

2010

State of Utah v. Luis Parra Gomez : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Mark Shurtleff; Utah Attorney General; Counsel for Appellee.

Margaret P. Lindsay; Matthew Morrise; Utah County Public Defender Assoc.; Counsel for Appellant.

Recommended Citation

Brief of Appellant, *Utah v. Gomez*, No. 20100486 (Utah Court of Appeals, 2010).
https://digitalcommons.law.byu.edu/byu_ca3/2379

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

Plaintiff/Appellee

vs.

LUIS PARRA GOMEZ

Defendant/Appellant

Case No. 20100486-CA

BRIEF OF APPELLANT

APPEAL FROM THE FOURTH DISTRICT COURT, UTAH COUNTY, STATE OF UTAH, FROM A CONVICTION OF POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE IN A DRUG FREE ZONE, A FIRST DEGREE FELONY; POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE IN A DRUG-FREE ZONE, A THIRD DEGREE FELONY; AND POSSESSION OF DRUG PARAPHERNALIA IN A DRUG-FREE ZONE, A CLASS A MISDEMEANOR, BEFORE THE HONORABLE LYNN W. DAVIS

MARK SHURTLEFF

Utah Attorney General

APPEALS DIVISION

160 East 300 South, Sixth Floor

P.O. Box 140854

Salt Lake City, Utah 84114

Counsel for Appellee

MARGARET P. LINDSAY (6766)

MATTHEW MORRISE (13082)

Utah County Public Defender Assoc.

P.O. Box 1058

Spanish Fork, Utah 84660

Telephone: (801) 318-3194

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
JURISDICTION OF THE UTAH COURT OF APPEALS	1
ISSUE PRESENTED AND STANDARD OF REVIEW	1
CONTROLLING STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	1
A. Nature of the Case	1
B. Trial Court Proceedings and Disposition	1
STATEMENT OF RELEVANT FACTS	4
SUMMARY OF ARGUMENT	7
ARGUMENT	
I. Officer Speeth Illegally Detained Gomez After Gomez Refused to Give Consent to Search	9
II. Officer Speeth Exploited the Illegal Detention to Obtain Consent	15
CONCLUSION AND PRECISE RELIEF SOUGHT	18
ADDENDA	
Ruling on Motion to Suppress	

TABLE OF AUTHORITIES

Statutory Provisions

Utah Code Ann. § 58-37-8(1)(a)(iii).....	2
Utah Code Ann. § 58-37a-5(1).....	2
Utah Code Ann. § 78A-4-103(2)(j).....	1

Cases Cited

<i>Illinois v. Caballes</i> , 543 U.S. 405 (2005).....	9
<i>Salt Lake City v. Ray</i> , 2000 UT App 55, 998 P.2d 274.....	1
<i>State v. Hansen</i> , 2002 UT 125, 63 P.3d 650.....	8, 9, 15-17
<i>State v. Martinez</i> , 2008 UT App 90, 182 P.3d 385.....	15
<i>State v. Shepard</i> , 955 P.2d 352, 355 (Utah App. 1998).....	9-10
<i>State v. Wilkinson</i> , 2008 UT App 395, 197 P.3d 96.....	9
<i>United States v. Sharpe</i> , 470 U.S. 675 (1985).....	9, 10
<i>United States v. Manuel</i> , 992 F.2d 272, 274 (10 th Cir. 1993).....	15

3

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

Plaintiff/Appellee

vs.

Case No. 20100486-CA

LUIS PARRA GOMEZ

Defendant/Appellant

BRIEF OF APPELLANT

JURISDICTION OF THE UTAH COURT OF APPEALS

This Court has appellate jurisdiction in this matter pursuant to the provisions of Utah Code Ann. § 78A-4-103(2)(e).

ISSUE PRESENTED AND STANDARD OF REVIEW

Whether Officer Speeth illegally seized Gomez on reasonable suspicion after Gomez refused to give consent to search his hotel room. The determination of whether an encounter with law enforcement officers constitutes a seizure under the Fourth Amendment is a legal conclusion that is reviewed for correctness. *Salt Lake City v. Ray*, 2000 UT App 55, ¶ 8, 998 P.2d 274.

CONTROLLING STATUTORY PROVISIONS

All controlling statutory provisions are attached hereto in the Addenda.

STATEMENT OF THE CASE

A. Nature of the Case

Luis Parra Gomez appeals from the judgment of the Honorable Lynn W. Davis, Fourth District Court, after the denial of his motion to suppress and his conditional plea to possession of a controlled substance with intent to distribute in a drug-free zone, a first degree felony; possession of a controlled substance with intent to distribute in a drug-free zone, a third degree felony; and possession of drug paraphernalia in a drug-free zone, a class A misdemeanor.

B. Trial Court Proceedings and Disposition

Luis Parra Gomez was charged by criminal information filed on August 8, 2008 in Fourth District Court with: Count 1 – possession of a controlled substance with intent to distribute in a drug-free zone, a first degree felony, in violation of Utah Code Ann. § 58-37-8(1)(a)(iii); Count 2 – possession of a controlled substance with intent to distribute in a drug-free zone, a third degree felony, in violation of Utah Code Ann. § 58-37-8(1)(a)(iii); and Count 3 – possession of drug paraphernalia in a drug-free zone, a class A misdemeanor, in violation of Utah Code Ann. § 58-37a-5(1). (R. 2-1.) At a preliminary hearing on February 18, 2009, the District Court found probable cause to bind all three charges over for trial. (R. 34-33.)

On May 26, 2009, Gomez filed a motion to suppress, and on September 23, 2009 Gomez filed an amended the motion to suppress. (R. 58, 99.) Gomez alleged that police officers illegally seized him, and exploited the illegal seizure to obtain Gomez's consent to search his hotel room, where they ultimately found the evidence giving rise to the

charges. (R. 98-77.) Gomez also alleged that his consent was involuntary. (R. 83-81.) The State responded on September 23, 2009. (R. 109-100.) The District Court heard oral argument on December 16, 2009. (R. 115.)

The District Court denied the motion to suppress in a written ruling on January 12, 2010. (R. 128-116.) The Court ruled that the seizure of Gomez was not illegal, and that Gomez's consent to search was voluntary. (R. 128-116.)

On March 10, 2010, Gomez entered conditional pleas of guilty to Count 1 – possession of a controlled substance with intent to distribute in a drug-free zone, a first degree felony; Count 2 – possession of a controlled substance with intent to distribute in a drug-free zone, a third degree felony; and Count 3 – possession of drug paraphernalia in a drug-free zone, a class A misdemeanor. (R. 143-134.)

On May 12, 2010, Gomez was given suspended sentences of five years to life in prison for possession of a controlled substance with intent to distribute in a drug-free zone, a first degree felony, up to five years in prison for possession of a controlled substance with intent to distribute in a drug-free zone, a third degree felony, and 365 days in the Utah County Jail for possession of drug paraphernalia in a drug-free zone. (R. 149.) Gomez was ordered to serve 365 days in jail, was placed on probation for 36 months, and was ordered to pay a fine of \$1,024.00 plus interest. (R. 148.)

On June 11, 2010, Gomez filed a Notice of Appeal with the Fourth District Court. (R. 150.)

STATEMENT OF RELEVANT FACTS

1. At approximately midnight on August 4, 2008, Officer Scott Speeth pulled over a vehicle for a taillight violation at 400 West and University Parkway in Orem. The vehicle had three occupants. (R. 157:6, 10, 26.)
2. While speaking with the driver of the vehicle, Officer Speeth noted that Gomez, one of the passengers, was not wearing a seat belt. (R. 157:6-7.)
3. Officer Speeth conducted record checks on the driver of the vehicle and on Gomez. Officer Speeth discovered that the driver had a suspended license, as well as a criminal history involving narcotics trafficking. (R. 157:7.)
4. Officer Speeth discovered that the vehicle was a rental, and asked the driver where he was going. The driver replied that he was going to Provo. Officer Speeth thought it unusual that the driver would be going to Provo, because the driver was headed eastbound on University Parkway, away from the freeway. (R. 157:7.)
5. Based on the facts he had gathered up to that point, Officer Speeth decided to call for a K-9 unit while he was preparing to cite the driver for driving on a suspended license. Thus far, the vehicle and its passengers had been detained for three to four minutes. (R. 157:7-8, 29.)
6. The K-9 unit arrived within five minutes of Officer Speeth's request. K-9 Officer Trent Colledge and Officer Thomas responded in one vehicle, and K-9 Officer Corporal Lopez responded in another vehicle. (R. 157:8, 33.)
7. At least some of the responding police vehicles' emergency lights flashed for the entirety of the stop. (R. 157:27.)

8. Officer Colledge walked a drug-sniffing dog around the outside of the vehicle. The dog indicated the possible presence of drugs in the vehicle. Officer Colledge informed Officer Speeth of the dog's alert. The dog sniff procedure took approximately five minutes. (R. 157:9, 33.)
9. After the dog alert, Officer Speeth ordered all three occupants to exit the vehicle. Officer Speeth then questioned each occupant individually. (R. 157:10.)
10. Officer Speeth questioned Gomez about where the three occupants were going, and whether they intended to visit any of the hotels in the area. Gomez replied that they were going to Provo, and that they did not intend to visit any hotels in the area. (R. 157:10-11.)
11. Officer Speeth questioned the other two occupants, and they both denied intending to visit any hotels in the area. (R. 157:11, 41.)
12. Officer Speeth, Corporal Lopez, and Officer Colledge then searched the vehicle. Officer Speeth discovered a parking pass on the dashboard belonging to the Comfort Inn, a hotel that was 100 feet from the place where Officer Speeth had stopped the vehicle in which Gomez was a passenger. The parking pass was dated August 3rd through August 4th, and indicated that it was associated with room 109. (R. 157:11-12, 36, 39.)
13. No drugs or other illegal objects were found in the vehicle. (R. 157:35.)
14. None of the vehicle's occupants exhibited signs of drug use. (R. 157:43, 45.)
15. Officer Speeth then called the front desk of the Comfort Inn and asked who was registered for room 109. The attendant replied that the room was registered to Luis P. Gomez. (R. 157:13.) The attendant did not give any information about the room being

registered to either of the other occupants. (R. 157:46.)

16. At this point, the stop had lasted approximately thirty to forty minutes. (R. 157:42.)

17. Officer Speeth then questioned the three vehicle occupants again. He specifically asked Gomez why he had lied about visiting nearby hotels. Gomez replied that the driver of the vehicle was giving Gomez a ride to Gomez's mother's house in Provo. (R. 157:13-14.)

18. Officer Speeth made it clear that all three occupants were being detained. However, Officer Speeth's tone was conversational and he attempted not to be overly accusatory. (R. 157:14.)

19. Officer Speeth searched all three occupants, and did not find any drugs or other illegal items. However, Officer Speeth found \$4,000 cash in the driver's shoes. (R. 157:15, 36.)

20. At this point, based on his specialized training, Officer Speeth believed that the occupants of the vehicle were engaged in drug trafficking, and believed that the hotel room contained drugs. (R. 157:44, 54.)

21. Officer Speeth asked Gomez for consent to search the hotel room. Gomez specifically told Officer Speeth that he did not want to be put in that kind of a position. (R. 157:16.)

22. Officer Speeth did not, at any point, advise Gomez that he had the right to refuse consent or the right to refuse to answer questions. (R. 157:41.)

23. Officer Speeth suspected that Gomez was trying to protect the other passengers,

and that the other passengers might have something incriminating inside the hotel room. Based on that belief, Officer Speeth asked Gomez again for consent to search the hotel room. Gomez's response to this second request was unclear. At the preliminary hearing, Officer Speeth testified: "The gist of my conversation with him was essentially, 'If [the other two passengers] will agree to allow officers into the room, then I'm okay with it.'" (R. 157:16, 46.)

24. Officer Speeth then spoke with the other two occupants, who denied ever having been in the hotel room and denied any claim to anything in the room. (R. 157:16-17.)

25. Officer Speeth then confronted Gomez with this information from the other passengers, and Gomez shrugged his shoulders and agreed to let officers into the hotel room. (R. 157:16-17.)

26. Officer Speeth and another officer, Corporal Lopez, accompanied Gomez to the hotel room. Gomez produced the key and opened the door. (R. 157:17.)

27. Inside the hotel room, the officers discovered digital scales, a measuring spoon, and a large quantity of cocaine and marijuana. (R. 157:18-23.)

SUMMARY OF THE ARGUMENT

This Court should reverse the District Court's ruling that denied Gomez's motion to suppress because Officer Speeth illegally detained Gomez after Gomez refused to give consent to search his hotel room, and Officer Speeth exploited the illegal detention to ultimately obtain Gomez's consent.

Officer Speeth illegally detained Gomez after Gomez refused to consent to a search of his hotel room. An officer may not continue a detention on reasonable suspicion if he is unable to quickly confirm or dispel a reasonable suspicion of criminal activity. *U.S. v. Sharpe*, 470 U.S. 675, 686 (1985). In this case, Officer Speeth conducted a thorough investigation of suspected drug trafficking activity, which culminated in his request for Gomez's consent to search the hotel room. After Gomez refused consent, the investigation was complete and Gomez could not be detained further on reasonable suspicion. Thus, Officer Speeth's further detention of Gomez after Gomez refused consent was illegal.

Officer Speeth exploited the illegal detention to obtain Gomez's consent to search the hotel room. The factors relevant to exploitation analysis are 1) the purpose and flagrancy of the illegal conduct; 2) the presence of intervening circumstances; and 3) the temporal proximity between the illegality and the consent. *State v. Hansen*, 2002 UT 125, 63 P.3d 650. In this case, these factors weigh in favor of suppression because 1) the purpose of the illegal detention was to obtain Gomez's consent; 2) there were no intervening circumstances which attenuated Gomez's consent from the illegal detention; and 3) the lapse of time between the illegal detention and Gomez's consent was short. Thus, this Court should reverse the District Court's denial of Gomez's motion to suppress.

ARGUMENT

I. OFFICER SPEETH ILLEGALLY DETAINED GOMEZ AFTER GOMEZ REFUSED TO GIVE CONSENT TO SEARCH THE HOTEL ROOM

Officer Speeth illegally detained Gomez after Gomez refused to give consent to search the hotel room. An officer may not continue a detention on reasonable suspicion if he is unable to quickly confirm or dispel a reasonable suspicion of criminal activity. *U.S. v. Sharpe*, 470 U.S. 675, 686 (1985).

Gomez concedes that Officer Speeth lawfully stopped the vehicle in which Gomez was a passenger, because Officer Speeth observed a traffic violation committed in his presence, specifically a taillight violation. *See State v. Hansen*, 2002 UT 125, ¶30, 63 P.3d 650, 660. Gomez also concedes that the dog sniff of the vehicle was lawful because it did not unreasonably extend the duration of the stop. *See State v. Wilkinson*, 2008 UT App 395, ¶¶ 7-9, 197 P.3d 96. Gomez further concedes that the dog alert on the vehicle provided probable cause to search the vehicle and reasonably extend the stop. *See Illinois v. Caballes*, 543 U.S. 405, 409 (2005).

However, the probable cause provided by the dog sniff dissipated when the search did not reveal any drugs or other contraband. Thus, Officer Speeth's continued investigation of drug trafficking after the vehicle search was concluded was based, at most, on reasonable suspicion.

An officer may extend a traffic stop when he has a reasonable suspicion of a further illegality. *Hansen*, 2002 UT 125, ¶31. However, even if the officer's reasonable suspicion supports further detention, the scope of the stop is still limited. *State v.*

Shepard, 955 P.2d 352, 355 (Utah App. 1998). The police must diligently pursue a means of investigation that is likely to confirm or dispel their suspicions quickly. *U.S. v. Sharpe*, 470 U.S. 675, 686 (1985).

In this case, after concluding the vehicle search, Officer Speeth diligently pursued a means of investigation that was likely to quickly confirm or dispel his suspicion that Gomez was involved in drug trafficking. Using the information on the parking pass which had been seized during the vehicle search, Officer Speeth called the front desk of the Comfort Inn and learned that Gomez was registered for a hotel room there. (R. 157:13.) He observed that none of the passengers exhibited signs of drug use. (R. 157:43, 45.) He questioned each of the passengers and challenged their prior statements. (R. 157:13-14.) He searched each of the passengers, and did not find any drugs, although he did find \$4,000 cash in the driver's shoe. (R. 157:15, 36.)

At this point, Gomez had been detained at least thirty to forty minutes. (R. 157:42.) The vehicle had been searched, the passengers had been searched, and no drugs or other illegal items had been found. (R. 157:45.) Officer Speeth suspected that there were drugs in the hotel room, but he did not have probable cause to search the hotel room. (R. 157:44.)

Thus, the only remaining investigative option available to Officer Speeth was to request consent to search the hotel room. He did so, and Gomez refused consent. The relevant portions of Officer Speeth's testimony at the suppression hearing regarding his request for consent were as follows:

Q. Okay, what if anything else did you do with respect to that hotel room and Mr. Gomez?

A. At that point nothing. It was basically I took all three individuals and discussed separately –

Q. Uh-huh.

A. – what involvement or what kind of items they had in the hotel room and what their – what their claim to the hotel room would have been.

Q. Okay, let's talk about specifically Mr. Gomez.

A. Specifically Mr. Gomez, as his name was the name that the hotel had on the registration –

Q. Uh-huh.

A. – for the room, I specifically asked him for consent to search the room. I asked him about what would be in the room.

Q. And what did he say?

A. Well, upon asking him that, he – he felt – from his statements and from his – his body language, I could tell that made him really uncomfortable. I mean, he told me specifically that he didn't want to be put in that kind of a position. At that point, with his statements about not wanting to be put in that kind of position, it led me to believe that possibly some of the other occupants had something incriminating inside the hotel room.

Q. Uh-huh.

A. At that point I asked Mr. Gomez again if we could have – you know, if he would consent to us going in there. The gist of my conversation with him was essentially, “If they will agree to allow officers into the room, then I’m okay with it.”

Q. That’s the impression you got from Mr. Gomez?

A. Correct.

Q. Okay. How did that all turn out?

A. I spoke with the other two occupants, who each denied ever being in the room and denied having any claim to anything in the room.

Q. Okay.

A. So at that point I came back to Mr. Gomez and said essentially that they had relinquished any claim –

Q. Uh-huh.

A. – and not made any statements about having anything of interest inside the room.

Q. At that point Mr. Gomez pretty much shrugged his shoulders and agreed to let us in.

....

Q. Okay, and then you asked Mr. Gomez if you could search the room, correct?

A. Correct.

Q. You said he wasn’t – he didn’t want to be put in that position?

A. Correct.

Q. Then you said if the other two were okay with it, would he be okay with it?

A. Uh-huh.

Q. Basically, just paraphrasing?

A. Sure.

Q. So did you speak to Reyes and Robles [the driver and the other passenger] about searching the room?

A. I did.

Q. Okay, but their names weren't on the – the Comfort Inn didn't give you any information about other people renting the room, did they?

A. That's correct.

Q. So basically when he said he didn't want to be in that position, that was a – he had told you no, he didn't want you to search the room?

A. I didn't interpret that as a "No." I interpreted that as him not wanting to incriminate his friends. I believe that he was acting out of trying to protect somebody else.

Q. Okay, and why did you come to that conclusion?

A. My – the conclusion that I came to through my investigation is that Reyes was probably the individual that was more involved. Again, these are – these are conclusions that I came to based mainly on criminal histories. Mr. Gomez I believe was actually the younger than Mr. Reyes. Mr. Gomez had nothing substantially criminal that I found as far as his history went.

Q. Okay.

A. Again, a lot of my issues I think Reyes had a lot to do with it. So –

Q. Okay, so let me ask you this. So you knew that Mr. Reyes and Mr. Robles' names weren't registered for that room?

A. That's correct.

Q. Why did you want them to give consent to search the room?

A. To satisfy Mr. Gomez's request.

Q. That was your request, though, right? Wasn't that your request? You said if they would be okay with the room being searched, would he be okay?

A. Correct. I made that offer to him, because I felt that his issues with giving us consent were because he didn't want to incriminate his friends.

(R. 157:15-17, 46-47.)

Officer Speeth's testimony indicates that Gomez initially refused consent.¹ Gomez was then detained further while Officer Speeth questioned the driver and the other passenger about their connection with the hotel room. Gomez was then detained even further so that Officer Speeth could approach him request consent a second time.

After Gomez's initial refusal to give consent, Officer Speeth could not lawfully detain Gomez any longer in order to question the driver and the other passenger or to continue to seek Gomez's consent. Officer Speeth had done all that he could to quickly confirm or dispel his suspicion that Gomez was involved and drug trafficking. No drugs

¹ The State appears to acknowledge in its Memorandum in Opposition to Defendant's Motion to Suppress that Defendant's statement that "he didn't want to be put in that kind of a position" constituted an "initial refusal to give consent." (R. 101.)

had been discovered, and reasonable suspicion could not support further detention. The stop had not de-escalated to a consensual encounter between Gomez and Officer Speeth,² and Officer Speeth did not claim to have probable cause to arrest Gomez.³ Thus, Gomez was illegally seized after he initially refused to consent to a search of the hotel room.⁴

II. OFFICER SPEETH EXPLOITED THE ILLEGAL DETENTION TO OBTAIN GOMEZ'S CONSENT

Officer Speeth exploited the illegal detention to obtain Gomez's consent. The factors relevant to an exploitation analysis are 1) the purpose and flagrancy of the illegal conduct, 2) the presence of intervening circumstances, and 3) the temporal proximity between the illegal conduct and consent. *State v. Hansen*, 2002 UT 125, 63 P.3d 650.

In *Hansen*, a police officer pulled over the defendant's vehicle for an improper lane change. *Id.* at ¶¶ 6-7. After the traffic stop was concluded, the officer asked whether the defendant had any alcohol, drugs, or weapons in the vehicle, even though the

² The State conceded this point in its Memorandum in Opposition to Defendant's Motion to Suppress. (R. 106.)

³ Utah recognizes three levels of reasonable police stops:

- (1) An officer may approach a citizen at any time 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; and
- (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. Martinez, 182 P.2d 385, 387-388 (Utah App. 2008).

⁴ Officer Speeth appears to imply in his testimony that Gomez's initial refusal to consent provided additional reasonable suspicion justifying a further extension of the detention, because Gomez's refusal led Officer Speeth to believe that the driver and the other passenger had drugs in the hotel room. On this point, we note that refusal to consent cannot form any part of the basis for reasonable suspicion. *United States v. Manuel*, 992 F.2d 272, 274 (10th Cir. 1993).

officer had no reason to suspect that any of these items were in the vehicle. *Id.* at ¶ 13. The defendant said “No.” *Id.* The officer then asked for consent to search the vehicle. *Id.* The defendant consented, and the officer subsequently searched the vehicle and found drugs and drug paraphernalia. *Id.* at ¶¶ 13-16.

The defendant argued that the officer had exploited the illegal questioning to obtain the defendant’s consent. *Id.* at ¶ 17. The Utah Supreme Court noted that the relevant factors in exploitation analysis are 1) the purpose and flagrancy of the illegal conduct, 2) the presence of intervening circumstances, and 3) the temporal proximity between the illegal conduct and consent. *Id.* at ¶ 64. The Court held that all three of these factors indicated that the officer exploited the illegal questioning to obtain the defendant’s consent. *Id.* at ¶ 70.

First, the Court noted that the “purpose and flagrancy factor directly relates to the deterrent value of suppression.” *Id.* at ¶ 65 (internal quotation omitted). The deterrent value of suppression is particularly high where the purpose of the officer’s illegal conduct is to exploit the opportunity to ask for consent. *Id.* at ¶ 66. The *Hansen* Court found that the purpose of the officer’s illegal question about the presence of alcohol, drugs, and weapons, was to provide an opportunity to ask for consent, and suppression of the evidence found during the subsequent search would deter future illegal questioning of the same kind. *Id.* at ¶ 67.

Second, the Court noted that intervening circumstances include events such as an officer telling a person that he or she has the right to refuse consent or consult with an attorney. *Id.* at ¶ 68. The Court found no such intervening circumstances. *Id.*

Third, the Court found that the lapse of time between the illegality and the defendant's consent was negligible. *Id.* at ¶ 69. The illegality began, the Court noted, when the officer asked the defendant whether he had any contraband in his vehicle, and consent was obtained immediately after the defendant denied having any contraband. *Id.*

The facts of *Hansen* parallel the facts of this case. First, the purpose of the illegal detention in this case was to provide an additional opportunity for Officer Speeth to request Gomez's consent to search the hotel room. Officer Speeth illegally detained Gomez so that he could question the driver and the other passenger, in an effort to persuade Gomez to give consent to search the hotel room. In this case, as in *Hansen*, suppression of the evidence will deter future illegal detentions of this kind.

Second, there were no intervening circumstances in this case. Officer Speeth did not tell Gomez that he had the right to refuse consent, or that he had the right to consult an attorney. There were no other intervening circumstances that logically separated the illegal detention from Gomez's consent.

Third, the lapse of time between the illegal detention and Gomez's consent was negligible. Gomez's consent was obtained immediately following the illegal detention.

Thus, all three *Hansen* factors indicate that Officer Speeth exploited the illegal detention to obtain Gomez's consent. Because Gomez was illegally seized and his consent to search was obtained by police exploitation of a prior illegality, this Court should reverse the District Court's denial of Gomez's motion to suppress.

CONCLUSION AND PRECISE RELIEF SOUGHT

Gomez asks this Court to reverse the District Court's denial of his motion to suppress because Officer Speeth illegally detained Gomez, and exploited the illegal detention to obtain Gomez's consent to search.

DATED this 9th day of February, 2011.



MATTHEW MORRISE
Counsel for Appellant

CERTIFICATE OF MAILING

I hereby certify that I delivered two (2) true and correct copies of the foregoing Brief of Appellant to the Appeals Division, Utah Attorney General, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this 9th day of February, 2011.



ADDENDA

FILED

JAN 12 2010 *V.12*

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

IN THE FOURTH JUDICIAL DISTRICT COURT,
UTAH COUNTY, STATE OF UTAH

<p>STATE OF UTAH, Plaintiff, vs. LUIS PARRA GOMEZ, Defendant.</p>	<p>RULING</p> <p>Date: January 11, 2010</p> <p>Case No.: 081402283</p> <p>Judge: Lynn W. Davis</p>
---	---

This matter comes before the court upon Luis Parra Gomez's ("Defendant's") Amendment to Motion to Suppress. David S. Sturgill represents the State of Utah, and Barbara A. Gonzales represents Defendant. The court, having carefully reviewed the parties' memoranda and heard the oral arguments, hereby rules as follows:

I.

Procedural History

1. On May 26, 2009, Defendant filed his Motion to Suppress and accompanying memorandum.
2. On September 23, 2009, Defendant filed his Amendment to Defendant's Motion to Suppress and accompanying memorandum, which were to replace the documents filed on May 26.

3. The State's opposition memorandum was also filed on September 23, 2009.
4. On December 16, 2009, oral arguments were held. The Court indicated at that time that it would rule in writing within 30 to 45 days.

II.

Factual Background

At around midnight on the night of August 3, 2008, Officer Scott Speeth ("Speeth") of the Orem Police Department stopped a vehicle traveling west near 400 West University Parkway in Orem for a brake light violation. The vehicle, a rental, had three occupants: the driver ("Driver"), front-seat passenger ("Passenger") and Defendant. Speeth was the only officer on the scene.

Speeth approached Driver and requested identification. Looking to the back seat, Speeth noticed that Defendant was not wearing a seat belt. Speeth took their identification information and ran a records check on both Driver and Defendant. While examining the documents and making a records check, Speeth requested a K-9 unit. Officer Colledge ("Colledge") and Officer Thomas ("Thomas") came about five minutes later with the K-9 unit, which indicated that drugs were in the vehicle.

Following the positive alert by the drug dog, Speeth ordered all three occupants to exit the vehicle, and he questioned each one separately while Thomas stood next to the other two. Speeth asked the occupants what they were doing, where they were going that day, and other questions as Corporal Lopez and Officer Colledge searched the vehicle with the K-9 unit. The

three occupants said they had no reason to visit any of the nearby hotels, and they denied visiting any hotels in the area. Even though the K-9 dog had alerted positively, no drugs were located in the vehicle.

Speeth searched the vehicle and found a parking permit for the Comfort Inn, a hotel that was within 100 feet of the vehicle. Driver and Defendant were searched. No contraband was found on any of the three occupants. At least \$4,000 was found hidden in Driver's shoe. Speeth called the Comfort Inn and was told that a room was registered to Defendant.

Speeth asked Defendant why Driver had \$4,000 in cash hidden in his shoe. Defendant shrugged his shoulders. Speeth asked Defendant about the Comfort Inn room, and asked why Defendant had lied. Speeth told Defendant he was "aware of what was going on" and asked Defendant what was in the room. Defendant told Speeth he did not have anything in the room. Speeth asked for consent to enter and search the room. Defendant said he "did not want to be in that position." Defendant agreed to allow Speeth inside the hotel room if the other two occupants consented.

Driver and Passenger told Speeth that they had no claim to anything in the room and had never been in the room. Driver said he could not consent to entry because it was not his room, and Passenger said he did not care if the room was searched because he was never in that room. Speeth then told Defendant that the other two occupants had no objection to officers searching the room, and that they had relinquished any claim to a search. Defendant shrugged his shoulders, and Speeth asked him to escort him to the room. They walked together to the nearby

room; Defendant was not handcuffed or physically restrained.

The court notes that for the duration of the stop, emergency lights from the patrol vehicles flashed.

Inside the hotel room, Speeth found electronic scales, a spoon, marijuana and cocaine. Defendant is charged with three drug possession counts: a first-degree felony, a third-degree felony, and a Class-A misdemeanor.

III.

Standard of Review for a Motion to Suppress Evidence

Pursuant to the Fourth Amendment of the U.S. Constitution and Article 1, section 14 of the Utah Constitution, people have a right to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. This constitutional protection extends to automobiles. The court must accordingly determine, based on the facts presented and the law cited, whether any of Defendant's constitutional rights were violated by police actions on August 3 and 4, 2008.

IV.

The Parties' Arguments

a. Defendant's Arguments Supporting his Motion to Suppress

Defendant argues that Speeth initiated a level-two stop, the second of the three types of police/citizen encounters. Defendant cites to case law holding that the length and scope of the stop must be justified by the circumstances which rendered the stop permissible. In such a stop,

the officer must have reasonable, articulable suspicion that the detained individual(s) has been, or is about to be, engaged in criminal activity. The Utah Supreme Court has held that the officer “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Johnson*, 805 P.2d 761, 764 (Utah 1991).

Defendant contends that the officer had no reasonable suspicion that Defendant was engaging in crime. Defendant was merely a passenger in a car with a broken brake light. Regarding the seat belt violation, Speeth never found out whether Defendant had been wearing his seat belt while the vehicle was moving. Defendant argues that there is no evidence of a seat belt ticket being issued to him. Based on the illegal detention, any information obtained was tainted by a constitutional violation.

Defendant further argues that following the unsuccessful search based on the drug dog’s indication, Defendant’s continued investigation was unlawful. Because no drugs or illegal items were found in the vehicle or on any of the occupants, and because none of the occupants showed signs of drug use, the purpose for the level-two encounter was concluded. Therefore, the occupants should have been permitted to leave. The State claims that the existence of the Comfort Inn parking pass provides reasonable suspicion that crime was afoot. Defendant disputes this. Therefore, Speeth should have stopped questioning the occupants and should not have found the money in Driver’s shoe.

Defendant argues that the continued investigation was unconstitutional. In the

preliminary hearing, Speeth testified that he made it clear that the occupants were detained. By the time that Speeth called the Comfort Inn and learned that the room was rented to Defendant, the detention had lasted 30 to 40 minutes. Admittedly, some inconsistent statements were made regarding the hotel room, but Speeth did not provide reasonable, articulable facts justifying further detention.

A person is seized if, considering all the circumstances, he reasonably “would have believed that he was not free to leave.” *State v. Merworth*, 2006 UT App, ¶ 7, 153 P.3d 775. Defendant argues that any reasonable person in his position would not have felt free to leave: (1) Physical touching occurred when Defendant was searched; (2) There were multiple patrol cars; (3) The emergency lights flashed during the stop; (4) Four officers were present with weapons; (5) Two drug dogs were present; (6) The occupants were continually detained for further questioning after the purpose for the stop and search was completed; (7) The occupants were not told they were free to leave, and were not told they did not have to answer questions; (8) The officers used deception and lies during their questioning. Defendant also contends that the prolonged illegal detention was a de facto arrest which required probable cause.

Defendant argues that the consent to search the hotel room was not given voluntarily. Using the totality of the circumstances test, specifically several factors discussed in case law, Defendant claims that his will was overborne and that he was coerced into consenting. There was an exhibition of force by the number of officers, dogs, and flashing patrol vehicles. Speeth used deception and trickery when he told Defendant he “was aware of what was going on.” The

request to consent for search was not simply a mere request. Further, there is clear evidence that Defendant did not want to consent when he told Speeth that he “was not comfortable with [the search].”

Defendant contends that the fraudulently obtained consent was not sufficiently attenuated to dissipate the taint of the illegal detention. The initial stop escalated continually without justification in mere minutes, until Defendant was being tricked into reluctantly consenting to a search of the hotel room. Therefore, the exploitation of the illegal detention was the but-for cause of Speeth’s requested consent.

Based on all the foregoing, Defendant argues that all evidence found in the hotel room should be suppressed under the Exclusionary Rule.

b. The State’s Arguments Opposing the Motion to Suppress

The State agrees with Defendant that Speeth initiated a level-two stop. The stop was based on the broken brake light, which was a violation of Utah Code Ann. § 41-6a-1604(2).

The State argues that during the stop, Speeth requested a canine sniff of the exterior of the car which did not extend the stop. *See State v. Wilkinson*, 2008 UT App 395, ¶¶ 7, 9, 197 P.3d 96. Because the drug dog alerted on the vehicle, the police then had probable cause to extend the stop and search the vehicle. *Id.* at ¶ 9. At the least, there was reasonable suspicion that someone in the car was in possession of illegal drugs. During the car search, Speeth noticed the Comfort Inn parking pass. The State argues that based on the officer’s training and experience, Speeth’s knowledge that drug deals often occur in hotel rooms, combined with the room rental, the

automobile rental, and the positive indication by the drug dog, there was reasonable suspicion that Defendant had drugs in the hotel room. Speeth became even more suspicious when he found more than \$4,000 hidden in Driver's shoe. Therefore, it was entirely reasonable for Speeth to ask for permission to search the room.

Regarding Defendant's argument that he was unlawfully detained when asked for his identification, the State argues that Speeth had reasonable suspicion that Defendant had violated the seat belt law, found in Utah Code Ann. § 41-6a-1803(2). It is not likely that a person would unfasten his safety belt in the few seconds between getting pulled over and the officer approaching. The seat belt statute requires the officer to identify the violator in issuing the ticket; therefore, Speeth had the right to ask for Defendant's name and date of birth.

The State contends that even if the request for Defendant's identification was unlawful, the discovery of evidence was so attenuated from the initial detention that the taint of the initial detention had dissipated. The events leading to the discovery of the drugs in the hotel room would have proceeded just as they did regardless of Defendant's identification and detention. The canine sniff was a separate occurrence, which led to the officer spotting the parking pass, which led to the officer calling the Comfort Inn, which led to the officer requesting permission to search the room, and eventually finding contraband.

Finally, the State argues that it had consent to search the hotel room. Even if the initial detention was illegal, the evidence may be admissible in a later search which was granted through valid, voluntary consent. Evaluating the consent under the relevant factors, the State

contends that the consent was voluntary under the totality of the circumstances. Defendant knew better than Speeth that the room was under his name, and that it did not matter what supposed authority the other two occupants gave for the search. Further, Defendant's initial reluctance to allow the search is evidence that he knew that he had the right to refuse consent. The presence of flashing lights and multiple officers was not sufficient to overcome Defendant's will. Speeth did not claim any authority to search the room. The State likens this case to *State v. Hansen*, in which officers asked for permission to search the defendant's car after the purpose for the initial stop had been fulfilled and there was no reasonable suspicion of drugs. 2002 UT 125, ¶ 14, 63 P.3d 650. Despite the presence of another police cruiser with its lights flashing, and despite the officer not telling the defendant he was free to leave or free to refuse the consent, the Utah Supreme Court held that the consent was voluntary. *Id.* at ¶¶ 54, 58.

Therefore, the State argues, Defendant's Motion to Suppress should be denied.

V.

Case Analysis

This is an unusual case because the ultimate search took place, not at the vehicular stop, but at the adjacent motel, and because of the unique attenuation arguments.

The officer, as a matter of law, had the right to ask Defendant for ID based upon his observance of Defendant's failure to wear a seat belt in violation of Utah Code Ann. Section 41-6a-1803(2). The fact that Defendant or Driver was never charged with a seat belt violation is of no legal consequence.

While an officer has a duty to quickly confirm or dispel reasonable articulable suspicion, he cannot ignore escalating suspicion. With the drug dog hit, reasonable suspicion escalated and the search of the vehicle and its occupants was authorized. *See Wilkinson*, 2008 UT App at ¶¶ 7, 9, 12. It is not material that drugs were not found in the vehicle after the positive alert by the K-9 unit; the indication itself “provided independent reasonable suspicion” to search the vehicle and the occupants. *Id.* at ¶ 12.

With the discovery of the \$4,000 hidden in the shoe of Driver, inconsistent and conflicting answers to questions posed to the occupants, the discovery of the rental car status, and the discovery of the rental of the room by Defendant in the adjacent motel, it was not improper to seek permission to search the room. This information, especially when considered by an officer of Speeth’s specialized training and experience, suffices to arouse reasonable articulable suspicion. *See State v. Prows*, 2007 UT App 409, ¶ 12, 178 P.3d 908. Based on their experience, officers are accorded deference in their “ability to distinguish between innocent and suspicious actions.” *Id.*

Defendant has no standing to challenge the search of Driver’s shoe, and the discovery of the \$4,000 in the shoe supported additional reasonable suspicion and supported reasonable inquiry.

The statement by Officer Speeth that he was “aware of what was going on,” while perhaps not entirely accurate, did not overpower Defendant’s will. “A defendant’s will is not overborne simply because he is led to believe that the government’s knowledge of his guilt is

greater than it actually is.” *Merworth*, 2006 UT App at ¶ 11. Further, the factors listed in the previous paragraph apparently were red flags or warning signs in Speeth’s view. Arguably, he was “aware of what was going on,” just not to the level of specificity that Defendant may have believed.

The court also notes that Defendant, not any officer, was the one who swiped his hotel card key to gain entry to the room. Further, there was no restraint of Defendant, or threat to use handcuffs during the escort. Also, Officer Speeth testified that his tone was conversational, rather than harsh and accusatory. Another factor showing consent is that Speeth did not claim any authority to search the room; he even asked for permission from the other two occupants before returning to seek consent from Defendant. As is well established by case law, the officers were not required to tell Defendant that he was free to leave or that he was free to refuse consent. *See Hansen*, 2002 UT at ¶ 54; *see also Ohio v. Robinette*, 519 U.S. 33, 39-40 (1996).

Examining the consent of Defendant under a “totality of the circumstances” test, the court concludes by a preponderance of the evidence that consent was not obtained by trickery, fraud, deception, lies, or force. The consent was voluntary.

VI.

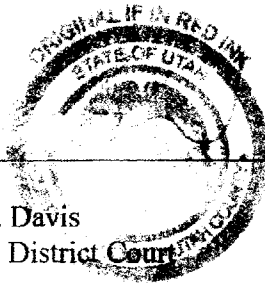
Ruling

Based on the foregoing, Defendant’s Amendment to Motion to Suppress is denied. Neither counsel is instructed to prepare an Order based on this Ruling. However, both counsel are to appear at the Further Proceedings hearing set for February 10, 2010, at 8:30 a.m. and

inform the court of how they wish to proceed.

Dated this 12 day of November, 2010.

Judge Lynn W. Davis
Fourth Judicial District Court



A certificate of mailing is on the following page.