

1989

State of Utah v. Chad A. Gardiner : Unknown

Utah Supreme Court

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Paul Van Dam; Attorney General; Attorney for Respondent.

Harry H. Souvall; McRae & DeLand; Attorneys for Appellant.

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THE ATTORNEY GENERAL

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BRIEF



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April 11, 1990

FILED

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Clerk, Supreme Court, Utah

Geoffrey J. Butler
Clerk of the Court
Utah Supreme Court
332 State Capitol
Salt Lake City, Utah 84114

Re: State v. Gardiner,
Case No. 890231

Dear Mr. Butler:

During oral argument to the Court in the Gardiner case on April 10, 1990, I represented that no decision of either the Utah Supreme Court or the Utah Court of Appeals had clearly stated that the defendant who asserts a fourth amendment claim has an initial burden of establishing standing to assert the claim, before the fourth amendment issue is properly presented to the trial court. However, I was in error on this point.

In an opinion issued on March 26, 1990, the Court of Appeals made clear that "the proponent of a motion to suppress has the burden of establishing that his own fourth amendment rights were violated by the challenged search or seizure." State v. Webb, No. 890256-CA, slip op. at 20 (Utah Ct. App. Mar. 26, 1990) (citing Rakas v. Illinois, 439 U.S. 128, 130 n.1 (1978)). See also State v. DeAlo, 748 P.2d 194, 197 (Utah Ct. App. 1987) (noting the defendant's burden of showing an expectation of privacy). Insofar as these cases may be relevant to the Court's treatment of the question of defendant's standing that was discussed by the parties in their briefs and at oral argument, I wish to cite them as supplemental authority pursuant to rule 24(j), Rules of the Utah Supreme Court.

Sincerely,

David B. Thompson
DAVID B. THOMPSON
Assistant Attorney General

DBT:bks

cc: Harry Souvall