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Summary of State v. Ruscetta, Nev. Adv. Op. No. 32

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Recommended Citation

Hernandez, Krystallin, "Summary of State v. Ruscetta, Nev. Adv. Op. No. 32" (2007). *Nevada Supreme Court Summaries*. 484.

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State v. Ruscetta, Nev. Adv. Op. No. 32 (August 2, 2007)¹

CRIMINAL LAW – SCOPE OF CONSENSUAL VEHICLE SEARCH

Summary

Appeal from a district court's order granting a defendant's motion to suppress evidence found by a Las Vegas Metropolitan Police Officer during a consensual vehicle search.

Disposition/Outcome

The Nevada Supreme Court vacated the district court's order and remanded for additional proceedings.

Factual and Procedural History

Las Vegas Metropolitan Police Officers conducted a vehicle stop after observing David John Ruscetta make an illegal right turn. A records check revealed Ruscetta was driving on a suspended license, and Ruscetta had two outstanding warrants for his arrest. An officer asked Ruscetta to exit his vehicle. Ruscetta complied and consented to a person search.

Ruscetta also consented to a vehicle search. Upon entering the vehicle, an officer observed someone had previously removed the air conditioning vents, the ashtray, and the center console. The officer also observed an odor he recognized as marijuana. When the officer placed his hand on the center console, the console shifted away from him, revealing three plastic baggies containing marijuana and a handgun.

The officers arrested Ruscetta and transported him to the Clark County Detention Center for booking. The officers conducted a vehicle inventory and impounded the vehicle.

The State charged Ruscetta with possession of a controlled substance with intent to sell, unlawful possession of a firearm, and possession of a firearm by an ex-felon. Ruscetta waived his right to a preliminary hearing, and filed a motion to suppress the evidence found during the vehicle search. At the hearing on the motion to suppress, the parties submitted the police report as the only evidence. The district court found, the officer's movement of the center console went beyond the scope of Ruscetta's consent, based on the totality of the circumstances. The district court granted Ruscetta's oral motion for dismissal based on lack of evidence. This appeal followed.

¹ By Krystallin Hernandez

Discussion

Scope of Consensual Vehicular Searches

In Nevada, the scope of consensual vehicular searches is governed by the Supreme Court Opinion, *Florida v. Jimeno*,² and the Nevada Opinion, *State v. Johnson*.³ The Fourth Amendment presumes every warrantless search and seizure unreasonable.⁴ Nonetheless, “waiver and consent, freely and intelligently given, converts a search and seizure which otherwise would be unlawful into a lawful search and seizure.”⁵ In *Jimeno*, the Supreme Court explains, “[t]he standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of ‘objective’ reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?”⁶ Therefore, “[t]he Fourth Amendment is satisfied when, under the circumstances, it is objectively reasonable for the officer to believe that the scope of the suspect’s consent permitted him [to perform the action in question].”⁷

Nevada considers dismantling a vehicle during a consensual search as lawful if, based on the totality of the circumstances,⁸ it is objectively reasonable to construe the vehicle’s dismantling as within the scope of consent.⁹ In *Johnson*, the Court considered “[i]nnocent citizens must not be stopped on the pretext of a traffic violation and have their automobiles dismantled when a police officer has nothing more than a ‘hunch’ that contraband may be present.”¹⁰ However, an inquiry is required as to “whether it is objectively reasonable to construe the consent to search the vehicle ... to include consent to dismantle the vehicle.”¹¹

Here, the district court concluded that, based on the totality of the circumstances, the movement of the center console went beyond Ruscetta’s scope of consent. However, the district court did not provide sufficient findings of fact enabling its decision to withstand appellate review.

² 500 U.S. 248 (1991).

³ 116 Nev. 78, 993 P.2d 44 (2000).

⁴ *Herman v. State*, 122 Nev. 199, 204, 128 P.3d 469, 472 (2006).

⁵ *Jimeno*, 500 U.S. 248 (1991).

⁶ *Id.* at 251.

⁷ *Id.* at 249.

⁸ Relevant considerations with respect to the scope of consent include “any express or implied limitations regarding the time, duration, area, or intensity of police activity necessary to accomplish the stated purpose of the search, as well as the expressed object of the search.” *State v. Troxell*, 78 S.W.3d 866, 871 (Tenn. 2002).

⁹ *Johnson*, 116 Nev. 78.

¹⁰ *Id.* at 81.

¹¹ *Id.* at 82, 993 P.2d at 46 (Agosti, J., concurring) (construing *Jimeno*, 500 U.S. 248).

Insufficient Findings to Withstand Review

The district court failed to hold an evidentiary hearing, failed to examine witnesses, and failed to make any written findings regarding the officer's conduct during the search. The Court has repeatedly "advised district courts to issue express factual findings when ruling on suppression motions so that this court [does] not have to speculate as to what findings were made below."¹² Therefore, because the record did not sufficiently provide the Court with information necessary for review, the Court vacated the district court's order granting Ruscetta's motion to suppress.

Conclusion

Though the district court correctly considered the scope of a consensual vehicle search limited to what an objectively reasonable officer would believe within the scope of consent, based on the totality of the circumstances, the court failed to make findings of fact sufficient to withstand review. Therefore, the Nevada Supreme Court vacated the district court's order and remanded for additional proceedings.

¹² State v. Rincon, 122 Nev. ___, ___, 147 P.3d 233, 237 (2006).