

1992

Salt Lake City v. Dave Ortiz : Brief of Appellee

Utah Court of Appeals

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BRIEF

UTAH

COMMITTEE

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DOCKET NO.

92-0563

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

SALT LAKE CITY, A	:	
Municipal Corporation,	:	
Plaintiff/Appellee,	:	
vs.	:	CASE NO. 92-0563-CA
DAVE ORTIZ,	:	
Defendant/Appellant.	:	Priority No. 2

BRIEF OF APPELLEE

Appeal by defendant of the trial court's denial of the Motion to Suppress on the Grounds of Pre Text Stop, in a prosecution for Driving Under the Influence of Alcohol, a Class B Misdemeanor, in violation of 12.24.100 of the Revised Ordinances of Salt Lake City, in the Third Circuit Court, Salt Lake Department, Salt Lake County, State of Utah, the Honorable Floyd H. Gowans, Judge, presiding.

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FEB 24 2003

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES

Salt Lake City Rev. Ordinances, Section 11.24.020

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JURISDICTIONAL STATEMENT

Jurisdiction is conferred upon this Court pursuant to Utah Code Ann. Section 78-2a-3(2)(d) (Supp. 1991).

STATEMENT OF THE ISSUES

1. Whether the trial court finding of no pretext stop was "clearly erroneous"?
2. Whether the evidence was sufficient to sustain the trial court's ruling that Officer Beesley was justified in stopping the subject vehicle.

STANDARD OF REVIEW

In considering an appeal from a circuit court motion to suppress, the Court of Appeals should give deference to the trial court's findings of fact, and be governed by a "clearly erroneous" standard. State v. Smith, 781 P.2d at 881.

Questions of law which flow from these factual findings are to reviewed under a "correctness" standard. State v. Lopez, 831 P.2d 1040, 1044 (Utah App. 1992); State v. Steward, 806 P.2d 213, 215 (Utah App. 1991).

STATEMENT OF THE CASE

The City concurs in appellant's Statement of the Case.

STATEMENT OF THE FACTS

Officer Beesley, of Salt Lake City Police Department, testified on behalf of the city at the motion to suppress, and although he initially erred in his recollection of the case, he clarified upon refreshing his memory with the report, and was consistent in his testimony that the stop was precipitated by his belief that an apparent traffic violation. (T. 2, & 9) Officer Beesley testified that he observed the suspect vehicle pulling slowly across 100 South, and then stopping in his path, (T. 2, 5, & 9)

The trial court found specifically, based on the testimony of Officer Beesley;

[a] vehicle stopping in that position, as has been testified to by the officer, certainly would be far more than probable cause [to stop]. The officer would be derelict in his duty if he did not investigate to see what was wrong. (T. 24)

It is clear from the testimony given by Officer Beesley, that he stopped the suspect vehicle based on his articulated suspicion that the driver was impeding traffic. (T. 2, 5, & 9)

SUMMARY OF THE ARGUMENT

The trial court, having heard the evidence, ruled properly in finding that Officer Beesley did not stop the appellant under a pretext to search in an unconstitutional manner.

The trial court was correct in finding that Officer Beesley's stop of the suspect vehicle on the basis of a reasonable articulable suspicion that the driver was committing a traffic offense, such as impeding traffic, was proper.

ARGUMENT

I. THERE CAN BE NO ISSUE OF A PRETEXTUAL STOP WHERE THE COURT DETERMINES THAT THE STOP WAS BASED ON THE OFFICER'S OBSERVATION OF A TRAFFIC VIOLATION.

Appellee concurs with the appellant's statement of the appropriate standard of review for questions of fact, The "clearly erroneous" standard requires the ruling to be reversed if it is against the clear weight of the evidence or it is apparent that a mistake has been made. It does not mean that the appellate court considers and weighs the evidence de novo or that a ruling may be reversed merely because the reviewing court may have reached a different result. Great weight is still accorded the trial court and its decision is reversed only if there is inadequate evidentiary support or a mistake in the law. State v. Walker, 743 P.2d 191, 193 (Utah 1987).

As recently as March of last year, this Court has addressed the issue of pretext stops, stating that;

the pretext doctrine applies in cases where the officer claims to have stopped a vehicle for a minor traffic violation, but where the court determines the stop was not made because of the traffic violation but rather due to an unconstitutional motivation and, therefore, the officer has deviated from the normal course of action expected of a reasonable officer. State v. Lopez, 831 P.2d 1040, 1044 (Utah App. 1992), citing State v. Sierra, 754 P.2d 972, 978.

This court articulated the pretext doctrine further as;

whether a "reasonable ... officer, in view of the totality of the circumstances confronting him or her, would have stopped" the vehicle for the traffic violation absent the unconstitutional motivation. Id.

The trial court held in this case, that there was no pretext stop, because the officer acted as any reasonable officer with similar training and experience would have when faced with the same circumstances. (T. 24)

The finding of facts by the trial court is clearly supported by sufficient evidence to sustain the denial of defendant's motion to dismiss on the basis of pretext stop.

II. REASONABLE ARTICULABLE SUSPICION OF A TRAFFIC VIOLATION IN PROGRESS IS SUFFICIENT TO WARRANT A STOP.

There are numerous reasons an officer might have for pulling a vehicle over, this court, again in Lopez, identified three situations where the officer is justified in stopping a vehicle:

(1) When the officer observes the driver commit a traffic violation; (2) when the officer has a reasonable articulable suspicion that the driver is committing a traffic offense, such as driving under the influence of alcohol...; and (3) when the officer has a reasonable articulable suspicion that the driver is engaged in more


serious criminal activity, such as transporting drugs.
(citations omitted) (emphasis added)

The issue presented by the immediate case pertains to the first situation, and it was addressed properly by the trial court as a question of reasonable suspicion or probable cause. See generally, State v. Grovier, 808 P.2d 133 (Utah App. 1991). The trial court, after having heard the evidence, ruled that there was certainly probable cause. The officer's training and background allowed him to make the determination that a traffic violation was being committed, and thus make the stop. The trial court having stated specifically the basis for its finding that probable cause existed, this Court should review it under the "clearly erroneous" standard. The evidence in support of the reasonable articulable suspicion or probable cause is sufficient to sustain the ruling of the lower court.

CONCLUSION

On the basis of the foregoing, the City requests that the trial court's denial of defendant's motion to suppress on the basis of pretext stop be affirmed.

Respectfully submitted this 8th day of February,
1993.



STEPHEN P. ZOLLINGER
Assistant City Prosecutor

MAILING CERTIFICATE

I hereby certify that on the 8th day of February,
1993, I caused to be delivered, four (4) true and correct copies
of the Brief of Appellee to Deborah Kreeck Mendez, Esq., Salt
Lake Legal Defender Assoc., 424 East 500 South, Suite 300, Salt
Lake City, Utah 84111.

Steph Zölliger

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FILED
Utah Court of Appeals

FEB 23 1993


Mary T. Noonan
Clerk of the Court

ADDENDUM

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES

Salt Lake City Rev. Ordinances, Section 11.24.020

A. It is unlawful and punishable as provided in this section for any person to operate or be in actual physical control of a vehicle within this city if the person has a blood or breath alcohol content of .08 percent or greater by weight as shown by a chemical test given within two hours after the alleged operation or physical control, or if the person is under the influence of alcohol or any drug to a degree which renders the person incapable of safely driving a vehicle within the city...

Amendment IV, United States Constitution

[Unreasonable searches and seizures.
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 particularity describing the place to be searched, and the persons or things to be seized.

Article I, Sections 7 and 14, Utah Constitution

Section 7. [Due process of law.]
No person shall be deprived of life, liberty or property, without due process of law.

Section 14. [Unreasonable searches forbidden -
Issuance of warrant.]
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.