

1991

Utah v. Rowe : Supplemental Submission

Utah Supreme Court

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R. Paul Van Dam; attorney general; attorney for petitioner.

Shelden R. Carter; Harris, Carter and Harrison; attorneys for respondent.

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STATE OF UTAH

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DOCKET NO. 9/0165 R. PAUL VAN DAM - ATTORNEY GENERAL

BRIEF

236 STATE CAPITOL • SALT LAKE CITY, UTAH 84114 • TELEPHONE: 801-538-1015 •

JOSEPH E. TESCH
CHIEF DEPUTY ATTORNEY GENERAL

June 22, 1992

FILED

JUN 11 1992

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

UTAH

Re: State v. Rowe
Sup. Ct. No. 910165

Dear Mr. Butler,

Pursuant to rule 24(j), Utah Rules of Appellate Procedure, the State cites the following as supplemental authority for the proposition expressed in Petitioner's Opening Brief at 22 n.9 that in analyzing a fourth amendment claim, no separate procedural issue of "standing" exists; instead, the question of who has a legitimate expectation of privacy is indistinguishable from substantive fourth amendment jurisprudence.

California v. Greenwood, 108 S. Ct. 1625, 1630-31 (1988):

Individual States may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution. We have never intimated, however, that whether or not a search is reasonable within the meaning of the Fourth Amendment depends on the law of the particular State in which the search occurs. We have emphasized instead that the Fourth Amendment analysis must turn on such factors as 'our *societal* understanding that certain areas deserve the most scrupulous protection from government invasion. [Citations omitted.] We have already concluded that society as a whole possesses no such understanding with regard to garbage left for collection at the side of a public street. Respondent's argument is no less than a suggestion that concepts of privacy under the laws of each State are to determine the reach of the Fourth Amendment. We do not accept this submission.

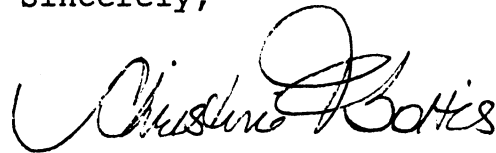
(Emphasis in original.) While Greenwood was otherwise cited in the State's brief, it was not cited for this proposition.

Geoff Butler
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Also, in preparing for oral argument, I noticed that some copies of Petitioner's Opening Brief were missing the last sentence on page 8. In case any of the Court's copies of the brief contained this omission, I have enclosed copies of the correct page and apologize for the over-sight.

I appreciate your circulation of this letter to the Court.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christine F. Soltis".

CHRISTINE F. SOLTIS
Assistant Attorney General
Criminal Appeals Division

CFS:jn

Enclosures

cc: Sheldon Carter

the fourth amendment in the third-party home so as to permit a challenge to the validity of the search warrant. By doing so, the majority adopted a "legitimately on the premises" test for determining whether any constitutionally protected interest of defendant's had been infringed by the police action. The application of such a test for fourth amendment analysis is in conflict with established law.

The majority of the court of appeals erroneously concluded that, before a defendant may be found to have abandoned a constitutionally protected interest in property, the state must prove by clear and convincing evidence that the defendant did not abandon the property to "avoid self-incrimination." This conclusion erroneously applies a subjective analysis to abandonment and is contrary to the prevailing view.

Accordingly, this Court should reverse the court of appeals' holding which suppressed the evidence seized and reversed defendant's conviction, and should reinstate and affirm defendant's conviction.

ARGUMENT

POINT I

THE COURT OF APPEALS ERRONEOUSLY CONCLUDED THAT THE EXCLUSIONARY RULE WAS APPLICABLE TO A PROCEDURAL VIOLATION OF THE NIGHTTIME SEARCH WARRANT PROVISION, UTAH CODE ANN. § 77-23-5 (1990).

In challenging the search warrant for the Swickey home, defendant never raised an issue of the warrant's substantive validity. Instead, defendant limited her argument to the narrow