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### Summary of Camacho v. State, 119 Nev. Adv. Op. No. 47

Hilary Barrett  
*Nevada Law Journal*

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***Camacho v. State*, 119 Nev. Adv. Op. No. 47 (Aug. 29, 2003)<sup>1</sup>**

**Criminal Procedure – Search & Seizure – Warrantless Searches –  
Exigent Circumstances**

**Summary**

Appeal from a judgment of conviction and sentence entered after a guilty plea.

**Disposition/Outcome**

Affirmed. Evidence obtained through a warrantless search is admissible under the inevitable discovery exception to the warrant requirement.

**Factual and Procedural History**

Between April 26, 2001 and May 16, 2001, police completed three undercover methamphetamine purchases from appellant Ruben Camacho. In each transaction, police paged Camacho who then negotiated a purchase price with a police informant. The informant then met Camacho in a public place and completed the exchange. On at least two occasions, Camacho arrived in his own vehicle with drugs in his possession.

On May 17, 2001, police arranged to make a methamphetamine purchase from Camacho at a Wal-Mart parking lot in Reno. Police planned to immediately arrest Camacho, search and seize his vehicle, and initiate forfeiture proceedings against the vehicle. Police did not obtain a search warrant for the vehicle.

When Camacho entered the parking lot, two unmarked police cars stopped the vehicle. Camacho was removed from the vehicle and handcuffed. Detective Timothy Kuzanek then searched the immediate area of the vehicle without Camacho's consent. Detective Kuzanek discovered a bag of what was later determined to be methamphetamine under the driver's seat. Camacho was transported to jail<sup>2</sup> and the vehicle was seized.

The following day, Detective Richard Ayala conducted an inventory search of the vehicle. No additional illegal drugs were found, and the contents of the vehicle were recorded on an inventory search form.

Camacho filed a motion to suppress the drugs seized from the vehicle and argued that a warrantless search of a vehicle is only authorized when police have probable cause to believe the automobile contains contraband and exigent circumstances exist to justify the search.

The State argued that there existed both probable cause to believe contraband was in Camacho's vehicle and exigent circumstances justifying the search. The State also contended that the search was proper under the search incident to arrest exception<sup>3</sup>; the inventory search exception; and the inevitable discovery exception.

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<sup>1</sup> By Hilary Barrett

<sup>2</sup> Camacho was later charged with four felony counts of trafficking in a controlled substance.

<sup>3</sup> See *New York v. Belton*, 453 U.S. 454 (1981).

Following a hearing, Judge James W. Hardesty of the Second Judicial District Court found that police had probable cause to arrest Camacho and prior to arrest police could have obtained a search warrant for the vehicle. The court also found that police intended to seize the vehicle after Camacho's arrest.

The court concluded that the automobile exception did not apply because there were no exigent circumstances excusing the failure to obtain a search warrant. However, the court determined that the search was incident to a lawful arrest and that the evidence would have been inevitably discovered during the inventory search.

After Camacho's motion was denied, he negotiated a plea to three counts of trafficking in a controlled substance.

## **Discussion**

### **Search Incident to Arrest**

The supreme court agreed with Camacho's contention that because he was in handcuffs and removed from the vehicle, he could neither destroy nor conceal evidence, therefore, the search incident to arrest exception did not justify a contemporaneous search of the vehicle.

There must exist both probable cause and exigent circumstances to justify a warrantless search of an automobile incident to a lawful arrest.<sup>4</sup> When no exigent circumstances are present, it is not unreasonable to require police to obtain a warrant prior to an automobile search.<sup>5</sup>

The supreme court refused to disturb the district court's findings that there were no exigent circumstances.

### **Seizure and Inevitable Discovery**

Camacho argued that NRS 179.1165<sup>6</sup> does not provide an exception to the warrant requirement. The State contended that because Camacho used his vehicle to traffic a controlled substance, the evidence would have been inevitably discovered during the inventory search.

The supreme court held that the police had probable cause to believe that the vehicle was being used to transport illegal drugs and that police conducted a valid inventory search following the vehicle's seizure.

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<sup>4</sup> See *Chimel v. California*, 395 U.S. 752 (1969).

<sup>5</sup> Exigent circumstances are defined as: "those circumstances that would cause a reasonable person to believe that entry ... was necessary to prevent physical harm to the officers and other persons, the destruction of relevant evidence, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." *Howe v. State*, 112 Nev. 458, 466 (1996).

<sup>6</sup> NRS 179.1165(1) states: "property that is subject to forfeiture may only be seized by a law enforcement agency upon process issued by a magistrate having jurisdiction over the property." NRS 179.1165(2)(d) permits seizure of property without process if "law enforcement ... has probable cause to believe that the property is subject to forfeiture." NRS 453.301(5) provides for the forfeiture of vehicles used to transport illegal substances.

Evidence obtained through a constitutional violation can still be admitted if the government can prove by a preponderance of the evidence that information would have been ultimately or inevitably discovered by lawful means.<sup>7</sup>

The Supreme Court concluded that even if police did not recover the evidence during their initial search, the evidence would have been discovered during the subsequent inventory search. Therefore, the evidence is admissible under the doctrine of inevitable discovery.

### **Conclusion**

The Nevada Constitution requires both probable cause and exigent circumstances to justify a warrantless search of an automobile incident to a lawful custodial arrest. Evidence obtained through a constitutional violation can still be admitted if the government can prove by a preponderance of the evidence that information would have been ultimately or inevitably discovered by lawful means.

### **Dissent and Concurrence**

Justice Maupin concurred with the majority's conclusion that the district court improperly applied *Belton*. However, Justice Maupin advocates the adoption of the bright-line *Belton* rule allowing police to search the passenger compartment of a vehicle incident to a lawful custodial arrest.

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<sup>7</sup> See *Proferes v. State*, 116 Nev. 1136, 1141 (2000).