

2003

## Utah v. Derek Chad Chism : Reply Brief

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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STATE OF UTAH,

Plaintiff/Appellee,

vs.

DEREK CHAD CHISM,

Defendant/Appellant.

Case No. 20030412-CA

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**REPLY BRIEF OF APPELLANT**

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APPEAL FROM THE FOURTH DISTRICT JUDICIAL COURT, UTAH COUNTY,  
STATE OF UTAH, FROM A CONVICTION OF ATTEMPTED ILLEGAL  
POSSESSION OR USE OF A CONTROLLED SUBSTANCE, A CLASS A  
MISDEMEANOR, BEFORE THE HONORABLE JAMES R. TAYLOR

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UTAH APPELLATE COURTS

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**REPLY BRIEF OF APPELLANT**

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**ARGUMENT**

**I. THE TRIAL COURT ERRED BY DENYING THE MOTION TO SUPPRESS GIVEN THAT THERE WERE NO SPECIFIC ARTICULABLE FACTS THAT CHSIM WAS ENGAGED IN ANY CRIMINAL BEHAVIOR**

The State properly cites that “once a traffic stop is made, the detention ‘must be temporary and last no longer than is necessary to effectuate the purpose of the stop.’” (Br. of App. at 6, quoting *State v. Despain*, 2003 UT App 266, ¶ 7, 74 P.3d 1176). The State further quotes: “If the officer reasonably suspects more serious criminal activity, ‘the scope of the stop is still limited.’ The officer must ‘diligently pursue[] a means of investigation that [is] likely to confirm or dispel [his or her] suspicions quickly, during which time it [is] necessary to detain the defendant” (Br. of App. at 7-8; citing *State v. Chevre*, 2000 UT App 6, ¶ 10, 994 P.2d 1278 (citations omitted)). However, the State incorrectly asserts that an officer’s mere hunch or “sense,” without more, that a driver’s

license might be fake is sufficient cause to exceed the scope of the original traffic stop and further detain a passenger in order to run a warrants check on the passenger and check the validity of that passenger's driver's license. Chism asserts that a mere hunch or "sense" is insufficient to support a finding of reasonable suspicion, and that based on the totality of the circumstances, there were insufficient specific, articulable facts to support running a warrants check and an identification check.

The State attempts to analogize the facts of *State v. Lopez*, 873 P.2d 1127 (Utah 1994) and *Michigan v. Summers*, 452 U.S. 692 (1981), to this case in an effort to conclude that running a warrants check and identification check on a driver of an automobile would allow the officer in this case to run a warrants check on Chism. This analogy fails, however, because Chism was not the driver of the automobile, but was only a passenger. In fact, the Court in *Lopez* made clear that "asking for the passenger's name and date of birth to running a warrants check on her severed the chain of rational inference from specific articulable facts and degenerated into an attempt to support an as yet 'inchoate and unparticularized suspicion or "hunch."'" *Id.* at 1133 (citations omitted).

The State also claims that the facts in *State v. Johnson*, 805 P.2d 761 (Utah 1991), are distinguishable because the officer in *Johnson* was "proceeding from a lack of facts rather than observation of specific facts," whereas in this case "the trial court recited those facts available to Deputy Randall" (Br. of App. at 10). The State's claims fails because the trial court's recitation of the facts available to Deputy Randall are mostly irrelevant to the issue of whether specific articulable facts supported a finding of reasonable suspicion that Chism was engaged in more serious criminal activity. The fact

that Chism had the odor of tobacco, had a discolored tongue, and that there was tobacco on the dashboard are not facts akin with the necessary articulated facts that would support reasonable suspicion that Chism was engaged in a more serious crime (R. 43-44). Chism readily admitted that he was smoking (R. 100: 7).

The only relevant fact cited by the trial court was Randall's "sense" that Chism was underage. Randall's inchoate and unparticularized hunch was supported only by his subjective observation that Chism looked younger than 19. Not only was this hunch incorrect, since Chism was 19, but even Randall admitted that the license was not tampered with (R. 100: 14). Instead of diligently pursuing a means of investigation that was likely to confirm or dispel his suspicions or hunch quickly, such as further questioning Chism and the other occupants about Chism's age, Randall instead took Chism's license and ran a warrants check and identification check – vastly increasing the length of detention and exceeding the scope of the original stop.

Chism asserts that Randall's actions are akin to the officer's action in *Johnson*. In *Johnson*, where the officer discovered that neither the driver nor passenger owned the vehicle and they could not produce proof of registration, the Court observed that this information only "raised the possibility that the car had been stolen." 805 P.2d at 762. While the Court recognized that these facts "are just as consistent with the more likely scenario that the driver borrowed the car from its rightful owner," it held that these facts do "not rise to the level of an articulable suspicion that the car was stolen." *Id.* at 764.

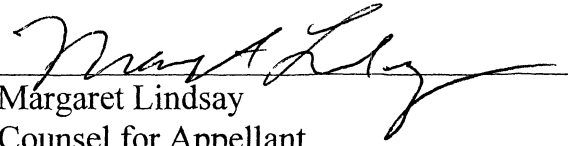
This situation is highly similar to the facts in this case. Although Randall perceived that Chism might be underage, the fact that the license was not tampered with

and that Chism's appearance was a close match to the picture are just as consistent with the more likely scenario that Chism's license in fact was valid. Thus, the State's assertions that *Johnson* is not relevant to this case are incorrect.

### **CONCLUSION AND PRECISE RELIEF SOUGHT**

For the foregoing reasons and the reasons stated in the original brief, Chism asks this Court to reverse his conviction.

RESPECTFULLY SUBMITTED this 25th day of June, 2004.

  
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Counsel for Appellant

### **CERTIFICATE OF MAILING**

I hereby certify that I delivered four (4) true and correct copies of the foregoing Brief of Appellant to the Appeals Division, Utah Attorney General, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this 25th day of June, 2004.

