

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20061016-CA
v.)	
)	F I L E D
David Mark Rodriguez,)	(November 8, 2007)
)	
Defendant and Appellant.)	2007 UT App 364

Seventh District, Monticello Department, 061700079
The Honorable Lyle R. Anderson

Attorneys: William L. Schultz, Moab, for Appellant
Mark L. Shurtleff and Marian Decker, Salt Lake City,
for Appellee

Before Judges Bench, Davis, and Thorne.

THORNE, Judge:

Defendant David Mark Rodriguez appeals the trial court's ruling denying his motion to suppress. Defendant claims that the trial court erred in denying his motion because the deputy effectuated a stop of Defendant's vehicle without reasonable suspicion that Defendant was involved in criminal activity. In reviewing the trial court's denial of Defendant's motion to suppress, "we review the trial court's factual findings for clear error and we review its conclusions of law for correctness." State v. Tiedemann, 2007 UT 49, ¶ 11, 162 P.3d 1106.

After an evidentiary hearing, wherein Defendant, his wife, and the involved deputy testified about the specifics of the alleged stop, the trial court denied Defendant's motion to suppress. The trial court found the deputy's testimony about the circumstances of the incident more credible than that of Defendant and his wife. As a result, the trial court found that the deputy did not block Defendant's travel and that the deputy's hand gesture was not a command to Defendant to stop his vehicle. The court concluded that the circumstances did not constitute a level two encounter.

The evidence supports the trial court's findings. The deputy testified that he observed Defendant's vehicle parked on a side road just off of Highway 95 in San Juan County and pulled onto the side road where he parked and waited for Defendant's vehicle. The deputy also testified that he waved at Defendant to see if Defendant would stop and demonstrated to the court how he had waved at Defendant. Based on these facts, the trial court did not err in finding that the deputy did not communicate a clear command to stop and in concluding that the stop did not amount to a level two stop. Affirmed.

William A. Thorne Jr., Judge

WE CONCUR:

Russell W. Bench,
Presiding Judge

James Z. Davis, Judge