

1992

State of Utah v. Federico Oliveros Perez : Brief of Appellee

Utah Supreme Court

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BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

DOCKET NO. ~~92-0001-CA~~

STATE OF UTAH,

:

Plaintiff-Appellee,

:

Case No. 910349

v.

:

92-0001-CA

FEDERICO OLIVEROS PEREZ,

:

Category No. 2

Defendant-Appellant.

:

BRIEF OF APPELLEE

APPEAL FROM A CONVICTION OF POSSESSION OF A
CONTROLLED SUBSTANCE WITH INTENT TO
DISTRIBUTE, A FIRST DEGREE FELONY, IN THE
FIFTH JUDICIAL DISTRICT COURT, IN AND FOR
WASHINGTON COUNTY, STATE OF UTAH, THE
HONORABLE J. PHILIP EVES, PRESIDING.

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UTAH

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 Plaintiff-Appellee, : Case No. 910349
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 v. :
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 FEDERICO OLIVEROS PEREZ, : Category No. 2
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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
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Defendant-Appellant.	:	

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of possession of a controlled substance with intent to distribute, a first degree felony, under Utah Code Ann. § 58-37-8(1)(a)(iv) (Supp. 1991).

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2-2(3)(i) (Supp. 1991).

STATEMENT OF ISSUES PRESENTED ON APPEAL

AND STANDARDS OF APPELLATE REVIEW

The following issues are presented by defendant for review:

1. Was defendant in custody or had he been restrained in any way or unreasonably detained by the officer at the time the consent to search was given?
2. Did the State sustain its burden of proving that defendant's consent to search was voluntary and valid?
3. Did the search of the vehicle exceed the scope of the consent given?

4. Were defendant's rights against unreasonable searches and seizures as guaranteed under the federal and state constitutions violated by the officer's detention of defendant and search of his vehicle?

Because defendant has failed to demonstrate by reference to the record on appeal that he presented arguments concerning these precise issues to the trial court, his claims are not properly before the Court. See State v. Carter, 707 P.2d 656, 660-61 (Utah 1985); State v. Robbins, 709 P.2d 771, 773 (Utah 1985). Therefore, standards of review applicable to the merits of the issues identified are not set forth here.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional provisions, statutes, or rules pertinent to the resolution of the issues presented on appeal is contained in the body of this brief.

STATEMENT OF THE CASE

Defendant, Federico Olivares Perez, was charged with possession of a controlled substance with intent to distribute, a first degree felony, under Utah Code Ann. § 58-37-8(1)(a)(iv) (Supp. 1991) (R. 6-7).¹ After the trial court denied defendant's motion to suppress evidence seized from his vehicle by the police, defendant entered and the court accepted a conditional guilty plea in which defendant reserved the right to challenge the court's suppression ruling (R. 65, 69, 72). See State v.

¹ The charge was for a first degree felony based on a prior conviction of an offense under subsection (1)(a) (R. 7). See Utah Code Ann. § 58-37-8(1)(b)(i) (Supp. 1991).

Sery, 758 P.2d 935, 937-40 (Utah App. 1988) (approving of the conditional guilty plea procedure for preserving suppression issues for appeal).²

The court sentenced defendant to the Utah State Prison for a term of five years to life (R. 73).

STATEMENT OF FACTS

In light of the State's response to defendant's legal arguments, a statement of facts beyond that set forth in the Statement of the Case is unnecessary.

SUMMARY OF ARGUMENT

Because defendant has failed to provide a record on appeal which reveals that he clearly presented to the trial court the same arguments for suppression of evidence he now presents on appeal, this Court should not consider his challenge to the denial of his motion to suppress.

ARGUMENT

DEFENDANT FAILS TO DEMONSTRATE THAT THE ARGUMENTS HE PRESENTS ON APPEAL WERE PRESENTED TO THE TRIAL COURT, A PREREQUISITE TO THEIR CONSIDERATION BY THIS COURT.

As noted above, in this appeal defendant identifies four issues concerning the trial court's denial of his motion to suppress evidence seized by the police in a warrantless search of his vehicle. However, defendant only presents argument on

² In Sery, the State challenged the conditional plea procedure ratified by the Utah Court of Appeals, 758 P.2d at 937; however, it now supports that procedure as a reasonable, timesaving device which is favored by both prosecutors and defense counsel. The validity of the conditional plea in the instant case is not in issue.

whether his rights under the fourth amendment and article I, section 14 of the Utah Constitution were violated by an allegedly illegal detention and a search of his vehicle that was conducted pursuant to his allegedly involuntary and invalid consent. He does not develop any argument regarding the issue of whether the search exceeded the scope of consent, and therefore that issue is not properly before the Court. See State v. Amicone, 689 P.2d 1341, 1344 (Utah 1984) ("Since the defendant fails to support [her] argument by any legal analysis or authority, we decline to rule on it."). For the reasons that follow, this Court should also decline to consider defendant's claims concerning an illegal detention and invalid consent.

The party who seeks to upset the judgment of the lower court bears the burden on appeal of showing reversible error. State v. Gotschall, 782 P.2d 459, 463 (Utah 1989); State v. Jones, 657 P.2d 1263, 1267 (Utah 1982); State v. Hamilton, 18 Utah 2d 234, 419 P.2d 770, 773 (1966). When challenging a trial court's denial of a motion to suppress, a defendant must demonstrate to the appellate court that the ground for suppression argued on appeal was clearly presented to the trial court. State v. Carter, 707 P.2d 656, 660-61 (Utah 1985). "[W]here a defendant fails to assert a particular ground for suppressing unlawfully obtained evidence in the trial court, an appellate court will not consider that ground on appeal." Id. at 660. "[M]otions to suppress should be supported by precise averments, not conclusory allegations[.]" Ibid. (footnote

omitted). Thus, a defendant who alleges error in the trial court's suppression ruling must provide a record on appeal which reveals that the appellate arguments were clearly made to the lower court. See State v. Robbins, 709 P.2d 771, 773 (Utah 1985) (defendant's failure to provide trial transcript on appeal precluded consideration of his claim of error).

In the instant case, defendant filed a one-page motion to suppress, not supported by a memorandum, which reads in its entirety:

Comes now Maxwell Bentley, attorney for defendant, and moves the court for an order to suppress any and all evidence arising [sic] or resulting from a search by police officers of a vehicle in possession of defendant on the 27th day of February, 1991 in Washington County, Utah on the grounds that said search was made without a warrant and without probable cause, was illegal in violation of defendant's rights as protected by the Fourth Amendment to the United States Constitution, and further objects to defendant's arrest as a result of said illegal search.

(R. 13). Defendant's specific appellate claims that he was illegally detained and that the consent search was invalid do not appear in this written motion. An evidentiary hearing on the motion was held on May 14, 1991; however, no legal argument was presented by either party at the conclusion of that hearing (R. 51, T. 67-68).³ And although defendant's counsel apparently submitted oral argument on the motion to the trial court two days after completion of the evidentiary hearing (R. 51-52), the

³ The appellate record contains a transcript of the evidentiary hearing.

appellate record does not contain a transcript of that argument. Thus, there is nothing in the appellate record to demonstrate that defendant presented his detention and consent arguments, as articulated on appeal, to the trial court. Accordingly, under the authority set forth above, this Court should not consider defendant's challenge to the denial of his motion to suppress.

CONCLUSION

Based on the foregoing arguments, this Court should affirm both the trial court's denial of defendant's motion to suppress and defendant's conviction.

RESPECTFULLY submitted this 24th day of December, 1991.

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CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Appellee was mailed, postage prepaid, to Maxwell Bentley, Attorney for Appellant, 1811 Middleton Drive, St. George, Utah 84770, this 24th day of December, 1991.

David B. Thompson