

SUPREME COURT OF WISCONSIN

State v. Carroll, 2010 WI 8

778 N.W.2d 1 (2010) · No. 2007AP1378-CR · Decided February 3, 2010

SUMMARY

The Supreme Court of Wisconsin reviewed whether evidence obtained from a cell phone pursuant to a warrant was tainted by the officer's warrantless browsing of the phone's image gallery. The court held that the initial seizure and continued possession of the phone were permissible, the gallery search was improper, but answering an incoming call was justified by exigent circumstances. The intercepted call supplied an untainted independent basis for the search warrant, so the court affirmed the court of appeals' reversal of the suppression order.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	N. Patrick Crooks, J.; Shirley S. Abrahamson, Chief Justice; N. Patrick Crooks, Justice; David T. Prosser, Jr., Justice
JURISDICTION	Wisconsin
DECIDED	February 3, 2010
DOCKET	2007AP1378-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State sought review of a published court of appeals decision reversing a Milwaukee County Circuit Court order suppressing evidence obtained from Carroll's cell phone pursuant to a search warrant.
STANDARD OF REVIEW	Whether a search complies with the Fourth Amendment is a question of constitutional fact. Historical and evidentiary findings are upheld unless clearly erroneous, while the application of constitutional principles to those facts is reviewed independently.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential
PARTIES	State of Wisconsin v. Jermichael James Carroll

TOPICS

fourth amendment

search and seizure

warrant requirement

exclusionary rule

suppression of evidence

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the initial seizure of Carroll's cell phone and viewing of the marijuana image violated the Fourth Amendment or Article I, section 11 of the Wisconsin Constitution.
2. Whether police could continue to possess the cell phone while seeking a warrant.
3. Whether browsing through the phone's image gallery without a warrant was lawful.
4. Whether answering an incoming call on the seized phone was justified by probable cause and exigent circumstances.
5. Whether the intercepted call and other untainted information supplied an independent source of probable cause sufficient to validate the search warrant despite the tainted image-gallery evidence.

HOLDINGS

1. The officer's order that Carroll drop the unknown object, seizure of the phone, and viewing of the marijuana image displayed on the open phone were reasonable and did not violate the Fourth Amendment or Wisconsin Constitution article I, section 11.
2. Police could continue to possess the cell phone while seeking a search warrant because they had probable cause to believe it contained evidence of criminal activity and exigent circumstances created a risk that evidence could be deleted or lost.
3. Browsing through the phone's image gallery without a warrant was unlawful and produced tainted evidence, but answering the incoming call was permissible because probable cause and exigent circumstances justified that limited warrantless intrusion.
4. The search warrant was valid because the untainted intercepted call, combined with the officer's knowledge of drug-trafficking practices, Carroll's juvenile record, and the plain-view marijuana image, supplied probable cause independently of the tainted image-gallery evidence.

KEY QUOTATIONS

"However, based on exigent circumstances, the officer was justified in answering the incoming call to Carroll's phone during which the caller ordered illegal drugs." (778 N.W.2d at 5)

"The consistent approach taken in these cases is that the courts scrutinized the nature of the evidence obtained, i.e., numeric codes on a pager, stored text messages, and incoming phone calls, and balanced that with an inquiry into whether the agent reasonably believed that the situation required a search to avoid lost evidence." (778 N.W.2d at 13)

"That evidence was an untainted independent source that formed a valid basis for the search warrant, when combined with the officer's knowledge of drug traffickers and Carroll's juvenile record, along with the plain view of the image of the marijuana blunt." (778 N.W.2d at 18)

FACTUAL BACKGROUND

Police officers pursuing Carroll after he drove at high speed ordered him to drop an unknown object, which proved to be an open cell phone displaying an image of him smoking what appeared to be a marijuana blunt. After securing Carroll and the phone, Detective Belsha browsed the phone's image gallery and saw photographs depicting firearms, drugs, and currency, then answered an incoming call while pretending to be Carroll; the caller ordered what Belsha interpreted as four and one-half ounces of cocaine. Police later obtained a warrant and downloaded the phone's data, including a photograph of Carroll holding a semiautomatic firearm, leading to a charge of possession of a firearm by a felon.

PROCEDURAL HISTORY

The circuit court suppressed firearm photographs and related digital evidence after finding that police unlawfully browsed Carroll's cell-phone image gallery and that the tainted evidence supplied the basis for the warrant. The court of appeals reversed, concluding that an intercepted incoming call supplied independent probable cause for the warrant. The Wisconsin Supreme Court granted Carroll's petition for review and affirmed the court of appeals.

DISPOSITION

affirmed

CASES CITED

- State v. Sanders, 2008 WI 85, 311 Wis. 2d 257, 752 N.W.2d 713
- United States v. Place, 462 U.S. 696, 701 (1983)
- Wong Sun v. United States, 371 U.S. 471, 488 (1963)
- Murray v. United States, 487 U.S. 533, 536-43 (1988)
- State v. Faust, 2004 WI 99, 274 Wis. 2d 183, 682 N.W.2d 371
- State v. Edgeberg, 188 Wis. 2d 339, 345, 524 N.W.2d 911 (Ct. App. 1994)
- State v. Bell, 62 Wis. 2d 534, 540, 215 N.W.2d 535 (1974)
- State v. Hughes, 2000 WI 24, 233 Wis. 2d 280, 607 N.W.2d 621
- Illinois v. Gates, 462 U.S. 213, 238-39 (1983)
- United States v. Arvizu, 534 U.S. 266, 270-71 (2002)
- Arkansas v. Sanders, 442 U.S. 753, 761, 766 (1979)
- United States v. Finley, 477 F.3d 250, 259-60 (5th Cir. 2007)
- United States v. Ortiz, 84 F.3d 977, 982-84 (7th Cir. 1996)
- United States v. Wurie, 612 F. Supp. 2d 104, 108-10 (D. Mass. 2009)
- United States v. Deans, 549 F. Supp. 2d 1085, 1094 (D. Minn. 2008)
- United States v. Wall, 2008 WL 5381412, at *4 (S.D. Fla. 2008)
- United States v. De La Paz, 43 F. Supp. 2d 370, 375-76 (S.D.N.Y. 1999)
- State v. O'Brien, 70 Wis. 2d 414, 424-25, 234 N.W.2d 362 (1975)
- State v. Lange, 158 Wis. 2d 609, 626-28, 463 N.W.2d 390 (Ct. App. 1990)

- State v. Herrmann, 2000 WI App 38, 233 Wis. 2d 135, 608 N.W.2d 406
- In the Matter of J.G.J., 388 A.2d 472, 475 (D.C. 1978)

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