

2006

Utah v. Rodriquez : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

v.

DAVID MARK RODRIGUEZ

Defendant/Appellant.

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Appeal No. 20061016-CA

REPLY BRIEF OF APPELLANT

THIS IS A DIRECT APPEAL FROM A JUDGEMENT AND
ORDER ENTERED IN THE SEVENTH DISTRICT COURT
IN AND FOR GRAND COUNTY, STATE OF UTAH,
THE HONORABLE LYLE R. ANDERSON, JUDGE, PRESIDING.

-----o0o-----

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UTAH APPELLATE COURTS

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ORAL ARGUMENT/PUBLISHED OPINION REQUESTED

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Appeal No. 20061016-CA

REPLY BRIEF OF APPELLANT

ARGUMENT

**I. NO MARSHALING OF THE EVIDENCE IS REQUIRED
WHEN ATTACKING THE COURT’S CONCLUSION**

In its *Brief of Appellee*, the State attempts to argue that Appellant did not meet the requirements to marshal the evidence. *Brief of Appellee* at p. 5. The State is mistaken in this argument.

UTAH R. APP. P. 24(a)(9) states in pertinent part that, “[a] party challenging a *fact finding* must first marshal all record evidence that supports the challenged finding.” *Ibid.* (emphasis added). In State v. Curry, the standard for reviewing the denial of a motion to suppress is stated as follows, “[t]his Court reviews the ‘factual findings underlying a trial court’s decision to grant or deny a motion to suppress evidence’ under a ‘clearly-erroneous standard,’ and this Court reviews the trial court’s legal conclusions for correctness.” *Ibid.* 2006 UT App 390, ¶5, 147 P.3d 483, *citing* State v. Peterson, 2003 UT App 300, ¶ 7, 77 P.3d 646

(quotations and citation omitted), *aff'd*, 2005 UT 17, 110 P.3d 699. However, this Court “afford[s] no deference to the trial court's application of the law to the underlying factual findings in search and seizure cases.” *Id.*, *see also* State v. Brake, 2004 UT 95, ¶ 15, 103 P.3d 699.

Marshaling may be required in challenges to the sufficiency of the evidence presented at trial as they pertain to the facts found by the trial court, however, no such requirements exists and the State cites to no authority respecting marshaling in a challenge to a trial court’s erroneous denial of a suppression motion under the Fourth Amendment. Should Rodriguez’s argument be construed by this Court as a challenge to the sufficiency of the evidence at the hearing on the Motion, however, and it be determined that marshaling is necessary, the Statement of Facts set forth in Rodriguez’s opening brief adequately set forth all the evidence presented by the three (3) witnesses in this matter and Rodriguez’s threshold requirement for marshaling has thus been met.

The Utah Supreme Court recently undertook an extensive analysis that lends support for Rodriguez’s position that marshaling should not be required as it pertains to the issues raised by Rodriguez in his opening brief in this matter, since the challenges contained therein pertain to the trial court’s determination as to whether reasonable suspicion existed with respect to the stop of Rodriguez’s vehicle by Adams. The Utah Supreme Court’s analysis pertained to the standard of review appropriate for such determination, stating as follows:

At issue in [State v. Pena,] was the proper standard by which to review a trial court's determination of whether a police stop was

supported by reasonable suspicion. [*Ibid.*, 869 P.2d 932, 934-35 (Utah 1994)]. The issue presented a classic mixed question of law and fact. *Id.* The circumstances surrounding Mr. Pena's detention were factual. *Id.* The concept of reasonable suspicion was legal. *Id.* The application of the reasonable suspicion standard to the circumstances of Mr. Pena's detention intertwined both elements. *Id.* at 936.

The focus of our inquiry in *Pena* was where to place the reasonable suspicion inquiry on the fact versus law continuum. *Id.* at 939.

Jensen v. Sawyers, 2005 UT 81, ¶¶75-76, 130 P.3d 325. In Pena, the Utah Supreme Court specifically stated that, “[w]e conclude that the proper standard of review to be applied to a trial court determination of whether a specific set of facts gives rise to reasonable suspicion is a determination of law and is reviewable nondeferentially for correctness, as opposed to being a fact determination reviewable for clear error.” Pena at 939. The Court adopted a four-part test in Pena for determinations as to the standards of review for mixed questions of fact and law; however, the test was later found to be confusing and a new test was recently adopted in State v. Levin, 2006 UT 50, ¶25, 144 P.3d 1096, as follows:

Our revised test considers the following factors: (1) the degree of variety and complexity in the facts to which the legal rule is to be applied; (2) the degree to which a trial court's application of the legal rule relies on "facts" observed by the trial judge, "such as a witness's appearance and demeanor, relevant to the application of the law that cannot be adequately reflected in the record available to appellate courts;" and (3) other "policy reasons that weigh for or against granting discretion to trial courts."

Ibid.

As it pertains to the first Levin factor pertaining to the degree of variety and complexity in the facts to which the legal rule is to be applied, “. . .the greater the

complexity and variety of the facts, the stronger the case for appellate deference.” Levin at ¶26. The facts favorable to a conclusion that a level-2 Terry stop has occurred requiring an officer to have reasonable suspicion to stop are that Adams pulled his car in front of Rodriguez’s, made a visual gesture with his hand to stop, all the while intending to try and stop him, drove up beside Rodriguez and rolled his window down to speak with Rodriguez. Since some of the facts, if found to be a lawful command of a police officer, could likely have resulted in a third degree felony charge for Rodriguez if he chose to ignore them. UTAH CODE ANN. § 41-6a-209(1)(a). These facts appear to be particular to this matter since counsel herein was unable to locate much case law on these particular facts, which evidence their complexity and support appellate deference.

“As to the second [factor], the greater the importance of a trial court's credibility assessments that cannot be adequately reflected in the record, the stronger the case for appellate deference.” Levin at ¶26. Although the parties’ accounts of what occurred differ in this matter, giving rise to credibility determinations, the issue challenged before this Court does not hinge on the credibility determination. Rodriguez has adopted the facts as sufficient and challenges the trial court’s conclusions of law that the encounter was a level-1 Terry stop, even with the facts as found by the trial court.

As it pertains to the third Levin factor, the Utah Court of Appeals set forth as follows:

The third factor requires that we take into consideration policy factors related to the degree of deference that should be applied.

Even where a case for appellate deference is strong under the first two factors, policy considerations may nevertheless lead us to limit that deference.

There exist no policy considerations that relate to the degree of deference that should be applied in the instant matter. Thus, no policy considerations would lead this Court to limit the deference it may otherwise exercise in mixed questions on review. Having sufficiently met the Levin factors evidencing that the instant matter as a challenge to the conclusions of law, not requiring marshaling, and requiring a standard of review conducive to Pena, *supra*, the matter can clearly be determined by this Court under a correctness standard.

As indicated *supra*, Rodriguez adopted the finding of the facts as presented in this matter and articulated them in detail in the Statement of Facts section found on pages 10-11 of the opening brief. Rodriguez is arguing against the trial court's conclusion that his encounter with Adams was a level one (1) Terry encounter. In order for the Appellant to make his argument against the trial court's conclusion it was necessary for him to reargue the evidence showing how the encounter was not a level one stop.

As is stated *supra* under UTAH .R .APP. P. 24(a)(9), marshaling the evidence is only necessary when challenging a *finding of fact*. (emphasis added). The findings of fact in this matter are not being challenged, only the conclusions made by the trial court. Therefore, because it is the conclusions which the Appellant is challenging and not the finding of fact marshaling was not required.

II. DEPUTY ADAMS STOP OF THE VEHICLE WAS A SEIZURE

The United States Supreme Court has held that stopping a vehicle and detaining its occupants constitutes a seizure, stating as follows:

“[S]topping 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, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660 (1979); *accord* State v. Strickling, 844 P.2d 979, 982 (Utah App.1992); *see* Terry v. Ohio, 392 U.S. 1, 16, 88 S.Ct. 1868, 1877, 20 L.Ed.2d 889 (1968) (defining Fourth Amendment seizure as “whenever a police officer accosts an individual and restrains his freedom to walk away”).

State v. Case, 884 P.2d 1274, 1276, (Utah App.,1994). “[A] seizure under the fourth amendment occurs when a reasonable person, in view of all the circumstances, would believe he or she is not free to leave.” State v. Jackson, 805 P.2d 765, 767, (Utah App. 1990) *citing* United States v. Mendenhall, 446 U.S. 544, 554, 100 S.Ct. 1870, 1877, 64 L.Ed.2d 497 (1980).

“A person is seized only when that person has an objective reason to believe he or she is not free to end the conversation with the officer and proceed on his or her way.” United States v. Hernandez, 93 F.3d 1493, 1498 (10th Cir.1996). The defendant's subjective belief that she was not free to leave is not determinative. “The correct test is whether a reasonable person in [the defendant's] position would believe [she] was not free to leave.” *Id.* at 1499. U.S. v. Torres-Guevara, 147 F.3d 1261, C.A.10 (Utah), 1998.

UTAH CODE ANN. § 41-6a-209(1)(a) clearly states that, “[a] person may not willfully fail or willfully refuse to comply with any lawful order or direction of a; (a) peace officer.” UTAH CODE ANN. § 41-6a-210 states in part: “An operator who

receives a *visual or audible signal* from a peace officer to bring the vehicle to a stop may not: (i) operate the vehicle in willful or wanton disregard of the signal so as to interfere with or endanger the operation of any vehicle or person; or (ii) attempt to flee or elude a peace officer by vehicle or other means. (emphasis added).

While the lesser offense of disobeying a peace officer requires “willful” conduct in order to meet the requisite level of culpability under section 41-6-13, (now 41-6a-209) the greater offense of fleeing or eluding a peace officer requires “willful or wanton disregard” on the part of the driver in order to violate section 41-6-13.5. “Wanton” is not defined for purposes of this statute, but it is commonly thought of as “[r]eckless, heedless, malicious; characterized by extreme recklessness or foolhardiness; recklessly disregarding of ... consequences.” Black's Law Dictionary 1582 (6th ed. 1990). Our supreme court addressed the meaning of the phrase “wanton or reckless disregard” as it appeared in a criminal statute. See State v. Johnson, 12 Utah 2d 220, 364 P.2d 1019 (1961). According to Johnson, the phrase “connotes the generally accepted meaning of ‘criminal negligence.’ ” *Id.* at 221, 364 P.2d at 1019. Under section 76-2-103(4) of the Utah Code, a person is criminally negligent “when he ought to be aware of a substantial and unjustifiable risk that the circumstances [surrounding his conduct] exist or the result [of his conduct] will occur.” UTAH CODE ANN. § 76-2-103(4) (1990).

State v. Simpson, 904 P.2d 709, 713, (Utah App. 1995).

In the instant matter, Adams stop of Rodriguez constituted a seizure. Adams saw the Rodriguez vehicle, was “curious” and decided to check it out, and headed down the road. Adams pulled his patrol car up alongside Rodriguez, made a gesture with his hand that was a raise of his hand with the palm facing upward, had his window down, began speaking to Rodriguez, and got out of his vehicle to do so. It is apparent that, because Adams waved at Rodriguez and had his window

rolled down as he approached the vehicle, he intended to have Rodriguez stop so he could speak with him.

At the hearing on the suppression motion in this matter, Adams testified that he “waved to see if he was going to stop. Some people just go by. I was going to just see if everything was all right.” Tr. at p 14. When asked to show how he waved, the officer demonstrated holding up his hand with his palm upward. Tr. at p. 15. It is clear by Adams’ testimony that he made a visual signal to Rodriguez and that it was his intention for Rodriguez to stop based on that visual signal. Rodriguez stopped based upon that signal and spoke to Adams and Rodriguez did not feel like he could just end the conversation and be on his way. As is stated *supra* in UTAH CODE ANN. § 41-6a-210, a person who receives a visual signal from a police officer is required to stop or they may be charged with a third degree felony. Under the law, Rodriguez was required to stop when he was waved at by Adams.

At the hearing on the suppression motion in this matter, the trial court concluded that the testimony of Adams was more credible. The trial court assumed that, if someone was stopped by a police officer, the first thing they would say is “why was I stopped?” and not just provide an explanation that they were okay and just getting some water. The trial court did not believe it was a level two Terry stop and did not believe that Adams had blocked their lane of travel; however, it did concede that Adams may have, at most, crossed their lane of traffic and then pulled up side by side with them. Tr. at pp. 48-50. The trial

court indicated that they believed that Adams only raised his hand at Rodriguez and did nothing more. *Id.*

“There is no bright line test for determining if reasonable suspicion exists. State v. Steward, 806 P.2d 213, 215 (Utah App.1991). Rather, courts must look at the totality of the circumstances.” United States v. Sokolow, 490 U.S. 1, 8, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989). *Accord* State v. Sykes, 840 P.2d 825, 827; Steward, 806 P.2d at 215. State v. Potter, 863 P.2d 40, (Utah App.,1993). However, when making its ruling in this matter, the trial court did not look at the totality of the circumstances pertaining to the reasonable person issue. Adams crossing their lane of travel for even a fraction of a second, to pull up alongside them, evidences that he blocked their lane of travel as they were trying to leave, requiring them to stop. As he pulled up alongside Rodriguez’s vehicle, he made a visual gesture with his hand as if to stop him and engaged Rodriguez in conversation. It is clear that this matter was a seizure since a reasonable person would not feel as though they could drive off based upon the totality of the facts surrounding the stop that occurred in this matter.

The trial court also concluded that they felt as though Adams raised hand was like an officer knocking on a door to see if someone is suspected of growing marijuana. The court concluded that any citizen can knock on your door to see if you are growing marijuana or pull up beside your vehicle and that if any citizen can do that so can police officers. However, the trial court erred in its conclusion, since police officers are held to a different standard than are normal citizens.

Police officers may be able to approach you on the street and ask you a few questions or do a pat-down search, however, they are precluded from stopping a vehicle without the requisite reasonable suspicion. A lack of reasonable suspicion in this regard warrants exercise of the exclusionary rule set forth in the U.S. CONST. AMEND IV. State v. Fridleifson, 2002 UT App 322, ¶8, 57 P.3d 1098.

III. RODRIGUEZ DID NOT FEEL FREE TO LEAVE AFTER HE STOPPED, MAKING THIS A LEVEL TWO ENCOUNTER

In State v. Tehero, this Court held as follows:

Under our case law, there are three permissible levels of police stops:

(1) An officer may approach a citizen at any time and pose questions so long as the citizen is not detained against his will; (2) 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; (3) an officer may arrest a suspect if the officer has probable cause to believe an offense had been committed or is being committed.”

State v. Markland, 2005 UT 26, ¶ 10 n. 1, 112 P.3d 507 (omission in original) (quotations and citation omitted). A level one encounter is a voluntary encounter during which a citizen may choose to answer a police officer's questions but is free to leave at any time during the questioning. See Salt Lake City v. Ray, 2000 UT App 55, ¶ 11, 998 P.2d 274. “ As long as the person remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification.’ ” *Id.* (quoting State v. Jackson, 805 P.2d 765, 767 (Utah Ct.App.1990)) (additional quotations and citation omitted). In contrast, a person is seized in a level two stop, and thus afforded the protections of the Fourth Amendment, when the officer by means of physical force or show of authority has in some way restrained the liberty of [the] person.” (quotations and citations omitted). A level one encounter becomes a level two seizure when “a reasonable person, in view of all the circumstances, would believe he or she is not free to leave. This is

true even if the purpose of the stop is limited and the resulting detention brief.” *Id.* (quotations and citations omitted). Circumstances demonstrating that a level two stop is underway include the presence of more than one officer, the display of an officer's weapon, physical touching of the person, use of commanding language or tone of voice, and retaining a person's identification or other documentation. *See id.*

Ibid., 2006 UT App 419 ¶6, 147 P.3d 506. This Court has also indicated as follows:

A level two stop occurs when, in an encounter between a citizen and law enforcement officers, “ ‘a reasonable person, in view of all the circumstances, would believe he or she is not free to leave.’ ” State v. Ray, 2000 UT App 55, ¶ 11, 998 P.2d 274 (quoting State v. Jackson, 805 P.2d 765, 767 (Utah Ct.App.1990)). Such a detention is constitutionally permissible when the officer has reasonable suspicion to believe a person “has committed or is in the act of committing or is attempting to commit a public offense.” Utah Code Ann. § 77-7-15 (1999); see also United States v. Arvizu, 534 U.S. 266, ----, 122 S.Ct. 744, 750, 151 L.Ed.2d 740 (2002).

State v. Fridleifson, 2002 UT App 322, ¶8, 57 P.3d 1098. In State v. Fridleifson, this Court stated as follows with respect to the requisite reasonable suspicion necessary in a level two stop:

[A] level two stop ... must be supported by reasonable suspicion [or it] violates the Fourth Amendment to the United States Constitution. While the required level of suspicion is lower than the standard required for probable cause to arrest, the same totality of facts and circumstances approach is used to determine if there are sufficient specific and articulable facts to support reasonable suspicion. In determining whether this objective standard has been met, the focus necessarily centers upon the facts known to the officer immediately before the stop. Ray, 2000 UT App 55 at ¶ 18, 998 P.2d 274 (citations and quotations omitted) (alterations in original).

Ibid., 2002 UT App 322, ¶8, 57 P.3d 1098. More recently, this Court undertook a further analysis of this issue, stating as follows:

A stop is justified if there is a reasonable suspicion that the defendant is involved in criminal activity.” State v. Case, 884 P.2d 1274, 1276, (Utah App.,1994), *citing* UTAH CODE ANN. § 77-7-15 (1990); *see also*, State v. Carpena, 714 P.2d 674, 675 (Utah 1986) (per curiam) (stating police must base reasonable suspicion on objective facts indicating defendant's criminal activity). “While the required level of suspicion is lower than the standard required for probable cause to arrest, the same totality of facts and circumstances approach is used to determine if there are sufficient ‘specific and articulable facts’ to support reasonable suspicion.” Case, *supra*, *citing* Terry, 392 U.S. at 21, 88 S.Ct. at 1880; *see* United States v. Sokolow, 490 U.S. 1, 7-8, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989); *accord* State v. Bello, 871 P.2d 584, 587 (Utah App.1994); Strickling, 844 P.2d at 983.

In general, “[t]he specific and articulable facts required to support reasonable suspicion are ... based on an investigating officer's own observations and inferences.” at 1276-77. Reasonable suspicion is ‘a particularized and objective basis’ for suspecting the person stopped of criminal activity,” United States v. Tibbetts, 396 F.3d 1132, 1138,(10th Cir. 2005) and whether or not a detention is supported by reasonable suspicion is determined by examining the totality of the circumstances, not through an examination of each individual fact. *See* State v. Brake, 2004 UT 95, ¶ 38, 103 P.3d 699 (concluding that the totality of the circumstances did not support a police officer's warrantless search of the interior of an automobile for weapons). In the case of a traffic stop, such an action is reasonable and the initial seizure will be found to be sound if the defendant commits a traffic offense in the officers presence, *see* State v. Hansen, 2002 UT 125 at ¶ 30, 63 P.3d 650, or if the officer has an articulable ‘reasonable suspicion’ that [the defendant has] violated any one of the multitude of applicable traffic and equipment regulations of the jurisdiction.”Tibbetts, 396 F.3d at 1137 (citation omitted).

State v. Yazzie 2005 UT App 261, ¶7, (Utah App.,2005). In Latta v. Keryte, our 10th Circuit Court of Appeals similarly analyzed an investigative detention and its compliance with the Fourth Amendment by determining as follows:

[w]e must determine whether the officer has reasonable suspicion to detain the individual. [Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 1879-80, 20 L.Ed.2d 889 (1968)]. Reasonable suspicion “requires considerably less than proof of wrongdoing by a preponderance of the evidence, but something more than an inchoate and

unparticularized suspicion or hunch.” United States v. Melendez-Garcia 28 F.3d 1046, 1051 (10th Cir.1994) (internal quotations omitted). The officer must be “able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

Ibid., 118 F.3d 693, 699, (C.A.10 (N.M.) 1997).

“There is no bright line test for determining if reasonable suspicion exists. State v. Steward, 806 P.2d 213, 215 (Utah App.1991). Rather, courts must look at the totality of the circumstances.” United States v. Sokolow, 490 U.S. 1, 8, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989). *Accord* State v. Sykes, 840 P.2d 825, 827; Steward, 806 P.2d at 215. State v. Potter, 863 P.2d 40, (Utah App.,1993).

In the instant matter, once Rodriguez had stopped, he did not feel free to leave the scene without speaking and complying with Adams’ request. At the hearing, Rodriguez and his wife testified as to how they felt when they were stopped by Adams. Both Rodriguez and his wife testified that Adams waved to them, which they perceived to be for them to stop, and made eye contact with Rodriguez. Tr. at pp. 21 and 35. Rodriguez stated that, “[h]e made eye contact with me right there and made a hand gesture ---- of stopping. It wasn't a hi how are you, it was a stop movement.” Tr. at p. 35. When asked what he was thinking when he saw that hand gesture, defendant stated: “I was thinking I was being stopped. It was apparent to me that the hand gesture and the angle of the vehicle was, was a forceful...” Tr. at p. 35. Defendant rolled down his window about seven inches or so and said, “We're okay I just stopped for some water.” At that point he just continued to stare at me. And exited his vehicle very quickly and

grabbed a hold of my door, opened it up and told me to step out of the vehicle. Tr. at p. 37.

This evidence was presented in Rodriguez's opening brief to show that, based upon the totality of the circumstances, Rodriguez did not feel free to leave once they received the visual signal from Adams, and additionally for fear of other criminal repercussions codified at UTAH CODE ANN. § 41-6a-210. *Brief of Appellant* at p. 17. Rodriguez is not challenging the trial court's determination of Adams credibility, but rather is merely showing how Rodriguez and his wife felt in order to show that a reasonable person would not have felt free to leave the scene. In order for this Court to know how Rodriguez and his wife were feeling it was necessary for Rodriguez to reiterate the testimony given at the hearing because there was no other evidence presented that would have shown how they felt.

Rodriguez does not challenge the trial court's determination that he and his wife were less credible than the Adams in this matter, instead they were simply using the totality of the circumstances test and their testimony to show that they did not feel free to leave the scene once Adams used a visual signal to stop them. Adams then engaged them in conversation and ultimately ordered Rodriguez out of the vehicle. Any person in this matter would not feel that they were free to just walk away, particularly when a police officer provides you with a visual signal to stop, rolls down his window, engages in conversation with the driver, and then asks the driver to step out of the vehicle. Rodriguez was merely using the totality

of the circumstances and his testimony to evidence how a reasonable person would not feel like they could just walk away from Adams.

Although the trial court concluded that the stop of Rodriguez was not a level two (2) stop, the trial court failed to undertake an examination as to the totality of the circumstances in this matter. For an encounter to rise to a level two (2) Terry stop, a reasonable person must feel like they are not free to just walk away from the detention. In this matter, given the totality of the circumstances and the testimony of Rodriguez about how he was feeling after he stopped, it is clear that a reasonable person would not feel free to leave.

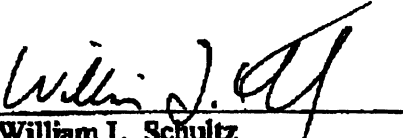
Rodriguez's travel had been blocked by Adams crossing their land of traffic, Adams had given Rodriguez a visual signal, Adams' window was rolled down, he engaged Rodriguez in conversation, and got out of his vehicle to continuing speaking with Rodriguez. A reasonable person in this situation would not feel free to leave. If a police officer approaches a person, gives them a visual signal, has their window rolled down, begins speaking to them, and then exits their vehicle to continue talking to them, that person is not going to feel like they can just end the conversation and leave, but rather they will likely feel as though they must finish speaking to the officer. The encounter in this matter became a level two (2) stop because Rodriguez did not feel like he could just leave the scene and disregard Adams' visual signals to stop. Based upon the totality of the circumstances and because Rodriguez did not feel like he could just leave the encounter was a level two (2) stop.

Appellant agrees with all findings of fact presented in this matter and merely challenges the trial court's conclusions of law in this matter. Based upon the totality of the circumstances in this matter, a seizure of Rodriguez by Adams occurred. Where a seizure occurs, a level two (2) Terry encounter occurs. The trial court erroneously determined that the encounter between Rodriguez and Adams in this matter was a level one (1) Terry stop negating the need for reasonable suspicion on Adams part for the stop that was conducted. The evidence as found by the trial court clearly indicates that this was a level two (2) encounter and that such encounter thus necessitated a finding with respect to whether reasonable suspicion existed. Rodriguez has argued in his opening brief and *supra* herein in favor of a finding that no reasonable suspicion existed at the time of the stop and that the evidence obtained as a result thereof should have been suppressed.

CONCLUSION

Wherefore, based upon the foregoing, Rodriguez respectfully requests that this Court reverse the trial court's Judgment, and enter such other and further relief it deems necessary.

DATED THIS 19th day of June, 2007.


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CERTIFICATE OF MAILING

I hereby certify that on this 19th day of June, 2007, I mailed, first class
postage prepaid, true and correct copies of the foregoing Reply Brief to:

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