

1990

West Valley City v. Dale Chapman : Brief of Respondent

Utah Court of Appeals

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Keith L. Stoney; West Valley City Prosecutor; Attorney for Plaintiff-Respondent.

Larry Long; Attorney for Defendant-Appellant.

Recommended Citation

Brief of Respondent, *West Valley City v. Chapman*, No. 900273 (Utah Court of Appeals, 1990).
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REF

900273-CA

IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,	:	
	:	
Plaintiff-Respondent,	:	
	:	
vs.	:	
	:	Case No. 900273-CA
DALE CHAPMAN,	:	Category 16
	:	
Defendant-Appellant,	:	

BRIEF OF RESPONDENT

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

Larry Long	Keith L. Stoney
39 Exchange Place, #200	West Valley City Prosecutor
Salt Lake City, Utah 84111	3600 South Constitution Blvd.
	West Valley City, Utah 84119
Attorney for Defendant- Appellant	Attorney for Plaintiff- Respondent

FILED

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Mary T. Noonan

IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,	:	
	:	
Plaintiff-Respondent,	:	
	:	
vs.	:	
	:	Case No. 900273-CA
DALE CHAPMAN,	:	Category 16
	:	
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39 Exchange Place, #200
Salt Lake City, Utah 84111

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Appellant

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IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,	:	
	:	
Plaintiff-Respondent,	:	
	:	
vs.	:	
	:	Case No. 900273-CA
DALE CHAPMAN,	:	Category 16
	:	
Defendant-Appellant,	:	

BRIEF OF RESPONDENT

STATEMENT OF THE ISSUE

Did the Third Circuit Court err in failing to suppress all evidence relating to a charge of driving while under the influence of alcohol because the initial traffic stop was made by the officer for failure to display lighted headlights and taillights at 11:30 p.m..

APPLICABLE STATUTES

41-6-118, Revised Ordinances of West Valley City

(a) Every vehicle upon a highway within this State at any time from a half hour after sunset to a half hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 1,000 feet ahead, shall display lighted lamps and other lamps and illuminating devices as respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, and further that stop lights, turn signals and other signaling devices shall be lighted as prescribed for the use of such devices.

Utah Code Annotated 77-7-15 (1953), as amended

A peace officer may stop any person in a public place when he has the reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

STATEMENT OF CASE

On February 11, 1989 West Valley City Police Officer Acocks issued a citation to the Defendant for driving under the influence of alcohol. On February 23, 1989 a Motion to Suppress was filed and a not guilty plea was entered by Defendant's attorney. (see Docket Sheet in Appendix) Pre-Trial was held on March 7 without resolution. As the Court had directed, Defendant filed a Memorandum In Support Of Defendant's Motion To Dismiss on April 4, and West Valley responded with a Memorandum In Opposition To Defendant's Motion to Dismiss on April 19, 1989. Defendant filed a Motion For Evidentiary Hearing on April 27 and the hearing was scheduled for June 26. Defendant requested a continuance for the Hearing to July 10, 1989 when the matter was heard by the Honorable Tyrone Medley and taken under advisement. On the 14th of July the parties were notified that the Motion To Suppress had been denied and a jury trial date was set for August 23. On the 23rd of August the case was bumped to October 17 because of a more dated case. On October 6, 1989, a Motion For A Second Hearing on Defendant's Motion To Suppress was filed by Defendant and on October 11, 1989 it was denied.

On October 17, 1989, before the Honorable Tyrone Medley, Defendant entered a Conditional, No Contest Plea. Sentence was entered, and stayed on the record and in writing and at the request of defendant, the Judge, agreed to place in writing his findings on Defendant's Motion To Suppress.

Defendant's Appeal dated November 3 was not filed with the court until November 24.

On November 29, 1989, the Honorable Tyrone Medley entered a written Findings of Fact and Conclusions of Law and Order with respect to Defendant's Motion To Suppress.

STATEMENT OF FACTS

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 in West Valley City, Utah with no headlights in violation of 41-6-11 of the Revised Ordinances of West Valley City and the State of Utah. The location in question is a well-lighted business district with several open businesses that generate a significant amount of traffic for that time of night. Thirty Fifth South is a busy east west thoroughfare with two lanes for each direction and a center lane for turns and merging.

Officer Acocks was driving west 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 its headlights, however, there was no response. After the vehicles passed one another, Officer Acocks also noticed that

its tail lights were not on. Officer Acocks initiated a U-turn and 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. The officer did not notice any other violation of the traffic law, nor did he observe any unusual driving pattern. Officer Acocks has stopped numerous vehicles in previous few months for driving without headlights because of the danger to others.

As Officer Acocks exited his vehicle and approached the Defendant, Dale H. Chapman, the Defendant 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, without incident, the Defendant's drivers license for identification and both the officer and the defendant returned to their respective vehicles. After the usual records checks, Officer Acocks approached the Defendant's vehicle and when the Defendant rolled down his car window could smell an odor of an alcoholic beverage emanating from the vehicle. Officer Acocks asked the Defendant if he had been drinking. The defendant responded, that he had and consented to field sobriety tests.

Based upon his observations of the vehicle operating

without headlights and tail lights, the odor of alcohol in the vehicle and from the defendant, the defendant's unsteady balance, the defendant's admission of drinking alcohol, and defendant's 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 and the State of Utah.

At the West Valley Police Station Mr. Chapman voluntarily provided a breath sample via an intoxilyzer machine with a breath alcohol result of .142.

ARGUMENT SUMMARY

The Circuit Court, in writing, found adequate evidence that the stop was not a pretext and that the officer had a reasonable basis to stop Mr. Chapman. The officer's sole basis for stopping the Chapman vehicle was the failure to have properly operating headlights and taillights. The officer's testimony is sufficient to provide a factual basis for the stop and ensuing arrest.

ARGUMENT

Officer Acocks observed a traffic violation that in his opinion caused a traffic hazard. He attempted to notify the pickup of the problem by flashing his lights. When that failed, he was left with no other choice but to alleviate the hazard, which in this circumstance meant stopping the vehicle.

No evidence was produced indicating that this stop was

precipitated by a profile, interdiction program or alcohol/D.U.I. task force or program. Every fact indicates that this was nothing more than a normal traffic matter attempted and completed by police officers across this state on a daily basis.

A. REASONABLE SUSPICION FOR THE STOP

The facts of this situation articulated by Plaintiff/Respondent rise to the level of reasonable suspicion permitting a brief traffic stop. *State v. Baumgaertel*, 762 P.2d 2, 3 (Utah App. 1988). Utah courts have long recognized the "reasonable suspicion" standard as a lesser standard than probable cause and it has been applied to a growing number of investigative stop cases. This standard is codified in Utah Code Ann. Section 77-7-15 (1953), as amended, as follows:

A peace officer may stop any person in a public place when he has the reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

B. FACT SENSITIVE ISSUES

"A determination of the constitutionality of a police officer's stop of a person under the fourth amendment turns upon the facts of each case." *State v. Trujillo*, 739 P.2d 85, 86 (Utah App. 1987); see also *State v. Sierra*, 754 P.2d 972, (Utah App. 1988). It is err for appellant to cite controlling case law without first urging the finding of

particular facts. Contrary to appellant, not every stop by a traffic officer is a pretext.

C. TOTALITY OF THE CIRCUMSTANCES APPROACH

Every stage of analysis in an investigative stop case requires a "totality of the circumstances" consideration in that all decisions are highly factual in nature.

In a recent investigatory stop case, *State v. Baumgaertel*, at 5, this Court affirmed the conviction finding that the officer had reasonable suspicion to stop the subject vehicle. In so finding, the court stated that "when a police officer sees or hears conduct which gives rise to a suspicion of crime, he has not only the right but the duty to make observations and investigations to determine whether the law is being violated; and if so, to take such measures as are necessary in the enforcement of the law." (*State v. Houser*, 669 P.2d 437, 439 (Utah 1983) (per curium) (quoting *State v. Folkes*, 565 P.2d 1125, 1127 (Utah 1977)).

D. PRETEXT STOP

Driving without headlights at night is a violation of 41-6-118, a class "B" misdemeanor in the West Valley City Municipal Code and the State statutes. A violation of the State Code is a valid reason for stopping a vehicle and said offense committed in the officer's presence is not random. *State v. Gibson*, 665 P.2d 1302 (Utah 1983). In *State v. Sierra*, *supra* at 6, the court announced a legal framework to protect individuals from pretextual misdemeanor traffic

arrests. The court stated that "in traffic violations stops, in balancing the rights of individuals to be free from arbitrary interference by law enforcement officers and the government's interest in crime prevention and public protection, if a hypothetical reasonable officer would not have stopped the driver for the cited offense, and the surrounding circumstances indicate the stop is a pretext, the stop is unconstitutional." *Sierra*, at 979.

The Utah Court of Appeals has most recently applied this standard in the case of *State v. Arroyo*, 770 P.2d 153, 1154 (Utah App. 1988). The court was persuaded that "a reasonable officer would not have stopped Arroyo and cited him for 'following too closely' except for some unarticulated suspicion of more serious criminal activity." The court concluded that the stop was an unconstitutional pretext to search for drugs. Unlike *Sierra*, there was evidence that the department had issued very few citations for "following too closely."

The facts indicate that Acocks has stopped several vehicles in recent months for the same violation, indicating that this stop was not accomplished at the whim of the officer. He had a legitimate concern not only for the safety of others but for the safety of the Defendant. To imply that this stop was a pretext would be tantamount to informing the officer to ignore such violations.

Acocks was not acting on any suspected profiles. He did

not know the race of the driver. He did not notice an out of state plate. He did not base his reactions on Chapman's nervousness. He did not have a hunch that there was a problem. He did not use the crime level of the area as any basis for his actions and he did not approach the vehicle with a pry-bar in hand ready to search the entire vehicle for evidence. Instead, he observed a traffic offence and his approach was routine. This Court in *State v. Sierra, supra* at 6, further pointed out that a stop of a vehicle may be constitutionally justified if it is incident to a lawful detention for a traffic violation. Which is exactly what happened in this instance.

E. CREDIBILITY OF THE OFFICER

Witnesses in a suppression hearing invariably testify as to conflicting versions of the facts. In D.U.I. cases it is not uncommon for a witness to testify in a Drivers License hearing, suppression hearings and at trial. It is quite possible that a witness may not phrase the facts in exactly the same verbiage at each separate hearing. Traditional deference is afforded the fact finder, in both civil and criminal cases, to determine the credibility of those witnesses. *State v. Walker*, 743 P.2d 191 (1987). Appellate courts have recognize that the trial judge is in the best position to assess the witnesses' credibility in a suppression hearing. *State v. Ashe*, 745 P.2d 1255, 1258 (Utah 1987); *State v. Sierra*, 754 P.2d 972 (Utah App. 1988).

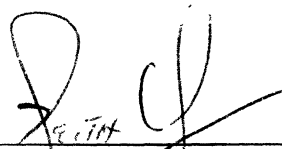
The trial court's factual evaluation underlying its decision to deny appellant's motion to suppress ought not to be disturbed unless clearly erroneous. *State v. Mendoza*, 748 P.2d 181, 183 (Utah 1987); *Ashe, supra* at 1258; *Sierra, supra* at 6.

CONCLUSION

Plaintiff submits that under the totality of the circumstances it was reasonable for Officer Acocks or for any officer to stop the Chapman vehicle for driving at night without headlights and taillights in violation of the Revised West Valley City Ordinances and State law. The failure of the officer to notice if the lights were functioning properly at the time of the stop was incidental and overshadowed by his concern that Mr. Chapman may be Driving Under the Influence of and Alcoholic Beverage in violation of the Revised West Valley City Ordinances and State law.

For this reason, the Circuit Court did not err in denying Defendant's Motion To Suppress and this Court should uphold the decision of the Circuit Court.


DATED this 3rd day of January, 1991.



Keith L. Stoney
Attorney for Respondent

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Respondent to Larry Long, Attorney for Defendant/Appellant, at 39 Exchange Place, Salt Lake City, Utah 84111, this ____ day of January, 1991.



Keith L. Stoney

APPENDIX

ndant

Citation: D32868

WVP Case: 892002005 TC

CHAPMAN, DALE H

Traffic Court Case

0/89	CNT2090 CLOSING ARGUMENT BY DEFENSE	CAC
	CNT2295 REBUTTAL ARGUMENT BY PROSECUTION	CAC
	CNT2346 RESPONSE BY DEFENSE	CAC
	CNT2475 MOTION TO SUPPRESS TUA	CAC
	TRJ scheduled for 8/23/89 at 9:00 A in room A with TEM	CAC
3/89	TAPE REQUEST FROM L. LONG. 583-9207	CLN
4/89	TEM/CC C/O MOTION TO SUPPRESS DENIED, PARTIES NOTIFIED JURY	CAC
	TRIAL SET 8/23/89	CAC
11/89	FILED: MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS	VAM
	EVIDENCE---L LONG	VAM
17/89	FILED DISCOVERY MOTION	MHG
03/89	FILED: DEFENDANT'S ANSWER TO PLAINTIFF'S MOTION FOR DISCOVERY---	VAM
	---L LONG	VAM
23/89	TEM/MG T7347 C0780 DPWC LARRY LONG, KEITH STONEY FOR CITY, THIS	MHG
	WAS SECOND CASE SET ON CALEDAR. CASE CONTINUED	MHG
	TRJ rescheduled to 10/17/89 at 9:00 A in room A with TEM	MHG
	MR. LONG REQUESTED JUDGE MEDLEY TO REVIEW MEMORANDUM DECISION	MHG
06/89	FILED: MOTION, STIPULATION AND ORDER FOR CONTINUANCE--L. LONG	VAM
	FILED: MOTION FOR SECOND HEARING ON DEF'S MOTION TO SUPPRESS	VAM
	EVIDENCE-----L LONG	VAM
11/89	TEM/CC MOTION TO SUPPRESS DENIED FOR SAME REASON AS MOTION	CAC
	FROM 7/14/89, MOTION FOR CONTINUANCE ALSO DENIED. CASE TO BE	CAC
	HEARD 10/17/89	CAC
17/89	TEM/CC T7461 CNT1000 DPWC L. LONG, KEITH STONEY FOR CITY. DEF	CAC
		CAC
	COP - CONDITIONAL NO CONTEST PLEA. DEF ADVISED OF RIGHTS -	CAC
	WAIVED.	CAC
	Sentence:	CAC
	Deft present with Counsel, Prosecutor present	CAC
	ATD: L. LONG PRO: KEITH STONEY	CAC
	TAPE: 7461 COUNT: 1000	CAC
	Judge: Tyrone E. Medley	CAC
	Chrg: DUI ALCO/DRUGS Plea: Find: Nolo Contem	CAC
	Fine Amount: 400.00 Suspended: .00	CAC
	Jail: 180 DAYS Suspended: 180 DAYS	CAC
	Community Service: 48 HOURS in lieu of jail.	CAC
	Fines and assessments entered: FS 400.00	CAC
	SF 100.00	CAC
	VR 100.00	CAC
	IN 200.00	CAC
	Total ARFINES: 800.00	CAC
	Conditions of Probation:	CAC
	12 MO PROB W/ACEC TERMS: 1. NO OTHER VIOLATIONS 2. COMPLY	CAC
	W/ACEC 3. COMPLETE COMMUNITY SERVICE 4. TIMELY PAYMENT	CAC
	STAY SENTENCE PENDING APPEAL	CAC
27/89	FILED: NOTICE OF APPEAL----L LONG	VAM
04/89	FILED NOTICE OF FAILURE TO APPEAR ACEC-SENTENCE STAYED PENDING	JLB
	APPEAL AS PER JUDGE MEDLEY	JLB
	FILED: NOTICE OF APPEAL--L LONG	CLN
18/90	NOTICE OF APPEAL SENT TO COURT OF APPEALS	CLN
25/90	FILE SENT TO COURT OF APPEALS-NO TRANSCRIPT-PER JANICE OF COA.	CLN
30/90	FILED: LETTER FROM COURT OF APPEALS--THEIR CASE NO. 900273-CA	CLN

Defendant

Citation: D32868

WVP Case: 892002005 TC

CHAPMAN, DALE H
502 S STATE
SALT LAKE CITY UT 84111

Traffic Court Case
Judge: Tyrone E. Medley

ChargesBail

Violation Date: 02/11/89

1. DRIVING UNDER THE INFLUENCE OF ALCO/DRUG 41-6-44

660.00

Plea:

Finding/Judgment: Nolo Contendre

Proceedings

02/13/89	Case filed on 02/13/89.	JLB
02/16/89	ARR scheduled for 2/23/89 at 9:00 A in room B with WAT	IPH
02/17/89	ARR rescheduled to 2/27/89 at 9:00 A in room A with TEM	IPH
02/23/89	FILED: APPEARANCE OF COUNSEL, ENTRY OF PLEA, DEMAND FOR JURY TRIAL, AND MOTION TO SUPPRESS EVIDENCE, REQUEST FOR DISCOVERY - L. LONG	SGJ
	ASSIGNED - JUDGE MEDLEY	SGJ
	ARR on 2/27/89 was cancelled	SGJ
02/27/89	PTC scheduled for 3/ 7/89 at 3:30 P in room A with TEM	CAC
03/07/89	TEM/CC T6890 CNT2632 DPWC L. LONG, KEITH STONEY FOR CITY. NO RESOLUTION AT THIS TIME, ON DEF MOTION CASE SET FOR MOTION TO SUPPRESS HEARING.	CAC
	MO scheduled for 4/ 6/89 at 9:00 A in room A with TEM	CAC
03/27/89	MO rescheduled to 4/ 3/89 at 9:00 A in room A with TEM	CAC
04/03/89	TEM/CC T6950 CNT0815 DPWC L. LONG, KEITH STONEY FOR CITY. DEFENSE TO SUBMIT WRITTEN MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS BY 4/7/89, RESPONSE BY PROSECUTION BY 4/19/89	CAC
04/12/89	FILED: MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS EVIDENCE-----L LONG	VAM
04/19/89	FILED: MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE - KEITH STONEY	CAC
04/20/89	Began tracking Taken Under Advisement Review on 06/18/89	CAC
04/27/89	FILED: MOTION FOR EVIDENTIARY HEARING ON DEFENDANT'S HEARING ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE--L. LONG	VAM
05/04/89	Ended tracking of Taken Under Advisement	CAC
	HRG scheduled for 6/26/89 at 2:00 P in room A with TEM	CAC
06/26/89	HRG rescheduled to 7/11/89 at 1:00 P in room A with TEM	CAC
07/05/89	TEM/CC MR LONG'S OFFICE REQUESTED A CONTINUANCE, INDICTATED MR LONG HAD A CONFLICT WITH DATE LISTED ABOVE. COURT INDICATED CASE WOULD BE RESET TO 7/10/89 AT 2:00 P.M. IF HEARING IS NOT HELD ON THAT DATE JUDGE MEDLEY ORDERED THAT CASE BE SET FOR TRIAL	CAC
	HRG rescheduled to 7/10/89 at 2:00 P in room A with TEM	CAC
07/10/89	TEM/CC T7233 CNT0850 DPWC L. LONG, KEITH STONEY FOR CITY.	CAC
	MOTION TO SUPPRESS HEARING	CAC
	CNT0880 PWI #1 COY ACOCKS, WVC PD, DEX	CAC
	CNT1141 XEX OF PWI #1	CAC
	CNT2072 CLOSING ARGUMENT BY PROSECUTION	CAC

ndant
CHAPMAN, DALE H

Citation: D32868

WVP Case: 892002005 TC
Traffic Court Case

9/90 REQUEST FOR TAPE # 7461 FROM LARRY LONGS OFFICE. HE WILL PICK UP CLN
IN SALT LAKE- HIS PHONE 532-5835 CLN
2/90 DAVE FROM LARRY LONGS OFFICE SAID THEY NEVER RECEIVED TAPE. CLN
IT WAS CHECKED OUT FROM OUR TAPE CABINET ON 7-19-90 AND CHECKED CLN
IN ON 8-6-90. TAPE SENT TO SALT LAKE AGAIN. PLEASE NOTIFY DAVE CLN
AT 532-5835. HE WILL PICK UP IN SL. CLN
4/90 DAVE ROBINSON FROM L. LONG OFFICE REQUESTED TAPE #7233 BE SENT CLN
TO SUZANNE IN SL TO BE COPIED. PLEASE NOTIFY HIM AT 532-5835. CLN
9/90 FILED TRANSCRIPT TRANSFERRED TO COURT OF APPEALS MHG

Accounting Summary

Line Due	Total Due	Paid	Credit	Balance	Time Pay#
	800.00			800.00	

Additional Case Data

Sentence Summary

1. 41-6-44 Plea: Find: Nolo Contendre
Fine amount: 400.00 Suspended: .00
Jail: 180 DA Suspended: 180 DA
Community Service: 48 HR

Parties

Atty for Defendant
L. LONG
39 EXCHANGE PLACE
SECOND FLOOR
SALT LAKE CITY UT 84111-2705
Home Phone: () -
Work Phone: () -

Personal Description

Sex: M DOB: 11/05/45
Dr. Lic. No.: 2029767 State: UT Expires:

Scheduled Hearing Summary

PRE-TRIAL CONFERENCE	on 03/07/89	0330 P in room A with TEM
MOTION HEARING	on 04/03/89	0900 A in room A with TEM
HEARING	on 07/10/89	0200 P in room A with TEM
JURY TRIAL	on 10/17/89	0900 A in room A with TEM

End of the docket report for this case.