

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060791-CA
v.)	
)	F I L E D
Elmer Anthony Candelario,)	(December 28, 2007)
)	
Defendant and Appellant.)	<u>2007 UT App 408</u>

Third District, Tooele Department, 061300148
The Honorable Mark S. Kouris

Attorneys: Francis J. Nielson, Salt Lake City, for Appellant
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake
City, for Appellee

Before Judges Billings, Davis, and McHugh.

DAVIS, Judge:

Appellant Elmer Anthony Candelario entered a Sery plea, see State v. Sery, 758 P.2d 935 (Utah Ct. App. 1988), on August 7, 2006. He now appeals, arguing that the trial court erred by finding that Adult Probation and Parole (AP&P) agents arrived by 1:13 p.m. and that the agents had the reasonable suspicion necessary to support an investigative detention. More specifically, Candelario argues both that the trial court improperly overlooked evidence indicating that AP&P agents actually arrived much later--as late as 1:27 p.m.--and that the evidence supporting reasonable suspicion was insufficient. Therefore, Candelario argues, he was unlawfully detained and the evidence seized should have been suppressed. We disagree and affirm.

"We review the trial court's factual findings for clear error and review its conclusions of law for correctness." State v. Alinas, 2007 UT 83, ¶ 7, 589 Utah Adv. Rep. 37. "A finding is clearly erroneous when . . . 'although there is evidence to support it, the reviewing court . . . is left with the definite and firm conviction that a mistake has been committed.'" State v. Burk, 839 P.2d 880, 885 (Utah Ct. App. 1992) (quoting State v. Walker, 743 P.2d 191, 193 (Utah 1987)).¹

1. The State also claims that Candelario's attempt at marshaling is inadequate. We need not address this argument because we instead choose to exercise our discretion to review the trial
(continued...)

Here, Candelario reargues evidence that, while tending to support his version of the time line, is not wholly inconsistent with the trial court's findings. Candelario relies on Agent Walters's report, which notes that Detective Nusporick called at 1:15 p.m. During the suppression hearing, however, Agent Walters testified that it was "approximately" 1:15 p.m. and that this time was "just an estimate." While he agreed that he may have left for the scene of the traffic stop "five, ten minutes" after receiving Detective Nusporick's call, Agent Walters said that this time was a "guestimation" and that it took him only two minutes to drive to the traffic stop. Under these circumstances, we are not left with "a firm and definite conviction that a mistake has been made," In re Z.D., 2006 UT 54, ¶ 40, 147 P.3d 401, with respect to the length of the detention.

Next, Candelario argues that AP&P agents lacked reasonable suspicion to conduct an investigative detention after Officer Wayman issued the citation. Yet through their participation in the Tooele County Drug Task Force, AP&P agents had been advised that Candelario was carrying illegal drugs in and out of one of his work sites and that he was considered by informants to be "one of the main players in the Tooele area for distribution of illicit drugs." This alone provided the agents with reasonable grounds to further detain Candelario and ask him for consent to search the vehicle.² See State v. Velasquez, 672 P.2d 1254, 1261-62 (Utah 1983).

We affirm.

James Z. Davis, Judge

WE CONCUR:

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

1. (...continued)
court's factual findings. See Martinez v. Media-Paymaster Plus, 2007 UT 42, ¶¶ 19-20, 164 P.3d 384.

2. Because Candelario offered no evidence to suggest that his consent was elicited involuntarily or that there was a prior illegality by the police, consent was valid. See State v. Harmon, 854 P.2d 1037, 1040 (Utah Ct. App. 1993), aff'd, 910 P.2d 1196 (Utah 1995).