

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20040901-CA
v.	)	
	)	F I L E D
Joe Sunthiphab Boupna,	)	(May 11, 2006)
	)	
Defendant and Appellant.	)	<u>2006 UT App 189</u>

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Second District, Ogden Department, 031903714  
The Honorable Parley R. Baldwin

Attorneys: Dee W. Smith, Ogden, for Appellant  
Mark L. Shurtleff and Karen A. Klucznik, Salt Lake  
City, for Appellee

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Before Judges Billings, Orme, and Thorne.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record[,] and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

"Because this case involves the legality of a search and seizure, the district court's determination of law on these issues should [be] afforded little deference by the court of appeals." State v. Hansen, 2002 UT 125, ¶26, 63 P.3d 650. Moreover, since none of the trial court's findings have been sufficiently challenged on appeal, we need only review the trial court's ruling on the motion to suppress for correctness, given

the facts it found.<sup>1</sup> See State v. Betha, 957 P.2d 611, 614 (Utah Ct. App. 1998).

In stating its conclusion, the trial court highlighted its reliance on several of the factors set forth in State v. Salas, 820 P.2d 1386 (Utah Ct. App. 1991). Significantly, it found probable cause from Defendant's "admission of use, proximity to the contraband[,] and physical indications of use." See id. at 1388. Thus, Defendant was clearly not arrested for his mere presence in the car, but as a result of other factors that buttressed the inference of his possession of marijuana and paraphernalia. See id.

And as to the driver's later claim of ownership, the trial court was correct in concluding that Trooper Jones's probable cause determination "does not evaporate the minute [the driver] admits to ownership of the pipe and marijuana." This confession is, of course, a factor that must be addressed in the probable cause determination, but it must also be evaluated in light of all the surrounding circumstances. See State v. Poole, 871 P.2d 531, 534 (Utah 1994). The confession is simply considered with all the other factors--many of which indicated possession in the instant case--to determine whether probable cause exists.<sup>2</sup> The

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1. Although Defendant parenthetically claims that two of the trial court's findings of facts are "clearly erroneous," Defendant points only to evidence that would support his version of events.

To mount a successful attack upon a trial court's findings of fact, an appellant must first marshal all the evidence in support of the finding and then demonstrate that the evidence is legally insufficient to support the finding even when viewing it in a light most favorable to the court below.

Wilson Supply, Inc. v. Fradan Mfg. Corp., 2002 UT 94, ¶21, 54 P.3d 1177. Given the failure to effectively challenge the trial court's findings, we assume the evidence adequately supports them. See id. at ¶26.

2. Furthermore, possession may include joint possession or control of the contraband. See Utah Code Ann. § 58-37-2(1)(ff) (Supp. 2005). Therefore, simply because the driver admitted to ownership of the contraband does not eliminate the possibility that Defendant may also have had possession of the contraband.

facts found by the trial court,<sup>3</sup> "viewed from the standpoint of an objectively reasonable police officer," Ornelas v. United States, 517 U.S. 690, 696 (1996), still amount to probable cause that Defendant was in possession of marijuana and paraphernalia.

Affirmed.

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Gregory K. Orme, Judge

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WE CONCUR:

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Judith M. Billings, Judge

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William A. Thorne Jr., Judge

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3. The facts relied on by the trial court specifically do not include the greenish tint of Defendant's tongue.