

Jason Owner's Criminal Charges

Client Opinion Letter

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Mrs. Ophelia Owner
123 Client Road
Salt Lake City, UT 84103

Re: Criminal charges against your son, Jason Owner

Dear Mrs. Owner,

Thank you for meeting with me regarding the criminal charges placed against your son, Jason. After analyzing what we discussed, I was able to deduce two possible outcomes to this case: (1) Jason gets charged as an accomplice for the crime, and may face a minimum of ten-years in prison; or (2) the charges are completely dropped due to the fact that the police officer likely violated Amendment IV of the U.S. Constitution when he searched the vehicle with no apparent probable cause. What follows is a comprehensive breakdown and analysis of these two issues.

Facts

Jason Owner, a high school student, was riding in a car with his friend, Dave Driver (when referring collectively to Jason and Dave, they will be referred to as "Defendants" through the rest of this letter). While Dave was driving, he missed a stop sign, and consequently got pulled over by a police officer. The officer cited Dave for running the stop sign and later asked for Dave's car keys. Dave handed the keys, and the officer started walking towards the trunk. Dave yelled, "I did not say you could search my trunk!" to which the officer dishonestly replied, "This is standard procedure for this kind of violation."

Upon opening the trunk, the officer discovered five kilograms of crack cocaine in small packages. He then placed Defendants in the back of the police patrol car, and continued searching the vehicle. He found one additional kilogram of crack cocaine in the car's glove compartment. While in the police patrol car, Jason asked Dave, "Do you think he will find anything else?"; this

conversation was being recorded by the patrol car's system. Defendants were taken to the police station for questioning; Defendants stated that they did not know there were drugs in the car. Dave additionally noted that he was the only one with a key to the car, and that he and Jason were the only ones who had ridden in the car for the past few weeks.

Questions/Answers

1. Was the car search constitutional?

The car search was probably unconstitutional, as it likely violated the provisions stated in Amendment IV of the U.S. Constitution. It's worth mentioning that constitutional questions are disputed in federal courts, so as to ensure that persons' constitutional rights are protected uniformly throughout all the states. This exclusive jurisdiction over constitutional questions allows, through the study of court cases which dealt with similar Fourth-Amendment controversies, for a more comprehensive understanding of how the federal courts have applied Fourth-Amendment rights to various situations; this understanding is imperative when predicting the outcome of Defendants' case. Amendment IV of the U.S. Constitution provides that,

The right of the people to be secure in their *persons, houses, papers, and effects*, against *unreasonable* searches and seizures, shall not be violated, and no Warrants shall issue, but upon *probable cause*, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (emphases added).

It is highly likely that a court would find that the officer who searched Dave's car did not have probable cause to search it, as he had no reasonable basis to suppose that he was justified to search the vehicle because of a traffic violation. An officer may have probable cause to search or question someone when he ". . . has a *reasonable* suspicion to believe the person has committed or is in the act of committing or is attempting to commit a public offense . . ." ¹ (emphasis added); therefore, a court would likely find that the officer did not have a reasonable suspicion that would have allowed him to search the car, as the circumstances were only that of a traffic citation and nothing more. The officer may have had probable cause to search the vehicle if, for example, Defendants' actions arose a reasonable suspicion that they were on drugs; I trust that this was not the case.

Furthermore, pursuant to Utah Code § 77-7-8, a forcible entry² to conduct a search ". . . may not be made solely for the alleged possession or use . . . of a controlled substance . . ." Therefore, even if Defendants had been guilty of allegedly possessing drugs, the officer would still not have been justified to conduct the search; mere allegations of possession do not constitute

¹ Utah Code § 77-7-15.

² A court would likely find that the officer used forcible entry to search the vehicle; the officer proceeded to search it even after Dave explicitly told him not to. The officer's breach of consent without probable cause is a clear forcible entry.

probable cause. It is evident, therefore, that because Defendants were not even alleged to be in possession of drugs, the officer had absolutely no reasonable justification to search the vehicle.

The officer's statement that searching people's car trunks was standard procedure when receiving a traffic violation, could only be true if he had been authorized by magistrate to search people's vehicles at a certain checkpoint in traffic.³ Supposing that the officer had not the authority, the only other ways in which he may have been justified is by having probable cause to search,⁴ or a "reasonable suspicion that criminal activity has occurred or is occurring";⁵ as aforementioned, we know that neither was the case. Therefore, for the rest of this letter, we can assume that the officer flagrantly performed an illegal search on the vehicle.

This illegally-obtained evidence will, per the Constitution-derived Exclusionary Rule, likely be made inadmissible in court. "Under the exclusionary rule, evidence seized in violation of the Fourth Amendment is inadmissible and considered 'fruit of the poisonous tree.'"⁶ Even in a hypothetical scenario where Defendants were knowingly in possession of the drugs, and perhaps even intended to distribute them, the seized drugs would still likely not be admissible as evidence in court; the evidence would have originated from the metaphorical poisonous tree of the illegal search, and therefore be considered tainted.

Furthermore, ". . . if the illegal [search] was flagrant, the poison [in the fruit] is even stronger. . ." ⁷ and considered even less admissible in court. Determining if the officer's actions were flagrant requires ". . . evidence that police actions were purposefully investigatory in nature; that an arrest was obviously illegal; and that an arresting officer was aware the arrest was illegal."⁸ The officer's search was evidently prompted by nothing specific and with no probable cause; therefore, it is reasonably assumed that the traffic stop was purposefully investigatory in nature. The arrest itself was obviously illegal, as it too stemmed from that same poisonous tree that gave fruit to the poisoned evidence. There's a clear cause and effect relationship between the officer's illegal search and the subsequent arrest of Defendants; ". . . but for the illegal traffic stop, the officer would not have discovered the [drugs] and ultimately [arrested Defendants]. This evidence would not have been discovered through inevitable discovery or the independent source rule."⁹

³ § 77-23-103(5): "A motor vehicle may be stopped and the occupants detained by an enforcement officer when the enforcement officer . . . is acting pursuant to duly authorized administrative traffic checkpoint authority granted by a magistrate . . ."

⁴ *Id.* (2): ". . . has probable cause to arrest or search . . ."

⁵ *Id.* (3).

⁶ COMMENT: DISCOVERING ARREST WARRANTS DURING ILLEGAL TRAFFIC STOPS: THE LOWER COURTS' WRONG TURN IN THE EXCLUSIONARY RULE ATTENUATION ANALYSIS, 85 Miss. L.J. 225, 227.

⁷ *Id.* at 249.

⁸ *Jacobs v. State*, 2006 OK CR 4, 128 P.3d 1085, 1, 6.

⁹ 85 Miss. L.J. 225, at 247-248.

The courts have historically been very protective of people's constitutional rights. For example, in *Katz v. United States*, Katz was incriminated by evidence obtained through an electronic listening and recording device which was used to record his private phone calls in a telephone booth. The court held that Katz's conversations were protected under the Fourth Amendment, because Katz had a reasonable expectation of privacy when using the phone booth. Because Katz's reasonable expectation of privacy was violated, the evidence obtained from his conversations were considered inadmissible in court. This meant that Katz could not be prosecuted, because of the lack of admissible evidence; therefore, his criminal conviction was reversed.¹⁰ Likewise, it is reasonable that courts would find that Defendants had a reasonable expectation of privacy while in the vehicle, and that the violation of that privacy, without warrant or probable cause, constituted a violation to their Fourth-Amendment rights.

An individual's Fourth-Amendment right to be protected from unreasonable vehicle searches is further elucidated by the May 14, 2018 case, *Byrd v. United States*.¹¹ Byrd was driving toward Pittsburgh, Pennsylvania, when he was stopped for a traffic infraction by the Pennsylvania State Troopers. While Byrd was stopped, Pennsylvania State Troopers learned that the car was rented; Byrd was not listed as an authorized driver; Byrd had prior drug and weapons convictions; and that Byrd had a marijuana cigarette in the car. Aware of these elements, the Troopers felt they had sufficient probable cause to search Byrd's vehicle; their search revealed that there was body armor and 49 bricks of heroin in the trunk. The evidence was turned over to federal authorities, who charged Byrd with federal drug and other crimes. However, even with the aforementioned elements which led to the Troopers searching Byrd's vehicle in the first place, the courts still had ". . . to consider whether the troopers had probable cause to search the car."¹² The main issue was whether or not Byrd had a reasonable expectation of privacy under the Fourth Amendment, and if this expectation of privacy could be overridden by probable cause.

The court found that the issue of whether the Troopers had probable cause for the search was subdued by the foremost constitutional issue of determining whether Byrd had a reasonable expectation of privacy; determining the privacy issue is what probable cause ultimately predicated upon. The court held that "the mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy."¹³ Therefore, having conclusively determined that Byrd indeed had a reasonable expectation of privacy, the court unanimously vacated the judgement and remanded the case.

In conclusion, it is evident that Defendants' Fourth-Amendment rights were violated, and, therefore, the evidence seized will be treated as inadmissible in the same way it happened in the aforementioned cases.

¹⁰ *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507 (1967).

¹¹ *Byrd v. United States*, No. 16-1371, 2018 U.S., (May 14, 2018).

¹² *Id.* at 6-7.

¹³ *Id.* at 25.

2. Does the ten-year minimum prison term apply to the substance in the car?

Pursuant to 21 U.S.C. § 841, the minimum mandatory sentence for possession of crack cocaine is 10-years. However, as has been shown, the case would likely be dismissed due to the lack of admissible evidence.

Additional notes:

Utah Code § 76-2-202 states that “[e]very person, acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct.” When applying this to Defendants’ case, the prosecution would have to prove unequivocally that Defendants, particularly Jason, were fully aware of their possession of the drugs and showed a clear intent with respect to them; in criminal law, this is called the Standard of Proof.¹⁴

Conclusion

In conclusion, it is highly likely the court will determine that the officer violated Defendants’ Fourth-Amendment rights when he searched the vehicle without probable cause; therefore, the evidence found will likely be considered inadmissible in court, and the charges should be consequently dropped.

Sincerely,

Saul Goodman

¹⁴ Utah Code § 58-37e-11(1). Standard of proof — Effect of criminal drug conviction: “Proof of participation in the illegal drug market in an action brought under this chapter shall be shown by clear and convincing evidence.”