

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Appellant,  
vs.  
THEODORE LEE WRIGHT,  
Respondent.

No. 38094

FILED

SEP 10 2002

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
*Richard*

This is an appeal from a district court order granting respondent Theodore Lee Wright's pretrial motion to dismiss charges, or in the alternative, to suppress evidence obtained by police during a drug interdiction bus stop in Las Vegas. The district court granted Wright's motion to suppress because it concluded that the State had unlawfully searched and seized Wright's property. Despite the State's argument to the contrary, the district court found that Wright had not abandoned his property, and had not, therefore, waived his Fourth Amendment rights<sup>1</sup> against unreasonable search and seizure. The State then filed this appeal, whereupon we reverse and remand to the district court.

FACTS

On May 6, 1994, Wright boarded a Greyhound bus in Las Vegas, Nevada, which was traveling from Las Vegas to Denver, Colorado. At the Las Vegas bus stop, three members of the Southern Narcotics Interdictions Task Force boarded the bus. One detective stood at the front of the bus inside the driver's compartment area, while the other two moved through the bus asking the passengers where they were travelling and where their luggage was located.

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<sup>1</sup>U.S. Const. amend. IV; see also Nev. Const. art. 1, § 18.

The detective positioned at the front of the bus noticed a passenger, later identified as Wright, board the bus. The detective observed that Wright was carrying a black plastic bag, which he placed in the overhead storage area before sitting down. Another detective approached Wright. Wright allegedly told the detective that his baggage was down below in the luggage storage area. After completing his survey of the bus, the detective, noting that the black bag was unclaimed, asked if the bag belonged to anyone on the bus. Receiving no answer, he took a few steps back and repeated the question. Wright did not respond or claim ownership of the bag.

The detectives then removed the bag from the bus and opened it, finding two bags of what they believed to be rock cocaine. Based on the observation that Wright boarded the bus with the bag, the detectives reboarded the bus and asked Wright if he "wouldn't mind" coming with them. Wright got up from his seat and followed the detectives off the bus. At that time, Wright again disclaimed ownership of the bag. The bag was tested on site and found to contain cocaine.

On December 1, 1995, the State charged Wright with two felonies for trafficking in a controlled substance, in violation of NRS 453.3385, and transporting a controlled substance, in violation of NRS 453.321. On May 15, 2001, Wright moved to suppress the evidence, arguing that the State violated his Fourth Amendment right against unreasonable search and seizure. The district court conducted a hearing on Wright's motion to suppress, and on June 21, 2001, filed its order granting the motion. The State then filed this appeal.

### DISCUSSION

If a person abandons his property, the property is no longer protected by the Fourth Amendment, and the "owner" no longer has

standing to challenge a search or seizure of that property.<sup>2</sup> In order to find abandonment, the district court must find that: (1) the property was abandoned, and (2) the abandonment was voluntary, i.e., it did not follow from an unlawful search or seizure.<sup>3</sup> Here, the district court found that Wright had not abandoned the bag. The district court reasoned that because all of the passengers were not necessarily on board the bus during the stop, the detectives could not reasonably have believed that the bag had been abandoned. That conclusion is clearly erroneous.<sup>4</sup>

Abandonment does not depend upon whether an officer reasonably believes property has been abandoned, but rather, on whether or not an individual has expressed an intent to abandon the property.<sup>5</sup> The crux of the issue is “whether the person so relinquished his interest in the property that he no longer retained a reasonable expectation of privacy in it at the time of the search.”<sup>6</sup> As this court has previously explained, “whether a person has abandoned his property is a question of intent, which we infer from words, acts and other objective facts.”<sup>7</sup>

Here, the district court applied the wrong legal standard, determining abandonment from the officer’s perspective rather than from the defendant’s. We, therefore, conclude that its decision was clearly

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<sup>2</sup>State v. Lisenbee, 116 Nev. 1124, 1130, 13 P.3d 947, 951 (2000).

<sup>3</sup>U.S. v. Stephens, 206 F.3d 914, 916-17 (9th Cir. 2000).

<sup>4</sup>Id. (“Whether property has been abandoned within the meaning of the Fourth Amendment is an issue of fact reviewed for clear error.”) (quoting U.S. v. Gonzales, 979 F.2d 711, 712 (9th Cir. 1992)).

<sup>5</sup>See State v. Taylor, 114 Nev. 1071, 1078, 968 P.2d 315, 320 (1998).

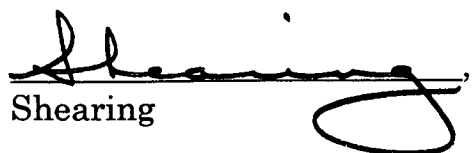
<sup>6</sup>Id. (quoting United States v. Jackson, 544 F.2d 407, 409 (9th Cir. 1976)).

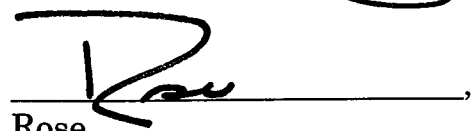
<sup>7</sup>Id.

erroneous. Furthermore, because Wright denied ownership of the bag on several occasions, we conclude that his intent, as can be inferred from his words, actions, and other objective facts as they are reflected in the record, indicates that he abandoned any ownership interest he may have had in the bag.<sup>8</sup>

Because the district court determined that Wright had not abandoned the bag, the district court failed to reach the second prong of the abandonment test, the voluntariness of the abandonment. We, therefore REVERSE and REMAND the district court's order and instruct the district court to conduct an evidentiary hearing and determine whether or not Wright's abandonment was voluntary.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk

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<sup>8</sup>See Stephens, 206 F.3d at 917 (holding that it was not erroneous for the district court to find abandonment where the defendant repeatedly denied ownership of the property).