

Summary of SC94927, State of Missouri v. Derrick L. Carrawell

Appeal from the St. Louis city circuit court, Judge Steven Russell Ohmer
Argued and submitted October 28, 2015: opinion issued January 12, 2016

Attorneys: Carrawell was represented by Srikant Chigurupati of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321.

The American Civil Liberties Union of Missouri Foundation, which submitted a brief as a friend of the Court, was represented by Anthony E. Rothert, Andrew McNulty and Jessica Steffan of the ACLU of Missouri Foundation in St. Louis, (314) 652-3114, and Gillian R. Wilcox of the ACLU of Missouri Foundation in Kansas City, (816) 470-9933.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals his conviction for felony drug possession, challenging the lawfulness of his arrest and a subsequent search of a plastic bag he had been holding. In a decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment. Six judges agree the man's arrest was lawful because there was probable cause to conclude the man committed the crime of resisting arrest. Four judges agree the warrantless search of the man's bag was not a lawful search incident to arrest because the bag was not within the man's immediate control at the time of the search. Three judges agree the drugs found in that search need not be excluded from evidence because there was appellate authority for conducting such a search.

In an opinion joined by two other judges, Judge Paul C. Wilson concurs in the result but writes separately. He agrees the man's arrest was lawful, but – because the bag was in the man's immediate possession and seized at the time of his arrest – he would hold the search of the man's bag was a lawful search incident to arrest.

Judge Richard B. Teitelman concurs that the search was unlawful because it occurred while the man's belongings were beyond his immediate control, but – given the overwhelming weight of authority holding that searches such as the one conducted here are illegal – he dissents from the holding that the exclusionary rule does not apply.

Facts: Police officers in a St. Louis neighborhood saw Derrick Carrawell pull up nearby and stare at them before parking his vehicle. Carrawell continued to stare at the officers, stepped out of the vehicle and uttered vulgarities at them. He took a white plastic grocery bag from the vehicle, continuing to curse. Because his language was bothering a group of neighborhood residents, including a child, one of the officers approached Carrawell, telling him he was under arrest for peace disturbance. Carrawell, plastic bag in hand, continued to walk away from the officer. The officer followed, and a struggle ensued. The officer repeatedly told Carrawell to drop the bag, but he did not. Eventually, the officer pulled the bag from Carrawell, and it dropped to the ground, making a breaking sound. Carrawell continued to struggle as the officer attempted to handcuff him and place him in the police car. The officer put the bag on the car's trunk while he secured Carrawell inside the vehicle. After Carrawell was secured inside the police car, the officer then opened and looked into the bag for the first time, finding a broken plate and a substance later confirmed to be heroin. The state charged Carrawell with felony drug possession. Before trial, he sought to suppress evidence of

the heroin, arguing neither the arrest nor search of the plastic bag was lawful. The trial court overruled the motion to suppress and Carrawell's continuing objection to introduction of the heroin at trial. Carrawell was convicted as charged and sentenced to 12 years in prison. He appeals.

AFFIRMED.

Court en banc holds: (1) Carrawell's arrest was lawful. This Court need not determine whether there was probable cause to arrest Carrawell for peace disturbance because there certainly was probable cause to arrest him for resisting arrest. Under the law, it is no defense to resisting arrest that the law enforcement officer was acting unlawfully in making the arrest. There is no need, therefore, to determine whether the officer lawfully could have arrested Carrawell for peace disturbance under the facts presented. It only matters that Carrawell indeed resisted an arrest.

(2) The search of Carrawell's bag was not a lawful search incident to arrest. Under the Fourth Amendment, warrantless searches are per se unreasonable unless an established and well-delineated exception applies. One such exception is a search incident to a lawful arrest – when officers lawfully may search the arrestee's person and the area within the arrestee's immediate control, from within which the arrestee might gain possession of a weapon or destructible evidence. The United States Supreme Court has made clear that the reasoning for searching an arrestee's person and the area within the arrestee's immediate control is to safeguard the officer and others and to prevent the loss of evidence. The Supreme Court has held that, once officers have taken exclusive control over an arrestee's personal property, there is no longer any danger the arrestee might gain access to the property to seize a weapon or destroy evidence, and so a search of that property is no longer a search incident to the arrest. In other words, if the item searched is not within the arrestee's reaching distance (or "immediate control") at the time of the search, there is no valid search incident to arrest because the justifications for such a search are absent.

Missouri court of appeals decisions previously have held that officers may search an arrestee's personal effects, such as a purse or backpack, even when they are not within the arrestee's immediate control because the personal effects qualify as part of the person. This distinction is not consistent with Supreme Court precedent, is based on a misunderstanding of the law and no longer should be followed. Personal effects may not be searched because they are part of the person but may be searched if they are within the arrestee's immediate control at the time of the search. It appears that a major source of this misunderstanding is language taken out of context from one case in which the United States Supreme Court said that searches and seizures that could be made on the spot, at the time of arrest, legally may be conducted later, when the arrestee arrives at the place of detention. This language, however, is dicta. The case concerned a search of the clothes the arrestee was wearing, which could not be searched until after the arrestee was taken to the police station and given a change of clothes, and the justification of preventing destruction of evidence – paint chips embedded in the clothes – remained the next day. In light of Supreme Court precedent regarding searches incident to arrest, searches of all personal effects are not authorized regardless of whether the item searched is within the arrestee's immediate control at the time of the search. Rather, an exception to the general rule applies only to items that are so intertwined with the arrestee's person that they cannot be separated from the person and searched at the time of arrest. Unlike the clothing in that case, the plastic bag in this case was easily separable from Carrawell's person.

There is no United States Supreme Court authority for a "time of arrest" rule to allow any personal effect in an arrestee's actual possession at the time of arrest to be searched, regardless of whether the item is within the arrestee's immediate control at the time of the search. To the extent the Supreme

Court discussed a search of an arrestee's person, including personal effects, requiring "no additional justification" beyond the validity of the custodial arrest, it meant only that officers need no reason to believe a person has, or an item contains, weapons or evidence to conduct a search incident to arrest to ensure their safety and the preservation of evidence in the flurry of a custodial arrest. The exigencies justifying a search hinge on the spatial location of an item to the arrestee at the time of the search, not at the time of arrest. Police need not be concerned with the arrestee inflicting harm with a weapon or destroying evidence when the item containing the hypothetical weapon or evidence no longer is within the arrestee's immediate control at the time of the search. The Supreme Court's recent clarification of its own search-incident-to-arrest precedent dispels the idea of a "time of arrest" rule.

When a personal effect is no longer within the arrestee's immediate control, a search of that personal effect must be grounded in an exception to the warrant requirement other than a search incident to arrest, such as an inventory search or exigent circumstances. Carrawell was handcuffed and locked in the back of a police car at the time the officer searched the plastic bag. Because the bag was not within Carrawell's immediate control, there was not a valid search incident to arrest, and the state has not demonstrated that any other exception to the warrant requirement applies.

(3) Although the search of the bag was not lawful, the trial court did not err or abuse its discretion in overruling Carrawell's motion to suppress the evidence of the heroin found in the bag. When an officer conducts a search incident to arrest in objectively reasonable reliance on binding appellate precedent that later is overturned, the exclusionary rule does not suppress the evidence obtained as a result of that search. At the time the officer searched Carrawell's bag, there was appellate precedent authorizing officers to search an arrestee's personal effects as a search incident to arrest, even if those items were not within the arrestee's immediate control. Although such searches no longer should be deemed lawful, the exclusionary rule will not apply to this case.

Concurring opinion by Judge Wilson: The author concurs in the result of the principal opinion and agrees that Carrawell's arrest was lawful, but he writes separately because he would hold the search of Carrawell's bag was a lawful search incident to arrest.

Under United States Supreme Court precedent, a search incident to arrest of the area within the arrestee's control requires additional exigency or justification – particularized concerns that the arrestee might access a weapon or destroy evidence. Whether case-by-case adjudication of a search incident to arrest is required turns on whether the item searched was an item of personal property immediately associated with the arrestee's person. Under Supreme Court precedent, officers lawfully may search anything an arrestee actually is holding at the time of a lawful arrest without additional justification, but if officers extend their search to items within the arrestee's reach or control, then case-by-case justification must be met. This time of arrest rule recognizes that the same exigencies that justify searching an arrestee's person also justify searching the arrestee's clothes and other items in the arrestee's actual possession.

The plastic bag was in Carrawell's actual possession at the time of his lawful arrest. Because it was immediately associated with the arrestee's person, it was subject to search incident to his arrest without any further justification. Even if further justification were required – which it is not – it is present in this case. After Carrawell initiated his confrontation with police, he reached back into his vehicle to retrieve the bag. While the officer attempted to arrest Carrawell, he was separated from other officers by a locked gate and struggling with Carrawell, and he ordered Carrawell several times to drop the bag; Carrawell refused. Officers were unable to handcuff Carrawell until the officer

wrested the bag from Carrawell's hand. He lawfully could have searched it then, but it would have been dangerous to do so because he and Carrawell still were separated from other officers by a locked gate. The officer ultimately got Carrawell and the bag through the gate and to the police vehicle, but he again had to set the bag aside to gain enough control to get Carrawell safely into the back of the police vehicle. Immediately thereafter, the officer looked in the bag. When the item searched was immediately associated with the arrestee at the time of the arrest, the exclusive control analysis does not apply. To construe "exclusive control" to mean it attaches the instant an arrestee loses physical contact with the item is neither workable nor compelled by Supreme Court precedent. Rather, police authority to seize and search items within the arrestee's immediate possession is measured at the time of the arrest and does not need to be exercised at that moment. The bag was in Carrawell's actual possession throughout the confrontation, struggle and arrest, and its search a few seconds after he was confined in the back of the police vehicle is lawful.

Opinion concurring in part and dissenting in part by Judge Teitelman: The author concurs with the principal opinion to the extent it holds the search was unlawful because it occurred while Carrawell's belongings were beyond his immediate control, but he dissents from the holding that the exclusionary rule does not apply. The reasoning in the two appellate cases misconstrues the individual constitutional right to be free from unreasonable searches. Given the overwhelming weight of authority holding that searches such as the one here are illegal, the exclusionary rule should apply.