noted the physical disability associated with defendant's left arm. When he told defendant that he would be undergoing field tests for drugs, defendant complained that he couldn't do so because of his disability (Id. at 28, 38). Fox took defendant's physical limitations into consideration by focusing his assessment on the unaffected side of defendant's body (Id. at 34-37).

⁴ At the time of this incident, Trooper Fox had completed the coursework to become a drug recognition evaluator, although he had not yet been certified (Id. at 21).

A few minutes later, Trooper Fox returned to the cab of the tractor trailer. Entering the cab, he opened the curtains dividing the driving area from the sleeping area of the vehicle. Fox testified that he "saw some large things underneath some blankets and to make sure they weren't people, I uncovered them" (Id. at 40). By so doing, he exposed "a large bundle . . . about maybe two feet long and maybe a foot and a half in diameter . . . the shape of a miniature hay bale. It was wrapped in a plastic contact paper, something similar to what you would line cupboards with or drawers with in your home" (Id. at 41). Based on his training, Fox assumed that the packaging contained marijuana (Id.). He tore back a corner of the bundle, exposing a green leafy substance inside (Id. at 42).

Ultimately, thirty-three bales of marijuana, weighing just over 350 pounds, were removed from the sleeper area of defendant's tractor trailer (Id. at 49, 70).

SUMMARY OF ARGUMENT

Defendant first argues that the Trooper Fox was not justified in initially stopping his vehicle. Fox, however, had observed an equipment malfunction on defendant's tractor trailer prior to effectuating the stop. That personal observation justified the stop.

Second, defendant argues that Fox impermissibly expanded the scope of the stop by extending it beyond the time necessary to

cite defendant for the equipment violation. However, when Fox first approached defendant and engaged him in conversation, Fox observed that defendant was unable to answer even simple questions coherently, was so nervous that his foot noticeably clattered against the brake pedal, and exhibited a significant physical disability of one arm. The trooper detained defendant just long enough to determine, through a series of field tests, whether defendant was driving under the influence of a central nervous system stimulant. Fox's reasonable suspicion that defendant was impaired justified the limited expansion of the scope of the stop.

Finally, defendant argues that, after he had been arrested, Fox impermissibly searched the passenger compartment of the tractor trailer. This search, however, is most easily justified as a search incident to arrest because the arrest was lawful, the passenger compartment was within defendant's area of immediate control, and because the search was contemporaneous with the arrest.

ARGUMENT

POINT ONE

THE INITIAL STOP OF DEFENDANT'S
TRACTOR TRAILER WAS JUSTIFIED WHERE
A SAFETY INSPECTION OFFICER,
FOLLOWING DEFENDANT DOWN A HILL,
OBSERVED A MALFUNCTIONING BRAKE
LIGHT PRIOR TO EFFECTUATING THE
STOP

Defendant articulates the issue before the Court as follows:

"Having determined to stop the vehicle on fallacious grounds, is an after observed mechanical defect justification for an officer to stop a vehicle?" (Br. of App. at 7). The simple answer to this question is "yes." That is, even if an officer intends to stop a vehicle for a reason unsupported by the law⁵ and then, prior to effectuating the stop, observes a violation that would legally justify the stop, he is not precluded by his original misjudgment from making the stop. See State v. Lopez, 873 P.2d 1127, 1140 (Utah 1994) (rejecting pretext doctrine and observing that "'it is irrelevant what else the officer knew or suspected about the traffic violator at the time of the stop.'" (citation omitted)).

A traffic stop is justified at its inception if the stop is "incident to a traffic violation committed in the officer's

⁵ The State does not concede that a log book violation cannot justify a stop, but simply argues that the Court need not reach the question where the officer personally observed a safety equipment malfunction.

presence." Id. at 1131 (quoting State v. Talbot, 792 P.2d 489, 491 (Utah App. 1990)). Indeed, whenever a police officer personally observes a traffic offense, no matter how minor, the officer is justified in stopping the driver of the vehicle. State v. Spurgeon, 904 P.2d 220, 224-25 (Utah App. 1995); Lopez, 873 P.2d at 1132.

In this case, regardless of whether Trooper Fox's desire to check defendant's log book justified the stop, his observation of a brake light malfunction would nonetheless independently suffice to justify it. See Utah Code Ann. § 41-6-120(a) (articulating requirement for brake lights); State v. Marshall, 791 P.2d 880, 883 (Utah 1990) (vehicle stop justified where officer believed vehicle safety equipment not functioning properly). Fox testified that, as he was following defendant's tractor trailer down a hill, defendant applied the brakes, and the trooper noticed that "there were no lights on the left side" (R. 130 at 21).⁶ This observation alone would justify the stop, regardless of any other bases that may have been available. Cf. Spurgeon, 904 P.2d at 225 (two separate traffic violations each provided

⁶ Defendant argues that the brake light malfunction cannot serve as a justification for stopping him because the officer initially reversed directions and followed him with an improper intent. Peace officers, however, can freely move about on the roads without any justification, so long as their stops are based either on observed traffic violations or on reasonable articulable suspicion. State v. Spurgeon, 904 P.2d 220, 224 n.3 (Utah App. 1995) (citing Lopez, 873 P.2d at 1132 (Utah 1994)).

independent justification for stop). Consequently, defendant's argument that the initial stop of his vehicle was unjustified must fail.

POINT TWO

THE SCOPE OF THE STOP WAS JUSTIFIED
WHERE THE OFFICER OBSERVED THAT THE
DRIVER OF THE TRACTOR TRAILER WAS
EXTREMELY NERVOUS, EXHIBITED A
SIGNIFICANT PHYSICAL DISABILITY,
AND WAS UNABLE TO COHERENTLY ANSWER
EVEN SIMPLE QUESTIONS

Defendant argues that after the officer showed him the defective brake light, the stop should have been terminated. That is, the officer would have been justified in citing him for the defective brake light, but had no reason to extend the scope of the stop beyond the time necessary to issue such a citation (Br. of App. at 8, 12).

When an officer stops a vehicle, the resulting detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." Florida v. Royer, 460 U.S. 491, 500 (1983). Any investigative questioning that detains the driver beyond the original purposes of the stop "must be supported by reasonable suspicion of more serious criminal activity" and "must be based on specific, articulable facts drawn from the totality of the circumstances facing the officer at the time of the stop." Lopez, 873 P.2d at 1132 (citations omitted). Furthermore, even if the officer has such reasonable suspicion,

the officer must "diligently [pursue] a means of investigation that [is] likely to confirm or dispel [the officer's] suspicions quickly, during which time it [is] necessary to detain the defendant." State v. Grovier, 808 P.2d 133, 136 (Utah App. 1991) (citation omitted).

In this case, by the time Trooper Fox had shown defendant the defective brake light, he had also noticed defendant's "strange, spacey" behavior, his limp left arm, his bouncing foot, and his inability to respond to simple, direct questions (R. 131 at 13-15, 45). Based on these specific facts, Fox reasonably suspected either that defendant was operating his tractor trailer under the influence of drugs or that he was impaired by a medical condition. Consequently, before permitting defendant to get back on the highway behind the wheel of a tractor trailer, the officer was justified in further investigating defendant's condition. See generally Exxon Corp. v. Esso Workers' Union, Inc., 118 F.3d 841, 848 (1st Cir. 1997) (discussing policy that "persons who are under the influence of narcotics or other intoxicants should not be permitted to operate commercial vehicles on public highways").

To confirm or dispel his suspicions of possible drug use, Trooper Fox extended the detention long enough to administer a drug recognition evaluation (R. 131 at 17). Indeed, a series of field tests, under the facts here, presented the quickest way to determine if the officer's suspicions were well-founded. Based

on the results of the tests, and after ascertaining that defendant was not in need of medical care or taking any prescribed drugs, Trooper Fox concluded that defendant was functioning under the influence of a central nervous system stimulant (Id. at 80, 83-84).

The totality of the circumstances thus demonstrates that Trooper Fox extended the detention beyond the scope of the original stop in order to determine in the most expeditious way possible whether or not defendant was operating a vehicle under the influence of drugs. Defendant's argument that the scope of the detention was unjustified, therefore, must fail.

POINT THREE

TROOPER FOX'S SEARCH OF THE SLEEPER COMPARTMENT WAS JUSTIFIED AS A SEARCH INCIDENT TO ARREST

Defendant contends that even if Trooper Fox reasonably believed that defendant was under the influence of a CNS stimulant, that belief alone, absent exigent circumstances, cannot justify the officer's search for drugs in the tractor trailer's sleeper compartment (Br. of App. at 14-15). Further, he argues, the search cannot be sustained as an impound inventory search. Consequently, he argues, the evidence found in the sleeper should be suppressed.

The law is well-settled that a reviewing court "can affirm the trial court on any proper legal ground," even if that ground

was not argued before the lower court. State v. Hansen, 837 P.2d 987, 988 (Utah App. 1992) (citation omitted). In this case, the officer's search of the sleeper compartment may be justified as a search incident to arrest.⁷

An arresting officer may conduct a warrantless search incident to arrest of both an arrestee and the area within the arrestee's immediate control if: 1) the arrest is lawful; 2) the search is confined to the area over which the arrestee has immediate control; and 3) the search is conducted contemporaneously with the arrest. New York v. Belton, 453 U.S. 454, 460 (1981); Chimel v. California, 395 U.S. 752, 763-64 (1969). The purpose of such a search is limited to preventing the arrestee from gaining control over a weapon or from destroying evidence of a crime. Chimel, 395 U.S. at 763; accord

⁷ In its written findings of fact and conclusions of law supporting its denial of defendant's suppression motion, the trial court concluded that "it was reasonable for Trooper Fox to return to the tractor to perform an inventory search of the tractor" (R. 104 or addendum A). The record reflects that: impounding the vehicle was proper because the passenger was not certified to drive a tractor trailer; the Highway Patrol has written policies and procedures for conducting impound inventories; and Trooper Fox was engaged in an inventory when he looked in the cab (R. 40, 43, 90). This limited record evidence provides thin support for the trial court's determination. See State v. Strickling, 844 P.2d 979, 988-90 (Utah App. 1992) (discussing need for evidence to support finding that officer acted in compliance with established departmental policies for conducting impound inventory searches and affirming in case where such evidence was "admittedly thin"). Consequently, the State offers a stronger alternative ground upon which to affirm, should the Court find the record too bare to support an impound inventory search.

State v. Harris, 671 P.2d 175, 180 (Utah 1983).

In this case, all three elements of a search incident to arrest have been fulfilled. First, as has been explained in Points I and II, the arrest was lawful. The brake light malfunction justified the initial stop of defendant's tractor-trailer. Once defendant had been stopped and the officer observed his peculiar behavior, the officer expanded the scope of the stop just enough to determine, through easily-administered field tests, that defendant was under the influence of a central nervous system stimulant or had an unknown medical condition. After defendant himself eliminated a medical explanation for his behavior, the officer lawfully arrested him for driving under the influence of a CNS stimulant.

Second, the search was limited to an area over which defendant had immediate control, as both federal and state appellate courts have interpreted that phrase. The United States Supreme Court has construed "immediate control" to mean "the area from within which [a suspect] might gain possession of a weapon or destructible evidence." Chimel, 395 U.S. at 763. Establishing a bright line test, the Court subsequently ruled that when a vehicle stop is involved, the area of immediate control includes the passenger compartment. New York v. Belton, 453 U.S. at 460. Further, the area of immediate control "can extend to a closed container left in the passenger area of a car,

even after the arrestee has been moved away from the car.” State v. Harrison, 805 P.2d 769, 784 (Utah App. 1991) (citing Belton, 453 U.S. at 461), cert. denied, 817 P.2d 327 (Utah 1991). In essence, every person arrested is viewed “as a combination acrobat and Houdini who might well free himself from his restraints and suddenly gain access to some distant place.” 2 Wayne R. LaFave, Search and Seizure, § 6.3(c), at 628 (1987).

In this case, the passenger compartment of the tractor trailer contained two areas, one for driving and one for sleeping, separated only by a curtain (R. 40). Because both areas were contiguous to each other and equally accessible, defendant or his passenger could as easily have destroyed evidence or secured a weapon from one area as the other. Consequently, in order to effectuate the purpose of a search incident to arrest, the officer’s right to search the passenger compartment must encompass the right to search both the driving area and the sleeping area.⁸ See State v. Johnson, 892 P.2d 106, 108-09 (Wash. App. 1995) (passenger compartment of tractor trailer includes sleeping area of cab reachable without exiting

⁸ When the officer “saw some large things underneath some blankets,” he uncovered them in order to make sure the “things” were not people (R. 131:40). Plainly, he did so for his own safety. When he found bales wrapped in contact paper, he knew from his training and experience that they likely contained marijuana (Id. at 41-42, 92-93). These actions plainly fell within the ambit of a search incident to arrest. See, e.g., Belton, 453 U.S. at 461.

the cab); 3 Wayne R. LaFave, Search and Seizure § 7.1(c), at 450-51 (3rd ed. 1996) (passenger compartment should be construed as including all space that can be reached without exiting the vehicle).

Finally, the evidence is undisputed that the search of the vehicle occurred minutes after defendant had been arrested and, indeed, before the passenger was arrested (R. 39, 42).⁹

The facts in this case thus demonstrably fulfill all the requirements of a search incident to arrest. Consequently, this Court can sustain the search on that basis.

CONCLUSION

For the reasons stated, this Court should affirm the trial court's denial of defendant's motion to suppress.

RESPECTFULLY submitted this 16th day of August, 1999.

JAN GRAHAM

Attorney General



JOANNE C. SLOTNIK

Assistant Attorney General

⁹ The passenger, then, was not constrained from accessing the passenger compartment and whatever it might contain.

CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing brief of appellee were mailed first-class, postage prepaid, to Jim R. Scarth, Scarth & Dent, 150 North 200 East, Suite 203, St. George, Utah 84770, this 16th day of August, 1999.

James C. Elstrik
v

ADDENDUM

ADDENDUM A

COLIN R. WINCHESTER [4696]
KANE COUNTY ATTORNEY
ERIC D. PETERSEN [7424]
DEPUTY KANE COUNTY ATTORNEY
76 North Main Street
Kanab, Utah 84741
Telephone: (435) 644-5278
Facsimile: (435) 644-2281

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR KANE COUNTY
STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

v.

WILLIAM JOSEPH CHEVRE,

Defendant.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Case No. 951600068

JUDGE K. L. McIFF

This matter came before the Court on October 27, 1995, pursuant to Defendant's Motion To Suppress. The State of Utah was represented by Colin R. Winchester, Kane County Attorney. The Defendant was present and was represented by counsel, Jim R. Scarth. The parties presented evidence and argued their respective positions. Counsel then requested that they be allowed to submit written memoranda in support of their respective positions. On November 22, 1996, the matter came before the Court for additional argument and the issuance of the

Court's decision. The Court, having heard the testimony, having reviewed the parties' memoranda, and having heard the arguments of counsel, now therefore enters the following:

FINDINGS OF FACT

1. On July 18, 1995, Utah Highway Patrolman Stanley B. Fox pulled over a westbound tractor trailer on U.S. Highway 89 in Kanab, Utah.

2. The tractor was being driven by the Defendant, and the only other occupant was an adult male in the passenger seat.

3. Trooper Fox was accompanied by State Safety Inspector David Shiers.

4. Trooper Fox decided to pull over the tractor trailer to check the driver's log book.

5. As Trooper Fox was preparing to find a place to pull over the tractor trailer, he noticed an inoperable brake light on the trailer.

6. Trooper Fox made the stop primarily to check the driver's log book and conduct a mechanical inspection.

7. Once Trooper Fox made the stop, he talked to the Defendant, and noticed that the Defendant was "pretty" nervous, that his left arm seemed "kinda" unresponsive, and that the Defendant seemed to have a physical defect of some type. Trooper

Fox noticed that the Defendant's foot "was virtually bouncin' off the floor."

8. Trooper Fox began to ask the Defendant questions relating to his log book and permits.

9. Trooper Fox observed the Defendant's extreme nervous condition, his inability to carry on a decent conversation, his cotton mouth or dry mouth, and his continual licking of his lips.

10. Trooper Fox asked the Defendant to get out of the tractor to show him the inoperable brake light, and a leaking oil seal, and to review the log book and have more discussion.

11. Once Trooper Fox had the Defendant in his patrol vehicle, he asked the Defendant to perform some drug recognition tests for the following reasons: inability to carry on a conversation, cotton mouth, dry lips, very nervous condition, and somewhat inconsistent answers regarding his whereabouts.

12. The Defendant complied, and performed some of the drug recognition tests.

13. At the time, although Trooper Fox had completed a drug recognition course, he did not hold a drug recognition evaluator's certificate because copies of the evaluations he had performed as part of his training had not been sent in to the instructors, and because he had not yet sent in a resúme.

14. Based on his training and the drug recognition evaluation, Trooper Fox determined that the Defendant was under the influence of a central nervous system stimulant.

15. Trooper Fox then placed the Defendant under arrest for driving under the influence of drugs.

16. After placing the Defendant under arrest, Trooper Fox opened and looked into the trailer.

17. The passenger did not have a commercial driver's license.

18. Trooper Fox then returned to the tractor to search for a central nervous stimulant and to conduct an inventory search, because the truck was going to be impounded.

19. Upon returning to the tractor, Trooper Fox opened the curtain to the sleeper area, saw something large under some blankets, and removed the blankets, all to ensure that no one was in the sleeper area.

20. Instead of finding a person, Trooper Fox found several large bundles wrapped in contact paper.

21. Trooper Fox tore open the corner of one bundle, having assumed the contents to be marijuana, based on training he had received.

22. Ultimately, the bundles were weighed, and found to contain 159.04 kilograms (350.6 pounds) of marijuana.

CONCLUSIONS OF LAW

1. The initial stop of the tractor trailer was legitimate because of the defective brake light on the trailer. Trooper Fox's decision to stop the tractor trailer to examine the driver's log book, which was made prior to the discovery of the defective brake light, does not adversely affect the legitimacy of the stop.

2. Based on Defendant's noted physical characteristics while Trooper Fox was at the tractor door, i.e., Defendant's nervous condition, his "kinda" unresponsive arm, his bouncing foot, his inability to carry on a conversation, his cotton mouth or dry mouth, the continual licking of his lips, and his inconsistent answers about his whereabouts, Trooper Fox was justified in asking Defendant out of the tractor, and was justified in having Defendant perform the drug recognition tests.

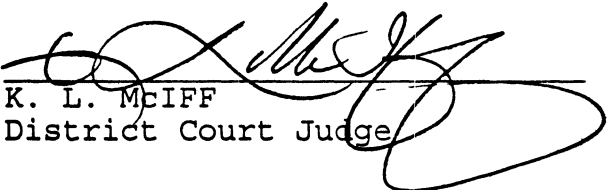
3. After Defendant was arrested for driving under the influence of a central nervous stimulant, it was reasonable for Trooper Fox to return to the tractor to perform an inventory search of the tractor.

4. It was reasonable for Trooper Fox to open the curtain to the tractor's sleeper area, and to remove the blankets to ensure that no one was under them.

5. Based on Trooper Fox's training, it was reasonable for him to tear the corner of one of the bundles to examine the contents.

12th Dec
DATED this ~~14th~~ day of ~~November~~, 1997.

BY THE COURT:


K. L. McIFF
District Court Judge

CERTIFICATE OF SERVICE

I certify that on the 30th day of May, 1997, I served a true and correct unsigned copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to each person or entity listed below:

Jim R. Scarth
P. O. Box 160
St. George, UT 84771

(via hand delivery)

Marcel P. Budd

CERTIFICATE OF SERVICE

I certify that on the 12th day of ~~November~~ ^{December}, 1997, I served a true and correct signed copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to each person or entity listed below:

Jim R. Scarth
P. O. Box 160
St. George, UT 84771

(via first class mail)

Marcel P. Budd