

2002

Utah v. Marc W. Schumacher : Brief of Appellant

Utah Court of Appeals

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David E. Doxey; Chief Deputy Iron County Attorney; Attorney for Appellee.

Marc W. Schumacher; Appellant pro se.

Recommended Citation

Brief of Appellant, *Utah v. Schumacher*, No. 20020478 (Utah Court of Appeals, 2002).
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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee

Case No. 20020478-CA

vs.

MARC W. SCHUMACHER,

Defendant/Appellant

APPELLANT'S SUPPLEMENTAL BRIEF
CONTAINING THE TRIAL COURT'S RULING AND FINDINGS OF FACT

APPEAL FROM THE CIRCUIT COURT OF IRON COUNTY
5th DISTRICT
HON. J. PHILIP EVES, JUDGE

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FILED
Utah Court of Appeals

NOV - 4 2002

Paulette Stagg
Clerk of the Court

(2)

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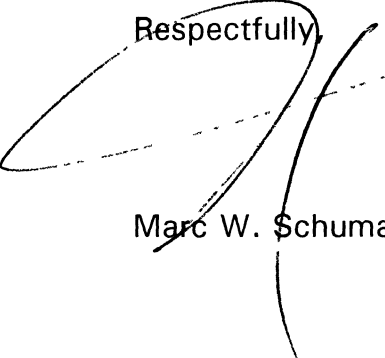
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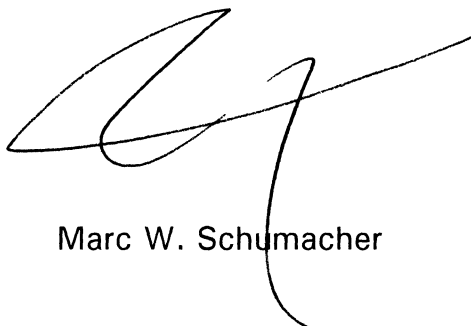
NOW COMES Appellant, Marc W. Schumacher, and hereby states that he inadvertently omitted appending the attached Ruling and Findings of Fact to his original brief in this matter.

Respectfully,

Marc W. Schumacher

Certificate of Mailing:

Now Comes Marc W. Schumacher who hereby swears under the penalties of perjury that on 11-4-02 he mailed a copy of this document to:

David E. Doxey, Deputy Iron County Attorney
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Marc W. Schumacher

11-04-02

**IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR
IRON COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

MARC WILLIAM SCHUMACHER,

Defendant.

**RULING ON DEFENDANT'S
MOTION TO SUPPRESS**

Case No. 015501427

Judge: J. Philip Eves

This matter came before the Court on Defendant's AMENDED MOTION FOR A HEARING TO ESTABLISH PROBABLE CAUSE/REASONABLE SUSPICION AND MOTION FOR TEMPORARY INJUNCTION (in reality a Motion to Suppress), filed September 6, 2001. The State filed an Objection thereto on October 10, 2001. A hearing on the matter was held on October 29, 2001, at which time both sides presented evidence and oral argument to the Court. The Court took the matter under submission to allow the parties to present copies of cases upon which they relied, which the Defendant did.

Having heard the parties' arguments, having considered the parties' memoranda and cases, having researched the relevant law, and now being fully advised in the premises, the Court rules as follows.

FINDINGS OF FACT

This case arises out of a traffic stop in Cedar City, Utah. Defendant Marc William

Schumacher ("Defendant"), who is representing himself in this case, argues that any evidence gathered as a result of the vehicle stop which took place on May 26, 2001 must be suppressed, because the stop was illegal.

The evidence demonstrates that at around 9:00 p.m. on May 26, 2001, the police dispatcher in Cedar City, Utah, put out a call for officers to investigate a suspicious vehicle, an older green pickup truck that had been parked in the parking lot at the Cinema 8 Theaters in Cedar City since around 3:00 p.m. that day. Agent Brent Dunlap of the Bureau of Criminal Investigation was just exiting Interstate 15, about ½ mile away from the Cinema 8 Theaters, heard the broadcast and responded.

As Agent Dunlap arrived at the Cinema 8 parking lot, he observed an older green pickup truck parked with its hood up. Before he could reach the Defendant's vehicle, Agent Dunlap saw Defendant shut the hood of the pickup truck, get in, and drive off, exiting the parking lot northbound onto Sage Drive. Agent Dunlap testified that he followed Defendant, who appeared to be traveling fairly quickly, onto Sage Drive. Agent Dunlap was unable to "get a speed" for Defendant. Agent Dunlap testified that as he followed Defendant on Sage Drive, and at the intersection with 600 South, the Defendant turned right onto 600 South (eastbound) without making a full stop at the stop sign at that intersection.

Officer Mike Russell of the Cedar City Police Department was also responding to the suspicious vehicle broadcast at about the same time. He was approaching westbound on 600 South, moving in the direction of Defendant, the Cinema 8 Theaters and Agent Dunlap. Officer Russell testified that Agent Dunlap advised him by radio that the Defendant had not stopped at the stop sign. Around 500 West and 600 South, Officer Russell encountered the Defendant's

vehicle eastbound with Agent Dunlap behind it. Officer Russell made a U-turn, got behind Defendant, and activated his overhead lights. The Defendant pulled to the curb, Officer Russell stopped right behind him and Agent Dunlap parked his vehicle behind Officer Russell's within a few seconds.

Once at Defendant's vehicle, Officer Russell detected the odor of alcohol on Defendant's breath, and noticed empty beer cans in plain view in the cab of Defendant's truck. Officer Russell then performed a series of "field sobriety tests," on which Defendant did not perform well. Officer Russell then informed Defendant that he was going to transport Defendant to the Iron County/Utah State Correctional Facility for an Intoxilyzer 5000 test.

Officer Russell impounded Defendant's vehicle after the arrest, at which time he found a partially empty can of beer in the cab of the truck, and at least three (3) empty cans of beer in the bed of the truck. At the Iron County/Utah State Correctional Facility, Defendant refused to participate in the Intoxilyzer 5000 test. Defendant was eventually cited for Driving Under the Influence of Alcohol, and for Open Container in Vehicle.

ISSUE

Defendant has moved to suppress any and all evidence gathered as a result of the stop, on the grounds that the stop was illegal because the officer who stopped him, Officer Russell, did not have a reasonable suspicion for that stop, as he had not observed Defendant run the stop sign at the intersection of Sage Drive and 600 South.

The State argues that Officer Russell had sufficient reasonable suspicion for the stop because he had been informed by Agent Dunlap of the offense, and that Agent Dunlap, having witnessed the offense, had sufficient reasonable suspicion.

ANALYSIS

IF THE REPORTING OFFICER/AGENCY HAS SUFFICIENT REASONABLE SUSPICION FOR A STOP, A STOP BASED ON THEIR REQUEST IS LEGAL

Because Agent Dunlap had sufficient reasonable suspicion for a stop, based on the fact that he witnessed Defendant commit an offense (running the stop sign), and he communicated that lawful basis for a vehicle stop to Officer Russell, the resulting stop by Officer Russell was lawful.

A similar situation was addressed by the Utah Court of Appeals in State v. Case, 884 P.2d 1274 (Utah Ct.App. 1994). In that case, University of Utah Police stopped a vehicle based on a radio broadcast that they received from dispatch of a suspicious vehicle, and a possible car burglary. During the course of the stop, the officer detected the odor of alcohol, and ultimately the driver was arrested for driving while under the influence of alcohol. The defendant there also sought to suppress the evidence, arguing that the stop was illegal because the officer lacked reasonable suspicion to initiate a stop.

The Utah Court of Appeals agreed with the defendant, and suppressed the seized evidence for the reason that the broadcast was not based on information in possession of the dispatcher, or anyone else in the law enforcement agency, that created a reasonable suspicion justifying the stop. The Case facts differ from the present matter in that in Case, dispatcher did not have sufficient reasonable suspicion for a stop when the radio transmission was made,

whereas, in the present matter Agent Dunlap did have sufficient reasonable suspicion, by virtue of having witnessed Defendant run the stop sign, when he made his transmission to Officer Russell.

The law is clear that the stopping of a motor vehicle invokes protections of Constitutional magnitude. As the Case Court stated:

Stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [the Fourth and Fourteenth] Amendments, even though the purpose of the stop is limited and the resulting detention quite brief." Delaware v. Prouse, 440 U.S. 648, 653 (1979). Accord State v. Strickling, 844 P.2d 979, 982 (Utah App. 1992). See Terry v. Ohio, 392 U.S. 1, 16 (1968) (defining Fourth Amendment seizure as "whenever a police officer accosts an individual and restrains his freedom to walk away"). Case, 884 P.2d at 1276.

The requirements for a Terry investigatory stop are codified in Utah Code Ann. §§ 77-7-15 (1990), which authorizes law enforcement personnel to "stop any person in a public place when [the officer] has a 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." Id., fn 2.

Thus, the law is clear that an officer may make a stop of a person or a vehicle when an offense is committed in his presence. The question raised by the Defendant in the present case is whether the officer actually making the stop is allowed to rely on information provided by another officer who has reasonable suspicion to justify the stop. Defendant argues that because Officer Russell did not witness the stop sign offense, he lacked sufficient reasonable suspicion to make the stop.

The Court in Case defined a narrow range of circumstances where an officer may rely on information from others to provide sufficient reasonable suspicion for a stop.

An investigative stop may survive the Fourth Amendment prohibition of unreasonable searches and seizures if performed by an officer who objectively relies on information, bulletins, or flyers received from other law enforcement

sources. United States v. Hensley, 469 U.S. 221, 232, 105 S. Ct. 675, 682, 83 L. Ed. 2d 604 (1985). Accord State v. Bruce, 779 P.2d 646, 650 (Utah 1989); State v. Seel, 827 P.2d 954, 960 (Utah App.), cert. denied, 836 P.2d 1383 (Utah 1992).

The Hensley decision is a landmark case which added an important clarification to the Terry investigatory stop doctrine. In Hensley, officers from the Covington, Kentucky, police department stopped the defendant based on a "wanted flyer," received via teletype from the St. Bernard, Ohio, police department, describing the defendant's alleged involvement in an armed robbery. Hensley, 469 U.S. at 223. The Supreme Court first ruled that a Terry stop is not limited to investigation of ongoing or future crimes. ⁿ³ Id. at 228-29. The Court then held that an investigating officer may rely on a flyer or bulletin from other Police Departments to justify an investigative stop, but only "if the police who issued the flyer or bulletin possessed a reasonable suspicion justifying a stop." Id. at 232,

* * *

In allowing such reliance, the Court made a logical progression from its decision fourteen years earlier in Whiteley v. Warden, 401 U.S. 560 (1971), in which it determined the legality of an arrest based on radioed arrest warrant information. The Whiteley Court held that an officer can make a valid arrest based on such broadcast information only if the department issuing the information had sufficient probable cause to support the arrest warrant. Whiteley, 401 U.S. at 568. By applying the Whiteley approach to reasonable suspicion scenarios, the Hensley Court concluded that *the officer or department who issues a directive for investigation to other police must have sufficient reasonable suspicion, through specific and articulable facts, to support the stop.* Hensley, 469 U.S. at 232. Case, 884 P.2d at 1277 (emphasis added).

Therefore, the distinction between Case and the present matter is the existence, or lack thereof, of reasonable suspicion in the possession of the officer or police agency who issues the directive for the stop. If that officer/agency has sufficient reasonable suspicion to initiate the stop, then a directive from that officer/agency may be relied upon by an officer who does not personally possess reasonable suspicion to justify the detention of a vehicle or person.

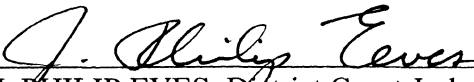
In the present matter, when Officer Russell stopped Defendant based on the radio transmission by Agent Dunlap, who clearly possessed sufficient reasonable suspicion to stop

Defendant after personally witnessing Defendant commit an offense by running the stop sign, he did not perform an illegal seizure.

CONCLUSION

Because Agent Dunlap had sufficient reasonable suspicion to stop Defendant, and communicated that information to Officer Russell, Officer Russell's subsequent stop of the Defendant's vehicle was proper. Defendant's Motion to Suppress is hereby denied. This matter should now be set for trial.

DATED this 29th day of November 2001.

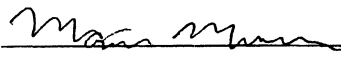

J. PHILIP EVES District Court Judge

Certificate of Mailing

I hereby certify that on this 29th day of November 2001, I mailed true and correct copies of the above and foregoing document, first-class postage prepaid, to the following:

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Deputy Court Clerk