

FILED
Court of Appeals
Division III
State of Washington
12/11/2019 8:00 AM

NO. 36583-2-III

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

BRANDON ANTONIO SCALISE,

Defendant/Appellant.

REPLY BRIEF

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United States Constitution, Fourth Amendment..... 2

OTHER AUTHORITIES

Charles W. Johnson, *Survey of Washington Search and Seizure Law: 2005 Update*, 28 SEATTLE U.L.R.EV. 467, 587 (2005) 2

ARGUMENT

The State claims that no warrantless search occurred prior to the officers obtaining a search warrant for the buildings and vehicles on Mr. Scalise's property.

The critical issue is whether or not Detective White's writing down the serial number of the generator was done from an appropriate vantage point.

The record is clear that the generator was just off the driveway in close proximity to a Jayco trailer. (CP 14)

If it was just off the driveway, then it was in the curtilage of the property. The record does not indicate if Detective White left the driveway and walked over to the generator.

A Designation of Exhibits has been filed. The designation pertains to exhibits 3, 4, and 5. These appear to be photos of the generator.

The officers were there to arrest Mr. Scalise on outstanding warrants. They were not there to conduct a search. They did not have a search warrant.

Observations of items surrounding the Jayco trailer would not constitute a search. However, if an officer leaves the driveway to go over and conduct a further examination of an item; then it does amount to a search.

Mr. Scalise reiterates that the officers did not immediately recognize the generator as contraband. Neither officer had any information that the generator had been stolen from the Pancake property in Idaho until after the fact. The serial number was written down by Detective White. He then contacted a dealer to run the serial number to discover who had purchased the generator so that he could determine if it was stolen.

Thus, the State's claim that there is no underlying search or seizure is in error. (State's brief, p. 16)

The State seems to rely upon *United States v. Gunn*, 428 F.2d 1057 (5th Cir. 1970) in support of its argument that no search occurred. The Gunn case is cited in *State v. Murray*, 84 Wn.2d 527, 527 P.2d 1303 (1974).

The difference in the *Gunn* case is that it relies entirely upon the Fourth Amendment to the United States Constitution. It is not a Washington case.

Const. art I, § 7 provides greater privacy to individuals than the Fourth Amendment. *See: State v. Jackson*, 150 Wn.2d 251, 259, 76 P.3d 217 (2003); *see also* Charles W. Johnson, *Survey of Washington Search and Seizure Law: 2005 Update*, 28 SEATTLE U.L.R. EV. 467, 587 (2005).

Mr. Scalise also wants to point out certain misstatements that occurred in both his original brief and the State's brief.

In Mr. Scalise's original brief he indicated that the search warrant affidavit is not part of the record. He is in error. (CP 10)

The State, in its brief, indicates that the officers had prior knowledge of the generator being next to the Jayco trailer. The officers only had that knowledge from when the trailer was at a different location. It is unknown whether the same generator was involved. (CP 6; State's brief, p. 4)

Mr. Scalise otherwise relies upon the argument contained in his original brief.

DATED this 11th day of December, 2019.

Respectfully submitted,

s/ Dennis W. Morgan

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DIVISION III

STATE OF WASHINGTON

| | | |
|--------------------------|---|-------------------------------|
| STATE OF WASHINGTON, |) | |
| |) | STEVENS COUNTY |
| Plaintiff, |) | NO. 18 1 00015 1 |
| Respondent, |) | |
| |) | |
| v. |) | CERTIFICATE OF SERVICE |
| |) | |
| BRANDON ANTONIO SCALISE, |) | |
| |) | |
| Defendant, |) | |
| Appellant. |) | |
| _____ |) | |

I certify under penalty of perjury under the laws of the State of Washington that on this 11th day of December, 2019, I caused a true and correct copy of the *REPLY BRIEF* to be served on:

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December 11, 2019 - 6:46 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36583-2
Appellate Court Case Title: State of Washington v. Brandon Antonio Scalise
Superior Court Case Number: 18-1-00015-1

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