1984

State of Utah v. James D. Chambers, Stanley Ned Jacobsen and J.D. (Last Name Unknown) : Appellant's Reply Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
v.	:	Case No. 19151 Case No. 19152
JAMES D. CHAMBERS, STANLEY NED JACOBSEN, and J.D. (last name unknown),	:	
Defendants-Appellants.	:	

APPELLANTS' REPLY BRIEF

APPEAL FROM A JUDGMENT AND CONVICTION OF BURGLARY, A SECOND-DEGREE FELONY, AND THEFT, A SECOND-DEGREE FELONY, IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SUMMIT COUNTY, STATE OF UTAH, THE HONORABLE J. DENNIS FREDERICK, JUDGE, PRESIDING.

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APPELLANTS'S REPLY BRIEF

PURPOSE OF REPLY BRIEF

Defendants-Appellants here, hereby submit the following Reply Brief for three purposes:

(1) To reply to Respondent's assertion that Appellants failed to make a specific objection at trial to the admission of certain evidence now challenged on Appeal;

(2) To address State v. Lesley, Utah, 672 P.2d [illegible] (1983), a decision relied upon by Respondent in asserting that Appellants did not preserve the "search" issue for Appeal;

(3) To reply to Respondent's construction of [illegible] specifically that there is not a suggestion that the rule have prospective application only.

POINT I

THE SEARCH ISSUE AS DISCUSSED IN APPELLANTS' POINT I IN APPELLANTS' BRIEF WAS PROPERLY PRESERVED FOR APPEAL.

On page 4 of Respondent's Brief Respondent contends:

> Appellants failed to make a specific, record objection at trial to the admission of the evidence whose admissibility they now challenge on appeal.

At pages 112-113 of the transcript the following exchange occurred in regards to the evidence challenged on Appeal. After the State had moved the admission of Exhibit 11 the following exchange occurred between the Court and counsel:

> MR. BROWN: Yes, Your Honor. A stipulation of the chain has been accurately represented by Mr. Christiansen, and subject to-- Well, may we approach the bench?
>
> THE COURT: Yes, you may.
>
> (A conference was held at the bench, not reported.)
>
> MR. BROWN: Your Honor, I would indicate, subsequent (sic) subject to previous rulings, we have no objection to those items.
>
> THE COURT: To the admission of Exhibit 11, Mr. Brown?
>
> MR. BROWN: Yes, Your Honor.
>
> THE COURT: Mr. Savage?
>
> MR. SAVAGE: That's correct.
>
> THE COURT: Very well. Exhibit 11 is received.
>
> Q (By Mr. Christiansen) Officer Evans, I will now show you what has been marked as

State's Exhibit No. 12, and I will ask you if you can identify that exhibit?

A Yes. I have seen these boots before.

Q Did you have occasion to receive those boots in connection with the execution of the search warrant on January 10, 1983 at the Chambers-Jacobsen residence?

A Yes, I did.

MR. SAVAGE: I'm going to object to Chambers-Jacobsen residence.

Q (By Mr. Christiansen) Chambers residence when Mr. Jacobsen was also present?

A That's correct.

Q What did you do with the boots after you received them?

A The boots, along with the pistol, were taken with us and turned over to the Summit County detectives.

MR CHRISTIANSEN: I would at this time indicate that the same stipulation, I believe, has been entered into, Your Honor, with regard to the chain, and would thus move for the admission of State's Exhibit No. 12.

MR. BROWN: That is correct, Your Honor. With the same understanding as the other, we would submit it.

MR. SAVAGE: Subject to prior rulings.

THE COURT: Very well. Exhibit 12 is received.

MR. CHRISTIANSEN: I have no further questions.

It is clear from the exchange that occurred between

the Court and counsel that the evidence was received over Appellants' previous objections which had been raised and [illegible] to the same Judge in connection with a Motion to Suppress Evidence. The Court had previously ruled that the evidence [illegible] admissible pursuant to the testimony and argument at a Motion to Suppress Evidence in which there had been extensive argument presented regarding the appropriateness of suppressing those particular items of evidence. That hearing was conducted by the same trial Judge that conducted and presided over the trial. There was indication by counsel for Appellants that their objections had been previously noted to the admission of that evidence and the Court ruled the evidence admissible at trial consistent with its prior ruling regarding the admissibility of the evidence at the Motion to Suppress Evidence hearing.

POINT II

THE RESPONDENT'S RELIANCE UPON STATE V. LESLEY IS NOT WELL TAKEN.

The State relies upon State v. Lesley, supra, in stating in Respondent's Brief that the absence of such an objection precludes appellate review of the admissibility of the challenged evidence.

State v. Lesley, supra, involved a situation where a different judge had ruled on the admissibility of certain evidence pursuant to a motion to suppress evidence, than the judge that presided over the defendant's trial, than the Supreme Court at 672 P.2d at 82 indicated the following:

> The appellant's position appears to be that his filing of a pretrial motion to suppress, and its denial, relieved him from the necessity of objecting to the evidence at trial. This raises a question of first impression in this jurisdiction, and we hold that, under Rule 4 of the Utah Rules of Evidence, a specific objection is required even where a pretrial motion to suppress has been made. The reasons for such a rule are well illustrated in this case. The judge who heard the motion to suppress was not the trial judge, and there is no indication in the record before us that an evidentiary hearing on the motion was conducted. There are no findings of fact, conclusions of law, or any written ruling with respect to the appellant's motion to suppress. Prior to trial, a judge is often in a disadvantaged position to decide on the admissibility of evidence. The trial judge is likely to have a more complete view of the grounds for excluding or admitting certain evidence. When defense counsel fails to call the trial judge's attention to any problems regarding the admissibility of evidence at the time it is offered, he or she deprives the trial court of an opportunity to avoid error in the trial which may have been created by an improper ruling on a pretrial motion based on inadequate information. (emphasis added)

Appellants' position would be that the Lesley decision should be confined to the facts as stated in Lesley in that a different judge had apparently ruled upon the admissibility of the evidence than the judge who conducted the trial. Under such circumstances there is wisdom in requiring that trial judge be made aware of, and have an opportunity to rule on any problems regarding the admissibility of evidence offered at trial.

In the case at bar the same Judge who conducted the trial also ruled upon the Defendant's Motion to Suppress Evidence. That Motion to Suppress Evidence was argued on constitutional grounds, and those constitutional grounds remained the same at trial, and the trial Court was advised of Defendants' position regarding that evidence by the exchange that Appellants' referred to in Point I of Appellants' Reply Brief. It is clear that Lesley does not require the result that Respondent asserts it should.

POINT III

THERE IS LANGUAGE IN GATES THAT INDICATES THAT GATES SHOULD BE APPLIED PROSPECTIVELY AS OPPOSED TO RETROACTIVELY.

Respondent contends at page 5 of Respondent's Brief.

> Nowhere in the Gates opinion is there even a suggestion that the ruling is to have prospective application only.

Such is not the case as reported in the Gates decision at 103 S.Ct. 2332 the Court said:

> For all of these reasons we conclude that it is wiser to abandon the "two prong" test established by our decisions in Aguilar and Spinelli. In its place we reaffirm the "totality of the circumstances" analysis that traditionally has formed probable cause determinations. (emphasis added)

It may be that the Gates decision should be applied retroactively as Respondent suggests but not for the reason that the Gates opinion there is no suggestion that the ruling is to have prospective application only. It is clear from the

Gates decision that the Supreme Court elected to use the term "abandon" in describing the Gates ruling and constitutional analysis regarding prospective versus retroactive application looks to the opinion in determing whether or not it is to have prospective or retroactive application. The United States Supreme Court chose to use the word "abandon" to refer to the Aguilar Spinelli "two prong" test which clearly indicates its desire to confine the Gates decision to situations occuring after Gates was rendered.

CONCLUSION

Appellants respectfully contend that their objections to the admissibility of the evidence challenged on Appeal was properly preserved by their specific reference to the evidence coming in subject to previous rulings. The Lesley decision as relied upon by Respondent in Respondent's Brief has limited application and should be specifically limited to the facts of Lesley. The Supreme Court in Gates indicated that the Gates decision was to have prospective and not retroactive application and therefore the appropriate standard for this Court to use in deciding the admissibility of the evidence in this case would be the standard developed in Aguilar and Spinelli.

RESPECTFULLY SUBMITTED this 30 day of May, 1984.

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J. BRUCE SAVAGE
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellants' Reply Brief was mailed to Dave B. Thompson, Assistant Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114, on this _____ day of _____ 1984.

Signature