

1978

The State of Utah v. Edward Peter Crabtree : Brief of Defendant-Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Utah v. Crabtree*, No. 16405 (Utah Supreme Court, 1978).
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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff-Respondent, :
vs. :
EDWARD PETER CRABTREE, :
Defendant-Appellant. :

Supreme

BRIEF OF DEFENDANT-APPELLANT

APPEAL FROM THE JUDGMENT OF THE
SEVENTH JUDICIAL DISTRICT COURT, COUNTY OF EMERY,
HONORABLE BOYD HARRIS, JUDGE

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HONORABLE BOYD BUNNELL, PRESIDING

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vs. : Supreme Court No. 16405
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Defendant-Appellant. :

BRIEF OF DEFENDANT-APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This was a criminal prosecution on one count of possessing heroin with the intent to distribute it for value, and a second count of possessing cocaine with the intent to distribute it for value.

DISPOSITION IN THE LOWER COURT

The defendant's pre-trial Motion to Suppress Evidence was heard before the Honorable Boyd Bunnell, Judge of the Seventh Judicial District Court, on the 4th day of January, 1979, at which time the court denied the defendant's Motion to Suppress Evidence. The case was tried by a jury on January 4 and 5, 1979, before the Honorable Boyd Bunnell, Judge of the Seventh Judicial District Court in and for the State of Utah, Castle Dale, Utah. A verdict of guilt was returned by the jury on both counts on January 5, 1979.

RELIEF SOUGHT ON APPEAL

Defendant-Appellant prays that this court reverse the ruling of the trial court as to defendant's Motion to Suppress Evidence and order that all evidence taken from defendant's luggage while the said defendant was in custody be suppressed and for such other and further relief as to the court may seem just in the premises.

STATEMENT OF FACTS

On the 12th day of October, 1978, (T. 5, 22-25), the defendant was stopped on Highway 6 between Green River and Price by an officer of the Utah Highway Patrol. (T. 6) The officer approached the defendant's car, and asked the defendant to accompany him to his patrol car. (T. 7) While sitting in the front seat of the patrol car, the officer observed the handles of what appeared to be hemostats in the defendant's coveralls. (T. 7) The officer asked to see the hemostats, and states that the defendant handed them to him, at which time he observed a brown residue on the hemostats and smelled an odor resembling marijuana. At that time, the officer told the defendant that he believed there was more marijuana in the vehicle and if the defendant would produce the marijuana, and it was a small amount, that the officer would only write a citation for possession of marijuana and escort the defendant back to Price to post bail. The defendant replied that stopping his vehicle for a traffic citation was not any reason to search the vehicle. The officer said that he had reasonable cause to search the vehicle. The defendant then said that he had one-half bag of marijuana in the front seat. (T. 8) The defendant then

produced the one-half bag of marijuana from the driver side of the front seat of the vehicle. The officer claims that the defendant then gave him permission to "look to make sure there is no more." The officer then began to search the car, and he looked into the large duffel bag in the back of the stationwagon. (T. 9). The officer claims that the defendant's bag was open and sitting on top was a gun powder scale, which the defendant told the officer he used to reload ammunition. The officer also found two loaded pistols in the duffel bag. At this time, the dispatcher called the officer back to his patrol car and advised him that a fugitive warrant existed for the defendant, although the dispatcher didn't know what the defendant was wanted for. (T. 10). The dispatcher just said, "Bring him in." The arresting officer then searched the defendant, handcuffed the defendant and then placed him in the patrol car. The officer went to the car and removed the defendant's suitcases and guitar, and put them in the back of the patrol car. The officer locked the defendant's vehicle and left it at the scene, and took the defendant in custody back to the police station in Price. (T. 11) On the way back to the station, the arresting officer advised the defendant of his rights.

The officer asked the defendant if there were more guns in the defendant's bags. The defendant replied that there was another gun in the suitcase. (T. 12, 41.) The defendant then told the officer that if his luggage was to be searched, he wanted

to be present because there was a large amount of cash in his luggage. (T. 12-13, T. 21). The arresting officer then placed the defendant in custody in a back room of the jail and proceeded to search the contents of the defendant's luggage. (T. 13). The officer testified that he had no probable cause to search the defendant's bag (T. 23, 9-25) but was only conducting an inventory search to "maintain custody" of defendant's belongings. (T. 13, T. 15, T. 20, T. 23.)

The defendant was allowed to watch as the officer made a warrantless search of his luggage. (T. 15.)

The officer found a gun, two packets of cash, and "some suspected control substances in a plastic bag" in the defendant's suitcase. (T. 15, T. 16.) The officer then told the defendant he was also under arrest for possession of control substances with the intent to distribute for value. (T. 16.) It was only after searching the luggage and finding the suspected drugs that the officer decided to inventory the defendant's possessions. (T. 16, 11-23, T. 19, 7-20).

The substances in the bag were examined by the State Division of Health and it was determined that the substances were heroin and cocaine. (T. 63.) The defendant was charged with two counts of possession of heroin and cocaine with the intent to distribute each for value. (R. 6) Prior to trial, the defendant filed a motion to suppress the substances taken from the defendant or his auto, (R. 7) which motion was heard immediately prior to trial on January 4, 1979. (T. 3). Having heard the facts surrounding the search of the luggage as testified by the arresting

officer, and the arguments of counsel, which were not reported, the trial court denied the Motion to Suppress Evidence. (T. 28)

Whereupon defendant was tried by a jury and convicted on January 5, 1979, of both counts, from which conviction defendant now appeals. (R. 40).

A R G U M E N T

POINT I

THE WARRANTLESS SEARCH OF DEFENDANT'S LUGGAGE WAS NOT A SEARCH INCIDENT TO LAWFUL ARREST NOR JUSTIFIED BY EXIGENT CIRCUMSTANCES.

The defendant in this case was stopped for speeding (T. 6.) and arrested by the Highway Patrolman on a fugitive warrant from Alaska. (T. 39). While the defendant was handcuffed in the patrolcar, the arresting officer removed defendant's luggage from his auto and transported it with the defendant back to the police station. (T. 39, T. 40). Placing the defendant in a back room in the jail, the arresting officer then proceeded to search the contents of defendant's luggage. (T. 13, T. 42, T. 43.)

The officer made no claim of exigent circumstances, and no evidence was introduced at the trial to support the existence of exigent circumstances. Once the arresting officer had taken the defendant into his custody, and had control and possession of defendant's luggage, and safely transported it to the police station, there was not the slightest danger that the luggage or its contents could have been removed or destroyed before a valid search warrant could be obtained. The initial taking into possession and control by the officer was sufficient to guard

against any risk that the contents might be lost, and it was unreasonable to undertake the additional and greater intrusion of the search without a warrant.

Whenever an arrest is made, there is always some danger that the person arrested may try to reach for a weapon or conceal or destroy evidence. Thus, a Chimel search is justified to safeguard the officer and the public, and to prevent the loss of evidence. It has been held reasonable for the arresting officer to conduct a prompt, warrantless "search of the arrestee's person and the area 'within his immediate control'--construing that phrase to mean the area from which he might gain possession of a weapon or destructible evidence." Chimel v. California, 395 US, at 76.

It should be noted, however, that warrantless searches of luggage cannot be justified as incident to the arrest if the "search is remote in time or place from the arrest," Preston v. United States, 376 US, at 367, or if no exigency exists.

This search was conducted long after the officer had lost exclusive control of the luggage and after the defendant had been taken securely into custody. The search cannot therefore be viewed as incident to the arrest or justified by any other exigency, nor was such a justification claimed by the state.

POINT II

THE SEARCH DOES NOT FIT THE AUTOMOBILE EXCEPTION TO THE WARRANT CLAUSE NOR WAS IT CONSENTED TO BY THE DEFENDANT.

The automobile exception to the warrant clause does not apply here, as the search which produced the controlled substance

leading to defendant's arrest and conviction was conducted in the police station, after the automobile had been secured and impounded, and the substances were within the defendant's suitcase, in the police station, and not in his automobile.

There was no evidence that the defendant consented to the search of the suitcase. In fact, when the officer was asked at trial, "now, Mr. Crabtree didn't consent to your taking that inventory; did he?" Answered: "I didn't ask him if I could take an inventory." (T. 55, 21-23.) The officer did testify that after asking the defendant concerning the contents of the luggage, the defendant told the officer, "that if I were going to look through his bags, that he wanted to be present. . ." (T. 12, T. 21.)
(Emphasis Added)

POINT III

THE SEARCH OF DEFENDANT'S SUITCASE AT THE
POLICE STATION WHILE THE DEFENDANT WAS IN
CUSTODY VIOLATED THE WARRANT CLAUSE OF THE
FOURTH AMENDMENT.

The Fourth Amendment of the Constitution of the United States provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

It is clear from the evidence that a search warrant should have been obtained. The suitcase was in the exclusive control of the police. The defendant was in custody. Some controlled

substance had been found in the car. Loaded weapons had been previously found in the duffel bag. Under these circumstances, probable cause to suspect that other control substances or loaded weapons may have been in the remaining suitcase, could have been demonstrated to a neutral magistrate and a warrant obtained for the search of the suitcase.

The defendant's principal privacy interest in the luggage was in its contents. Even though the officer had custody and control over the luggage, diminishing defendant's use and possession thereof, that did not diminish the defendant's legitimate expectation that the contents of his luggage would remain private.

In United States v. Chadwick, 433 US 1, (1976), the United States Supreme Court was asked to apply the Fourth Amendment to a set of facts very similar to the present case. In Chadwick, officers had been alerted to the arrival of possible drug traffickers and arrested them, after observing them place a large footlocker in the trunk of their automobile. The agents then took the defendants and their luggage to the federal building, and there opened the footlocker without the defendants' consent or a search warrant. The agents found large amounts of marijuana in the footlocker and charged the defendants with possession with intent to distribute.

The District Court granted the pre-trial motion to suppress the marijuana obtained from the footlocker, holding that warrantless searches are per se unreasonable under the Fourth Amendment unless they fall within some established exception to the warrant requirement. The District Court found that the luggage search was not justified under either the automobile

exception or as a search incident to a lawful arrest. The court of appeals affirmed and the government appealed.

The Supreme Court affirmed that the evidence should be suppressed as it was obtained in violation of the Fourth Amendment warrant requirement. The court held that the defendants in Chadwick were entitled to the protection of the warrant clause of the Fourth Amendment with the evaluation of a neutral magistrate, before their privacy interest in the contents of their luggage were invaded.

In so holding, the court stated,

Moreover, in this area we do not write on a clean slate. Our fundamental inquiry in considering Fourth Amendment issues is whether or not a search or seizure is unreasonable under all the circumstances Cooper v. California, 386 US 58 (1967). The judicial warrant has a significant role to play in that it provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer "engaged in the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 US 10, 14 (1948). Once a lawful search has begun, it is also far more likely that it will not exceed proper bounds when it is done pursuant to a judicial authorization "particularly describing the place to be searched and the persons or things to be seized." Further, a warrant assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search. Camara v. Municipal Court, 387 US 523, 532 (1967).

Just as the Fourth Amendment "protects people, not places," the protection of a judicial warrant offers against erroneous governmental intrusions are effective whether applied in or out of the home. Accordingly, we have held warrantless searches unreasonable, and therefore unconstitutional, in a variety of settings. 433 US 9, 10.

In applying the Fourth Amendment to the material facts of the Chadwick case, facts nearly identical to the present case, the court found as follows:

In this case, important Fourth Amendment privacy interests were at stake. By placing personal effects inside a double lock footlocker, respondents manifested an expectation that the contents would remain free from public examination. No less than one who locks the doors of his home against intruders, one who safeguards his personal possessions in this manner is due the protection of the Fourth Amendment warrant clause. There being no exigency, it was unreasonable for the government to conduct this search without the safeguards a judicial warrant provides. 433 US 11.

In ruling out the possibility of the government using the automobile exception rational in searching luggage found in a suspect's automobile when arrested, the court stated:

The factors which diminish the privacy aspects of an automobile do not apply to respondents' footlocker. Luggage contents are not open to public view, except as a condition to border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a persons's expectations of privacy in personal luggage are substantially greater than in an automobile. 433 US 13.

That the facts surrounding the search in the instant case cannot be considered justifying a search incident to an arrest was clearly stated by the court in Chadwick.

Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest. 433 US 15.

The arresting officer testified that after the arrest of the defendant, he put defendant's suitcase in his patrol car and transported it to the police station. He testified that at the time of his search of the contents of the suitcase, he had custody and possession of the defendant's belongings. (T. 13, 17-20; T. 14, 20-23.) It is clear from the record that the officer had gained exclusive control of the suitcase and had the defendant securely in custody when he opened the suitcase and searched its contents.

The court concluded its opinion in Chadwick by saying:

In our view, when no exigency is shown to support the need for immediate search, the warrant clause places the line at the point where the property to be searched comes under the exclusive dominion of police authority. Respondents were therefore entitled to protection of the warrant clause with the evaluation of a neutral magistrate, before their privacy interest in the contents of the footlocker were invaded. 433 US 15, 16.

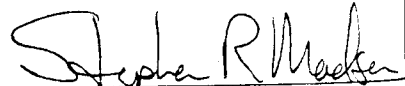
CONCLUSION

In applying the principals of Chadwick to the present case, it is clear that the warrantless search of the defendant's suitcase, after it was in the exclusive control of the police officer, violated the defendant's expectation of privacy protected by the warrant clause of the Fourth Amendment. There was no exigency shown to justify an immediate search of the suitcase once it passed to the officer's control and was safely transported more than 25 miles back to the police station prior to the search. The time and distance of the search of the arrest preclude an assertion that it was incident to a lawful arrest. The automobile exception cannot justify this search, firstly because the suitcase

was not searched until it was removed to the police station; and secondly because there is a greater expectation of privacy in luggage than in an automobile. There was not the slightest danger that the suitcase or its contents could have been removed before a valid search warrant could have been obtained and the officer should not have conducted the warrantless search by which the evidence against the defendant was obtained.

The trial court was in error in not granting the pre-trial Motion by defendant to suppress the evidence obtained as a result of the unlawful, warrantless search of defendant's suitcase. Therefore, the decision of the trial court should be reversed and the verdict of the jury vacated and such other relief be granted to the defendant as is just and appropriate in the premises.

Respectfully submitted this 2 day of January, 1980


STEPHEN R. MADSEN
Attorney for Defendant-Appellant

CERTIFICATE OF MAILING

This is to certify that two true and exact copies of the foregoing Brief of Appellant were mailed to Charles Taylor, Emery County Attorney, Emery County Courthouse, Castle Dale, Utah 84513, postage prepaid, this 7th day of January, 1980.


SECRETARY