

1990

Louie E. Sims v. Collection Division of the Utah State Tax Commission : Reply Brief

Utah Supreme Court

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900324

IN THE UTAH SUPREME COURT

LOUIE E. SIMS,	:	Case No. 900324
Petitioner/Appellant,	:	
v.	:	REPLY BRIEF
	:	OF PETITIONER
COLLECTION DIVISION OF THE	:	
UTAH STATE TAX COMMISSION,	:	
Respondent/Appellee.	:	

PETITION FOR REVIEW OF THE ADMINISTRATIVE
ACTION TAKEN BY THE UTAH STATE TAX COMMISSION

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POINT I

THE FOURTH AMENDMENT EXCLUSIONARY RULE
APPLIES TO ILLEGAL DRUG STAMP TAX PROCEEDINGS
BEFORE THE UTAH STATE TAX COMMISSION.

Appellee asserts a three part argument to support its contention that the exclusionary rule does not apply to illegal drug stamp tax proceedings. Appellee argues first that the proceedings are civil in nature; second, the exclusionary rule does not apply to civil proceedings; and, finally, the policies underlying the exclusionary rule make it inapplicable to such proceedings.

A.

THE ILLEGAL DRUG TAX STAMP PROCEEDINGS ARE
QUASI-CRIMINAL IN NATURE AND ARE SUBJECT TO
THE FOURTH AMENDMENT'S EXCLUSIONARY RULE.

Appellee urges this court to hold that the proceedings and resulting tax and penalties described in Utah Code Annotated §59-19-101 et. seq. (1953, as amended) are purely civil in

nature. Appellee first supports this position by claiming that taxes are imposed on other illegal activities such as bootlegging, gambling, extortion and fraud. Those taxes have been held to be civil in nature. However, the distinction between those situations and the illegal drug tax stamp is that those tax proceedings address the issue of the income derived from the illegal activities. Such proceedings relate to the tax due and owing if that same income were derived from legitimate means. The tax stamp assessment and penalties are based on the nature and quantity of the illegal substances involved. The nature of the activity that gives rise to the illegal drug stamp tax are the manufacture, production, shipment, transportation, importation or possession of a controlled substance.¹ In other words, the drug stamp tax and penalty are not related to income. Rather, the tax and penalty are imposed solely on the alleged illegal activity.

Appellee next argues that the test given in United States v. Ward, 448 U.S. 242 (1980) results in the conclusion that tax stamp proceedings are civil in nature. The issue decided in Ward was whether the penalty for pollution to the water system was sufficiently punitive to intrude on Fifth Amendment protections. The court of appeals had held that the civil penalty statute was quasi-criminal in nature. In

¹ Utah Code Annotated §59-19-105(1)(1953, as amended).

concluding no Fifth Amendment protections were implicated the Court distinguished a forfeiture case, Boyd v. United States, 116 U.S. 616 (1886).² Boyd was distinguished on the basis that there was no correlation between the damages sustained and the amount of property subject to the forfeiture. In Ward the penalties were correlated to the cost of cleanup of the pollutants. The Court also noted that a factor of critical importance in Boyd was that the criminal and civil sanctions were provided in the same statute. In Ward the civil and criminal statutes were enacted seventy years apart and were found in different statutes.

The Court in Ward then went on to rely on a test from Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963). Appellee quoted the seven factors from that test³ but did not analyze the Utah illegal drug tax stamp statutes in light of those factors. Although not all of these factors apply to the tax stamp

² Boyd was a civil forfeiture case where the Supreme Court first indicated that the exclusionary rule may apply to Fourth Amendment violations.

³ Brief of appellee at 7.

statutes, several are applicable.⁴ First, a substantial monetary penalty for the commission of a crime, such as that associated with the drug tax stamp, has historically been regarded as a fine. A fine is obviously a form of punishment. Second, the acts that give rise to the tax assessment--manufacturing, producing, shipping, transporting, importing or possessing controlled substances⁵--all require an awareness that can be equated to "knowledge" or "intention" as defined in the

⁴ Those factors quoted in appellee's brief are:

[1] Whether the sanction involves an affirmative disability or restraint, [2] whether it has historically been regarded as a punishment, [3] whether it comes into play only on a finding of scienter, [4] whether its operation will promote the traditional aims of punishment--retribution and deterrence, [5] whether the behavior to which it applies is already a crime, [6] whether an alternative purpose to which it may rationally be connected is assignable for it, and [7] whether it appears excessive in relation to the inquiry, are all relevant to the inquiry and may often point in differing directions. [emphasis in original, footnotes omitted]

Mendoza-Martinez, 372 U.S. at 168-9.

⁵ Utah Code Annotated §59-19-105(1)(1953, as amended).

criminal code.⁶ These are traditionally regarded as "scienter" requirements for the commission of a crime. Third, the operation of the tax stamp statutes is obviously aimed at promoting retribution and deterrence. The extremely large amounts of money imposed as taxes and penalties are obviously aimed at discouraging people from engaging in illegal drug transactions. The drug stamp taxes and penalties also act as a form of retribution against those who break the law. Fourth, as previously discussed, the behavior to which these proceedings apply is already a crime. Finally, there is no relationship between the amount of the tax and penalty and civil-type damages that are sustained as a result of illegal drug manufacture, production, shipment, transportation, importation or possession.

⁶ Utah Code Annotated §76-2-103 (1953, as amended) defines the mental states required for the commission of a crime. That statute provides in part:

A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

The factors from Mendoza-Martinez, supra, indicate that the illegal drug tax stamp proceedings are at least quasi-criminal in nature. Furthermore, the other factors relied upon in Ward are also instructive. The civil and criminal illegal drug stamp tax statutes were enacted at the same time. Those civil and criminal provisions are found under the same title and in the same chapter of the Utah code. Finally, the daily penalty provisions in Ward were found to relate to the cost of toxic waste clean-up. The tax and penalty under the illegal drug stamp tax are based on the type and quantity of drug and are indistinguishable from a fine. Indeed, fines under the federal sentencing guidelines are determined in the same manner.⁷ Consequently, under the analysis employed in Ward the proceedings at issue here would be regarded as quasi-criminal in nature.

Appellee's obvious purpose in making the argument that these are civil proceedings is to avoid the implications of the holding of One Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965).⁸ In One Plymouth Sedan the Supreme Court held that civil forfeiture proceedings were "quasi-criminal" in nature and

⁷ The federal sentencing reform act of 1984 established guideline sentencing. In drug cases, the "offense level" is determined by the type and quantity of the controlled substance (Guideline §2D1.1(a)(3)). That "offense level" determines the range of applicable fines (Guideline §5E1.2(c)(3)).

⁸ The importance of that case was argued by appellant in its opening brief but was not cited or discussed by appellee.

subject to the Fourth Amendment exclusionary rule. This was because the civil penalty of forfeiture could be imposed only if there was proof that the claimant had violated the law. The Court also found importance in the fact that the penalty of forfeiture could be substantially greater than the potential fine for the criminal conviction of the underlying offense. Under those circumstances, the court found that it was anomalous to exclude the evidence in the criminal proceeding, but admit that same evidence to prove those facts in the forfeiture proceeding.

Applying the analysis from One Plymouth Sedan, the tax stamp proceedings fall into this "quasi-criminal" category. The tax commission must have proof that the defendant violated the law to be able to impose the drug stamp tax and penalty. To make the assessment there must also be proof that the criminal provisions of Utah Code Annotated §59-19-106(2)(1953, as amended) have been violated. Furthermore, inherent in proof of a violation of Utah Code Annotated §59-19-106(2)(1953, as amended) would be proof of a criminal controlled substances offense.⁹ In this case the tax and penalty assessed was \$394,106. The maximum fine and assessment for the second degree felony with which appellant was charged was \$12,500. The tax stamp proceedings clearly fall within the "quasi-criminal" category described in One Plymouth Sedan. Consequently, the Fourth Amendment exclusionary rule should apply to these proceedings.

⁹ See generally, Utah Code Annotated §58-37-8 (1953, as amended).

B.

THE FOURTH AMENDMENT EXCLUSIONARY RULE HAS
BEEN APPLIED TO CIVIL ADMINISTRATIVE
PROCEEDINGS.

In conjunction with this first argument advanced by appellee is the claim that the exclusionary rule does not apply to civil proceedings. In making this argument, appellee first addresses the history and development of the exclusionary rule. In this discussion appellee fails to discuss several important cases. Appellee does not mention One Plymouth Sedan v. Pennsylvania, supra. As previously discussed, that case applied the exclusionary rule to civil forfeiture proceedings. The basis for that decision was that forfeiture is a "quasi-criminal" proceeding.

The other important line of cases not mentioned by appellee are those dealing with administrative searches. In Camera v. Municipal Court, 387 U.S. 523 (1967), the Fourth Amendment warrant requirement was applied to health and safety inspections.¹⁰ Likewise, in G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977), the Court held that IRS agents executing a levy for a jeopardy tax assessment could not enter the petitioner's business and seize assets and records without a warrant or exigent circumstances. These cases belie appellee's

¹⁰ See also; See v. City of Seattle, 387 U.S. 541 (1967) and Marshall v. Barlow's Inc., 436 U.S. 307 (1978).

assertion that the protections of the Fourth Amendment have never been applied to civil cases.

Appellee also listed several situations where state and federal courts have declined to apply the exclusionary rule. One commentator has listed a number of administrative hearings where the rule has been applied:

Courts have held or at least assumed that the exclusionary rule is applicable in a wide variety of administrative proceedings, including FTC hearings to uncover discriminatory pricing practices, [11] SEC

[11] Knoll Associates, Inc. v. FTC, 397 F.2d 530 (7th Cir. 1968); FTC v. Page, 378 F.Supp. 1052 (N.D.Ga. 1974) (distinguishing Supreme court's ruling in Calandra that exclusionary rule not applicable to grand jury witness, as here "[n]o investigative proceedings will be interrupted by consideration of respondents' Fourth Amendment arguments at this point").

proceedings, [12] OSHA proceedings, [13] proceedings before the public utilities commission to terminate phone service because of illegal use, [14] NLRB hearings concerning labor controversies, [15] immigration

[12] OKC Corp. v. Williams, 461 F.Supp. 540 (N.D.Tex. 1978); judgment aff'd, 614 F.2d 58 (5th Cir.).

[13] Savina Home Industries, Inc. v. Secretary of Labor, 594 F.2d 1358 (10th Cir. 1979)(noting that the Barlow's case, discussed in §10.2(a), did not resolve the issue because there no OSHA search had yet taken place). Consider also Weyerhaeuser Co. v. Marshall, 592 F.2d 373 (7th Cir. 1979)(company can seek suppression in district court notwithstanding fact OSHA administrative proceedings still pending; exhaustion of administrative remedies not required here, "as counsel for the Secretary informed us at oral argument that the OSHA Review Commission has never ruled on the issue of a warrant's validity"). See also Trant, OSHA and the Exclusionary Rule: Should the Employer Go Free Because the Compliance Officer Has Blundered", 1981 Duke L.J. 667; Annot., 67 A.L.R.Fed. 724 (1984); Comments, 64 Minn.L.Rev. 789 (1980); 19 Wake Forest L.Rev. 819 (1983).

[14] Goldin v. Public Utilities Comm., 23 Cal.3d 638, 153 Cal.Rptr. 802, 592 P.2d 289 (1979).

[15] NLRB v. Bell Oil & Gas Co., 98 F.2d 870 (5th Cir. 1938).

hearings, [16] hearings to terminate a public employee's government service, [17] hearings to suspend or revoke a license to practice a

[16] Wong Chung Che v. Immigration and Naturalization Service, 565 F.2d 166 (1st Cir. 1977); Schenk ex rel. Chow Fook Hong v. Ward, 24 F.Supp. 776 (D.Mass. 1938). See Fragomen, Procedural Aspects of Illegal Search and Seizure in Deportation Cases, 14 San Diego L.Rev. 151 (1976); Annot., 44 A.L.R.Fed. 933 (1979); Comment, 14 U.C.Davis.L.Rev. 955 (1981); Note 58 N.Car.L.Rev. 647 (1980). But see text at note 98 infra.

[17] Powell v. Zuckert, 366 F.2d 634 (D.C.Cir. 1966); Sullivan v. District Ct. of Hampshire, 384 Mass. 736, 429 N.E.2d 335 (1981)("Illegally obtained evidence may not be used by the government in a Civil Service Commission proceeding to support the discharge of a public employee"); City of New Brunswick v. Speights, 157 N.J.Super. 9, 384 A.2d 225 (1978).

But see People v. McGrath, 46 N.Y.2d 12, 412 N.T.S.2d 801, 385 N.Y.S.2d 801, 385 N.E.2d 541 (1978)(under the "length of the road" part of the fruit-of-the-poisonous-tree analysis used by the Supreme Court in the Ceccolini case, discussed in §11.4(i), the fact the evidence was offered in such a proceedings is relevant because it shows it is somewhat less likely that suppression is needed as a deterrent).

profession [18] or to sell liquor [19] and hearings to suspend or expel a student from a public high school [20] or a state university.[21]

LeFave, Search and Seizure, §1.7(e) at p. 159 (1987).

One of the cases cited by appellee, Tirado v. Commissioner of Internal Revenue, 689 F.2d 307 (2nd Cir. 1982), specifically rejected the civil-criminal distinction in the application of the exclusionary rule. In Tirado the court indicated that a number of factors must be explored to determine if the exclusionary rule applied to a particular proceeding. Those factors include: whether the officers had an interest in

[18] Elder v. Board of Medical Examiners, 241 Cal.App.2d 489, 50 Cal.Rptr. 304 (1966)(questioned in Pierce v. Board of Nursing Education, 255 Cal.App.2d 558, 63 Cal.Rptr. 107 (1967); Yarbrough v. Pfeiffer, 370 So.2d 1177 (Fla.App. 1979).

[19] Finn's Liquor Shop v. State Liquor Authority, 24 N.Y.2d 647, 301 N.Y.S.2d 584, 249 N.E.2d 440 (1969); Leogrande v. State Liquor Authority, 25 A.D.2d 225, 268 N.Y.S.2d 433 (1966); Board of Comm'rs v. Pastore, ___ R.I. ___, 463 A.2d 161 (1983).

[20] Jones v. Latexo Independent School District, 499 F.Supp. 223 (E.D.Tex. 1980); Caldwell v. Cannady, 340 F.Supp. 835 (N.D.Tex. 1972).

[21] Smyth v. Lubber, 389 F.Supp. 777 (W.D.Mich.1975); Moore v. Student Affairs Committee of Troy State University, 284 F.Supp. 725 (M.D.Ala. 1968).

the proceeding at issue, if that proceeding was within the officers predictable contemplation, if that potential proceeding motivated the officers' actions, and if there was any understanding or collusion between the two bodies. The court in Tirado concluded its analysis stating,

. . . the exclusionary rule can be properly and beneficially applied in those civil proceedings where it has a realistic prospect of achieving marginal deterrence.

689 F.2d at 314.

The bright line civil-criminal distinction urged by appellee fails to correctly reflect the state of the law. This court needs to look to the nature of the proceedings²² or the policies that support the exclusionary rule.²³ As discussed in Point I, A., supra, these proceedings are quasi-criminal in nature and the exclusionary rule should apply to them. In Point I, C., infra, it will be shown that the policies underlying the exclusionary rule require that it be applied to illegal drug stamp tax proceedings.

C.

THE POLICIES THAT JUSTIFY THE EXCLUSIONARY
RULE REQUIRE ITS APPLICATION TO THE ILLEGAL
DRUG TAX STAMP PROCEEDINGS.

²² One Plymouth Sedan v. Pennsylvania, supra.

²³ Janis v. United States, 480 U.S. 433 (1976); INS v. Lopez-Mendoza, 468 U.S. 1032 (1984).

The exclusionary rule was originally regarded as a constitutional requirement that attached to Fourth Amendment violations. Weeks v. United States, 232 U.S. 383 (1914). The Court in Weeks found that without this remedy there would be no protections against Fourth Amendment violations. In Mapp v. Ohio, 367 U.S. 643 (1961), the Court held that two policies justified the rule. The first justification was the need to deter unlawful police conduct by making the evidence seized in violation of the Fourth Amendment inadmissible. The second justification was the need to preserve judicial integrity. The Court reasoned that the judiciary should not be in a position of condoning Fourth Amendment violations by admitting evidence seized as a result of those violations. Subsequently, in United States v. Calandra, 414 U.S. 338 (1974), the court indicated that the exclusionary rule was a judicial remedy and its primary purpose was to deter law enforcement from violating the Fourth Amendment.

Appellee argues that judicial integrity is not a policy that should be considered to justify the application of the exclusionary rule. There is no question that the United States Supreme Court has recently downplayed or even disregarded the importance of that policy in determining the application of the exclusionary rule. See United States v. Leon, 468 U.S. 897 (1984). However; this court reasserted its importance as a justification for the exclusionary rule in State v. Arroyo, 796 P.2d 684 (Utah 1990). In Arroyo, this court stated,

A further purpose of the exclusionary rule implicated here, as enunciated in Terry v. Ohio, 392 U.S. 1, 13 (1968), is to prevent making a court a "party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions."

796 P.2d at 689. This policy of judicial integrity also prevents the erosion of the courts' ability to enforce individual liberties.

The second purpose for the exclusionary rule is to deter unlawful police conduct. Appellee argues there is no deterrence of such conduct if the tax commission suppresses evidence illegally seized. Appellee first claims that the suppression of evidence in the criminal proceeding is sufficient deterrence. Second, appellee contends that the tax commission has no authority to control the actions of police officers. Third, appellee argues that the officers do not directly benefit from their misdeeds. Finally, appellee asserts that litigating search and seizure claims will be unduly burdensome to the tax commission and this court.

In support of this last assertion, appellee cites INS v. Lopez-Mendoza, supra. In that case, the Supreme Court held that the exclusionary rule was inapplicable to deportation cases. One of the reasons given for that holding was the burden created by requiring immigration judges to litigate search and seizure issues. Immigration judges heard a very large number of cases and the proceedings were relatively simple. The same thing

cannot be said for tax stamp proceedings. In this case appellant is faced with a tax liability of nearly \$400,000. There were a number of conferences and hearings before a law-trained administrative law judge prior to that judge's decision being submitted to the tax commission for approval. Requiring that judge to make decisions on Fourth Amendment issues will not cause the same kinds of problems as would occur in the immigration hearings in Lopez-Mendoza.²⁴

As for the question of deterrence, the critical factor is that the State reaps a substantial benefit from Fourth Amendment violations. Under the current statute, the agency involved in the seizure receives sixty percent of the taxes and penalty collected.²⁵ If the state or the particular agency is able to benefit from the violation, such violations would be encouraged. Appellee argues that the provisions of Utah Code Annotated §59-19-105(6)(1953, as amended) were not in effect at the time of this stop. However, the existence of that statute should be a substantial factor for this court to consider in determining if the exclusionary rule should apply to these

²⁴ Appellee contends that there may be added litigation in the courts, as a result of applying the exclusionary rule to the tax stamp proceedings. However, if the exclusionary rule does not apply, those who are the subjects of the tax may opt to file Civil Rights actions claiming Fourth Amendment violations. The drug stamp tax and penalty could be claimed as damages. Thus, the burden on our judicial system may be increased.

²⁵ Utah Code Annotated §59-19-105(6)(1953, as amended).

proceedings. Appellee also claims that the tax commission is not in a position to effect the actions of local law enforcement. However, if law enforcement officers were aware that the state would not benefit from Fourth Amendment violations, they would certainly be deterred from committing those violations.

Furthermore, when the nature of the drug tax stamp proceedings is considered in light of the factors discussed in the Tirado case, the deterrent effect of the exclusionary rule can be seen. Appellant was stopped and the drugs were found on July 27, 1988. (R. 153) On August 30, 1988, he was served with the notice and demand for payment. (R. 257-258) The information regarding the drug seizure was relayed to the tax commission by the Juab County Attorney. (R. 60) These factors tend to indicate that the drug stamp tax proceedings were within the officer's contemplation at the time of the stop. These facts also indicate there is some degree of collusion between the local law enforcement officials and the tax commission. Consequently, there would be a deterrent effect in applying the exclusionary rule to the illegal drug tax stamp proceedings before the state tax commission.

POINT II

ARTICLE I, SECTION 14 OF THE UTAH
CONSTITUTION REQUIRES THE EXCLUSIONARY RULE
BE APPLIED TO ILLEGAL DRUG TAX STAMP
PROCEEDINGS.

Appellant argued in its opening brief that the exclusionary rule applicable to violations of Article I, Section 14 of the Utah Constitution should be applied in this case.²⁶ Appellee did not respond to this argument. In State v. Larocco, 794 P.2d 460 (Utah 1990), this court held that there is an exclusionary rule for law enforcement violations of Article I, Section 14. This court specifically left several issues open with respect to that rule. The court stated,

Thus, the significant questions which must be answered by state courts considering independent state exclusionary rules are "(1) whether the state courts consider the exclusionary rule to be a constitutional requirement; (2) whether state courts view deterrence as the only purpose behind the rule; and (3) which governmental officials are deemed to be the target of this deterrence." [citation omitted]

794 P.2d at 473.

These issues are applicable to this case. If this court regards the exclusionary rule as a constitutional requirement rather than a judicial remedy, then the rule would certainly apply to any criminal or civil proceedings to which the government is a party. As pointed out in Larocco, several state courts had held prior to Mapp v. Ohio, supra, that the exclusionary rule was a state constitutional requirement.²⁷

²⁶ See Point II. D. of appellant's opening brief.

²⁷ See, State v. Larocco, supra, at 472.

Those decisions relied heavily on the policy that the courts should not be a party to the unlawful actions of police officers by admitting the results of those actions into evidence. State v. Arrequi, 44 Idaho 43, 254 P. 788 (1927); Gore v. State, 24 Okla.Crim. 394, 218 P. 545 (1923).

That same reasoning should be applied by this court to these proceedings. Evidence that was seized as a result of the officers' unlawful activities should not be allowed to be used in any manner. To allow such use, this court is condoning those unlawful actions. Furthermore, if the exclusionary rule is inapplicable here, this court would allow the state to receive a substantial financial benefit as a result of its agents violating the state constitution. Consequently, this court should rule that the exclusionary rule is a constitutional requirement rather than a judicial remedy.

These same arguments also apply to the second issue discussed in Larocco, whether deterrence is the only purpose behind the exclusionary rule. The policy of deterrence described in Janis and Lopez-Mendoza, should not be regarded as the only purpose of the state constitutional exclusionary rule. As previously noted, in discussing the issue of the fruits of a Fourth Amendment violation, this court relied on the policy of judicial integrity as a purpose of the exclusionary rule. State v. Arroyo, supra. Furthermore, refusing to acknowledge the importance of the judicial integrity policy would "relegate the

judiciary to the periphery" in the enforcement of the Fourth Amendment. United States v. Leon, supra, at 931 (Brennan, J., dissenting).

One commentator addressed the issue of deterrence being the only policy justifying the exclusionary rule, stating,

The response to the view that the fourth amendment restricts only privacy violations by government agents who perform the actual invasion is that the amendment restricts governmental power as a whole. Thus, the scope of the amendment includes administrative, executive and judicial action. When a judge admits illegally obtained evidence, he completes the governmental action prohibited by the fourth amendment. The possession by the government of illegally obtained evidence is meaningless unless it is admitted by a trial judge. It is only by police and judge acting in concert, as evidence-gatherers and evidence-admitter, that a constitutional violation can have a legal effect. Because searches and seizures are executed in order to bring "proof to the aid of the Government," and because such evidence is of no value unless admitted by a trial judge, in order for the fourth amendment to have any effect "police and the courts cannot be regarded as constitutional strangers to each other." The significance of the exclusionary rule, therefore, largely lies in the fact that it serves to protect constitutional rights without the need for judicial intervention. The threat of the exclusion of unlawfully obtained evidence makes enforcement of fourth amendment rights at least partially self-executing. [footnotes omitted]

Note, The Future of the Exclusionary Rule and the Development of State Constitution Law, 1987 Wis.L.Rev. 377 at 393-394.

There are several other problems with the deterrence, cost/benefit analysis advanced in Janis and Lopez-Mendoza. The most important of which is the nature of the fundamental right that is at issue:

The individual rights provided in the Constitution are among the fundamental principles of our system of government, and embody our conception of the relation of the individual to the government. These rights are vital ends in themselves, and our government exists in part, to protect these rights. Because of their fundamental nature, they cannot be means to more important ends. But recent United States Supreme Court decisions, by using a cost/benefit methodology, have subordinated these fundamental ends to lesser ends, such as administrative efficiency. Implicit in employing a cost/benefit analysis in adjudicating questions of individual rights lies the notion that these rights have an instrumental, and not fundamental, value. This methodology poses a danger to the future vitality of individual rights. The fundamental nature of these rights, therefore, should preclude use of a cost/benefit methodology in deciding cases directly concerning individuals rights. [footnote omitted]

Note, 1987 Wis.L.Rev., supra, at 394.

The other problem with the reasoning in Janis and Lopez-Mendoza is that it fails to account for the changes in attitudes of law enforcement and the judiciary with respect to the Fourth Amendment. In State v. Carter, 370 S.E.2d 553 (N.C. 1988) the court refused to apply the "good faith" exception described in Leon to its exclusionary rule. Some of the reasons given were that the court felt the exclusionary rule has resulted

in more training for police and judges being more careful in scrutinizing search warrants and supporting affidavits. The "deterrence only" analysis of the exclusionary rule fails to account for these factors. Based on these factors, the benefits from the exclusionary rule cannot be quantified. It is impossible to determine how many bad searches have been avoided based on the change in judicial attitudes and police education.

The third of these issues, the scope of the deterrent effect of the exclusionary rule, was discussed at length in point I.C., supra. Those same arguments would apply to the deterrent effects of the exclusionary rule of Article I, Section 14 of the Utah Constitution.

This court should rule that the exclusionary rule of Article I, Section 14 of the Utah Constitution is a constitutional requirement rather than a judicially created remedy. Furthermore, the purposes of the rule go beyond deterrence. Those purposes should also include the integrity of the judicial system and a prohibition on the state receiving financial benefits from violations of Article I, Section 14. Finally, there is a deterrent effect on the actions of law enforcement officers if the exclusionary rule is applied to the illegal drug tax stamp proceedings. Consequently, the Article I, Section 14 exclusionary rule should be regarded as a constitutional requirement and be applied to these proceedings.

POINT III

THE ROADBLOCK STOP WAS CONDUCTED IN VIOLATION OF BOTH ARTICLE I, SECTION 14 OF THE UTAH CONSTITUTION AND THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Appellee refused to address the issues related to the constitutional violations.²⁸ In State v. Sims, 156 U.A.R. 8 (Ut.App. 1991), the court of appeals reversed appellant's criminal conviction. That court found violations of both the Fourth Amendment and of Article I, Section 14 of the Utah Constitution. The evidence that was introduced at the suppression hearing in the criminal case was entered into evidence in this case as part of the stipulated facts. (R. 146-213) Based on the ruling of the court of appeals, this court should find that the roadblock in question violated both the Fourth Amendment and Article I, Section 14 of the Utah Constitution.

CONCLUSION

This court should hold that the exclusionary rule is applicable to the proceedings before the State Tax Commission on the illegal drug stamp tax. This case should be remanded to the Tax Commission with orders that the Tax Commission apply the exclusionary rule and comply with the ruling on the constitutional violations as was determined by the court of appeals.

²⁸ See, Brief of Appellee at p. 4.

DATED this _____ day of April, 1991.

G. FRED METOS
Attorney for Petitioner/Appellant

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Reply Brief of Petitioner was mailed/delivered to John McCarrey and Lee A. Dever, at the Office of the Attorney General, 236 State Capitol Building, Salt Lake City, Utah, 84114, this _____ day of April, 1991.
