

2006

State of Utah v. Mark Lefevre : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH.	:	
	:	
Plaintiff / Appellee	:	
	:	
vs.	:	Case No. 20060974-CA
	:	
MARK LEFEVRE.	:	
	:	
Defendant / Appellant	:	
	:	

ARGUMENT

I. Lefevre’s initial detention was unreasonable and thus illegal, rendering all evidence thereafter obtained inadmissible.

It is well established that “...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 ...” *State v. Worwood*, 2007 UT 47 ¶21, 164 P.3d 397, 406 (Utah 2007). Here, the dispute is not whether Lefevre was detained, but whether Officer Barson reasonably and articulatively suspected that Lefevre had committed or was about to commit a crime at the point he was detained. Because there was no such suspicion, all after-occurring evidence should have been suppressed.

“Reasonable suspicion requires a ‘particularized and objective basis, supported by specific and articulable facts.’ Courts should evaluate these facts in their totality, rather than looking at each fact in isolation.” *Id.* at ¶23, 164 P.3d at 406 (citations omitted). In the context of a traffic stop, reasonableness is

determined by a two-part inquiry: first, whether the police action was justified at the outset, and second, whether the resulting detention was “reasonably related in scope to the circumstances that justified the interference in the first place.” *State v. Lopez*, 873 P.2d 1127, 1132 (Utah 1994) (internal quotations omitted) (quoting *Terry v. Ohio*, 392 U.S. 1, 19-20, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)).

Officer Barson’s actions fail under both prongs. He noticed Lefevre walking stiffly, clenching his fists and jerking his head, and carrying a lightbulb. Barson attributed Lefevre’s odd demeanor to drug use, but it is just as likely that seeing the police activity made Lefevre – with his prior history of police contact – uptight. Lefevre was not stumbling or talking incoherently or doing anything else that is commonly associated with drug use. He committed no crime in Barson’s presence; he simply walked to his car.

Not only must the original stop be reasonable, but the detention “must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229 (1983). “Both the ‘length and [the] scope of the detention must be ‘strictly tied to and justified by’ the circumstances which rendered its initiation permissible.” *Lopez, supra*, 873 P.2d at 1132, quoting *State v. Johnson*, 805 P.2d 761, 763 (Utah 1991). Thus, “an officer conducting a routine traffic stop may request a driver’s license and vehicle registration, conduct a computer check, and issue a citation. However, once the driver has produced a valid driver’s license and evidence of entitlement to use the vehicle, ‘he must be allowed to proceed on his way, without

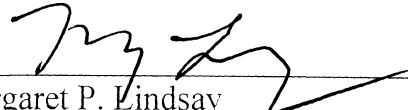
being subjected to further delay by police for additional questioning.” *Id.* Here, it is unclear what the purpose of the stop was - but once Lefevre produced his driver’s license, he should have been allowed to go. He was not.

The State appears to argue primarily that the search was lawful incident to Lefevre’s arrest (Brief of Appellee, pp. 12-13). However, the arrest was only justified if the initial detention was reasonable. Since it was not, everything that happened thereafter and anything recovered in the search should have been suppressed.

CONCLUSION AND PRECISE RELIEF SOUGHT

Lefevre asks that this Court reverse the trial court’s denial of his motion to suppress and remand this case to the Fourth District Court for further proceedings.

RESPECTFULLY SUBMITTED this 15th day of November, 2007.



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CERTIFICATE OF MAILING

I hereby certify that I delivered four (4) true and correct copies of the foregoing Appellant's Reply Brief to the Appeals Division, Utah Attorney General, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this 15th day of November, 2007.

