1964

State of Utah v. Arden E. Tuttle : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

THE STATE OF UTAH,
Plaintiff and Respondent,

vs.

ARDEN E. TUTTLE,
Defendant and Appellant.

Case No.
10205

APELLANT'S BRIEF

Appeal from a Judgment of the District Court of Sanpete County, State of Utah, rendered by the Honorable Henry Ruggeri.

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STATEMENT OF THE KIND OF CASE

The Appellant, Arden E. Tuttle, appeals from the conviction of the crime of Grand Larceny in the District Court of Sanpete County, State of Utah.

DISPOSITION IN LOWER COURT

The Appellant was charged with the crime of Grand Larceny in violation of 76-38-1 and 4, Utah Code Annotated, 1953, in the District Court of Sanpete County,

State of Utah. Upon a jury trial, the Appellant was convicted and sentenced by the Honorable Henry Ruggeri, Judge.

RELIEF SOUGHT ON APPEAL

The Appellant seeks to reverse the judgment of the District Court.

STATEMENT OF THE CASE

In the jury trial of the above cause the State evidence showed that one Milton S.Harman was a partner in the business of operating a general merchandise store in Manti, Utah, on the 18th day of November, 1961. On this day the Appellant was hauling coal to his residence, also in Manti, Utah, from the general store. Mr. Milton S. Harman left the business approximately at 8:00 p.m. (R-47), and secured the door and took the cash and check the till out and left some dimes, nickels, and pennies in the cash register. (R-48). Upon his return to the store on the 19th day of November, 1961, at approximately 9:00 to 10:00 a.m. Mr. Milton Harman discovered that the coins were gone. Also, he discovered that five of the following firearms were missing: (R-150) Winchester Automatic Shotgun; Remington Pumpgun; 464 Magnum Gun; 22 Pumpgun; 22 Single Shot Rifle. Later he determined that other miscellaneous items were missing, to-wit: A box of 410

shotgun shells, telescopic sight 4 power, recoil pads, cleaning kit, 2 magnum boxes, Winchester 12 gauge 3 inches, 2 boxes of 22 long, 2 boxes of 22 short, all of the 30 ott 6 and 22 bird shot. The owner, Mr. Harman, did not discover the 22 bird shot as missing until the same were submitted into evidence, (R-55). No inventory of the missing items was taken on the 19th day of November, 1961, (R-67).

Mr. Harman stated that no running inventory was kept of any of the items which were alleged to have been taken, (R-74), and in fact, the 22 single shot rifle was not reported as missing until the same was located in the reservoir, (R-76). Additional items were not discovered missing while the City Marshall was present to investigate the alleged theft, (R-83).

A Complaint charging the Appellant with Grand Larceny was signed on the 16th day of May, 1963, (R-64), from 18 months after the date of the alleged larceny.

Calvin D. Nielson, City Marshall of Manti, Utah, testified as to the conversation had with the Appellant on the 21st day of December, 1961, and on the 26th day of December, 1961, wherein theAppellant denied any knowledge of the theft, (R-95). Then after waiting approximately one year, on the 29th day of November, 1962, the City Marshall & Leon Harmon co-owner went

to the Appellant's parents' home, and ask the Appellant's mother permission to look for the property, (R-96). At this time the Appellant was not residing at his parents home but was on active service in the Air Force. Upon arrival at the Appellant's home, the City Marshall did not have a search warrant (R-114); and when asked for a search warrant, Mrs. Tuttle testified that the City Marshall stated, "Oh, we don't need one.", (R-270). The City Marshall indicated that a search warrant could probably be obtained, (R-115). A conflict in the evidence arose at this point, and Mrs. Tuttle testified that at the time the City Marshall came to the house they stated that they wanted to find out and get straight and to make a search and do what they could and further stated that if the Appellant, was found guilty he would lose his citizenship; and if they brought him out of the Army he would be dishonorably discharged and would not be able to own any property of any sort. Further, Mrs. Tuttle testified that they attempted to be friendly enough about it and stated that we were on good terms with the Harmons, and she indicated that if they wanted to go ahead and search knowing that they were violating the law, they could, which they did. (R-271, R-273)

In conducting the search of the house, after finding nothing in the opening of the rafters of the room occupied by the appellant before his departure to the Air Force, (R-196), the City Marshall, together with Leonard Harmon, discovered an old phonograph and finding

it padlocked proceeded to undue the screws. (R-116)). As a result of said search, the following items were obtained; Exhibit 2, 22 shells and cartons; Exhibit 3, 2 boxes; Exhibit 4, 2 rehead recoil pads in boxes; Exhibit 5, 2 boxes marked with a black crayon or pencil; Exhibit 6, 2 boxes; Exhibit 7, boxes; Exhibit 8, boxes with writing in ink and stuck together with scotch tape, R-101). These items of evidence were taken from the Appellant's mother's home to Milton S. Harmon's home without any identifying marks placed on them. From Milton S. Harmon's home the City Marshall picked the same up the following day or the next day and placed them in the city vault and later showed them to the County Attorney. All of these Exhibits were unmarked, (R-122-124). In fact, the above referred to Exhibits from 2 to 8 were not marked until the time of Preliminary Hearing, (R-118, 124). Thereafter the State submitted the following Exhibits: Exhibit 10, a pump gun with a Serial number; Exhibit 12, an automatic shotgun; Exhibit 13, a pump 22; Exhibit 14, a barrel, no serial number, (R-195). These items of evidence were found in the Gunnison Reservoir Bed in approximately November, 1963, by Richard Harmon. (R-137) Upon discovering these weapons, the same were taken over to Milton S. Harmon's residence where they were cleaned. It should be noted that none of the foregoing Exhibits were connected to the Appellant. In laying a foundation for the admittance of the evidence, it should be noted tha Nielson S. Harmon never did examine Exhibit 2 when the same was taken to his house, (R-151). However,

Milton S. Harmon then testified as follows in connection with the Exhibits submitted. As to Exhibit 2, he identified the price as his writing; Exhibit 3, testified that it was his marking, although he admits he "could not tell you f that was the same paint or not," (R-152); Exhibit 4, his markings, (R-152); Exhibit 6, his markings; Exhibit 7, testified that this is exactly the same knd of box; Exhibit 8, B. B. Bird Shot, 22 was marked with a piece of paper with scotch tape around it which was the method he marked this type of merchandise. Further, he testified as to the market value of the various guns, (R-62-163). The State further submitted State's Exhibit 15 which contained a package received from Mrs. Tuttle, which contained the following items: 10 boxes of shot and shell 410s; a full carton of 22 longs; and 7 boxes of 30.06 shells. Exhibit 16 was a receipt for said items dated the 7th day of December, 1962. The timely objection to the admittance of the evidence was made on the grouds that said evidence was obtained as a result of an unlawful search and seizure, (R-211).

A conflict in the evidence again arose concerning a conversation had with the Appellant in the presence of his mother and father, Louis Eakland, Milton Harmon, Leonard Harmon, and Calvin Neilson, on the 23rd day of December, 1962. Officer Neilson testified that when the Appellant was confronted with taking these items, the defendant admitted that he had and that he desired to pay for them. (R-104-105)

The record is devoid of any statement by the Marshall informing the Appellant that he had a right to remain silent, and that anything said could be used against him in a trial; and that he was entitled to an attorney.

Edgar Tuttle, the Appellant's father, testified that the City Marshall had threatened to bring the defendant out of the service with a dishonorable discharge and loss of citizenship. (R-251). Further he testified that the defendant denied taking any of the items. (R-251).

The Appellant took the witness stand on his behalf and stated that he owned a 30.06 Model 1917 Enfield, Caliber 30.06, gauge three inch magnum shotgun, four ten shot gun, .22 single shot and .22 Winchester Model Six pump .22 (R-278) Further he had purchased the Weaver scope, exhibit 2, together with the shot gun cleaning kit, exhibit 3, recoil pads, exhibit 4, and bird shot .22, exhibit 8 at various times in 1961 from the Harmon store. (R-281) Other exhibits 5 (empty boxes) the contents of which were traded for .06 shells; exhibit 6 (22 bullets) was purchased in cartons through the years; exhibit 7 (empty carton) the contents of which were also purchased.

As to the purported confession, the Appellant stated that he admitted no guilt, but when confronted with possible dishonorable Discharge, loss of citizenship, and such other matters, he agreed to pay for the missing items. (R-288)

The time of sentencing was set for April 1, 1964, at which time the Appellant made a motion for a new trial based on the fact that the evidence submitted in the trial was as a result of an unlawful search and seizure, citing Mapp v Ohio. The court denied motion for a new trial (R-351) and (R-344).

ARGUMENT

POINT I

THE COURT ERRED IN ADMITTING EXHIBITS TWO TO EIGHT OVER THE DEFENDANT'S OBJECTION THAT SAID EVIDENCE WAS OBTAINED AS A RESULT OF AN UNLAWFUL SEARCH AND SEIZURE;TO WIT.

SUB POINT I. THAT THE SEARCH WAS EXPLORATORY IN NATURE AND CONDUCTED WITHOUT A SEARCH WARRANT.

SUB-POINT II. THAT THE STATE FAILED TO SHOW CONSENT TO MAKE THE SEARCH.

The record clearly indicates that Calvin Nielson, City Marshall of Manti, together with Leonard Harmon went to the defendant's parents home and searched the house without a search warrant. At the time of the

search, the defendant was away on active duty in the United States Air Force. (R-96) There is no doubt that the city marshall had knowledge of the defendant's absence. Not finding anything incriminating in the opening into the rafters of the room occupied by the defendant, Leonard Harman, in the presence of the City Marshall, proceeded to disengage the screws in the old phonograph player (R-116) which was padlocked (R-270) and discovered the following items: (R-96-97)

1. 22 shells and cartons—exhibit 2
2. Two boxes—exhibit 3
3. Two rehead recoil pad in boxes—exhibit 4
4. Two boxes—exhibit 5
5. Two boxes—exhibit 6
6. Boxes of 22 longs—exhibit 7
7. Bird shot 22 shot—exhibit 8

The above items were submitted against the defendant over the defendant's objection that the items were taken as a result of an unlawful search and seizure. (R-211)

On June, 1961, The Supreme Court of the United States in *Mapp ve. Ohio,* 367 U.S. 643, 6L Ed. 2d 1081, 81 S.C. 1684, in a precedent shattering decision, held

that as a matter of due process, evidence obtained by a search and seizure in violation of the Fourth Amendment is inadmissable in a State Court through the Fourteenth Amendment. The so-called exclusionary rule established in *Weeks vs. U.S.*, (1914) 232 US 383, 58 L.Ed 652, 34 SC 341, LRA 1915 B 834, Ann Cas 1915 C1177, was made expressly applicable to the State of Utah and other states and *Wolf vs. Colorado*, (1949) 338 U.S. 25, 93 L.Ed. 1782, 69 SC 1359 was overruled. The question, left answered in the Mapp case, as to whether the states were obligated to adopt the Federal standard, and therefore federal precedent, as to unreasonableness of the search and siezure, was answered in *Ker vs. California,* 374 U.S. 23, 83 S.C., 1623, 10 L.Ed. 726 (1963), wherein the Justice Clark speaking for the majority stated that the Fourth Amendment was enforceable against the state."

> ". . . by the same sanction of exclusion as in used against the federal government by the application of the same constitutional standard prohibiting unreasonable searches and seizures."

The force of the Supreme Court of the United States in this area was made known by *Stoner vs. California,* 84 S.C. 889, (1964) and *Louden vs. State,* No. 6 Misc., decided on October 12, 1964, where in the United States Supreme Court in a per curium decision vacated the judgment of conviction of the Utah Court on the bases of Stoner case. Also see *Green vs. Yeager,* (Habeus Corp-

us Proceeding), 223 R Supp 545 (1963) and *Commonwealth vs. Spofford,* 180 N.E. 2d 673 (1962) wherein the Court looked to and applied Federal law.

Clearly, the above decisions have greatly affected criminal law in States, such as Utah, that have not had the exclusionary rule. These decisions have forced the States to re-analyze their positions and seek to apply the exclusionary rule in accordance with the Mapp-Ker mandate. In doing so, Massachusetts, Conneticut, New York, and New Jersey, have looked to Federal *precedent.* Florida and Illinois already having the exclusionary, look to Federal precedents as a matter of policy. (See California and the 4th Amendment, 16 Stan L Rev. 318 (March 1964)).

Pennsylvania stands alone in its quest against the Federal precedents. Utah, prior to *State vs. Lauden,* Supra, was in a similar position. Since the Lauden case, Utah is forced to follow that Federal mandate in regards to reasonableness of the searches and seizures. The law of Utah has clearly been Mapped.

The Appellant contends that the search herein conducted should be condemned as an exploratory in nature and without a search warrant. As a general rule, except as incident to a lawful arrest or invitation or consent without warrant, no search can be made of a private residence without a search warrant. This is necessarily

based upon time honored legal maximum that "every man's house is his castle." The rule as to a private residence applies equally to an apartment or room used as a dwelling by a preson even though the family of such person may be occupying his main abode elsewhere. *Moulton vs. State of Oklahoma,* 227 P.2d 695, (1951), *Billup vs. State,* 116 Tex. Cr. 63, 31 SW2d 821. (1930).

The Federal rule in this area indicates that a search warrant must be procurred when "practicable" in the case of a search incident to arrest. *Trupianno vs. U.S.,* 68 Sup. C. 12229, 334 U.S. 699, 92 L.Ed. 1663 C. A. and *U.S. vs. Assendio,* C. A., Pa., 171 F2d 122. However, to the extent that the Trupianno case requires a search warrant solely on the bases of practicability of procurring it rather than upon the reasonableness of the search after lawful arrest, the case was over-ruled. See *U.S. vs. Rabinowitz,* 339 U.S. 56, 70 S. C. 430, (1950) wherein the Court stated, in addition to over-ruling Trupianno,

> "The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. That criterion in turn depends upon the facts and circumstances — the total atmosphere of the case. . . ."

It is submitted that even under the ruling of the last case, the search herein conducted was unreasonable. The Rabinowitz case, supra, stated that the requirement of obtaining a search warrant should not be crystalized

into a *sine quo non* to reasonableness of a search. Further the court stated that it is not disputed that there may be reasonable searches, incident to an arrest, without a search warrant. In the instance case, there was no arrest at the time of the search. In fact, the defendant was not arrested until some 18 months of the alleged crime. The alleged crime occurred on November 19, 1961, and the search was conducted on November 29, 1962, one year after the date of the crime. Surely, ample opportunity existed to obtain search warrant without unduly infringing upon the investigative prowness of the law enforcement officers. Clearly the instance case does not fall within the language of the Rabinowitz decision when the court stated:

> "The judgment of the officers as to when to close trap on a criminal committing a crime in their presence or who they have reasonable cause to believe is committing a felony is not determined solely upon whether there was time to procure a search warrant. Some flexibility will be accorded law officers employed in the daily battle with criminal for whose restraint criminal laws are essential."

To condemn this practice would insure not only the protection of the law officers, but the tradition of our government against search and seizures without warrants.

A correlative factor which must necessarily be considered in determining the reasonablenes of the search

is the fast that the search was a "fishing expedition" on the part of the City Marshall. The search by the City Marshall was exploratory in nature and without sufficient cause. Neither a warrant for arrest was issued, nor had a complaint been issued. That general exploratory searches can not be undertaken with or without search warrant has been settled in the Federal Courts. See *Go-Bart Importing Co. vs. U.*S., 282, U.S. 344, 75 L.Ed. 374 (1930) and *U.S. vs. Lefkowitz,* 285 U.S. 452, 52 S. C. 420, 76 L.Ed. 877, 82 ALR 775 (1932). Aside from the fact the defendant was hauling coal to him home on November 18, 1961 from the victim's store (R-39), no other incriminating factors exist to justify the unconstitutional intrusion of the residence where the defendant kept his personal belongings while he was away on the Air Force. On two occasions, the defendant had denied any implications with the larceny (R-94-95) and the City Marshall had searched the barn and granary, not the house, a month and two days after date of crime and found nothing. (R-115). Further, the defendant City Marshall indicated that he could have got a search warrant. (R-115).

To permit such conduct would render our statute (Utah Code Annotated 77-54-1) on obtaining search warrants a nullity and meaningless for the protection of individual safeguards against unconstitutional invasion

The Appellant further contends that the State failed to justify the search of the defendant's room, in the

absence of a warrant, on the bases of the defendant's mother's consent. Although the constitutional imunity against unreasonable search and seizure may be waived by volunteer, invitational consent to the search or seizure, 79 C J S Sec. 62, P816; the intent to waive must be positively established, *U.S. vs. Lydecker,* N.C., N.Y., 275 F 976, *U.S. vs. Kelih,* D.C. Ill, 272 F 484, and the consent must be real consent; a mere gesture or failure to object may not be enough. *People vs. Zeigler,* 358 Mich. 355, 100 SW 2d 456 (1960), *People vs. Hill* 31 Misc. 2d 985, 221 N.Y. S2d, 875. The consent must be voluntary and mere asquiescence in authoriative demands does not effect the necessary waiver of rights. *Johnson vs. U.S.,* 333 U.S. 10 (1948), *Amos vs. U.S.,* 255 U.S. 313 (1921), *Clay vs. U.S.,* 239 F2d 196 (5th Cir. 1956). The Federal Rule is clearly pointed out in *U.S. vs. Gregory,* D.C., N.J. 204 F Supp. 884 (1962) wherein the Court stated:

> "Acquiescence to search without warrant, is resignation, a mere submission in an orderly way to action of arresting agent is not consent which constitutes unequivolcal, free and intelligent waiver of fundamental right."

Taking the record in the light favorable to the state, it would appear that the City Marshall asked the defendant's mother if they could look in her home for the property they suspected the defendant had taken (R-96) to which she said yes. She did ask for search warrant

(R-114). It is submitted that the record does not show that this was other than mere acquiescence to the authority of the law enforcement officers.

The waiver and consent must be shown by convincing, clear and convincing, or clear and positive evidence and the burden rests on the party alleging the waiver; to wit, the appellee. *Judd vs. U.S.,* C.A. 190 F.2d 649. *Gibson vs. U.S.,* 66 S. Ct. 29, 326 U.S. 724, 90 L.Ed. 429; *Nueslein vs. District of Columbia,* 115 Fed. 2d 690, 73 App. D.C. 85; *Edwards vs. State,* 177 P.2d 143, 83 Okla. Cr. 340; *Dawson vs. State,* 175 Pac.2d 368, App. Okla., Cr. 263; *Bolger vs. U.S.,* D.C. N.Y. 189 F. Supp. 237, affirmed C.A. 293 Fed. 2d 368 reversed on other grounds, 83 S. Ct. 385, 371 U.S. 392, 9 L.Ed. 2nd 390. *U.S. vs. Rugheiser,* D.C. N.Y. 203 F. Supp. 891. *U.S. vs. Gregory,* D.C. N.Y. 204 F. Supp. 884. *Sagonias vs. State,* Flo., 89 F. 2d 252. *State of Mont. vs. Tomick,* 332 F2d 987. *State vs. Sheppard,* Iowa 124 N.W2d 712. *State vs. Collins,* Conn. 191 A2d 253. *Pekar vs. U.S.,* 315 F2d 319 (5th Cir. 1963). *McDonald vs. U.S.,* 307 F2d 272 (10th Cir. 1962). Voluntary consent requires sufficient intelligence to appreciate the act as well as the consequences of the acts agreed to. Since the constitutional guarantee is not dependent upon any afffirmative act of the citizen the courts do not place the citizen in a position of either contesting the officer's authority by force or waiving his constitutional rights but instead they hold that a

peaceful submission to a search or seizure is not consent or an invitation thereto, but is merely a demonstration of regard to the supremacy of the law.

As illustrative cases on this issue, see following cases where evidence of consent was held insufficient to show voluntary consent:

Herter vs. U.S., CCA. Mont., 27 F2d 521 (1928) where police stated "If you haven't any beer, you do not mind my looking for it."

Smith vs. Commonwealth, 283 Ky. 492, 141 S.W.2d 881, (1940) where defendant said "all right."

Pritchett vs. State, 78 Okla. Cr. 67, 143 P2d 622 (1943) where defendant stated "you do not have a search warrant, just go ahead."

U.S. vs. Slusser, D. Ohio 270 F 818, where defendant stated "all right, go ahead."

People vs. Sapp, 249 N.Y. S.2d 1020 (1964), where the officer after arresting the defendant on a minor traffic violation inquired of the defendant if he was writing number again and said "Do you want to give them to me now or at the station house." Defendant turned envelope over to officer and the court reversed stating that

it was the burden of the District Attorney to prove by clear and convincing evidence that a person consenting to a search for, or voluntarily surrendered the property. the possession of which is unlawful or would implicate him in a crime. The district attorney failed in this burden by not submitting anything which would alter the perspective of the facts in the record.

State vs. Trumbull, 23 Conn. Supp., 41, 176 A2d 887 (1961) where defendant was informed that the police had a right to see the articles and nothing was said about defendant's legal rights or privilege to obtain counsel.

The instant case clearly falls within the wording and spirit of the aforementioned cases. The attitude with which this particular issue should be approached can be found in *U.S. vs. Hoffenberg,* E.D. N.Y., 24 F Supp. 989, wherein the Court stated:

> "An illegal search and seizure usually is a single incident, perpetuated by surprise, conducted in haste, kept purposely beyond the court's supervision and limited only by the judgment and moderation of the officers whose own interests and records are often at stake in the search. There is no opportunity for injunction or appeal to disinterested intervention. The citizens choice is quietly to submit to whatever the officer undertakes or to resist at risk of arrest or immediate violence."

Another problem raised by the instant case is whether the appellant is bound by the purported consent on

the part of his mother. The defendant was not living with his mother at the time of the search but was in fact in the Air Force. He, however, did have his room in his mother's house and kept his personal belongings there. In fact, he was a tenant in his mother's house. Although the California cases conflict with the federal rule, this conflict can no longer exist in the face of *Stoner vs. California,* 84 S.Ct., 889, (1964), wherein the Supreme Court of U.S. rejected the argument that a search of hotel room, although conducted without consent of the accused was lawful because it was conducted with the consent of the hotel clerk.

See *McDonald vs. U.S.,* (1948) 335 U.S. 45, 69 S.Ct. 191, 93 L.Ed. 153, involving the search of occupant's room in a boarding house and *Chapman vs. U.S.,* 365 U.S. 610, 81 S.Ct. 776 (1961) wherein the consent of landlord on a bases for search of tenants room was held to be unlawful. A comment on the Chapman case is found in *Green vs. Yeager,* 223 F. Supp. 545, (1963), wherein a habeaus corpus proceeding in the federal court struck down a state conviction where the evidence showed that some of the stolen articles were taken from defendant's room at hotel while door was open and prior to defendant's arrest and the court stated:

> "Although not expressly stated in Chapman, the clear implication of that opinion is that any evidence obtained by a warrantless search of any premises in the absence of the accused, whether

> the subsequent arrest be with or without a warrant, is inadmissable solely on the basis that the search was not incident to, but preceded a lawful arrest.
>
> The only exception to this rule would be where 'compelling circumstance' such as the threatened destruction of evidence exists."

The instance case falls within the prohibition pronounced by the two above cases. The search was conducted prior to arrest and was not incident to any arrest and accomplished in the appellant's absence.

Assuming that consent of the mother is binding upon the defendant, the appellants position would still warrant a reversal. The right of officers to search is only co-extensive with the particular search consented to. Thus consent to search a portion of the structure does not give the right to search the whole structure. *U.S. vs. McCunn,* D.C., N.Y. 40 Fed.2d 295; or does the consent to search defendant's room extend to the unscrewing of the defendant's locked phonograph. (R-116). Clearly, a monther's right to consent does not extend to the defendant's personal locked belongings. Moreover, there did not appear any consent on the mother's part to permit the officers to disengage the screws.

The case of *Holzhez vs. U.S.,* C.A. Flo. (1955) 223 F2d 823, directly prohibits the type of conduct display by the city marshall and the victim's brother. The federal court struck down the conduct of government officials

where the officials obtains the consent of the defendant's daughter and son-in-law to search their premises, in which the accused was staying and the agents found locked boxes and cabintes and opened up the same. The Court stated that the search was prohibited by the Fourth Amendment in that the consent to search the premises did not and could not be extended to authorize the forceable entry and search of the defedant's personal locked effects. The court further went to say, in effect, that the officers were engaged in a more or less exploratory search and had they not been on such a search, no reason appears for their not obtaining a search warrant. Also see *U.S. vs. Blok,* C.A. Col. 188 F2nd 1019 (1951), wherein the Court held that although employers of the defendant could consent to the search of the room, their consent could not extend to the defendant's business desk.

CONCLUSION

The Apellant respectfully submits that the instance case warrants reversal on the grounds of that the facts clearly shows a violation of the Appellant's right against unlawful search and seizures. Exploratory search without search warrant and mere acquiescence on the part of the person can not be the basis of any forfeiture of individual rights. The Appellant urges this court to envision the road signs; the road in Utah has been Mapped.

Respectfully submitted,

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