

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060128-CA
v.)	
)	
David Leon Bunting,)	F I L E D
)	(December 14, 2006)
)	
Defendant and Appellant.)	<u>2006 UT App 504</u>

Fourth District, Provo Department, 051401669
The Honorable Claudia Laycock

Attorneys: Shelden R. Carter, Provo, for Appellant
Mark L. Shurtleff and Jeffrey S. Grey, Salt Lake
City, for Appellee

Before Judges Greenwood, Davis, and Orme.

PER CURIAM:

David Leon Bunting appeals a district court order denying his motion to suppress. Bunting challenges the district court's finding that an arresting police officer stated sufficient cause to stop and detain Bunting. Specifically, Bunting argues that the district court erred when it based its decision on the officer's subjective perceptions. We affirm.

"A car stop and investigatory detention by police of the car's occupants is a 'seizure' under the Fourth and Fourteenth Amendments." Kaysville City v. Mulcahy, 943 P.2d 231, 234 (Utah Ct. App. 1997) (citing State v. Case, 884 P.2d 1274, 1276 (Utah Ct. App. 1994)). To overcome the Fourth Amendment's prohibition against unreasonable seizures, the stop and detention must satisfy a two-part test: "First, the officer's initial stop must be justified; second, subsequent actions must be within the scope of the circumstances justifying the stop." Case, 884 P.2d at 1276 (citing Terry v. Ohio, 392 U.S. 1, 19-20 (1968)). This case concerns only the first part of the test.

"A stop is justified if a police officer has reasonable suspicion that a person is engaging in criminal behavior."

Mulcahy, 943 P.2d at 234. "'The police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.'" State v. Menke, 787 P.2d 537, 541 (Utah Ct. App. 1990) (quoting Terry, 392 U.S. at 21). "Although the necessary degree of suspicion is lower than that necessary 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." Mulcahy, 943 P.2d at 234 (quotations and citation omitted). In addition, "the State bears the burden of establishing those sufficient articulable facts." Id.

The arresting officer testified at a preliminary hearing that he initiated a traffic stop because he noted that Bunting's "right tail light appeared to be pink rather than red. It was much dimmer than the left tail light was."¹ At a subsequent hearing on a motion to suppress, Bunting's counsel presented a demonstration with a red folder and flashlight, attempting to illustrate that a light shone through the folder appeared red. The State objected to the demonstration and the following colloquy ensued:

Court: Is there any question as to the testimony of the officer that it was simply one [light] was dimmer than the other and pinker than the other?

State: There's no contrary evidence, to the State's knowledge.

Defense counsel: I agree there's no contrary--or nothing to contradict that.

Accordingly, the district court held that, based upon the officer's testimony, there was sufficient evidence to support reasonable suspicion. Bunting argues on appeal that the district court erred when it based its decision on the officer's subjective perceptions rather than the district court's "own objective observation of the tail light covering." This argument is misguided.

1. Utah Code section 41-6a-1604 requires that "all stop lamps or other lamps and reflectors mounted on the rear of a vehicle shall display or reflect a red color." Utah Code Ann. § 41-6a-1604(2)(b)(I) (2005).

"The articulable facts supporting reasonable suspicion are usually grounded in an officer's personal perceptions and inferences." Mulcahy, 943 P.2d at 234; see also Case, 884 P.2d at 1276-77 ("The specific and articulable facts required to support reasonable suspicion are most frequently based on an investigating officer's own observations and inferences." (citing Terry, 392 U.S. at 22-23)). Moreover, because the officer's testimony was uncontroverted, the district court did not err when it relied solely thereon to find reasonable suspicion.

Affirmed.

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

Gregory K. Orme, Judge