

SUPREME COURT OF UTAH

State v. Gettling

229 P.3d 647 (Utah 2010) · No. No. 20080037 · Decided March 12, 2010

SUMMARY

The Utah Supreme Court held that police unlawfully detained a vehicle passenger after completing the lawful purpose of a traffic stop and conducting a canine sniff without reasonable suspicion. The court nevertheless upheld the denial of the defendant's motion to suppress under the federal good-faith exception because the officer relied on then-settled precedent permitting a vehicle search incident to the driver's arrest.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Parrish; Chief Justice Durham; Associate Chief Justice Durrant; Justice Wilkins; Justice Nehring
JURISDICTION	Utah
DECIDED	March 12, 2010
DOCKET	No. 20080037
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gettling entered a conditional guilty plea after the district court denied his motion to suppress evidence discovered during a vehicle search. He appealed, and the Utah Court of Appeals certified the case to the Utah Supreme Court.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review; it independently determined whether the detention violated the Fourth Amendment and whether the exclusionary rule required suppression.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Utah; binding Utah precedent.
PARTIES	Bradford Gettling v. State of Utah

TOPICS

- suppression of evidence
- fourth amendment
- search and seizure
- exclusionary rule
- criminal procedure

PRACTICE AREAS

criminal procedure

constitutional law

search and seizure

suppression of evidence

QUESTIONS PRESENTED

1. Whether police may continue detaining a vehicle passenger after the traffic stop has concluded and the driver has been arrested, absent reasonable articulable suspicion that the passenger is involved in criminal activity.
2. Whether evidence discovered during the unlawful detention must be suppressed when the officer conducted the vehicle search in reasonable reliance on then-settled precedent authorizing searches incident to the arrest of a vehicle occupant.
3. Whether furtive movements by a passenger or the presence of a narcotics-detection dog at the scene justified extending the traffic stop.

HOLDINGS

1. Once officers complete the procedures incident to the driver's arrest and the lawful purpose of the traffic stop has concluded, they must release detained passengers unless they possess reasonable articulable suspicion that a passenger is engaged in criminal activity.
2. The federal good-faith exception to the exclusionary rule applies when officers conduct a vehicle search in reasonable reliance on then-settled judicial precedent authorizing the search, so evidence discovered during the search need not be suppressed.

KEY QUOTATIONS

"Once the lawful purpose of the stop concluded, Deputy Radmall was required to release the passengers." (649)

"However, the evidence uncovered during the search of the vehicle should not be excluded because Deputy Radmall relied on settled precedent to search the vehicle incident to the arrest of its driver." (649)

"Although Deputy Radmall violated Mr. Gettling's Fourth Amendment rights by detaining him after concluding the lawful purpose of the traffic stop, we apply the federal good-faith exception to the exclusionary rule and uphold the district court's denial of Mr. Gettling's motion to suppress." (649)

FACTUAL BACKGROUND

A deputy stopped a vehicle for an improper lane change and failure to stop at a stop sign. The driver was arrested on outstanding warrants and for driving with a suspended license, while Gettling and another passenger were ordered out of the vehicle. During a canine sniff and subsequent search conducted after the driver's arrest, officers found methamphetamine and drug paraphernalia in a closed glasses case belonging to Gettling.

PROCEDURAL HISTORY

After police discovered methamphetamine and drug paraphernalia in Gettling's belongings during a search of the vehicle in which he was a passenger, Gettling moved to suppress the evidence. The district court denied the

motion. Gettling entered a conditional guilty plea preserving his right to appeal the suppression ruling, and the Utah Court of Appeals certified the matter to the Utah Supreme Court. The Supreme Court affirmed the denial of suppression.

DISPOSITION

affirmed

CASES CITED

- Arizona v. Gant, 129 S. Ct. 1710, 1719, 173 L. Ed. 2d 485 (2009)
- State v. James, 2000 UT 80, ¶ 10, 13 P.3d 576
- Arizona v. Johnson, 129 S. Ct. 781, 788, 172 L. Ed. 2d 694 (2009)
- State v. Hansen, 2002 UT 125, ¶ 31, 63 P.3d 650
- State v. Schlosser, 774 P.2d 1132, 1135, 1137 (Utah 1989)
- State v. Baker, 2010 UT 18, ¶¶ 18, 30, 33, 39, 229 P.3d 650
- Illinois v. Caballes, 543 U.S. 405, 407-08, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005)
- Arizona v. Hicks, 480 U.S. 321, 325, 107 S. Ct. 1149, 94 L. Ed. 2d 347 (1987)

OPINION

PARRISH, J.

229 P.3d 647 (2010) 2010 UT 17 STATE of Utah, Plaintiff and Appellee, v. Bradford GETTLING, Defendant and Appellant. No. 20080037. Supreme Court of Utah. March 12, 2010. Mark Shurtleff, Att'y Gen., Marian Decker, Asst. Att'y Gen., Salt Lake City, for plaintiff. Margaret P. Lindsay, Spanish Fork, for defendant.

On Certification from the Utah Court of Appeals PARRISH, Justice: INTRODUCTION ¶ 1 Bradford Dale Gettling appeals the district court's denial of his motion to suppress. Police found drugs and drug paraphernalia in Gettling's personal belongings while conducting a search of the vehicle in which he had been traveling incident to the arrest of the vehicle's driver.

During the pendency of this *648 case, the United States Supreme Court ruled in Arizona v. Gant that officers could conduct a search of a vehicle incident to the arrest of a vehicle occupant only if the arrestee could actually access the passenger compartment of the vehicle or if a failure to search could actually result in the loss of evidence pertaining to the crime underlying the arrest. ____ U.S. ____, ____, 129 S.Ct.

1710, 1719, 173 L.Ed.2d 485 (2009). Because the police officers were not authorized to conduct a search of the vehicle incident to the driver's arrest, we hold that Mr. Gettling was illegally detained at the time officers conducted a dog sniff and subsequent search of the car.

However, we apply the federal good-faith exception to the exclusionary rule and therefore uphold the denial of Mr. Gettling's motion to suppress. BACKGROUND ¶ 2 On January 2, 2006, Deputy Shawn Radmall, a K-9 officer with the Utah County Sheriff's Department, pulled over a vehicle for an improper lane change and failure to come to a complete stop at a stop sign.

The vehicle had three occupants Steven Canals, the driver; Amber Childs, the front seat passenger and vehicle owner; and Mr. Gettling, the backseat passenger. None of the vehicle occupants held a valid driver license.

After discovering that Mr. Canals had outstanding warrants and was driving with a suspended license, Deputy Radmall arrested him and placed him in the police cruiser. While effecting the arrest of Mr. Canals, Deputy Radmall noticed Mr. Gettling making furtive movements in the back seat and ordered him and Ms. Childs to exit the vehicle. Deputy Radmall then conducted a free air sniff around the exterior of the vehicle with his narcotics-detection dog.

The dog indicated the presence of narcotics in two areas: (1) the top of the driver's window, and (2) the door handle of the back passenger-side door. After the positive indication, Deputy Radmall put the dog in the car, where it detected narcotics in Mr. Gettling's belongings. Upon searching those belongings, Deputy Radmall discovered methamphetamine and drug paraphernalia in a closed glasses case.

Both the driver and the other passenger denied ownership, and Mr. Gettling indicated by nodding that the glasses case and its contents belonged to him. He later entered a conditional guilty plea, which allowed him to appeal the district court's denial of his motion to suppress the evidence. ANALYSIS I. POLICE OFFICERS CAN DETAIN PASSENGERS UNTIL THE PURPOSE OF THE TRAFFIC STOP HAS BEEN COMPLETED ¶ 3 Mr. Gettling argues that he was illegally detained at the time Deputy Radmall conducted the free air sniff with his narcotics-detection dog and that the drugs and drug paraphernalia found in the subsequent search of his belongings should be suppressed.

The State counters that Mr. Gettling was lawfully detained at the time of the search because Deputy Radmall was still permitted to conduct a search incident to the arrest of the driver and thus had not concluded the lawful purpose of the stop at the time of the canine sniff.

After the Supreme Court issued *Arizona v. Gant*, ___ U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), clarifying that officers are not permitted to conduct routine searches incident to arrest, the State filed a supplemental brief arguing that *Gant* does not apply to situations with unsecured passengers, that Deputy Radmall had further need to control the scene, and that the dog sniff was only a de minimis extension of the lawful traffic stop.

The State alternatively argues that *Gant* should not have retroactive application. ¶ 4 We determine that the purpose of the stop concluded after the arrest of the driver. Thereafter, Deputy Radmall

had no continued justification to detain the passengers.

However, while Mr. Gettling was unlawfully detained at the time of the search, we apply the federal good-faith exception to the exclusionary rule to any evidence discovered as a result of the unlawful detention. ¶ 5 Police can detain individuals on reasonable articulable suspicion that they are engaged or about to be engaged in criminal activity. *State v. James*, 2000 UT 80, ¶ 10, 13 P.3d 576.

Observing a vehicle commit a *649 traffic violation gives police probable cause to detain the driver and passengers of the vehicle. *Arizona v. Johnson*, ___ U.S. ___, ___, 129 S.Ct. 781, 788, 172 L.Ed.2d 694 (2009). If, during the course of a lawful traffic stop, an officer gains further suspicion that a vehicle occupant is engaged in illegal activity, the officer can detain the vehicle further in order to investigate.

State v. Hansen, 2002 UT 125, ¶ 31, 63 P.3d 650. When officers have concluded their investigation of their initial suspicion and any further suspicion that arose during the stop, they are required to end the detention. *Id.* "[E]ven a small intrusion beyond the legitimate scope of an initially lawful search is unlawful under the Fourth Amendment." *State v. Schlosser*, 774 P.2d 1132, 1135 (Utah 1989) (citing *Arizona v. Hicks*, 480 U.S. 321, 325, 107 S.Ct.

1149, 94 L.Ed.2d 347 (1987)). ¶ 6 In *State v. Baker*, also announced today, we held that when a traffic stop culminates in the arrest of the driver, the "officers must release any passengers who were detained incident to the detention of the vehicle" after the officer has completed all procedures incident to the arrest of the driver. *Baker*, 2010 UT 18, ¶ 18, 229 P.3d 650.

We also declined to adopt any de minimis exception to a passenger's Fourth Amendment rights in order to allow officers to conduct a canine sniff after the lawful purpose of the stop has concluded. *Id.* ¶¶ 30, 33; see also *Illinois v. Caballes*, 543 U.S. 405, 407-08, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005) (finding that although a dog sniff by a trained narcotics-detection dog is not a search, it is not lawful to conduct a dog sniff if it prolongs the stop).

However, because the detention of the passengers in *Baker* took place while officers were conducting a routine search incident to arrest, a search allowed prior to the recent United States Supreme Court decision in *Gant*, 129 S.Ct. 1710, we determined that application of the federal exclusionary rule would not deter the police from unlawful conduct. *Baker* ¶ 39.

We therefore applied the federal good-faith exception to the exclusionary rule to searches conducted by officers in reliance on judicial precedent authorizing a search of a vehicle incident to the arrest of a vehicle occupant. *Id.* ¶ 7 In this case, Deputy Radmall detained Mr. Gettling while conducting a search incident to driver's arrest that, prior to *Gant*, would have been constitutional.

At the time of Mr. Gettling's detention, Deputy Radmall had no reasonable articulable suspicion that Mr. Gettling was involved in criminal activity and thus could not continue to detain him after he completed the arrest of the driver. But Deputy Radmall did detain Mr. Gettling as he circled the vehicle with the narcotics-detection dog.

The fact that Mr. Gettling may have made "furtive movements" in the back seat is not sufficient justification to allow the officers to extend the stop. Schlosser, 774 P.2d at 1137 ("Mere furtive gestures of an occupant of an automobile do not give rise to an articulable suspicion suggesting criminal activity."). Additionally, the fact that Deputy Radmall's narcotics-detection dog was present in his patrol vehicle at the time of the stop, rather than arriving on the scene after the lawful purposes of the stop had concluded, has no bearing on whether the stop was improperly extended.

Once the lawful purpose of the stop concluded, Deputy Radmall was required to release the passengers. However, the evidence uncovered during the search of the vehicle should not be excluded because Deputy Radmall relied on settled precedent to search the vehicle incident to the arrest of its driver. CONCLUSION ¶ 8 Although Deputy Radmall violated Mr. Gettling's Fourth Amendment rights by detaining him after concluding the lawful purpose of the traffic stop, we apply the federal good-faith exception to the exclusionary rule and uphold the district court's denial of Mr. Gettling's motion to suppress. ¶ 9 Chief Justice DURHAM, Associate Chief Justice DURRANT, Justice WILKINS and Justice NEHRING concur in Justice PARRISH's opinion.