1997

State of Utah v. Jane Shepard : Brief of Appellee

Utah Court of Appeals

Todd Utzinger; Assistant Attorney General; Jan Graham; Attorney General; Craig Halls; San Juan County Attorney; Attorneys for Appellee.
Rosalie Reilly; Attorney for Appellant.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	Priority No. 2
v.	:	
JANE SHEPARD,	:	Case No. 970317-CA
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM A CONVICTION FOR POSSESSION OF A CONTROLLED SUBSTANCE (PSILOCYBIN), A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 58-37-8(2)(a)(i) (1997), POSSESSION OF A CONTROLLED SUBSTANCE (MARIJUANA), A CLASS B MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 58-37-8(2)(a)(i) (1997), AND POSSESSION OF DRUG PARAPHERNALIA (A MARIJUANA PIPE), A CLASS B MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 58-37a-5 (1997), IN THE SEVENTH JUDICIAL DISTRICT, IN AND FOR SAN JUAN COUNTY, UTAH, THE HONORABLE BOYD C. BUNNELL, PRESIDING

ROSALIE REILLY
148 South Main, #1
Post Office Box 404
Monticello, Utah 84535
Telephone: (801) 587-3266

ATTORNEY FOR APPELLANT

TODD UTZINGER (6047)
Assistant Attorney General
JAN GRAHAM (1231)
Utah Attorney General
Heber Wells Building
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114-0854
Telephone: (801) 366-0180

CRAIG HALLS
San Juan County Attorney

ATTORNEYS FOR APPELLEE

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TODD UTZINGER (6047)
Assistant Attorney General
JAN GRAHAM (1231)
Utah Attorney General
Heber Wells Building
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114-0854
Telephone: (801) 366-0180

CRAIG HALLS
San Juan County Attorney

ATTORNEYS FOR APPELLEE

ROSALIE REILLY
148 South Main, #1
Post Office Box 404
Monticello, Utah 84535
Telephone: (801) 587-3266

ATTORNEY FOR APPELLANT

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IN THE UTAH COURT OF APPEALS

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v.	:	
JANE SHEPARD,	:	**Case No. 970317-CA**
Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

Defendant appeals her convictions for two counts of possession of a controlled substance (psilocybin and marijuana), a third degree felony and a class B misdemeanor, respectively, in violation of Utah Code Ann. § 58-37-8(2)(a)(i) (1997) and for possession of drug paraphernalia, a class B misdemeanor, in violation of Utah Code Ann. § 58-37a-5 (1997). The Court has jurisdiction of the appeal under Utah Code Ann. § 78-2a-3(2)(e) (1997).

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Did the trial court properly determine that defendant – a passenger in a lawfully stopped vehicle – was not unlawfully detained where dispatch reported that the license plate number on the vehicle was listed as "not on file" and where neither

the driver nor defendant could produce a recognizable vehicle registration form or any other document identifying the registered owner of the vehicle or proof of their entitlement to use the vehicle?

2. Did the trial court properly determine that the investigating officer had probable cause to seize and inspect a corn cob pipe that was in plain view near defendant where the officer suspected the pipe was illegal drug paraphernalia?

A trial court's findings in support of its determination to deny a motion to suppress evidence are reviewed under the "deferential clearly-erroneous standard." State v. Moreno, 910 P.2d 1245, 1247 (Utah App.), *cert. denied*, 916 P.2d 909 (Utah 1996). A trial court's supporting legal conclusions are "reviewed for correctness, with a measure of discretion given to the trial judge's application of the legal standard to the facts." Id. (citing State v. Pena, 869 P.2d 932, 935-40 (Utah 1994)).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

> The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
>
> U.S. Const. amend. IV

STATEMENT OF THE CASE

Defendant was charged with possession of a controlled substance (psilocybin), a third degree felony in violation of Utah Code Ann. § 58-37-8(2)(a)(i) (1997), possession

of a controlled substance (marijuana), a class B misdemeanor in violation of Utah Code Ann. § 58-37-8(2)(a)(i) (1997), and possession of drug paraphernalia (a pipe with marijuana residue), a class B misdemeanor, in violation of Utah Code Ann. § 58-37a-5 (1997) (R. 1-2).

Defendant moved to suppress the evidence seized pursuant to a warrantless vehicle search (R. 20-25). Following an evidentiary hearing, the motion was denied (R. 97-99).[1] Thereafter, defendant entered a conditional guilty plea to the charges in the information, reserving the right to appeal the denial of her motion to suppress (R. 99-108).

The trial court sentenced defendant to five years to life in the Utah State Prison and a fine of $500 with an 85% assessment for the possession of psilocybin, fines and an assessment totaling $370.00 for the possession of marijuana, and fines and an assessment totaling $185.00 for the possession of drug paraphernalia (R. 106-07). The court stayed execution of the prison sentence on condition that defendant pay the fines forthwith and placed defendant on probation for 12 months (R. 107).

STATEMENT OF THE FACTS[2]

On July 30, 1996, Utah Highway Patrol Trooper Sanford Randall was traveling southbound on SR 191 in San Juan County when he saw a vehicle coming from the other

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[1] The trial court's Findings of Fact and Conclusions of Law announced from the bench are transcribed and reproduced in addendum A.

[2] The State recites the facts in a light supporting the trial court's ruling. See, e.g., State v. Troyer, 910 P.2d 1182, 1186 (Utah 1995).

direction that appeared to be speeding. Randall estimated that the vehicle was going about 74 miles per hour when he first saw it. When the vehicle came into radar range, Randall activated his radar unit and determined the vehicle was traveling at 71 miles per hour. After the vehicle went past Randall, Randall turn around and stopped the car for speeding (R. 31-2, 58-9).

Defendant was seated in the front passenger seat, and her brother was driving the car. Randall asked the driver for his driver's license and the vehicle registration.[3] The driver handed his driver's license to Randall, but he was unable to produce a vehicle registration form. Randall asked the driver if he had any other paperwork, such as an insurance certificate, that might include the name of the registered owner (32, 59). Although the driver and the defendant indicated their father had recently purchased the car, they could not find any documents indicating ownership of the car (R. 65-6). Given the lack of registration or other paperwork, Randall decided he should check whether the vehicle may have been stolen and had the driver accompany him to his patrol car where he asked dispatch to run an NCIC check on the license plate number. Dispatch reported that the plate number was "not on file" (R. 33, 60, 78). Although the "not on file" status of the plate may have been consistent with the claim that their father had

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[3] At some point during his initial contact with the driver and defendant, Randall explained to the driver that he was going to move to the passenger side of the car so that he would be safely out of the way of passing traffic (R. 71-2). The record, however, does not clearly show at exactly what point Randall moved to the passenger side of the vehicle.

recently purchased the car insofar as the new plate number may not have been recorded, Randall still questioned whether the vehicle may have been stolen because he had encountered stolen cars in the past that did not have the proper license plates on them and because neither the driver nor defendant could produce any paperwork on the vehicle (R. 72-3, 78).

Randall and the driver returned to the stopped car (R. 33, 60). Randall again went to the passenger side of the vehicle so that he would be out of the way of passing traffic and asked defendant whether she had been able to find any papers reflecting ownership of the car. Defendant produced a receipt from a service station showing that work had been done on the car, but it had someone else's name on it (R. 33, 60, 63, 67). Randall explained to defendant that the receipt made him even more suspicious because of the difference in names (R. 33, 60, 82). Defendant also produced a document that was purportedly a temporary registration form. Randall viewed the form with suspicion because it did not appear to have been issued by a government agency (R. 63-4, 78-9). The form was completed in handwriting instead of being typed or computer generated like other registration forms Randall had seen. Although the form had a VIN number written on it, the form included no description of the vehicle or even the name of the registered owner (R. 64, 67, 78-82).[4]

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[4] Although it appears the temporary registration form was valid, the trial court examined the form during the course of the suppression hearing and assessed its

(continued...)

In an attempt to confirm or dispel his suspicion that the car may have been stolen, Randall decided to examine the vehicle identification numbers and have dispatch run the numbers through NCIC (R. 34, 60, 64, 79-80). For safety reasons, Randall did not want defendant or the driver inside the car while his attention was distracted when examining the VIN numbers (R. 64). The driver was already outside the car, and Randall asked the defendant to get out of the car while he examined the VIN numbers (R. 62, 64). Randall was already on the passenger side of the car to be out of the lane of traffic and he positioned himself at the front of the passenger door as a matter of courtesy to defendant and to ensure he was appropriately positioned for safety reasons as defendant exited the car (R. 62, 69-71, 78).

As defendant was getting out of the car, Randall noticed a corncob pipe in the side pocket of the passenger door (R. 34, 60, 68, 79-81). Recognizing the pipe as a type used to smoke marijuana as well as tobacco, Randall asked defendant and the driver if they had any tobacco (R. 34). Defendant and the driver indicated they did not (R. 34). Randall removed the pipe from the door pocket and sniffed it. The pipe smelled of burnt marijuana (R. 34, 60, 63). Randall told defendant and the driver their rights under

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[4](...continued)
significance as follows: "this thing here, which is hand prepared, and is obviously not printed by some state agen[cy] – well, of course, it could be prepared, but it's not printed out by some state agency, and it doesn't have any name on it. It just has a VIN number. Again, there's an [articulable] suspicion, justifiable in his mind, at that time, I think, and would be reasonable [for Randall to check that VIN number to see if it corresponded with the car] to make sure this car wasn't stolen, or illegally possessed" (R. 98).

Miranda and asked them if they had marijuana in the car. The driver invoked his right to remain silent, but defendant indicated there was marijuana in the trunk and that she had some mushrooms in a cooler behind the front seats (R. 39, 60).

Randall searched the car and found the illegal drugs described by defendant in the places defendant indicated they were located. Specifically, he found some marijuana in a canning jar in the trunk and mushrooms in the cooler in the back seat (R. 37-61). He also found a clay pot containing mushrooms on the floor of the front seat where defendant had been seated (R. 60-1). Defendant and the driver were arrested and charged with various drug related offenses. Subsequent tests confirmed the mushrooms were psilocybin, that the pipe had marijuana residue in it and that the material in the trunk was marijuana (R. 34-9, 62-3).

Prior to trial, defendant moved to suppress the evidence seized during the warrantless search (R. 20-25). Following an evidentiary hearing, the trial court denied the motion (R. 97-99), *see* addendum A. The propriety of the initial stop was not in dispute, but defendant did claim that Randall improperly exceeded the scope of a routine traffic stop and that the seizure of the corncob pipe was not supported by probable cause. The trial court rejected both arguments and held that Randall properly investigated the possibility that the car was stolen and that the corncob pipe was of a type often used to smoke marijuana and that its seizure was therefore proper. The subsequent search of the vehicle was likewise supported by probable cause based not only on the corncob pipe, but

also defendant's admission that there were drugs in the vehicle (R. 97-99).

SUMMARY OF THE ARGUMENT

Trooper Randall properly sought to verify that defendant and her brother were entitled to be in possession of their lawfully stopped vehicle. Randall's requests for insurance papers or other documentation of ownership as well as the running of a computer check on the vehicle's license plate number were proper given that neither defendant nor her brother produced a recognizable registration form. Randall's was also entitled to order defendant to exit the vehicle pending completion of the admittedly lawful stop. Upon observing a marijuana pipe inside the car while defendant was exiting the vehicle, and considering the totality of the circumstances, Randall's seizure of the pipe and the ensuing search of the car were supported by probable cause. This Court should therefore uphold the denial of defendant's motion to suppress evidence and affirm her convictions.

ARGUMENT

POINT I

TROOPER RANDALL'S REQUESTS FOR VEHICLE REGISTRATION INFORMATION AND HIS ATTEMPTS TO VERIFY ENTITLEMENT TO USE THE VEHICLE WERE WITHIN THE SCOPE OF A ROUTINE TRAFFIC STOP

Trooper Randall was justified in stopping the vehicle in which defendant was a passenger based on the fact that he observed the vehicle speeding. Utah courts have

consistently recognized that speeding justifies a traffic stop. See, e.g., State v. Spurgeon, 904 P.2d 220, 225 (Utah App. 1995) (upholding stop for driving seventy-two miles per hour in a sixty-five mile per hour speed zone). Defendant's concession that the stop was justified at its outset is therefore well-measured (Br. of Appellant at 7). However, defendant's challenge to the scope of the ensuing detention is misplaced. Defendant misapprehends the legal principles applicable to scope of detention questions and fails to fully recognize the totality of the circumstances known to Randall.

A. Randall's Actions, Up to the Seizure of Defendant's Pipe, Were Within the Scope of Detention of a Routine Traffic Stop.

Given that the initial stop of the vehicle was justified based on the observed traffic violation, the first scope of detention question to consider is what actions Randall was authorized to take during that routine traffic stop. The law on this issue is well-established:

> [A]n 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 subject to further delay by police for additional questioning.

State v. Lopez, 873 P.2d 1127, 1132 (Utah 1994) (citations and internal quotation marks omitted).

In this case, Randall promptly requested and obtained a driver's license from the driver. However, the driver and defendant were initially unable to provide a vehicle

registration form. Randall's requests for other paperwork were within the scope of a routine traffic stop insofar as the requested documentation would have helped establish "evidence of entitlement to use the vehicle." By the same token, Randall acted within the scope of a routine traffic stop when he asked dispatch to run a computer check on the license plate number. When the results came back indicating the license plate number was "not on file," Randall was justified in again asking defendant whether she had found any documents indicating ownership of the vehicle. Up to that point, neither the driver, defendant, nor dispatch had been able to provide evidence of who owned the vehicle let alone proof that defendant and the driver were entitled to use the vehicle.

B. Even If Randall's Attempts to Confirm Whether Defendant and Her Brother Were Entitled to Use the Car Exceeded the Scope of A Routine Traffic Stop, Randall's Investigative Efforts Were Supported By a Reasonable Suspicion That the Car May Have Been Stolen.

Even assuming Randall exceeded the scope of a routine traffic stop by asking for documents that may have provided information about the ownership of the car, or by preparing to examine the vehicle identification numbers, the expansion of the detention was proper. Investigative questioning that further expands the detention permitted under a routine traffic stop must be supported by reasonable suspicion of other criminal activity. Lopez, 873 P.2d at 1132. As the trial court held, the totality of the circumstances known to Randall gave rise to a reasonable suspicion to believe the vehicle may have been stolen

(R. 97-8). Specifically, Randall had two young people who, though they claimed to be driving a car recently purchased by their father, could not produce a vehicle registration form or any other document featuring their father's name. When dispatch reported that the license plate number was "not on file," Randall diligently pursued a means of investigation that was likely to quickly confirm or dispel his suspicion that the vehicle may have been stolen. See United States v. Sharpe, 470 U.S. 675, 686-87, 105 S. Ct. 1568, 1575-76 (1985) (holding that where an officer has reasonable suspicion of criminal activity, the officer must diligently pursue a means of investigation likely to quickly confirm or dispel the suspicions quickly); City of St. George v. Carter, 325 Utah Adv. Rep. 15, 17-18 (Utah App. 1997) (same).

By asking defendant whether she had found any documents during the time that Randall and defendant's brother were in Randall's patrol car awaiting word from dispatch, Randall provided defendant and her brother yet a second opportunity to produce documentation that would have eliminated the need to have dispatch run a check on the VIN number. As Randall testified and the trial court recognized, the fact that defendant first produced a receipt for work completed on the car that was in another person's name actually served to bolster Randall's suspicion of possible wrongdoing (R. 60, 63, 97). Even the document that later proved to be a valid temporary registration form was very unusual. Rather than being typed like most government issued registration forms, the one defendant produced was completed in long hand. More to the point, it identified the

vehicle only by a vehicle identification and contained no description of the vehicle or even the name of the registered owner. By comparing the VIN number written on the form produced by defendant to that on the vehicle, Randall would have been able to better evaluate the veracity of the unusual registration form. Had it been necessary to have dispatch run an NCIC check on the VIN number, Randall would have been able to determine whether the vehicle had been reported stolen. Of course, Randall never in fact took those actions because, as demonstrated below, probable cause to believe defendant was in possession of drug paraphernalia arose before Randall had an opportunity to check the VIN number on the car. Accordingly, the trial court properly determined that Randall's actions up to when he directed defendant to exit the vehicle were supported by reasonable suspicion that the vehicle may have been stolen (R. 97-8). As demonstrated in subpart C below, the trial court was also correct in holding that Randall was justified in directing defendant to exit the car.

C. Randall Lawfully Directed Defendant to Exit the Vehicle.

Randall's decision to have defendant exit the vehicle was permissible because she was a passenger in a lawfully stopped vehicle. The United States Supreme Court has ruled as a matter of law that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop." Maryland v. Wilson, 117 S. Ct. 882, 886 (1997) (footnote omitted). Under Wilson, the trial court's determination that Randall was justified in directing defendant to exit the car was proper, and defendant does not

contend otherwise. Nor does defendant challenge the trial court's additional conclusion that Randall had a reasonable basis for wanting defendant outside the vehicle as a safety precaution while he examined the VIN numbers, presumably because that ruling is amply supported by the record. Instead, defendant suggests that Randall's "reasons for going to the passenger side of the car are suspect" and that Randall's testimony that he stood by the door while defendant exited the car as a matter of "politeness" and to enhance his own safety should "be viewed with skepticism" (Br. of Appellant at 9-10). In so doing, defendant essentially asks this Court to ignore the trial court's implied determination that Randall's testimony about why he was on the passenger side of the car was credible. This Court should not indulge defendant because credibility assessments are best reserved for the trial judge who is able to observe the demeanor of witnesses firsthand. See, e.g., Pena, 869 P.2d at 936 (because trial court judges are "in the best position to assess the credibility of witnesses and to derive a sense of the proceeding as a whole, something an appellate court cannot hope to garner from a cold record[,]" findings of fact will be reversed only upon a showing of clear error). Accordingly, to the extent defendant seems to argue in Point II of her brief that Randall conducted a "search" of the vehicle merely because he stood by the passenger side door while defendant opened the door and got out of the car, this Court should refuse to consider that issue.

D. Defendant's Claim that Randall Lacked Probable Cause to Conduct A "Search" of the Car to Inspect the Vehicle Identification Number Is Irrelevant Because Randall Never Conducted Such a Search.

This Court need not reach the issue of whether Randall had probable cause to conduct a "search" of the car to check its vehicle identification numbers because Randall never conducted such a search. Although Randall intended to examine the VIN number, the record establishes and the trial court found, that Randall never initiated a search of the car until after he observed a marijuana pipe in the pocket of the passenger side door and after defendant admitted there were illegal drugs in the car (R. 98). Accordingly, defendant's argument in Point II of her brief notwithstanding, the State need not establish that Randall had probable cause to conduct a "search" of the vehicle based on his stated intent to examine the vehicle identification number.

POINT II

RANDALL'S SEIZURE OF THE CORNCOB PIPE WAS CONSTITUTIONAL BECAUSE HE HAD PROBABLE CAUSE TO BELIEVE THE PIPE WAS ILLEGAL DRUG PARAPHERNALIA

Considering the totality of the circumstances known to Randall at the time he seized defendant's pipe, the trial court's determination that Randall was justified in seizing the pipe was correct and should be affirmed.

Determinations of whether probable cause exists require a common sense assessment of the totality of the circumstances confronting the officer at the time the

search is made. State v. Dorsey, 731 P.2d 1085, 1088 (Utah 1986). Probable cause is more than suspicion but less than certainty:

> In dealing with probable cause . . . as the very name implies, we deal with probabilities. These are not technical; they are factual and practical considerations of every day life on which reasonable and prudent [persons], not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.

Id. (quoting Brinegar v. Untied States, 338 U.S. 160, 175, 69 S. Ct. 1302, 1310 (1949)). Accordingly, probable cause is "only the probability, and not a prima facie showing, of criminal activity." State v. Brown, 798 P.2d 284, 285 (Utah App. 1990) (citations and internal quotation marks omitted).

Against the backdrop of investigating the possibility that the vehicle was stolen, Randall saw the corncob pipe in the passenger door pocket and recognized it as a "marijuana pipe" (R. 34, 68). Randall then asked defendant and the driver "if they had any tobacco. They said they didn't. [Randall r]etrieved the pipe and smelled it[. He] could [sm]ell the odor of burnt marijuana coming from it" (R. 34). In the course of upholding Randall's decision to sniff the pipe to confirm or dispel his suspicion that it had been used to smoke marijuana, the trial court recognized that "the corn cob pipe [was] not an unusual item to use in the ingestion of drugs, particularly marijuana" (R. 98).

The trial court's determination that corncob pipes are known to be used to smoke marijuana is amply supported by Randall's testimony that he recognized the pipe as a "marijuana pipe" as well as cases from other jurisdictions noting the use of corncob pipes

to ingest illegal drugs. See, e.g., Commonwealth v. Waters, 20 Va. App. 285, 456 S.E.2d 257 (1995) (corncob pipe used to smoke marijuana and cocaine); Korby v. State, 567 P.2d 961 (Nevada 1977) (appellant "produced some marijuana and a corncob pipe and passed them to the others"); State v. Gannaway, 291 Minn. 391, 191 N.W.2d 255 (1971) (affirming suppression of corncob pipe with marijuana residue and baggy of marijuana that were seized during otherwise lawful frisk search because officer lacked probable cause to make "nonprotective" search for contraband that resulted in discovery of pipe and marijuana).

Considering the totality of the circumstances known to Randall when he seized the corncob pipe, and affording the trial judge an appropriate measure of deference to apply the probable cause legal standard to the particular facts of this case, the trial court's denial of defendant's motion to suppress the corncob pipe and the remaining evidence seized during the subsequent search of the car should be upheld and defendant's convictions affirmed.

CONCLUSION

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

RESPECTFULLY SUBMITTED this 4th day of November, 1997.

JAN GRAHAM
Attorney General

TODD UTZINGER
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I have mailed, by first class mail, postage prepaid, two accurate copies of the foregoing ***BRIEF OF APPELLEE***, to

ROSALIE REILLY
148 South Main #1
Post Office Box 404
Monticello, Utah 84535

this 4th day of November, 1997.

Addendum A

Trial Court's Findings of Fact and Conclusions of Law

but without more, I don't think it rises to the level of reasonable suspicion that it's paraphernalia, let alone probable cause to seize it and to smell it. For that reason, I think that the Motion to Suppress should succeed.

THE COURT: The court, before considering any of these cases, we're always talking about reasonable, reasonable. Of course, the whole thing is based upon the fact that that wonderful document, the Constitution, leaves those things up to varying times, because all it says is we will be free from unreasonable search and seizure, PERIOD. And then, that leaves the courts in the position where they've got to interpret what is and is not reasonable.

But, the, of course, there's no question, as you indicate, there isn't any question about the legality of the stop. Once the stop is made then, of course, anything that precedes that and follows must be based upon reasonable suspicion, based upon articulative facts. In other words, did the officer have reason then, to stop and ask them to get out of the car, and everything, after they had taken care of the speeding situation, or was in the process of doing that? And, of course, the articular facts, we have to go to what the officer saw and perceived from his standpoint, and, uh, when the license check came back that there was no record, or they couldn't find it, that was an articulative fact which would lead to some suspicion. Then, when there is no registration, but all--he hands him some kind of receipt for work, as he says, and then this thing here, which is a hand prepared, and is obviously not printed by some state agen--well, of course, it

could be prepared, but it's not printed out by some state agency, and it doesn't have any name on it. It just has a VIN number. Again, there's an particular suspicion, justifiable in his mind, at that time, I think, and would be reasonable. I need to check that VIN number to see. Even if he saw it didn't correspond, then, I'm sure they'd be on their way. So, the point comes up, and the court feels, that he had articulated facts enough to want to check the VIN number to make sure this car wasn't stolen, or illegally possessed.

So, at that point, then, the court concludes two of--because of security reasons, and so on, and the fact that the court's--the officer's attention has to be directed elsewhere besides the people in the car, that he had a reasonable grounds to ask them to leave the vehicle, while he made that check. But, of course, he didn't get to that point because he saw the corn cob pipe, which is not an unusual item to use in the ingestion of drugs, particularly, marijuana, and that he was reasonable in smelling it, just to eliminate the possibility that it might be being used for tobacco, or something else. But, marijuana does have a peculiar smell. In fact, I've had it here in the courtroom. I ordered them to take it out because it stinks so bad. But, he saw that and, then, of course, then the picture completely changes because, at that point, the defendant admitted that there were drugs in the vehicle.

Once that admission is made, then there is certainly reasonable cause to check the vehicle to see the quantity, what's there, and so on. Then we don't have to worry about anything else once the

admission is made that there are drugs present in the vehicle.

So, The court finds that he had the reasonable suspicion to do what he did in asking the people to leave the vehicle and what he perceived after that where the pipe was in his plain view, and he didn't have to tear open a glove compartment, or anything, to get to it. It was there in plain sight.

So, the court will deny the Motion to Suppress.

MS. REILLY: For clarification, Your Honor, for our purposes, is the court holding that all the officer needed was reasonable suspicion to search that pipe?

THE COURT: Based upon articulatable facts, yes, that's true. So, do you need anything else in this case?

MS. REILLY: Yes, Your Honor. May I have a moment.

THE COURT: Sure.

MS. REILLY: Your Honor, I've asked Mr. Halls earlier, he's indicated his willingness to allow her to enter a conditional plea to all three counts of the Information. We would ask that we be able to do that and have immediate sentencing.

THE COURT: Of course, the condition would be that you would have a right of appeal?

MS REILLY: Yes, Your Honor.

THE COURT: Sure, okay. Is that correct Mr. Halls?

MR. HALLS: Yes, Your Honor.

THE COURT: All right, then, conditioned on, of

M. Jane Musselman
Certified Court Transcriber
P.O. Box 531
Monticello, Utah 84535
Telephone: (801) 587-2351