



Exploding The Phone

db515

www.explodingthephone.com

Bibliographic Cover Sheet

Title **The State of New Jersey The John Thomas Draper, transcript of proceedings**

Date 1978-02-14

Abstract Dismissal of Draper New Jersey red box charges due to lack of criminal intent.

Keywords John Draper

The following pages may contain copyrighted material. We believe that our use of this material for non-commercial educational and research purposes constitutes "fair use" under Section 107 of U.S. Copyright Law. If you wish to use this material for purposes that go beyond "fair use," you must obtain permission from the copyright owner, if any. While it will make us slightly sad to do so, we will nonetheless comply with requests from copyright owners who want their material removed from our web site.

Municipal Court

WEEHAWKEN, NEW JERSEY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE STATE OF NEW JERSEY

Plaintiff,

vs.

JOHN THOMAS DRAPER,

Defendant

TRANSCRIPT OF PROCEEDINGS

February 14, 1978

BEFORE:

THOMAS M. VENINO, Judge of the Municipal Court

APPEARANCES:

LAWRENCE H. POSNER, ESQ., For the State

HENRY FIRST, ESQ., For Defendant Draper

1 THE COURT: State v. John Thomas Draper.

2 Will you enter your appearances please, gentlemen?

3 MR. POSNER: Excuse me, your Honor. May we have
4 just a minute to set up for these? Thank you. It will
5 just take one minute.

6 (Pause)

7 THE COURT: May I have your appearances please?

8 MR. FIRST: For the record, your Honor, Henry First.
9 I'm with the firm of Brown and Vogelmann, appearing on
10 behalf of Mr. Alan Silber. He's not a member of the
11 firm. I'm doing this as a favor for Mr. Silber.

12 THE COURT: You're a member of the bar though.

13 MR. FIRST: Yes, sir. New Jersey Bar.

14 THE COURT: And you're for the defendant Mr. Draper?

15 MR. FIRST: Mr. Draper, yes.

16 THE COURT: Mr. Posner, for the record please?

17 MR. POSNER: Assistant County Prosecutor Lawrence
18 H. Posner.

19 THE COURT: Mr. First, your client has received a
20 copy of the complaint, I trust?

21 MR. FIRST: Yes, your Honor. I believe the Prose-
22 cutor has a stipulation, if it can be called such, to
23 enter into.

24 THE COURT: Mr. Posner?

25 MR. POSNER: Your Honor, I've reviewed the complaint

1 and I've reviewed the accompanying reports, and I've
2 read the statute this evening when I arrived at Court.
3 I believe that this matter can be settled by a motion
4 to dismiss by the State with a stipulation from the de-
5 fendant that no countercharge will be brought against
6 the complainant for harassment or malicious prosecution
7 or any similarly named offense.

8 The statute under which Mr. John Thomas Draper was
9 charged is 2A:111-7, deals with fraud involving a coin
10 receptacle, in this case a coin telephone, that makes
11 it illegal to possess a device or manufacture a device
12 within intent to sell or distribute, knowing this device
13 is capable of and is intended for the purpose of commit-
14 ting a fraud. My understanding of the facts in this
15 case leads me to believe that the State cannot prove that
16 the defendant possessed this device with the intent to
17 use it unlawfully, nor did he manufacture it for distri-
18 bution to another. It appears that the facts in this
19 case are that Mr. Draper possessed a device capable of
20 being unlawfully used. We have no facts to show that it
21 was unlawfully used or that he was intending to use it
22 unlawfully.

23 I make these statements for the record, recognizing
24 the possibility that this device is only capable of il-
25 legal use and may not have any legal use. However, I

1 still make the statement for the record and make the
2 motion to dismiss these charges.

3 THE COURT: You feel that an essential element of
4 the State's case is not provable at this time. Is that
5 correct.

6 MR. POSNER: If your Honor would pass the statute
7 book to me I'll read the relevant portion of the statute
8 into the record.

9 THE COURT: Counsel has it, I think.

10 MR. POSNER: Thank you.

11 Your Honor, the statute reads, "Any person who with
12 intent to cheat or defraud the owner, lessee, licensee,
13 or other person entitled to the contents of any auto-
14 matic vending machine, slot machine, coin box telephone
15 or other receptacle, depository or contrivance designed
16 to receive lawful coin of the United States of America
17 in connection with the sale, use or enjoyment of pro-
18 perty or service or," and this is the relevant portion
19 of the statute, "who knowing that the same is intended
20 for unlawful use, manufactures for sale or sells or
21 gives away any slug, device or substance intended or
22 calculated to be placed or deposited in such automatic
23 vending machine, slot machine, coin box telephone or
24 other receptacle, depository or contrivance, is guilty
25 of a misdemeanor.

1 I don't believe that the State can prove that there
2 was a manufacture for sale, that there was a sale or
3 that there was an unlawful use. We have here a gentle-
4 man who is capable of constructing an electronic device
5 which might be unlawfully used, but that is not the
6 charge in this case.

7 THE COURT: Mr. Posner, I understand your motion
8 to dismiss then is bottomed on a stipulation from de-
9 fense counsel. Is that Right, Mr. First?

10 MR. FIRST: We have discussed something about that,
11 your Honor, and I think that whether this device is
12 capable of being unlawfully used isn't the issue. The
13 issue is whether there is probable cause. I don't think
14 there's probable cause and I of course join in the
15 Prosecutor's motion to dismiss.

16 THE COURT: Well do I understand there's also a
17 stipulation from the defense with respect to any future
18 action in this case?

19 MR. FIRST: I don't know how that's relevant but if
20 the Court would want me to inquire --

21 THE COURT: Well I think if we're putting it on
22 the record --

23 MR. FIRST: The Prosecutor has mentioned something
24 about that to me but I don't think it's relevant to the
25 motion to dismiss.

1 MR. POSNER: Well, your Honor, as I understand it,
2 there is a strategic distinction between the State making
3 a motion of this type to dismiss charges and a Court
4 finding upon a record that there is no probable cause
5 established. I do not want the complainant in this case
6 to be faced with a charge of harassment or malicious
7 prosecution. I believe that the complainant acted
8 reasonably and in good faith and that's all I'm asking
9 the defendant to concede, that the officer not being a
10 skilled legal scholar did what he believed was proper
11 and best at the time. However, further analysis by
12 the County Prosecutor's office leads us to believe that
13 in fairness and consistent with our oath to see that
14 justice is done we must make this motion.

15 MR. FIRST: May I have a moment to discuss this
16 with my client?

17 THE COURT: Certainly.

18 (Pause)

19 MR. FIRST: Your Honor, my client Mr. Draper agrees
20 not to press any action against the officer who arrested
21 him and that all charges are dropped and the matter is
22 dismissed.

23 THE COURT: Allright.

24 And you have no objection of course to the motion
25 of the prosecution.

1 MR. FIRST: No, sir.

2 MR. POSNER: Your Honor, I would also point out
3 that if there is the unlawful use of telephone equip-
4 ment, it is my understanding that such equipment falls
5 under the Federal Communications Act and as such it
6 would be more appropriate for investigation and prose-
7 cution by the U.S. Attorney's office.

8 THE COURT: In violation of a United States Code
9 if anything? Is that what you're talking

10 MR. POSNER: If the U.S. Attorney feels that this
11 case does not warrant Federal prosecution, I don't be-
12 lieve it's substantial for State prosecution.

13 THE COURT: All right. Based on the statements
14 made by Mr. Posner for the record and being concerned
15 that justice is properly done, I will grant the motion
16 to dismiss. I think the Prosecutor is to be commended
17 for his forthrightness in making the motion after a
18 proper investigation of the facts in this matter, and I
19 thank both you and Mr. First.

20 So the matter will be dismissed.

21 MR. FIRST: And may Mr. Draper be discharged from
22 bail and return of property --

23 THE COURT: Of Course. He'll be discharged from
24 bail immediately

25 MR. FIRST: His property --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: His property will be returned in due course.

MR. FIRST: Thank you ver much.

THE COURT: Thank you, Mr. First.

* * *

C E R T I F I C A T I O N

I, Albert Adler, assigned transcriber, do hereby certify that the foregoing Transcript of Proceedings in the matter of State of New Jersey v. John Thomas Draper, heard in the Weehawken, New Jersey Municipal Court on February 14, 1978 and recorded on Tape No. All9, Index Nos. 030 to 080, is true and accurate to the best of my knowledge and ability.

Dated: February 28, 1978

