

Contents

Prologue: <i>The People of the State of Colorado v James P. Esch</i>	xi
<i>The Last Client of Luis Montez</i>	1

*Traigo una pena clavada,
como puñalada en mi pensamiento.
Como carcajada que se hace lamento
como si llorando se rieran de mí.
Es la vida pasada que siento
reprochar el haber sido así.*

“Mi Único Camino” (D.A.R.)

PROLOGUE

DISTRICT COURT, CITY AND COUNTY OF DENVER,
COLORADO

Criminal Action No. ATA-789, Courtroom 9

ORDER

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiffs,

v.

JAMES P. ESCH,
Defendant

This matter comes before the Court on defendant's motion to suppress evidence. The Court, having heard testimony and weighed the evidence, and being fully apprised, makes the following findings of fact and conclusions of law:

On the night of April 11, 1992, Officers Ben Martínez and Thomas Strayhorn were on regular patrol in the northwest quadrant of the city and county of Denver. Around midnight, they observed a vehicle "weaving between traffic lanes and running a red traffic signal." The officers attempted to make

a traffic stop of the vehicle, but the automobile did not pull over until it arrived at a deserted shopping center parking lot.

Strayhorn testified that as the officers approached the automobile from their own car, he saw one of the passengers in the rear seat of the car “stuff something under the front seat.” Until that point, the sole reason for the stop was the erratic performance of the car’s driver. Strayhorn requested a backup unit when he saw the activity of the passengers.

The driver identified himself as Alton Enoch. The defendant, James P. Esch, the passenger in the back seat, could not produce identification when one was requested by Officer Strayhorn. The other passenger in the car, Enoch’s girlfriend, Glory Jane Jacquez, provided the officers with identification.

Although there was a conflict in the evidence, there is no doubt that Officer Strayhorn ordered all three out of the car. He searched under the front seat and, on the passenger’s side, found a leather bag, secured with a leather thong and decorated with beads and rhinestones. Officer Strayhorn then testified, and I quote from the transcript of his testimony, that he “manipulated the bag” and, although he “did not feel any weighty objects or things like a gun,” he untied the leather thong and opened the bag “to check for weapons and possible identification.” Strayhorn and Martínez also testified that when the bag was opened, defendant Esch said, “The bag’s mine.” In the bag, Strayhorn found Esch’s driver’s license and two small envelopes with a powdery substance. Strayhorn advised Esch that he would have the substance tested, at which point Esch said, “Fuck that, man. You know it’s coke.” The other occupants of the automobile shouted at Esch to stop talking, and all three were placed under arrest. (The Court notes that although the other two have been charged with offenses stemming from the arrests on the night of April 11, 1992, those cases have not been consolidated with this action.) No weapons were found in the

car, and the defendants refused to make any additional statements to the police. Defendant Esch eventually was charged with possession of a controlled substance (cocaine).

It is clear to the Court that the officers had no probable cause or reasonable grounds to suspect that the leather bag contained cocaine or any other drug. There is not one piece of evidence to justify any such conclusion. However, the officers would have been justified in searching the bag if they had a reasonable belief based on specific and articulable facts that the suspects were dangerous and had access to weapons. In *Michigan v. Long*, 463 U.S. 1032 (1983), the Supreme Court held that police officers may conduct a “protective search” for weapons, not only of the driver but also of the vehicle.

The *Long* case has been applied to cases in Colorado, and certain standards have been established by the Colorado appellate courts, primarily in the opinions that have become known as *Cagle I* and *Cagle II*. See *People v. Cagle*, 688 P.2d 718 (Colo. 1984), and *People v. Cagle*, 751 P.2d 614 (Colo. 1988), appeal dismissed sub nom. *Cagle v. Colorado*, 486 U.S. 1028 (1988). Under these standards, this Court is satisfied that officers Strayhorn and Martínez had an articulable and specific basis for stopping the automobile. The traffic offenses were constitutional justification for the intrusion by the police officers. The furtive conduct of the passengers as the officers approached was an obvious, potentially dangerous response that required a call for backup.

The critical issue is whether the search of the bag had a reasonable relationship to the stated purpose of the search—i.e., ensuring the officers’ safety. It is on this issue that the search fails to meet constitutional standards. The testimony of Officer Strayhorn indicated that he had no reasonable concern for his safety. The defendants were cooperating; they were outside the car, under the watchful eye, and weapon, of Officer Martínez

and Strayhorn's "pat-down" search of the bag did not turn up any indication of a weapon. The search of the bag exceeded the constitutionally permissible bounds of the limited protective search of the passenger compartment of an automobile.

The Fourth Amendment to the Constitution prohibits unreasonable searches and seizures. The search of the leather bag and subsequent seizure of the envelopes were unreasonable under the Fourth Amendment. Therefore, evidence discovered on the basis of the unlawful search or seizure must be suppressed (the "poisonous tree"), as well as any derivative evidence ("fruit of the poisonous tree"). Defendant Esch's statements are the fruit. They would not have been made if the illegal search of the bag had not occurred. This Court deeply regrets its findings, but there is no other choice, given the testimony of the officers, particularly Strayhorn, and the arguments made by defense counsel.

This Court deeply regrets its findings, but there is no other choice, given the testimony of the officers, particularly Strayhorn, and the arguments made by defense counsel. This Court is well aware of Mr. Esch. His criminal record is before the Court, and in bulk and weight alone it is impressive. There are times when the law leaves little room for common sense or practical reality.

Therefore, this Court orders that the contents of the leather bag, as well as all of defendant Esch's statements after the search of the bag was begun, are hereby suppressed.

DONE AND SIGNED IN OPEN COURT THIS 14TH DAY
OF JANUARY, 1993.

By the Court:

District Court Judge

PART I

1

“Can we get together?”

Lisa’s voice put something into that innocent phrase that would have made me blush had my skin been a shade or two lighter.

I took it as a sign. Maybe that playful imp—fate—had decided to line me up one more time. Falling back on nonsense was something I wouldn’t hesitate to do if it fit the moment.

“I’ll pick you up in an Explorer—lilac and black. You can’t miss it. Four-wheel drive, so I don’t get stuck in the drifts.”

I tried to focus on the details so I wouldn’t have to call her back and ask what it was she had said, but it was tough.

“I want to thank you, Louie, personally. For helping Jimmy. But I won’t be free until this afternoon. Maybe we can have coffee or a drink?”

I agreed to meet Lisa after my 2:00 p.m. hearing with Judge Frederick.

My court appearance was a waste of time. The heating system wasn’t all it should have been for the justice center of a major American city. So many clerks, bailiffs and secretaries had stayed home that the judges who had driven into

town were quick to cancel what they could and dispose of everything else as unceremoniously as possible. Judge Frederick agreed with the red-nosed, sniffling deputy district attorney that because one of the witnesses against my client had slid into three other cars along Sixth Avenue, on her way into court, the preliminary hearing should be rescheduled.

I protested, mumbling something about my client's right to a speedy trial, but after Frederick rolled his eyes, I flourished my pocket calendar and graciously agreed on a date for the next hearing.

I spent more than an hour roaming the almost-deserted halls of the courthouse, gabbing with an occasional clerk, until I broke down and bought a cup of coffee in the basement cafeteria. Then I exchanged raunchy jokes with a sleepy guard stationed at the Bannock Street entrance's metal detector. Slightly warmed, I ventured into the muck to wait for my ride.

I had proposed that I wait for Lisa at the corner of Bannock and Colfax Avenue, outside the courthouse, so that she wouldn't have to hassle with parking. My frozen butt didn't let me forget the foolishness of my chivalrous gesture.

For a reason that became more obscure the longer I shivered on the corner, I was in a public-transportation state of mind, and I had neglected my car for most of the winter. I had intended to borrow Priscilla's car, since my secretary's medium-sized Chevy was far more reliable in the snow than any auto I could get my hands on. But that would have inconvenienced her, particularly as she wanted to get home as soon as she could. I couldn't think of a good reason to keep her twiddling her thumbs in my office, and when Lisa's husky voice offered to be my chauffeur, I struck a deal with my bored secretary. If she gave me a ride downtown to the hearing, she could take off the rest of the day. The blizzard had

slowed business, and there were only so many files that Priscilla could file away and only so many times she could rearrange the chairs in my waiting room.

It was also the least I could do for the environment. Red pollution days were supposed to mean that people joined in carpools, didn't burn wood and, generally, cut back on anything that might add more particulates to the atmosphere. I was as civic-minded as the next guy—even more so when my thoughtfulness involved a petite redhead with what I knew to be a fairly liberated outlook on life and what I imagined to be a well-entrenched need to express her appreciation.

At 3:30 in the afternoon, cold long shadows draped across the skyline, covered the parking lots and darkened most of downtown Denver. The streets were cold; the buildings were cold; I was cold. The January air whipped through the canyons of the skyscrapers, then aimed straight for me. Gusts twirled around my legs, raising bits and pieces of ice that clung to my heaviest pair of wool slacks. I inhaled coldness through clenched teeth. Frigid slivers of oxygen and pollutants knifed down my throat and into my lungs. A drop of moisture stubbornly clung to the numb tip of my nose, and I ached like an old miner. I coughed and wheezed.

Although I stood in semidarkness, the sky overhead was bright with sunshine that accented the crisp arctic blue. I tried to tell myself that maybe the winter wasn't so tough. That lasted as long as it took for the minus-fifteen-degree wind-chill factor to overcome my overcoat and layers of shirts and sweaters, and for my toes to cringe and cramp with each step in the crusted snow.

The storm had spent itself on the Mile High City two days before. Its memory was alive and well on dangerous sidewalks and in uncooperative car batteries, and enhanced by the irritability of court clerks, waiters, bus drivers and anyone else I

had to come into contact with during my daily sorties into the real world of the last major storm of Colorado's winter.

Ice encased my mustache. When Lisa's all-purpose vehicle finally rolled in front of me, I would have sworn that sections of my face were falling off in dark, frozen chunks. Her car slogged through a three-foot hill of gray and black gunk that at one time had been snow cleared from the middle of Colfax Avenue. She expertly eased it to a pause without too much of a slide, then idled at the curb.

The window tint was almost black, and a thick coat of ice and mud smeared across the glass except where the wipers scraped a crazy pattern of lines and semicircles. Lisa was a blurry phantom behind the steering wheel. She might have waved at me, so I opened the door and stepped into a bucket seat.

Heat engulfed me as soon as I sat down. The heater's hum reassured me, and I felt a tad more alive. And there was Lisa, too. Her smell—her taste—must have been part Amariage, part sweat and maybe a shot or two of apricot schnapps. She smiled from beneath wraparound sunglasses and a Day-Glo teal ski jacket designed to turn heads on the steepest slopes in Steamboat. Her hair was bundled under a knit cap, but stray shiny strands flicked around her neck and across her forehead.

Only Lisa could cause a hot flash in freezing weather.

"Sorry I'm late. The streets are still a mess. Hope you didn't get too cold." Before I could answer, she added, "I know a place where you can warm up. We can talk."

"You're the driver."

She eased into the sluggish traffic and expertly changed lanes so she could turn around and end up back on Colfax, heading west. A country-western station broadcast the latest storm alerts, with needless warnings to listeners to "be careful out there, y'all," then went into "ten in a row." I tuned out the

saccharine songs and focused on Lisa. She concentrated on keeping her vehicle on the street, without spinning on the ice or ending up stuck in mud and snow. I didn't want to distract her. Straining against her Colorado status symbol in order to free it from a drift was not on my agenda for that afternoon. Not for any afternoon.

Keeping focused on Lisa was not difficult. She swallowed attention like a black hole in outer space seizes the light. Her classic cover-girl smile generated a high energy level, a reflection of her animated personality. Her body had been in constant motion whenever I had talked with her, and she'd had a hell of a time staying quiet during Jimmy's court proceedings. Quick, with an ironic sense of humor, she had a hundred ideas, plans and motives bouncing around the inside of her head at once, and sometimes they included a few minutes with me, her brother's lawyer.

The *People of the State of Colorado v. James P. Esch* had to rank as one of my major achievements as a lawyer. Not that there were many, but once in a while Luis Montez, Esq., truly figured out this legal stuff, and his clients sometimes actually won.

Lisa's bar of choice was a cluttered tavern near Union Station that had experienced a resurgence of popularity along with the rest of lower downtown Denver. The ride to the Skyline Café & Saloon should have been slow and easy. But men such as I know that women such as Lisa never do anything slow and easy. The normal, most direct route to the bar, the Twentieth Street Viaduct, had been erased in the interest of the new baseball stadium, so Lisa had to steer through an elaborate and complicated detour behind the massive post office building. Construction on the stadium had torn up acreage, strewn trucks, cranes and heavy equipment in haphazard patterns that might have made sense to a construction

foreman, and generally screwed up access to the Skyline. Snow, mud and ice added to the misery. The Skyline had better be a great bar.

Lisa cut off more careful drivers, splashed pedestrians dodging for protection and eventually we landed in a pile of snow that should have been a parking space for the Skyline's customers. A crazy thought crossed my mind that maybe having a drink or two wasn't quite appropriate, but then I rationalized that the holiday season wasn't that far gone, and anyway, Lisa wanted conversation. The crazy thought gasped and died without any real shot at a meaningful life as Lisa and I chugged through the snow. I can talk myself into just about anything, when I put my heart behind it.

She took off her cap and her long, bright hair tumbled around her shoulders. We hung our coats on wall hooks and dropped gloves and scarves into a booth while our chilled senses adjusted to the bar's ambience.

Cigarette smoke and Texas white-boy blues floated around us in a nice mix of midafternoon booziness and insolent lethargy left over from the previous night. An amazing array of beer posters plastered the rough-hewn wooden walls, while numerous odd gadgets and trinkets left by patrons over the half a dozen years of the Skyline's existence dangled from the walls or across the back of the bar. Black corrugated tin carelessly covered the ceiling. I caught myself watching for it to fall on our heads.

We ordered drinks, and then I launched into the small talk.

"The weather doesn't seem to have hurt business."

She smiled, and I considered warning her to cut it out. I didn't.

She said, "This place always has a good crowd. A blizzard doesn't mean diddly to these people."