January 1990

Criminal Procedure - United States v. $124,570 US Currency: Disinfecting Administrative Airport Security Searches

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CRIMINAL PROCEDURE

UNITED STATES v. $124,570 U.S. CURRENCY: DISINFECTING ADMINISTRATIVE AIRPORT SECURITY SEARCHES

I. INTRODUCTION

In United States v. $124,570 U.S. Currency, the Ninth Circuit vacated an order of forfeiture of currency initially discovered during an airport security check. The court found that when the objectives of airport security officers are broader than necessary to ensure air safety, administrative searches conducted by those officers are no longer supported by the air safety rationale under which such warrantless security checks have been held constitutional. This decision reflects the continuing caution with which the Ninth Circuit and other circuits will examine administrative searches to ensure they do not become "infected by general law enforcement objectives."

II. FACTS

On January 5, 1987, appellant Wayne G. Campbell was en-

1. United States v. $124,570 U.S. Currency, 873 F.2d 1240 (9th Cir. 1989)(per Kozinski, J.; the other panel members were Poole, J., and Reinhardt, J.).
2. 21 U.S.C. § 881(a)(6) provides in pertinent part:
   (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:
   (6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance. . . .
3. $124,570 U.S. Currency, 873 F.2d at 1240.
4. Id. at 1245.
5. Id.
route from Seattle to Los Angeles via United Airlines Flight 22. In Seattle International Airport, like all airline passengers, he was required to pass his carry-on items through an x-ray scanner. When his locked briefcase passed through the scanner, the Flight Terminal Security (FTS) officer detected a dark mass on the x-ray screen. When asked to open his briefcase, Campbell was initially reluctant but eventually permitted an FTS officer to search the case in private behind a screen. The officer discovered the large sum of currency, questioned Campbell as to his destination and subsequently released him.

FTS officers at the Seattle airport have a policy of reporting any sum of U.S. currency exceeding $10,000 to the United States Customs Service and Airport Police. Officers are paid a reward of $250 for each report. The discovery of Campbell’s cash was immediately reported to a United States Customs Service officer along with Campbell’s physical description and destination. The Customs Service officer in turn notified a customs agent at Los Angeles International Airport where Campbell was to arrive shortly. The L.A. agent subsequently alerted an officer of the Drug Enforcement Administration (DEA).

The DEA agent and his partner followed Campbell upon his arrival at Los Angeles International Airport. They subsequently approached Campbell, identified themselves as DEA agents, and questioned him regarding the contents of his briefcase.

6. Id. at 1241.
7. Id.
8. FTS employees are private law enforcement officers trained in aviation security procedures, as well as state and local law enforcement procedures. Each airport must maintain such a security force to comply with federal regulations. 14 C.F.R. §§ 107.1-109.5. These officers are uniformed, armed, and have authority to make arrests for certain crimes. $124,570 U.S. Currency, 873 F.2d at 1241 n.1.
9. Id. at 1241.
10. Id.
11. Id. The FTS officer returned the briefcase to Campbell, who then boarded his flight to Los Angeles. Id.
12. Id.
13. Id.
14. Id. In addition to describing Campbell, the FTS officer gave the customs agent a description of the briefcase and its contents. Id.
15. Id.
16. Id.
17. Id.
case. He admitted the briefcase contained $130,000 and told the agents that the money belonged to a friend, whom he refused to identify. The DEA officers did not believe Campbell's story that his friend had hired him to ransom a stolen painting, so they took the briefcase to their office for further investigation.

Although told he was not under arrest, Campbell followed the agents to the DEA office. There he opened the briefcase after the agents said they would attempt to get a search warrant should he refuse. The case contained bundles of currency in denominations between five and one hundred dollars and a "substantial" quantity of cigarette rolling papers. The agents kept the currency, and took photographs of the papers. Everything but the currency was returned to Campbell. The following day, the reactions of a narcotics-detecting-dog suggested that the currency had come in contact with one or more controlled substances. The United States filed a forfeiture action pursuant to 21 U.S.C. § 881(a)(6) (1982). Campbell moved to suppress the evidence uncovered by the search of his briefcase, but the district court denied the motion. Campbell appealed.

III. COURT'S ANALYSIS

The court began by noting that commercial air travel is no longer a luxury, but rather an essential component of our existence. Airline travel, while offering speed, comfort and conve-

18. Id.
19. Id. at 1242. Campbell told the agents he had travelled to Seattle to read books and visit friends. He also said he had taken the money with him because he was afraid to leave it at home. Id.
20. Id.
21. Id. Although the agents indicated to Campbell that he was not under arrest, they told him they would be "detaining" his briefcase. Id.
22. Id.
23. Id. Also contained in the case was a receipt from a Seattle hotel indicating that Campbell had stayed there from January 3 to January 5, 1987. Id.
24. Id.
25. Id.
26. Id. The currency was tested for the odor of cocaine, heroin, marijuana and marijuana derivatives. Id.
27. Id. See supra n.2.
28. $124,570 U.S. Currency, 873 F.2d 1242.
29. Id.
30. Id. The court noted that there were 1,095,600,000 airline passengers in 1987 (an
nience to passengers, also offers an attractive target for terrorists and other criminals. To protect air travelers from this danger, Congress enacted the Air Transportation Security Act of 1974. Pursuant to this legislation, the FAA has established regulations requiring all passengers and carry-on items to be screened for weapons and explosives. Americans are aware of the purpose of these security procedures and most accept the privacy intrusion as a necessary part of air travel.

An inevitable consequence of airport weapons searches is that FTS officers become aware of personal items which pose no danger to safety. In United States v. Davis, the Ninth Circuit found that these narrowly tailored searches for guns and explosives are, however, constitutional as justified by the need for air traffic safety. While the rationale of the Air Transportation Security Act is constitutional, the Ninth Circuit noted that the rationale will not support generalized law enforcement searches of all passengers boarding commercial aircraft.

The Ninth Circuit restated the fundamental premise that "except within certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant". Previ-
ously, in *Davis*, the Ninth Circuit approved warrantless administrative airport security checks, acknowledging that governmental interest in assuring air traffic safety is compelling, while the intrusion into passengers' privacy is limited.\(^{40}\)

The Ninth Circuit noted that *Davis* did not suggest that all airport searches are constitutional merely because they serve some security purpose.\(^{41}\) To the extent that administrative searches are used for other purposes, they may not fall within the regulatory rationale by which they have been approved.\(^{42}\)

The Ninth Circuit noted that the approval of a new type of administrative search requires an analysis of legislative facts applicable to an entire class of cases, rather than adjudicative facts applicable only to the case before it.\(^{43}\) In approving an administrative search, a court must focus on these legislative facts mindful of the long-term impact that an entire class of similar searches is thereby validated.\(^{44}\) The court then relies on the legislative facts to make a dual determination: (1) that the search serves a narrow but compelling administrative objective,\(^{45}\) and

\(^{40}\) The court concluded that such intrusion is limited "as is consistent with the satisfaction of the administrative need that justifies it." *Davis*, 482 F.2d at 910.

\(^{41}\) *$124,570 U.S. Currency*, 873 F.2d at 1243. All governmental searches, including administrative searches, are subject to the fourth amendment's reasonableness requirement. *Id.* Because the FTS officers' activities are imbued with a governmental purpose, their searches constitute state action. *Id.* n.2 (citing *Davis*, 482 F.2d at 904).

\(^{42}\) *$124,570 U.S. Currency*, 873 F.2d at 1243. The court in *Davis* recognized the potential danger that "the screening of passengers and their carry-on luggage for weapons and explosives will be subverted into a generalized search for evidence of a crime." *Id.* (quoting *United States v. Davis*, 482 F.2d at 909). The court further observed that evidence so obtained would be subject to exclusion. *$124,570 U.S. Currency*, 873 F.2d at 1243 (citing *United States v. Politano*, 491 F. Supp. 456 (W.D.N.Y. 1980)(evidence obtained by DEA suppressed where assistance was sought from airport security to identify defendants); *United States v. Scott*, 406 F. Supp. 443, 444-45 (E.D. Mich. 1976)(motion to suppress denied where DEA activities did not taint security search); *United States v. Mitchell*, 352 F. Supp. 38, 43 (E.D.N.Y. 1972), (evidence uncovered by warrantless searches tainted by impermissible investigatory motives must be suppressed), aff'd mem. 486 F.2d 1397 (2d Cir. 1973)).

\(^{43}\) *$124,570 U.S. Currency*, 873 F.2d at 1244.

\(^{44}\) *Id.*

\(^{45}\) *Id.* (citing *Camara v. Municipal Court* 387 U.S. 523, 536-37 (1967)).
(2) that the intrusion is as "limited . . . as is consistent with the administrative need that justifies [it]." Applying these criteria to the present case, the Ninth Circuit found that this search plainly fell outside the administrative search rationale approved in Davis.\footnote{46}

The Ninth Circuit noted that the Supreme Court has repeatedly emphasized the importance of keeping administrative searches free of the government's separate motive of criminal investigation.\footnote{48} The court observed that the risk that general law enforcement objectives will taint administrative searches is a recurrent theme in previous cases decided by the Ninth Circuit as well as other circuits.\footnote{49} In the instant case, the Ninth circuit found that the close working relationship between the FTS officers and law enforcement authorities at the Seattle airport significantly distorted the searches as approved in Davis.\footnote{50} The court noted that the FTS policy of cooperation with law enforcement authorities, fueled by the hope of substantial monetary rewards, was likely to affect the actions of FTS agents in ways neither contemplated nor approved in Davis.\footnote{51}

FTS officers have broad latitude in deciding how deeply to

\footnotesize{46. \$124,570 U.S. Currency, 873 F.2d at 1244-45 (quoting Davis, 482 F.2d at 910).}
\footnotesize{47. \$124,570 U.S. Currency, 873 F.2d at 1245.}
\footnotesize{48. Id. at 1244. In Camara, the Supreme Court found that administrative searches were reasonable because "the inspections are neither personal in nature nor aimed at the discovery of evidence of a crime," therefore involving only a limited invasion of privacy. Id. (quoting Camara, 387 U.S. at 537). See also Wyman v. James, 400 U.S. 309, at 323 (1971) (upholding the requirement that case workers visit the homes of potential welfare recipients as a condition of welfare assistance in part because the home visit is "is not in aid of any criminal proceeding").}
\footnotesize{49. \$124,570 U.S. Currency, 873 F.2d at 1244. (citing United States v. Schafer 461 F.2d 856 (9th Cir. 1972) (evidence obtained during a routine agricultural quarantine search admissible because the record lacked showing that search was an instrument for law enforcement) cert. denied, 409 U.S. 881 (1972)). See also United States v. Pulido-Baquerizo, 800 F.2d 899, 902 (9th Cir. 1986)("a visual inspection and limited hand search of luggage which is used for the purpose of detecting weapons or explosives, and not in order to uncover other types of contraband, is a privacy invasion we believe free society is willing to tolerate") (emphasis added); United States v. Epperson, 454 F.2d 769, 771 (4th Cir. 1972)("the search for the sole purpose of discovering weapons and preventing air piracy, and not for the purpose of discovering weapons and precriminal events, fully justified the minimal invasion of personal privacy by magnetometer") cert. denied, 406 U.S. 947 (1972)).}
\footnotesize{50. \$124,570 U.S. Currency, 873 F.2d at 1245.}
\footnotesize{51. Id. In the instant case, two FTS officers received \$250 each from a Customs Service agent. Id. n.1.}
probe for weapons or explosives. The court noted that when the FTS officers pursue only the approved objective of ensuring air safety, only packages containing something potentially dangerous need be opened. When, however, FTS officers have a dual objective, more and increasingly intrusive searches will be conducted.

In the present case, the Ninth Circuit found that the FTS officer's legitimate interest in Campbell's identity and destination ceased after the manual search of his briefcase uncovered no weapons or explosives. The court noted that the FTS officer had no safety-related justification and found that the further inquiry into Cambell's affairs was impermissibly motivated by the hope of obtaining a reward. The court further found that the pursuit law enforcement objectives can potentially distract FTS agents and limit their effectiveness in achieving the important goals of the Air Transportation Security Act.

Finding that the search could not be approved as an administrative search, the court inquired whether any other exception to the warrant requirement was present. The Ninth Circuit previously determined in Davis that airport screening systems cannot be justified as a limited search for weapons under the Terry v. Ohio standard. Finally, the court found that the consent exception did not apply to this case because the scope of consent to an airport security search cannot exceed the safety

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52. 873 F.2d at 1245. This latitude extends to the decision whether or not to manually search an item after the initial x-ray scan. Id.
53. Id.
54. Id. at 1246.
55. Id.
56. Id.
57. Id. Spending time searching for contraband may also cause unnecessary delay at security checkpoints. Id. The Ninth Circuit carefully distinguished a very similar case in which currency was discovered during an airport security check and reported by an airlines security guard to a DEA agent. In that case there was no indication of a cooperative relationship and there was no reward. Id. at 1247 n.7. See United States v. Canada, 527 F.2d 1374 (9th Cir. 1975)(convictions of conspiracy to possess heroin and cocaine with intent to distribute and possession of cocaine and heroin with intent to distribute affirmed) cert. denied, 429 U.S. 867 (1976).
58. Id. at 1247.
59. 392 U.S. 1 (1968)(detention and search by police officer based on reasonable belief that detainees were involved in criminal conduct reasonable under fourth amendment).
60. $124,570 U.S. Currency, 873 F.2d at 1247 (citing Davis, 482 F.2d at 905-08.)
rationale for such checks. 61

IV. CONCLUSION

Administrative airport searches are one exception to the general requirement that a search of private property without proper consent requires a valid search warrant. The Ninth Circuit was unwilling to approve an arrangement whereby law enforcement motives are attached to administrative searches to circumvent separate constitutional requirements. The policy underlying the war on drugs though important, is distinctly different from the government’s compelling interest of preventing air disasters. As such, the aims of the Customs Service and the Drug Enforcement Administration must be excised from the duties of airport security forces to keep air travellers safe in the sky. The objectives of the Air Transportation Security Act which mandates airport safety checks must be neither confused nor compromised by unrelated governmental interests.

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61. $124,570 U.S. Currency, 873 F.2d at 1247.
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