

SIGNIFICANT DECISIONS
UNITED STATES SUPREME COURT AND THE COURT OF CRIMINAL APPEALS
FROM SEPTEMBER 2020 TO APRIL 2021

HON. DAVID C. NEWELL
JUDGE, PLACE 9
Court of Criminal Appeals

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Acknowledgement

This paper has been the primary responsibility of my briefing attorney, Lynda Hercules Charleson. No, keep reading. She works really hard, and the summaries are really good. Actually she's not my briefing attorney anymore. She now works at central staff at the Court of Criminal Appeals. So that should give her more credibility. I edited the summaries, but she did most of the heavy lifting. I did the commentary, for what it is worth, but any commentary is written in my role as commentator not as part of my job. Late Justice Scalia once said that. Neat. So take the commentary with a grain of salt and I hope they aren't too salty. I hope you will find something in this paper to be helpful, preferably the part Lynda wrote because she is awesome. This is a working document so any typos and misspellings are my fault.

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SCOTUS/CCA Update

Significant Decisions from September 2020 to April 2021

I. INTRODUCTION

This paper covers the published opinions issued by the Court of Criminal Appeals between September 1, 2020 and April 28, 2021. It also includes the significant criminal cases from the United States Supreme Court that have broad applicability, issued during that same time frame. If you feel something is missing, please email me through Nichole Reedy at nichole.reedy@txcourts.gov and we'll do our best to either correct or explain ourselves. Additionally, we will continue to update the paper throughout the terms of the respective courts. If you'd like a copy of the updated paper, do not lose the email mentioned above.

II. MOTIONS TO SUPPRESS

A. Warrantless Search

1. **Court upholds warrantless search of luggage at an airport, probably as a search incident to arrest.** San Antonio Police Officer Carl Bishop received a tip from an Austin police officer that a reliable informant had indicated Braden Price would be flying into the San Antonio airport, on a specified date, with a quantity of marijuana he had purchased from out of state. Bishop verified that Price was on an incoming flight, and a drug dog alerted to the presence of contraband in suitcases bearing labels with Price's name. Bishop and at least two other detectives then watched as Price retrieved the suitcases from the baggage claim area and rolled them out to the curb. There, the officers detained Price, seized the suitcases from him, and handcuffed him behind his back. They then transported both him and his rolling suitcases to a "secure office" inside the airport. After reading Price his rights, they searched the suitcases and discovered marijuana.

Prior to trial, Price filed a motion to suppress, arguing that the officers' search of the suitcases was impermissible under the Fourth Amendment. The trial court denied the motion, assessed punishment, and certified Price's right to appeal the pretrial denial of his

motion. The court of appeals reversed, holding that the warrantless search was not justified as a search incident to arrest because, as a categorical matter, luggage is never "property immediately associated with the arrestee." The court also concluded that the trial court's denial could not otherwise be upheld because the search constituted an application of the inevitable discovery doctrine, which does not apply to Texas' statutory exclusion rule.

The Texas Court of Criminal Appeals reversed. *Price v. State*, __S.W.3d__, 2020 WL 5754618 (Tex. Crim. App. Nov. 23, 2020) (4:4:1). Judge Yeary announced the judgment of the Court and delivered an opinion, which Judges Keasler, Keel, and Slaughter joined. At least where—as in the instant case—an arrestee is in actual possession of a receptacle at the time of, or reasonably contemporaneously to, his custodial arrest, and that receptacle must inevitably accompany him into custody, a warrantless search of that receptacle at or near the time of the arrest is reasonable under the Fourth Amendment as a search incident to the arrestee's person. Such a search requires no greater justification than the fact of the lawful arrest itself. Application of this principle does not turn on the specific nature or character of the receptacle. In *United States v. Robinson*, 414 U.S. 218 (1973), the Supreme Court identified two types of searches under the search-incident-to-arrest exception to the warrant requirement: (1) searches of the person, or of property within the "immediate control" of the person, of the arrestee; and (2) searches of the area within the control of the arrestee. The State argued that the search in this case was of the first kind, and thus the court of appeals erred when it held that a suitcase is necessarily excluded from the category of receptacles that may be regarded as "immediately associated with the person" of an arrestee. Price argued that it was of the second.

Judge Yeary agreed with the State. First, the Court has not explicitly endorsed the view that suitcases and luggage should never be regarded as "immediately associated with the person" of an arrestee. Second, the highest courts of several states have recently held that the search of a suitcase in an arrestee's possession at the time of his arrest constitutes a *Robinson* search of property immediately associated with his person, requiring no greater justification than the arrest itself when the police intend to take the arrestee to jail or to

the stationhouse for booking. Third, under the rationale of *Lalande v. State*, 676 S.W.2d 115 (Tex. Crim. App. 1984) (holding that where a detainee asserts an ownership interest in the item leaving no alternative to its accompanying him into custody, once it becomes unequivocally clear that the item is to accompany the detainee, the right of inspection accrues immediately and is not limited to inspections carried out within the station itself), the officers were entitled to search the suitcases as a search of his person incident to arrest. The suitcases unquestionably belonged to him and would inevitably accompany him into custody, where a protective search would take place. And contrary to the court of appeals' belief, *Lalande* does not conflict with *State v. Daugherty*, 931 S.W.2d 268 (Tex. Crim. App. 1996) (holding that inevitable discovery doctrine—evidence obtained illegally would have eventually been obtained in any event by lawful means—does not apply to Texas' statutory exclusionary rule). The inevitable discovery doctrine discussed in *Daugherty* assumes that an illegal search has already occurred. But under *Lalande*, there is no illegality in the initial search. Therefore, there is no need to invoke the inevitable discovery doctrine to insulate the product of such a search from the exclusionary rule's application when the search was constitutionally reasonable to begin with.

Presiding Judge Keller filed a dissenting opinion. She argued that holding in *Lalande* had nothing to do with the inevitable-discovery doctrine or the search-incident-to-arrest doctrine. Rather, it was based on the inventory-search doctrine and on the proposition that the Fourth Amendment permitted the police to do on the scene what they were authorized to do at the station. Accordingly, the search of Price's suitcase might have been valid as a legal accelerated inventory search. In order for police to validly search a closed container during an inventory search, the arresting agency must have a policy or established routine authorizing such a search. Because the court of appeals did not address whether these requirements would have been met if a search had been conducted at the station, she would remand the case to the court of appeals to do so.

Judge Newell filed a dissenting opinion, joined by Judge Hervey. He agreed with the court of appeals that the Court's holding in *Daugherty* that the statutory

exclusionary rule does not incorporate the inevitable discovery doctrine undermined the Court's previous holding in *Lalande*. In *Lalande*, the Court held that the search was justified at the time of arrest because the luggage would have eventually been searched. The Court did not base its decision upon the theory that the search was a legal inventory search; it based it on the theory that discovery during a future inventory search was inevitable. Moreover, while the search in this case felt reasonable, the Supreme Court has held that the search-incident-to-arrest exception does not justify a search of luggage once police have that luggage in their personal control and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence. *United States v. Chadwick*, 433 U.S. 1 (1997). Although the luggage at issue in *Chadwick* was a footlocker, Judge Newell found that case dispositive. And while subsequent holdings related to searches of containers in cars have watered down *Chadwick*, the Supreme Court has maintained the distinction between a search pursuant to the automobile exception and a search incident to arrest. Finally, he acknowledged that the search at issue in this case might have been justified as a "present" inventory search rather than as an "inevitable" one, but that theory would have required proof of an established departmental policy to inventory such property at the airport as well as proof that the policy was followed. Because the State did not make that argument to the trial court and the record didn't support it, he would have affirmed the court of appeals' opinion and waited for a case in which the issue is squarely presented.

Judge Walker filed a dissenting opinion. He believed that the search violated the Fourth Amendment's proscription against warrantless searches; therefore, the marijuana seized from the luggage should have been suppressed from evidence at trial. First, contrary to the Court's opinion, the search of Price's luggage was not "an incident of the arrest." Neither purpose of the search incident to arrest exception—officer safety and evidence preservation—was threatened here. From the moment of arrest and until the luggage was searched, officers had exclusive control of Price's luggage. There was no danger, after Price was in handcuffs and not holding his bags, that he "might gain access to the property to seize a weapon or

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