

1990

West Valley City v. Dale Chapman : Brief of Appellant

Utah Court of Appeals

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APPEALS

IN THE UTAH COURT OF APPEALS

5

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DOCKET NO.

900273-CA

WEST VALLEY CITY,

Plaintiff-Respondent,

vs.

Case No. 900273-CA

Category **2**

DALE CHAPMAN,

Defendant-Appellant.

BRIEF OF APPELLANT

Appeal from a Judgment of the
Third Circuit Court, State of Utah
Salt Lake County, West Valley Department
The Honorable Tyrone Medley

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IN THE UTAH COURT OF APPEALS

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WEST VALLEY CITY,

Plaintiff-Respondent,

vs.

Case No. 900273-CA
Category 16

DALE CHAPMAN,

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IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,

Plaintiff-Respondent,

vs.

Case No. 900273-CA

Category 16

DALE CHAPMAN,

Defendant-Appellant.

BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction over this matter pursuant to Section 78-2a-3(2)(d).

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Did the lower court err in failing to suppress all evidence relating to a charge of driving while under the influence of alcohol because of an illegal traffic stop initially made by the arresting officer? Sandy City v. Thorsness, 778 P.2d 1011 (Utah App. 1989). Whether the requisite reasonable suspicion was present to support an investigatory detention by a police officer presents a question of fact. State v. Mendoza, 748 P.2d 181, 183 (Utah 1987). The standard for review in such cases is whether the denial of a motion to suppress was "clearly erroneous". State v. Ash, 745 P.2d 1255, 1258 (Utah 1987). A trial court's finding is clearly erroneous if it is without adequate evidentiary support in the record or if it is induced by

an erroneous view of the law. State v. Walker, 743 P.2d 191, 193 (Utah 1987); see also, State v. Arroyo, 137 Utah Adv. Rpt. 13, 14 (1990) (a finding not supported by substantial competent evidence is clearly erroneous).

APPLICABLE STATUTES

Amendment 4, United States Constitution:

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.

Utah Constitution, Section 14:

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

STATEMENT OF THE CASE

The record in this case is a confusing maze of procedural irregularities which make it difficult for the parties and this Court to properly comprehend. It is unknown why the Third Circuit Court of West Valley has failed in its obligation to properly preserve the record in a coherent form but regardless of the reasons the record must be dealt with in its present condition.

On February 11, 1989 Defendant was issued a citation for driving under the influence of alcohol. On February 22 a not guilty plea was entered by Defendant's attorney Larry Long. (R. 4). On March 7, 1989 a "per se" hearing was held in the

Department of Driver's License Division for the purpose of determining whether Defendant would maintain his driver's license. A separate transcript of this hearing has been included in the record on appeal.

A Motion to Suppress the evidence was filed by the defendant and a hearing was scheduled for April 3, 1989. (R. 7, 8-20). A memorandum dated April 19, 1989 in opposition to Defendant's Motion to Suppress the evidence was filed by the City. This memorandum is contained in a separate envelope of the record and is not numbered in the court file.

On April 25, 1989 Defendant objected to the Statement of Facts contained in the memorandum and requested an evidentiary hearing on the Motion to Suppress. (R. 21-22). An evidentiary hearing was scheduled for June 26, 1989. (R. 25). Upon the request of the City a continuation of the hearing was granted and the hearing was moved to July 10, 1989. (R. 27). At the same time a jury trial was set for August 23, 1989.

It is believed by Defendant that the evidentiary hearing was held on July 10 although there is nothing in the file to indicate what occurred at the suppression hearing with the exception of some handwritten notes presumably by the court on a sheet of paper. (R. 27). A copy of this suppression hearing has been transcribed by Defendant from the tape recording of the proceeding. A new memorandum was subsequently filed by the defendant on July 21, 1989 (R. 30-35).

On August 23, 1989, the time set for trial, the Court continued the trial until October 17, 1989. (R. 43). On October

4, 1989 a motion was made by Defendant to continue the jury trial on the grounds that no decision had yet been rendered as to defendant's Motion to Suppress the evidence. (R. 45). At the same time a motion was made by Defendant for a second evidentiary hearing on Defendant's Motion to Suppress and a request that the Court render a decision on Defendant's Motion to Suppress and to submit a written decision of the findings of fact and conclusions of law. (R. 48-49).

On October 17, 1989 Defendant appeared before the lower court and entered a conditional plea of guilty. (R. 56-59). A separate transcript of that hearing made from the tape recording has been filed with this Court.

A Notice of Appeal dated November 3, 1989, with a mailing certificate of November 17, 1989 and a filing date of November 24, 1989 appeals from the October 17, 1989 judgment. (R. 64-65). The "Findings of Fact, Conclusions of Law and Order" of the lower court do not contain a filing date but are dated November 29, 1989. The Court basically denied Defendant's Motion to Suppress on the basis that the totality of circumstances gave the officer reasonable grounds to stop the defendant. A copy of these findings is included in the Appendix.

A second copy of Defendant's Notice of Appeal dated November 3, 1989 is contained in the file with a new filing date of December 4, 1989. (R. 71-72).

Despite repeated requests from Defendant the Clerk of the Third Circuit Court, West Valley Department, failed to file the Notice of Appeal with this Court. Defendant accordingly filed a

docketing statement with this Court on March 7, 1990 even though there was no official appeal before the court. On April 27, 1990 Defendant's attorney received a letter from a deputy clerk of this Court informing Defendant that the appeal had not yet been forwarded from the trial court and that the docketing statement would be held until May 7, 1990 and thereafter returned if the appeal was not filed by the Circuit Court Clerk. See Appendix to this Brief. The Notice of Appeal together with the record of appeal was finally filed with this Court on May 29, 1990 some six months after the original appeal was instituted by the defendant.

STATEMENT OF FACTS

It is undisputed that on February 11, 1989 Defendant was stopped by Officer Corey Acocks of the West Valley City Police Department and was given a citation for driving under the influence of alcohol. The "Findings of Fact and Conclusions of Law" of the Circuit Court Judge from which this appeal is taken does not indicate from what source the "Findings" are derived. As noted earlier a civil hearing was held before the Department of Drivers License Division before a hearing officer in accordance with Utah Administrative Procedure Act 41-2-130. In addition, an evidentiary hearing was held before the Circuit Court at which time Officer Acocks also testified. Since these hearings were the only evidentiary base for Findings of Fact they will both be briefly summarized.

The March 7 hearing before the Department of Drivers' License Division involved solely the testimony of Officer Corey

Acocks. The examination of Officer Acocks was conducted by the hearing officer. Acocks stated that he first observed the defendant's car at 3400 West 3500 South driving eastbound. The officer was westbound on 3500 South and observed the vehicle had no headlights. This occurred at approximately 11:10 p.m. The officer stated he flashed his headlights two separate times but did not receive a response. He therefore made a "U" turn and was stopped for a traffic signal at 3200 West before he caught up with the vehicle at 2600 West and activated his overhead lights. The defendant pulled over immediately upon seeing the lights. (Tr. 5, March 7, 1989 hearing).

At that point Mr. Chapman exited his vehicle and gave the officer his Utah drivers license. The Officer thought that Mr. Chapman may have been a little mentally handicapped since he was very slow in his responses. After checking with the dispatcher he returned to the vehicle and talked to him through the window at which time he smelled an odor of alcohol. (Tr. 6).

The officer stated that he was able to determine that the odor was coming from in and about the vehicle. (Tr. 7). Mr. Chapman upon being asked if he had had anything to drink replied he had had a couple of drinks a half hour before. The officer then asked him if he would take some field sobriety tests and he agreed to do so. He was given the finger count, leg lift, walk and turn, ABC's and NYSTAGMUS tests. (Id.). After taking the field tests the officer arrested Defendant for driving under the influence. (Tr. 8). Subsequently, he was given a chemical breath test. (Tr. 9-11).

Upon cross examination the following dialogue occurred:

Q. MR. LONG: Officer Acocks, you said that when you first noticed the vehicle, the headlights were off; is that correct?

A. Yes, sir.

Q. In your police report it says the headlight, as in singular; which was it?

A. It was both headlights.

Q. It was both headlights?

A. Yes, sir.

Q. So, in other words, the lights weren't on?

A. The headlights weren't on.

Q. And what about when you caught up to him?

A. I did not notice that they were on at that time, either. The taillights, or the brakelights were, but were dim, I thought that it may be a faulty equipment problem.

(Tr. 11-12, March 7, 1989).

The testimony given by the officer in the per se hearing before the Department of Motor Vehicles was in direct contradiction to his testimony given at the suppression hearing before the Circuit Court Judge. The following dialogue occurred between the prosecutor and Officer Acocks:

Q. MR STONEY: Did you do anything as the vehicle approached in your direction?

A. Yes, sir, I did.

Q. And what did you do?

A. I flashed my headlights off and then back on again two times.

Q. And what is that a common signal for?

- A. To try to get the other driver's attention to turn on the headlights.
- Q. Did the other driver in the vehicle do anything with his headlights?
- A. The headlights did not come on.
- Q. Did the vehicle eventually pass you?
- A. Yes, it did.
- Q. Going in the opposite direction?
- A. Yes, sir.
- Q. What did you do at that point?
- A. I turned my vehicle around, making a "U" turn, and went in pursuit of the vehicle.
- Q. When you made the "U" turn, could you still see the vehicle?
- A. Yes, sir.
- Q. Had you lost sight of the vehicle at any time, then, during the "U" turn or before then?
- A. Maybe briefly for a moment (unintelligible), the vehicle making the turn. I made the turn in safety for myself and others; but when I turned back around I noticed that there were no taillights on the vehicle and still pursued.
- Q. You're sure that was the same vehicle?
- A. Yes.
- Q. When you say "briefly for a moment" you lost sight of it when making the turn, were you in the process of making sure you were making a safe turn?
- A. To make sure no other vehicle was around, I may have lost sight of the vehicle.
- Q. Were there any other vehicles that were able to get between you and this other, this pickup that you saw?
- A. I don't recall at this time.
- Q. Okay, what kind of vehicle was it that you were

following?

A. A Datsun pickup.

Q. You say there were no taillights either at this point?

A. No, sir.

Q. How far behind the vehicle were you when you started following it?

A. An estimate would probably be, by the time I turned around, maybe 100 yards.

Q. Okay. It wasn't speeding (unintelligible) or anything?

A. No.

Q. You noticed no other violations up to that point?

A. No sir.

(Suppression Hearing, pp. 4-5).

On cross examination again the officer stated there were no taillights present.

Q. Didn't you--when you turned around, what attracted you to the car was that there were no taillights?

A. Yes, sir.

Q. And you couldn't tell whether the headlights on that vehicle were on or not?

A. Not at that point, no, I could not. As I passed the headlights were off on the vehicle.

Q. That section of the roadway right there, is almost like broad daylight at that time of night because of all the street lights, isn't it?

A. It's very well lit, uh huh.

(Suppression Hearing, p. 9)

In a later portion of the cross examination the officer stated the following:

Q. Now you told me that the taillights were out. They were totally out of the vehicle you chased,

is that right?

A. Yes sir.

Q. And what about the brake lights?

A. As the vehicle stopped, I did notice that a dim light was coming from the taillights.

Q. Well, let's see, in other words you thought that the brakes were faulty, the brake lights were faulty?

A. I don't know at that point what I thought.

Q. Did you ever follow it up to try to find out, you know, why the brake lights were so dim?

A. I did not.

Q. Did you--when you got up to the vehicle, did you find out whether the headlights were in fact off?

A. I don't recall at the point of looking at the headlights after I made contact with Mr. Chapman.

(Suppression Hearing, pp. 20-21) (Emphasis added).

During the suppression hearing the officer testified that when Mr. Chapman left his vehicle and approached the officer on foot that he cooperated with him fully and had no difficulty in producing his drivers license. (Suppression Hearing, pp. 11-12), There was no testimony by the officer that he had any suspicion of Mr. Chapman being intoxicated until the time he returned to Mr. Chapman's car and smelled alcohol coming from the vehicle. (Suppression Hearing, p. 16).

The Court gave an oral decision denying the motion to suppress at the conclusion of the suppression hearing. (Suppression Hearing, pp. 26-27). Subsequently, some five months later the court entered specific Findings of Fact and Conclusions of Law concerning the motion.

Defendant entered a conditional plea of no contest with the condition that he could appeal the denial of his Motion to Suppress.

SUMMARY OF ARGUMENT

The lower court's factual finding that the officer had a reasonable basis to stop Mr. Chapman is not based upon adequate evidentiary support and the Court's conclusion that a pretext stop did not occur is erroneous. The officer's sole basis for stopping the Chapman vehicle was the alleged failure to have properly operating headlights and taillights. As to headlights, while the officer stated that the lights were out when he passed the vehicle he could not recall whether they were out at the time of the stop or whether he even checked to see if they were operating. As to taillights his testimony was extremely contradictory. In the per se hearing he stated that the taillights were properly working but that the brake lights were dim. In the suppression hearing he stated that the taillights were out completely and that only the brake lights came on in a dimmed condition. The testimony of the officer is simply insufficient to provide a factual basis for the stop and the ensuing arrest.

ARGUMENT

THE STOP OF THE DEFENDANT CHAPMAN WAS NOT JUSTIFIED SINCE THE OFFICER DID NOT HAVE A REASONABLE BASIS TO SUSPECT THAT CHAPMAN WAS VIOLATING A TRAFFIC REGULATION.

In establishing the constitutional standard to stop a particular automobile, the United States Supreme Court has

clearly denied an officer the right to randomly stop cars on public roads. Delaware v. Prouse, 440 U.S. 648 (1979). The Utah Supreme Court has also approved this principle. State v. Gibson, 665 P.2d 1302, 1304 (Utah 1983).

A police officer may, however, stop an automobile for a traffic violation in the officer's presence. However, it is impermissible for law enforcement officers to use a misdemeanor arrest as a pretext to search for evidence of a more serious crime. United States v. Millio, 588 F.Supp. 45, 49 (D.N.Y. 1984).

In determining whether a stop for a traffic violation and subsequent arrest is a pretext, the totality of the circumstances governs. United States v. Birnsoni-Ponce, 422 U.S. 873, 885. In making this determination the subjective intent of the officer is irrelevant. "Whether a Fourth Amendment violation has occurred 'turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time,' and not on the officer's actual state of mind at the time the challenged action was taken." Maryland v. Macon, 472 U.S. 463 (1985).

Applying these principles, this Court in State v. Sierra, 754 P.2d 972 (Utah App. 1988) formulated the following standard:

Thus, in determining whether Officer Smith's stop of Sierra for driving in the left lane was an unconstitutional pretext, we focus on whether a hypothetical reasonable officer, in view of the totality of the circumstances confronting him or her, would have stopped Sierra to issue a warning for driving in the left lane. The proper inquiry does not focus on whether the officer could validly have made the stop. This analysis is congruent with that

developed by other jurisdictions under the Fourth Amendment. 754 P.2d at 978.

This Court approved the reasoning utilized to protect individuals from pretextual misdemeanor traffic arrests by quoting a treatise on search and seizure. This treatise stated:

Given the facts, as noted, that "in most jurisdictions and for most traffic offenses the determination of whether to issue a citation or effect a full arrest is discretionary with the officer," and that "very few drivers can tranverse any appreciable distance without violating some traffic regulation," this [pretextual traffic stop] is indeed a frightening possibility. It is apparent that virtually everyone who ventures out onto the public streets and highways may then, with little effort by the police, be placed in a position where he is subject to a full search. Nor is one put at ease by what evidence exists as to what police practices in this regard; it is clear that this subterfuge is employed as a means for searching for evidence on the persons of suspects who could not be lawfully arrested for the crimes of which they are suspected. 754 P.2d at 972 quoting 5 LaFave, Search and Seizure §5.2(e) 2d. Ed. 1987.

In Sierra this Court held that the stop of defendant's vehicle was not constitutionally justified as an incident to citation for a traffic violation for driving unlawfully in the left lane since a reasonable officer would not have stopped defendant's car when defendant was in the left lane for 40 to 50 seconds, passing two cars during that time.

Two additional cases decided by this Court are also helpful to the issue involved in this case. In State v. Smith, 781 P.2d 879 (Utah App. 1989) a car was stopped by an officer because it turned into a motel driveway without signaling. This Court held that the stop was legal since it was "a clear-cut traffic violation for which officers routinely stop citizens and issue citations."

In State v. Marshall, 791 P.2d 880 (Utah App. 1989), cert. filed 135 Utah Adv. Rpt. 78 (1990) a highway patrol trooper noticed that the defendant's left-hand signal remained blinking for two miles after passing a motor home. This Court in upholding the stop stated:

In this case, Trooper Avery perceived an equipment problem with Mr. Marshall's car. Either his turn signal was malfunctioning or he had negligently failed to turn it off. Courts consistently have held that a police officer can stop a car when he or she believes the car's safety equipment is not functioning properly. Id. at 882.

Thus, there is no question that under certain circumstances an officer may legally stop a vehicle for equipment problems without a claim of a pretext stop being asserted. In the instant case, however, the facts do not justify the reasonable hypothetical officer in pulling over the Chapman vehicle.

The officer testified that he first observed the Chapman vehicle passing in the opposite direction with no headlights. He acknowledged that the street was brightly lit and did not state that he considered Mr. Chapman to be driving in any hazardous manner because of the failure to have his lights on. In any event, he proceeded to make a "U" turn and to follow the Chapman vehicle which he claimed had no taillights showing at the time the observation was made going in the same direction as the Chapman vehicle.

Obviously, the officer did not consider the light problem serious since he stopped at a red light rather than going through it was he could have under the emergency vehicle provisions of Utah law. Assuming that the Chapman vehicle was the same one

which he initially saw prior to his stop at the intersection he stated that the taillights were now working prior to the stop although he considered them to be slightly dim. After stopping the vehicle he had no recollection whether the headlights were working or not.

Defendant would contend that a reasonable hypothetical officer would conclude that if the taillights were suddenly turned on that the driver, upon entering a darker section of the highway, realized he had not activated his lighting system and therefore had turned on both the headlights and taillights and that there was no longer a danger present on the road. Moreover, a reasonable officer could have passed the Chapman vehicle to confirm whether the headlights were now operating.

The failure of the officer to even observe whether the headlights were on or not after the stop raises a serious question as to his initial motives. Also, no effort was made to check the taillights or the brake lights which also allegedly were a concern of the officer.

It is unlikely that a reasonable hypothetical officer would have stopped the Chapman vehicle for having momentarily failed to previously have had its lights on. The officer himself stated in the suppression hearing:

Q. So if you had stopped Mr. Chapman and he hadn't-- there was no evidence he had been drinking, would you have let him go?

A. Yes sir.

Q. You wouldn't have given him a citation?

A. Not for--maybe not for driving with his headlights

out. I've pulled people over in the past for not having their headlights on, and they have honestly just not had them on. And I've done it for safety reasons.

Q. So you just give them a warning, then?

A. Yes, sir.

(Suppression Hearing, Tr. p. 11).

Defendant submits, therefore, that while the officer may have initially had a reason to pursue the Chapman vehicle when he believed that the lights were not on this reason disintegrated once he approached the vehicle and saw the taillights working and failed to ascertain whether the headlights were in fact on. The testimony is undisputed that there were no other driving violations occurring nor did the defendant drive in any unreasonable manner. Even after he exited his vehicle and gave the officer his drivers license the officer did not suspect any alcoholic use. It was only after the officer approached the vehicle and could smell the odor of alcohol coming from the driver's seat that he became suspicious of drinking activity.

The lower court evidently based its opinion upon both the testimony taken at the per se hearing before the Department of Motor Vehicles and the testimony before the court at the suppression hearing. Elements of both testimonies appear in the court's Findings of Fact. The lower court essentially chose to disregard any contradiction between the two forms of testimony concerning the taillights even though the per se hearing testimony indicated that the taillights were on at the time of the stop while the suppression hearing testimony indicated they

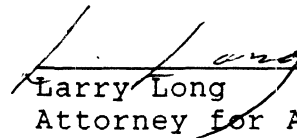
were never on while the vehicle was being chased. The court in its Findings of Fact reconciled this otherwise irreconcilable testimony by finding that initially the taillights were not on when the chase began but that they were on at the time the vehicle was stopped by the officer. As mentioned earlier, if this scenario of the facts is utilized then the officer clearly should have suspected that the driver had now activated his lighting system and that the headlights were on as well as the taillights. If, on the other hand, the taillights were always out as testified in the suppression hearing then the officer's testimony in the per se hearing is completely inconsistent.

CONCLUSION

Defendant submits that under the totality of the circumstances it was unreasonable for Officer Acocks or for any officer to stop the Chapman vehicle without further investigation as to the lighting system or, at a minimum, to ascertain the condition of the lighting system after the stop had actually occurred. The complete failure of the officer to even know which lights were on or off seriously negates any claim for a valid stop.

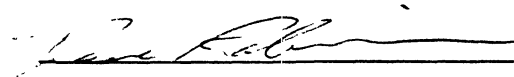
For this reason, the lower court erred in denying Defendant's Motion for Suppression and this Court should reverse and hold that all evidence acquired subsequent to the stop was inadmissible.

DATED this 5th day of November, 1990.


Larry Long
Attorney for Appellant

MAILING CERTIFICATE

I hereby certify that I mailed four true and correct copies of the foregoing Brief of Appellant to R. Paul Van Dam, Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114 this 7th day of November, 1990.


Paul Van Dam

APPENDIX

Richard C. Davidson
Presiding Judge

Russell W. Bench
Associate Presiding Judge

Judith M. Billings
Judge

Regnal W. Garff
Judge

Pamela T. Greenwood
Judge

Norman H. Jackson
Judge

Gregory K. Orme
Judge

Utah Court of Appeals

400 Midtown Plaza
230 South 500 East
Salt Lake City, Utah 84102
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Mary T. Noonan
Clerk of the Court

April 27, 1990


L. Long
Attorney at Law
39 Exchange Place, Second Floor
Salt Lake City, UT 84111-2705

In Re: State v. Dale H. Chapman
Civil No. 892002005TC

Dear Ms. Long:

You filed with this Court the docketing statement on the above named case on March 27, 1990, and to date, the appeal has not been forwarded from the trial court. We will hold your filings until May 7, 1990, and unless an appeal is received from the trial court by that date, it will be returned to you.

Sincerely,


Janice Ray
Deputy Clerk

IN THE THIRD CIRCUIT COURT
STATE OF UTAH, SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

	:	
WEST VALLEY CITY,	:	
Plaintiff,	:	FINDINGS OF FACT
vs.	:	CONCLUSIONS OF LAW
DALE H. CHAPMAN,	:	AND ORDER
Defendant.	:	No. 892002005TC
	:	

FINDINGS OF FACT

On February 11, 1989, at approximately 11:30 p.m. Officer Acocks, while on routine patrol. observed a vehicle traveling eastbound on 3500 South at 3400 West with no headlights. Officer Acocks was traveling westbound and as the two vehicles approached one another from opposite directions, Officer Acocks flashed his lights as a signal to the vehicle to turn on it's headlights, however, there was no response. After the vehicles passed one another, Officer Acocks also noticed that the tail lights were not on. Officer Acocks initiated a U-turn, proceeded to follow the vehicle, however, the Officer's pursuit was interrupted by a stop light. The pursuit continued and the vehicle was stopped, as the vehicle came to a stop the officer

noticed dim or faint tail lights. At that time, Officer Acocks did not notice if the headlights were on or off, furthermore, the vehicle did not violate any other traffic law, nor did Officer Acocks notice any unusual or erratic driving pattern. Additionally, Officer Acocks has stopped numerous vehicles in the past few months for driving without headlights because of the traffic hazard.

As Officer Acocks exited his vehicle and approached the Defendant, the Defendant Dale H. Chapman exited his vehicle and began walking towards Officer Acocks. The officer noticed that the Defendant's balance was unsteady and that his speech was slow. Officer Acocks obtained the Defendant's driver's license for identification and both returned to their respective vehicles. Officer Acocks then approached the Defendant again and when the Defendant rolled down his car window, Officer Acocks could smell an odor of alcohol emanating from the vehicle. Officer Acocks asked the Defendant if he had been drinking. The Defendant responded, "had a couple a half hour ago". The Defendant consented to performing field sobriety tests.

Based upon observing the vehicle operating without headlights and tail lights, odor of alcohol, unsteady balance, statement of drinking alcohol, and poor performance on the field sobriety tests, Officer Acocks placed the Defendant under arrest for Driving Under the Influence of Alcohol in violation of

41-6-44 of the Revised Ordinances of West Valley City.

The Defendant moves this Court for an order Suppressing evidence obtained by Officer Acocks based upon the grounds that, Officer Acocks' stop of the Defendant was not based upon a reasonable articulable suspicion in violation of the Defendant's Fourth Amendment Rights.

CONCLUSIONS OF LAW

1. Officer Acocks' observation of the Defendant's vehicle operating without headlights and dim tail lights is a reasonable articulable suspicion, not a mere hunch, that the Defendant was violating the law by creating a traffic hazard.

2. Based upon the foregoing findings of fact, and totality of the circumstances, Officer Acocks' stop of the Defendant for a traffic violation committed in the officer's presence was reasonable and one which a reasonable officer would perform. Therefore, the stop was not a pretext.

3. Statements made by the Defendant to the officer, were investigatory in nature and do not amount to custodial interrogation.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that Defendant's Motion to Suppress is Denied.

DATED this 29th day of November, 1989.



TYRONE E. MEDLEY
Third Circuit Court Judge



CERTIFICATE OF DELIVERY

I hereby certify that I delivered a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Order to L. Long, Attorney for Defendant, and Paula Houston, Assistant City Prosecutor.

DATED this 29th day of November, 1989.

Cindy Catlin-Edpe