

COURT OF APPEALS OF GEORGIA

Rowland v. State

117 Ga. App. 577 (1968) · No. 43465 · Decided April 2, 1968

SUMMARY

The Court of Appeals of Georgia reversed a judgment against the defendant due to an unlawful search of their automobile. The search was conducted without a warrant and without the defendant's consent, and the only reason given by the police officer was that it was their usual practice to search stopped cars. The court ruled that this search was unreasonable and illegal, and therefore the evidence obtained from it was inadmissible. The case highlights the importance of adhering to the terms of Section 1 of the Act approved March 16, 1966, which governs searches without a warrant.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Pannell; Jordan; Deen
JURISDICTION	Georgia
DECIDED	April 2, 1968
DOCKET	43465
DISPOSITION	reversed
PROCEDURAL POSTURE	Rowland appealed a conviction for possessing excess quantities of tax-paid whiskey, challenging the denial of a motion to suppress evidence obtained during a warrantless search of his automobile and the denial of a motion for new trial.
STANDARD OF REVIEW	The appellate court reviewed the legality of the warrantless search and the trial court's rulings on the motion to suppress and motion for new trial.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion
PARTIES	Rowland v. The State

TOPICS

- search and seizure
- warrant requirement
- suppression of evidence
- exclusionary rule
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a warrantless search of an automobile following a lawful arrest was authorized when the officer stated only that it was his usual practice to search stopped cars.
2. Whether evidence of whiskey discovered during that search was admissible at trial.

HOLDINGS

1. A warrantless search incident to a lawful arrest must be limited to the person arrested and the area within that person's immediate presence, and must serve one of the purposes specified by Georgia Code Ann. § 27-301. A search of the automobile based only on the officer's usual practice of searching stopped cars is unreasonable and illegal.
2. Evidence obtained through the unreasonable and illegal warrantless search of the automobile was inadmissible against Rowland.

KEY QUOTATIONS

“While a lawful search may be made without a warrant when a person is under arrest, such search must be made under the terms of Section 1 of the Act approved March 16, 1966” (117 Ga. App. at 577)

“such a search is unreasonable and illegal and evidence of the possession of excess quantities of tax-paid whiskey in the trunk of the automobile obtained by such illegal search is inadmissible” (117 Ga. App. at 578)

FACTUAL BACKGROUND

A state police officer observed Rowland run a stop light while entering a state highway and immediately arrested him for that offense. Without Rowland's consent, the officer searched the automobile, giving as his only reason that it was his usual practice to search stopped cars. The search uncovered excess quantities of tax-paid whiskey in the trunk, and the State used that evidence to obtain a conviction for possessing the whiskey.

PROCEDURAL HISTORY

A state police officer arrested Rowland after observing him run a stop light while operating an automobile. The officer searched the automobile without Rowland's consent, finding whiskey in the trunk, and explained only that it was his usual practice to search stopped cars. The trial court overruled the motion to suppress and the motion for new trial, and the Court of Appeals of Georgia reversed.

DISPOSITION

reversed

CASES CITED

- People v. Blodgett, 46 Cal. 2d 114, 293 P.2d 57

- People v. Zeigler, 358 Mich. 355, 100 N.W.2d 456
- People v. Gonzales, 356 Mich. 247, 97 N.W.2d 16
- Burley v. State, 59 So. 2d 744 (Fla.)
- People v. Watkins, 19 Ill. 2d 11, 166 N.E.2d 433
- People v. Mayo, 19 Ill. 2d 136, 166 N.E.2d 440
- Joseph v. Commonwealth, 324 S.W.2d 126 (Ky.)
- Barnes v. State, 25 Wis. 2d 116, 130 N.W.2d 264
- United States v. Tate, 209 F. Supp. 762

OPINION

PANNELL, J.

117 Ga. App. 577 (1968) 161 S.E.2d 422 ROWLAND v. THE STATE. 43465. Court of Appeals of Georgia. Argued February 7, 1968. Decided April 2, 1968. Garland T. Byrd, for appellant. Albert D. Mullis, Solicitor General, for appellee. PANNELL, Judge. 1. While a lawful search may be made without a warrant when a person is under arrest, such search must be made under the terms of Section 1 of the Act approved March 16, 1966 (Ga.

L. 1966, p. 567; Code Ann. § 27-301), which reads as follows: "Search without Warrant. When a lawful arrest is effected a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of: (a) Protecting the officer from attack; or (b) Preventing the person from escaping; or (c) Discovering or seizing the fruits of the crime for which the person has been arrested; or (d) Discovering or seizing any instruments, articles, or things which are being used, or which may have been used, in the commission of the crime for which the person has been arrested.

Provided, however, when the peace officer is in the process of effecting a lawful search, nothing in this section shall be construed as precluding him from discovering or seizing any stolen or embezzled property, any item, substance, object, thing or matter the possession of which is unlawful, or any item, substance, object, thing, or matter other than the private papers of any person which is tangible evidence of the commission of a crime against the laws of the State of Georgia."

2. Accordingly, where a defendant, while operating an automobile, runs a stop light upon entering a state highway, in the presence of a state police officer, who immediately arrests him for that offense (but makes no subsequent charge against the defendant for such offense) and searches the automobile without the consent of the defendant, and the police officer gives as his only reason for searching the automobile that it was his usual practice to search stopped cars, and no other reason appears otherwise from the evidence on a hearing had upon a motion to suppress filed by the defendant, such a search is unreasonable and illegal and evidence of the possession of excess

quantities of tax-paid whiskey in the trunk of the automobile obtained by such illegal search is inadmissible *578 against the defendant upon the trial of the case upon a charge of possessing such whiskey.

The trial court, therefore, erred in overruling the motion to suppress and the motion for new trial complaining of the conviction of the defendant based upon the evidence so illegally obtained. See in this connection *People v. Blodgett*, 46 Cal. 2d 114 (293 P2d 57); *People v. Zeigler*, 358 Mich. 355 (100 NW2d 456); *People v. Gonzales*, 356 Mich. 247 (97 NW2d 16); *Burley v. State* (Fla.), 59 S2d 744; *People v. Watkins*, 19 Ill. 2d 11 (166 NE2d 433); *People v. Mayo*, 19 Ill. 2d 136 (166 NE2d 440); *Joseph v. Commonwealth* (Ky.), 324 SW2d 126; *Barnes v. State*, 25 Wis. 2d 116 (130 NW2d 264); *United States v. Tate*, 209 FSupp.

762. Judgment reversed. Jordan, P.J., and Deen, J., concur.