1994

State of Utah v. Amorico Ramos Archuletta : Reply Brief

Utah Court of Appeals

David M. Allred; Attorney for Defendant/Appellant.
Kenneth A. Bronston; Assistant Attorney General; Jan Graham; Attorney General; Attorneys for Appellee.

IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,	)	
	)	Case No. 940698-CA
Plaintiff/Appellee,	)	
	)	
vs.	)	
	)	
AMORICO RAMOS ARCHULETTA,	)	CATAGORY ~~9~~ 2
	)	
Defendant/Appellant.	)	

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REPLY BRIEF OF APPELLANT

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DAVID M. ALLRED
Attorney for Defendant/
Appellant
26 East Main Street
Post Office Box 575
Castle Dale, Utah 84513
(801) 381-5326

KENNETH A. BRONSTON (4470)
Assistant Attorney General
JAN GRAHAM (1231)
Attorney General
124 State Capitol
Salt Lake City, Utah 84114
(801) 538-1022
Attorneys for Appellee

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Assistant Attorney General
JAN GRAHAM (1231)
Attorney General
124 State Capitol
Salt Lake City, Utah 84114
(801) 538-1022
Attorneys for Appellee

TABLE OF CONTENTS

Table of Authorities ii

Argument:

POINT I

DEFENDANT APPROPRIATELY AND ADEQUATELY PRESERVED AND RAISES THE ISSUES HE ARGUES, INCLUDING LACK OF CONSENT, EXIGENT CIRCUMSTANCES, AND PROBABLE CAUSE. 1

POINT II

ADULT PROBATION AND PAROLE OFFICERS DID NOT HAVE EITHER REASONABLE SUSPICION OR PROBABLE CAUSE TO CONDUCT EITHER SEARCHES OF THE RESIDENCE OR OF THE AUTOMOBILE. 7

POINT III

. 8

Conclusion 8

Certificate of Mailing 9

TABLE OF AUTHORITIES

State vs. Bradford, 839 P.2d 866 (Utah App. 1992) . . . 5

State vs. Cole, 674 P.2d 119 (Utah 1983) 5

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EXCEPTIONS FOR APPELLEE'S STATEMENT OF FACTS

Defendant/Appellant asserts the following challenges to the Statement of Fact set forth by the Plaintiff/Appellee:

1. There was no specific written Findings of Fact or Conclusions of Law on which to base the Court's decision to deny the Defendant's Motion to Suppress Evidence.

2. Although Officer Mele stated trailer 41 was "occupied" by Teddy Kinneman, Officer Mele could not have known the trailer was then "occupied" by anyone, let alone Kinneman, until he knocked on the door. He may have known Kinneman was the leaseholder of the estate, or that the trailer belonged to Kinneman, but he could not have known Kinneman "occupied" the trailer at that time. Additionally, Officer Mele did not state in his testimony that he knew Kinneman was a parolee. This was not known, or at least testified to, until after AP&P Officer Olsen arrived at the scene.

3. The officers, either Law Enforcement or AP&P did not know whether Defendant had any reason to be in the trailer or not. Kinneman was not present in or at the trailer and Roberts and Pimental refused to give any information regarding Defendant. There was no information to determine whether Defendant was a trespasser, Kinneman's brother, or a drinking buddy.

4. The search of the vehicle was conducted simultaneously with the arrest of Roberts. The search began prior to any possible consent, although, as acknowledged by Plaintiff, Roberts denied having given consent.

ARGUMENT

Point 1

DEFENDANT APPROPRIATELY AND ADEQUATELY PRESERVED AND RAISES THE ISSUES HE ARGUES, INCLUDING LACK OF CONSENT, EXIGENT CIRCUMSTANCES, AND PROBABLE CAUSE.

The Trial Court ruled from the bench and denied Defendant's Motion to Suppress. Nevertheless, clear findings to support this ruling were not set forth. Appellee now attempts to use that dearth against the Defendant by arguing that Defendant failed to preserve or properly argue the issues raised. It is not the Defendant's obligation to set forth the findings on which the Court's ruling is based. Defendant argued at the trial level that consent did not exist, that exigent circumstances did not exist, and that the officers did not have probable cause, or reasonable suspicion to conduct their searches. On appeal, Defendant properly raises these contentions.

A. DEFENDANT DENIED HAVING GIVEN CONSENT AND ARGUED SUCH DENIAL IN ITS BRIEF IN CHIEF

Defendant contended vigorously at the trial level that Roberts denied having given consent. In Defendant's Brief in Chief he never concedes that consent was given. The contention that no consent was given was at the very least impliedly raised by Defendant's arguments that neither a warrant nor exigent circumstances existed and therefore the search was illegal. If Defendant believed consent was given, or if Defendant did not oppose this possibility, the basis for Defendant's appeal would be eroded. Clearly, Defendant raised the issue in his appeal and this issue is not waived. Appellee has the obligation to argue Consent and Defendant can then attack the question of Consent. Defendant is arguing very clearly that the search by law enforcement officers and AP&P officers was illegal. A consent search, in most instances, is legal. Clearly, Defendant's brief raises, not concedes, the issue of consent. Otherwise, Appellee would not have to argue it existed.

Officer Mele indicated he requested permission to "look inside" the vehicle. Mele testified that he received permission to "look." The officer did that and observed weapons. He then placed Roberts under arrest. Later, Roberts was told that the vehicle was now going to be searched, meaning opened and the weapons extracted. Roberts testified that he did not consent to the search of his vehicle. It appears from the transcript of the trial that Roberts was not asked whether the vehicle could be searched, but that the

officer explained in some detail why he was going to search the vehicle. While Roberts may have given permission to "look" in the vehicle, that does not extend into consent to search the vehicle. He has already indicated the vehicle did not belong to him, but to his mother. It is particularly interesting that the officers present approached Roberts a second time, after receiving permission to "look" in the vehicle to inform him they were going to search the vehicle. R. 57-58, 159.

B. THERE EXISTED NO "REASONABLE FEAR" FOR THEIR OWN SAFETY IN THE MIND OF THE LAW ENFORCEMENT OFFICERS.

The officers, law enforcement and AP&P claimed to be concerned for their safety, but that concern had to be "genuine." The record does not support any such belief. At no time during this incident was a person, not a law enforcement or AP&P officer, near the vehicle and especially near with ability or potential of obtaining anything from the vehicle. If anything supports Defendant's contention that the police officers were overreaching and/or over reacting, it is their contention that they feared for their safety. The initial responding officer, Mele, radioed for back-up immediately upon pulling into the drive behind what he believed was the ATL vehicle. Back up arrived very quickly. His knock at the door was answered promptly (within 30 seconds). Before the passage of any time the back up officers were scouting the vehicle. While it is possible they could see the weapons through the windows there is no possibility these weapons in the vehicle were accessible to

anyone, especially Roberts, who at that time was being placed under arrest by Officer Mele. Roberts was then placed in a police vehicle and told the vehicle was going to be searched. At no time did any officer, either at the scene, in the suppression hearing or the trial articulate who presented any threat to their safety.

State vs. Bradford, 839 P.2d 866 (Utah App. 1992) as cited by Appellee, is instructive herein. In Bradford, this Court clearly required that immediate control must be a possibility. It would clearly be stretching to say that Roberts could "break away from police control." It appears from the record that the officers informed Roberts they were going to conduct this first weapons search while he was sitting in the police vehicle with handcuffs on. R. 18-19. Additionally, at this time, there were at least three police officers, and perhaps two AP&P officers present, securing the scene. The State cites State vs. Cole, 674 P.2d 119 (Utah 1983) as helpful. Indeed, certain elements of Cole show the lack of justification in the officer's searches in the instant case. In Cole, there was a denial of the existence of any weapon, and yet the officer observed one. In the present case, the arrestee has acknowledged the existence of the weapon. Drugs were not a part of the encounter with Roberts, as they were with Cole.

In the case at bar, it appears that any volatility in the situation decreased with time, rather than increased. As time progressed, more and more officers arrived at the scene. Roberts was arrested almost immediately. As Pimental and then Defendant were located, they too were arrested. Never at any time did the

officers subject themselves to any challenge to their personal safety in this situation. As soon as a person was located, that person was arrested.

If any portion of the officer's actions were clearly erroneous, it was a belief that they were in harms way or subjected to danger. To base any ruling of exigent circumstances on this belief would be clearly erroneous. It is unknown whether this formed the basis of the Trial Court's ruling however.

C. DEFENDANT PRESERVED HIS CLAIM THAT PROBABLE CAUSE DID NOT EXIST TO GIVE THE LAW ENFORCEMENT OFFICERS AN EXCEPTION TO THE WARRANT REQUIREMENT.

Defendant clearly contended, during the suppression hearing, that the officers did not have probable cause to conduct such a search. Defendant argued at the hearing that if there was probable cause to conduct the various searches, why not obtain a search warrant. No search warrant was ever obtained. The clear intent of this argument is that no probable cause existed. To suggest that because the trial court did not mention the lack of probable cause in its ruling is to concede that the court did not find the officers did not violate the Defendant's constitutional rights to be free from search and seizure or that the Court found that the AP&P officers didn't have reasonable suspicion to conduct a parolee search because no explicit ruling was made on these issues either. The court failed to make any explicit rulings, and merely found "for the number of grounds stated..." that the motion was denied.

Defendant never conceded the existence of probable cause more

argued the issue more expressly than the Court expressly ruled against him. Defendant questioned why, if probable cause existed, didn't the officer's obtain a warrant. Since a warrant wasn't sought, Defendant's argument is expressly that no probable cause existed. The Court was as likely to have ruled implicitly that no probable cause existed as it was to have not explicitly ruled that probable cause did exist.

POINT II

ADULT PROBATION AND PAROLE OFFICERS DID NOT HAVE EITHER REASONABLE SUSPICION OR PROBABLE CAUSE TO CONDUCT EITHER SEARCHES OF THE RESIDENCE OR OF THE AUTOMOBILE.

The one thing that Defendant does concede is that a parolee does have a diminished right to privacy. Nevertheless, it is well established, as cited in Defendant's brief in chief, that while diminished, the rights to privacy and to be free from unreasonable search and seizure still exist.

Roberts was arrested shortly after exiting the premise. While the officers had information that Kinneman resided there, they had no information he was home. Roberts denied that Kinneman was at the residence. Kinneman did not fit the description of any of the three occupants in the vehicle, and yet the officers were determined to gain access to the residence. All the officers, including the AP&P officers were restricted by the requirement of having reasonable suspicion of wrongdoing on the part of a probationer. The only probationer they knew was present was now in

custody. His suspected wrong doing was entirely outside of the house. The possession of weapons was independent of the house. There was no reasonable suspicion that Kinneman was home, nor was there any reasonable suspicion that there were any weapons in the house. AP&P officers claim that parolees are not to associate with criminals. This requirement, however, is vague. Is a criminal someone who has once committed a crime? This appears to be merely a hook upon which an AP&P officer can hang a desire to conduct a search barring any valid reason.

POINT III

The Defendant stands on his argument in his brief on point IV of Defendant's Brief and of Appellant's Brief and declines to further brief or respond to this point herein.

CONCLUSION

The Defendant has properly raised the issues, both at trial and on appeal, that he argues. The searches were illegal and evidence obtained from the searches was tainted such that it should have been suppressed. Had the evidence from the searches been suppressed, no conviction could have resulted.

Respectfully submitted this 13th day of March, 1995.

David M. Allred

CERTIFICATE OF MAILING

I certify that four true and correct copies of the foregoing Reply Brief of Appellant were mailed to Kenneth A. Bronston, Assistant Attorney General, State of Utah, 124 State Capitol, Salt Lake City, Utah 84114 on the 13th day of March, 1995.