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Summary of Torres v. The State of Nevada, 131 Nev. Adv. Op. 2

Jenn Odell
Nevada Law Summary

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CONSTITUTIONAL LAW: FOURTH AMENDMENT

Summary

The Court determined (1) an investigative stop under NRS 171.123 is transformed into an illegal seizure in violation of the Fourth Amendment when an officer retains a pedestrian's identification after the suspicion for the original encounter is cured and there is no longer reasonable suspicion to detain the pedestrian; (2) without reasonable suspicion, the discovery of an arrest warrant cannot purge the taint from an illegal seizure.

Background

In February 2008, believing Ralph Torres to be drunk and out past curfew, Officer Shelley stopped him as he walked over a bridge in Elko, Nevada. Torres gave Officer Shelley his California identification card ("ID card"), which revealed Torres was old enough to be out past curfew and consuming alcohol. Although nothing indicated Torres's ID card was fake or inaccurate, Officer Shelley retained the ID card and called dispatch to verify Torres's ID, at which time Officer Shelley learned Torres had two outstanding arrest warrants from California. Officer Shelley took Torres into custody, conducting a search incident to arrest, at which time Torres informed him he had a gun in his pocket.

Torres was charged with being an ex-felon in possession of a firearm, receiving or possessing stolen goods, and carrying a concealed weapon. Torres filed a motion to suppress the handgun evidence in district court, claiming Officer Shelley conducted an illegal seizure that resulted in the discovery of the firearm. Further, Torres claimed the discovery of the outstanding warrants was not an intervening circumstance sufficient to purge the taint of the discovery of the handgun, and sought to have the charges dismissed.

The State, however, contended that Officer Shelley had reasonable suspicion, that Torres consented to the encounter, and that the discovery of the warrant was an intervening circumstance sufficient to purge the taint. The State argued, therefore, that the handgun evidence was not the fruit of an illegal seizure.

Torres filed a motion to suppress in the district court against the State of Nevada, which the district court denied, finding that the initial contact between Torres and Officer Shelley was consensual. Rather than determining whether the consensual encounter became an illegal seizure, the district court found the warrant to be an intervening circumstance sufficient to purge the illegality of the seizure if the stop had become illegal.

Upon the district court's denial of Torres's motion to suppress, Torres pleaded guilty to being an ex-felon in possession of a firearm.² This appeal followed.

Discussion

The court was required to first determine whether Officer Shelley's continued detention of Torres constituted an illegal seizure. If so, the court was required to decide whether the discovery of Torres's valid arrest warrant attenuated the taint from the illegal seizure, such that the firearm evidence obtained during a search incident to arrest was admissible.

Officer Shelley's continued detention of Torres resulted in an illegal seizure in violation of the Fourth Amendment

While police encounters can be consensual, if a reasonable person would not feel free to

¹ By Jenn Odell.

² Pursuant to NEV. REV. STAT. 202.360(1)(a)

leave he has been “seized” within the meaning of the Fourth Amendment.³ Even if a person does not consent, police officers may conduct a brief investigative stop, so long as the officer has objective justification for detaining a person, and is not acting on a hunch that criminal activity is occurring.⁴ Further, for an investigative stop to be reasonable, it must “last no longer than is necessary.”⁵ “[T]he nature of the police-citizen encounter can change—what may begin as a consensual encounter may change to an investigative detention if the police conduct changes”⁶ such that the person no longer feels free to leave.

Though courts disagree on whether a seizure has occurred for Fourth Amendment purposes when the police retain an individual’s identification, the Court held that “a reasonable person would not feel free to leave when an officer retains a pedestrian’s identification after the facts giving rise to articulable suspicion for the original stop had been satisfied.”⁷

Here, Officer Shelley testified that he stopped Torres because Officer Shelley thought Torres was a minor out past curfew and too young to be drinking. Once Torres produced his ID card verifying he was not a minor and over the age of 21, the suspicion for the original encounter was cured and Officer Shelley no longer had reasonable suspicion to detain Torres.

The firearm evidence should have been suppressed because it was the fruit of an illegal seizure

Unless the Fourth Amendment violation is far enough removed from the acquisition of evidence as to “dissipate the taint,”⁸ courts must exclude evidence obtained as “indirect fruits of an illegal search or arrest.”⁹ Despite the State’s urging, the Court chose not to apply the three-factor test from *Brown* as here there was no demonstration of an act of free will by Torres to purge the taint caused by the illegal seizure.¹⁰ Agreeing with the Ninth and Tenth Circuits, as well as the Supreme Court of Tennessee, the Court held that without reasonable suspicion, the discovery of arrest warrants cannot purge the taint from illegal seizures.¹¹ Here, since Officer Shelley did not have reasonable suspicion to justify the seizure under NRS 171.123(4), and there was no intervening circumstance to purge the taint of the illegal seizure, the evidence discovered should have been suppressed in the district court.

Conclusion

The Court found the further detention of Torres was not consensual, and Officer Shelley retained Torres’s ID card longer than necessary, rendering Torres unable to leave. The continued detention of Torres transformed an investigative stop into an illegal seizure in violation of the Fourth

³ See *United States v. Mendenhall*, 446 U.S. 544, 553-54 (1980).

⁴ *State v. Lisenbee*, 116 Nev. 1124, 1127, 13 P.3d 947, 949 (2000); see also NEV. REV. STAT. 171.123(1); *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

⁵ *Florida v. Royer*, 460 U.S. 491, 500 (1983); NEV. REV. STAT. 171.123(4) provides, in part, that “[a] person must not be detained longer than is reasonably necessary to effect the purposes of this section [(temporary detention by peace officer of person suspected of criminal behavior)].”

⁶ *United States v. Zapata*, 997 F.2d 751, 756 n.3 (10th Cir. 1993).

⁷ The Court based its decision on NRS 171.123(4) and the previous holding in *Lisenbee*, supra note 5.

⁸ *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963).

⁹ *New York v. Harris*, 495 U.S. 14, 19 (1990).

¹⁰ The *Brown* factors to analyze whether the presence of an outstanding arrest warrant purges the taint of evidence discovered during an illegal seizure include: (1) the temporal proximity of the arrest and the confession; (2) the presence of intervening circumstances; and, particularly, (3) the purpose and flagrancy of the official misconduct. One factor alone is not dispositive of attenuation. *Brown v. Illinois*, 422 U.S. 590 (1975).

¹¹ See *United States v. Lopez*, 443 F.3d 1280, 1285-86 (10th Cir. 2006); *United States v. Lockett*, 484 F.2d 89 (9th Cir. 1973); *State v. Daniel*, 12 S.W.3d 420 (Tenn. 2000).

Amendment and no intervening circumstance purged the taint of the illegal seizure. Thus, the evidence of the firearm should have been suppressed. Accordingly, the Court reversed the judgment of conviction and remands the matter to the district court to allow Torres to withdraw his guilty plea.