1970

Salt Lake City Corporation v. Joe Wheeler, David Boyd, and Joe Jackson : Brief of Amicus Curiae

IN THE SUPREME COURT
of the
STATE OF UTAH

T LAKE CITY, a municipal
oration,

Plaintiff-Appellant

- vs. -

WHEELER, DAVID BO
JACKSON,

Defendants-Res

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CRELLIN
City Attorney
. CUTLER
City Attorney
for Appellant
M. McRAE
Mae & Richardson
for Respondents

IN THE SUPREME COURT

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STATE OF UTAH

SALT LAKE CITY, a municipal corporation,

Plaintiff-Appellant,

vs.

JOE WHEELER, DAVID BOYD and JOE JACKSON,

Defendants-Respondents.

Case No. 11855

BRIEF OF AMICUS CURIAE

STATEMENT OF THE NATURE OF CASE

The Attorney General of the State of Utah joins as amicus curiae in asking this Court to uphold the constitutionality of the Salt Lake City ordinance (*Revised Ordinances of Salt Lake City, Utah*, Section 19-4-6 (1965)) allowing warrantless inspection of licensed beer taverns.

ARGUMENT

The issue that concerns the Amicus Curiae in this case is application of the cases of *Camara v. Municipal Court*, 387 U.S. 523, 87 S. Ct. 1727, 18 L.Ed. 2d 930 (1967); *See v. City of Seattle*, 387 U.S. 541, 87 S. Ct. 1737, 18 L.Ed. 2d 943 (1967); and *State of Utah v. Salt Lake City*, 21 Utah 2d 318, 445 P.2d 691 (1968) to warrantless inspections of licensed beer taverns. The latter case cited above struck down a Salt Lake City ordinance on the grounds that the ordinance was in conflict with the State law since it vested the jurisdiction in the Board of Commissioners of Salt Lake City to license nonprofit social clubs contrary to the State law which provided that such licensing should be the function of the Secretary of State. The case went further, however, and held on the basis of the two decisions of the United States Supreme Court cited above that the provisions of the ordinance which compelled clubs to provide a key to the police and permitted inspections for violation of the law without the necessity of a warrant violated the Fourth and Fourteenth Amendments to the United States Constitution and were therefore unconstitutional.

The concern of the Attorney General in the instant case is that Respondents in their brief appear to argue that warrantless searches or inspections of private property are unconstitutional per se (see their statement of "Point on Appeal," p. 3).

The decisions of the United States Supreme Court cited above, however, did not deal with property on which liquor was being stored or consumed so they cannot be said to be controlling in such a case as this one. Even so, the court in the *See* case was careful to limit its decision to the facts of that case by the statement cited on page 9 of Appellant's Brief.

The United States Supreme Court has had occasion to comment on the effect of *See* and *Camara* in the liquor case cited by Appellant and made it clear that in each such case the issue is whether or not the particular warrantless search was unreasonable and not that such searches were unconstitutional per se. The fact that the United States Supreme Court reversed the Second Circuit on the basis that the statute there did not authorize forcible entry does not weaken the principle recognized by the lower appellate federal court that a warrantless search of premises where liquor is consumed or stored is not per se unconstitutional. In that case, *The Colonnade Catering Corp. v. United States*, ... U.S. ....., 38 Law Week 4167 (Supreme Court Section), the Court said in an opinion filed February 25, 1970:

> "The Court recognized the special treatment of inspection laws of this kind in Boyd v. United States, 116 U.S. 616, 624:
>
> > '. . . in the case of excisable or dutiable articles, the government has an interest in them

> for the payment of the duties thereon, and until such duties are paid has a right to keep them under observation, or to pursue and drag them from concealment.'

And it added:

> 'The seizure of stolen goods is authorized by the common law; and the seizure of goods forfeited for a breach of the revenue laws, or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by our own Revenue Acts from the commencement of the Government. The first statute passed by Congress to regulate the collection of duties, the Act of July 31, 1789, 1 Stat. 29, 43, contains provisions to this effect. As this Act was passed by the same Congress which proposed for adoption the original Amendments of the Constitution, it is clear that the members of that body did not regard searches and seizures of this kind as "unreasonable," and they are not embraced within the prohibition of the amendement.' *Id.* at 623.

"We agree that Congress has broad power to design such powers of inspection under the liquor laws as it deems necessary to meet the evils at hand. The general rule laid down in *See v. City of Seattle*, *supra*, at 545—'that administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant proced-

ure' — is therefore not applicable here. In *See*, we reserved decision on the problems of 'licensing programs' requiring inspection, saying they can be resolved 'on a case-by-case basis under the general Fourth Amendment standard of reasonableness.' *Id.*, p. 546.

"Where Congress has authorized inspection but made no rules governing the procedure which inspectors must follow, the Fourth Amendment and its various restrictive rules apply. We said in the *See* case:

> 'The businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property. The businessman, too, has that right placed in jeopardy if the decision to enter and inspect for violation of regulatory laws can be made and enforced by the inspector in the field without official authority evidenced by a warrant.' *Id.*, at 543.

"What was said in *See*, reflects this Nation's traditions that are strongly opposed to using force without definite authority to break down doors. We deal here with the liquor industry long subject to close supervision and inspection. As respects that industry, and its various branches including retailers, Congress has broad authority to fashion standards of reasonableness for searches and seizures. Under the existing statutes, Congress selected a standard that does not include forcible

> entries without a warrant. It resolved the issue not by authorizing forcible, warrantless entries, but by making it an offense for a licensee to refuse admission to the inspector."

The foregoing makes it clear that Congress could constitutionally enact legislation which would enable law enforcement officers to effect a forcible warrantless search and seizure if the search and seizure so authorized is within limits which are reasonable. As a matter of constitutional law, the same is true as to legislation of a state or ordinances of a city enacted pursuant to state law.

The issue on this appeal should be whether or not the search authorized by the city ordinance was in fact reasonable. The considerations in making that determination are well set forth in the respective briefs filed by these parties and the only interest of Amicus Curiae is to urge this Court to limit the application of the three cases cited above to their particular facts and not to strike down the subject ordinance solely because it authorized a warrantless search but only if it determines that such search was an "unreasonable" one.

Respectfully submitted,

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Attorney General

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