2001

American Fork City v. Larry J. Singleton : Reply Brief of Appellant

Utah Court of Appeals

James \"Tucker\" Hansen; Duval, Hansen, Witt and Morley; Attorney for Plaintiff/Appellee.
Noall T. Wootton; Attorney for Defendant/ Appellant.

IN THE UTAH COURT OF APPEALS

AMERICAN FORK CITY,	:	
Plaintiff/Appellee	:	No. 20010706-CA
VS.	:	Priority # 2
LARRY J. SINGLETON	:	
Defendant/Appellant	:	

REPLY BRIEF OF APPELLANT

Appeal from the Fourth Judicial District Court
of Utah County, State of Utah
Honorable Howard H. Maetani, Presiding

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ARGUMENT

This appeal is about two issues and two issues only. First, was the Defendants arrest at his home valid or wasn't it. Second, if it was not, should evidence obtained as a result of it be suppressed or shouldn't it.

This appeal is not about a police officer making a mistake in announcing the basis for the arrest or of a suspect trying to capitalize on a mistake. It became apparent that this is the way the Trial Court viewed the issue (May 3,2000 tr. P. 46, lines 11-20). The Defense obviously failed in it's attempt to make his point clear to the Court at that time. (Tr.p. 46).

The City properly states the first issue in it's brief. Probable Cause to effect that arrest is what we should be talking about. The statement of issues cited by the City at page 1 of it's brief makes reference to an "issue 2". Whether the officer's alleged mistaken pronouncement at the time of arrest invalidates the arrest and taints any evidence seized as a result." That is not an issue at all. It is in fact a non-issue. We don't know whether the pre-arrest statement by Officer Southard was a mistake or not. The point is that it doesn't matter. What matters is that Mr Singleton was arrested and removed from his home when he should not have been. Patients and a little effort would most likely have revealed additional facts regarding the Defendant's conduct and physical condition that may have changed that situation.

This Court has heretofore recognized the existence and validity of three distinct levels of police intrusion: (State v Contrel 886 p.2d 107. Ut. App. 1994)

1. An officer may approach a citizen at anytime 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; however, the detention must be temporary and last

no longer than is necessary to effectuate the purpose of the stop."

3. An officer may arrest a suspect if the officer has probable cause to believe an offense has been committed or is being committed.

The Defendants point is that what the Officer observed, coupled with the information he had falls within the category of a level 2 detention. He had the potential to elevate that to a level 3 probable cause if he had simply maintained the level 2 detention, made additional observations of the defendant's conduct and movements and taken steps either personally or with the assistance of other police personnel readily available to him to inquire as to just what it was that the informants who originally called the police either observed or heard that led them to call in the report of a drunk driver in the first place. This may have taken a little more time and a little more effort but most likely not much. The bottom line, however, is that it didn't happen that way. It would have been a much more professional approach if it had. The Defendants rights would not have been violated in what appears to have been a very offensive way. The City can argue that it doesn't really matter because the end result would in all likelihood have been the same. No one can legitimately argue otherwise. But that too is beside the point.

CONCLUSION

Unless this Court is prepared to hold that encountering a suspect who is identified as the driver of a motor vehicle, who smells strongly of alcohol, has bloodshot and glassy eyes and who is "slightly swaying", is belligerent, refuses to cooperate with field tests and denies having a "damn thing to drink" constitutes probable cause for arrest without further observation independent of cooperation and without further inquiry into facts that appear to be readily available it can only conclude that a level 2 detention was all that is constitutionally justified and the arrest cannot be supported. Nor can additional evidence obtained following a promise that the Defendant can go

home if he cooperates or be incarcerated if he does not, be deemed admissible

PRECISE RELIEF SOUGHT

The Defendant asks this Honorable Court to reverse the order of the Trial Court denying the Defendant's motion to suppress and the entry of an order of it's own that said motion is granted. Costs are not sought.

Respectfully submitted this 24th day of April, 2002.

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Mailing Certificate

A copy of this document is mailed to James Tucker Hansen, Attorney for Plaintiff/Respondent April 25th, 2002, first class postage prepaid at American Fork, Utah to the following address:

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