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Constitutional Law - Criminal Procedure - Federal Standards of Reasonableness Applied to State Searches and Seizures

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NOTES

CONSTITUTIONAL LAW — CRIMINAL PROCEDURE — FEDERAL STANDARDS OF REASONABLENESS APPLIED TO STATE SEARCHES AND SEIZURES

Petitioner was convicted of illegal possession of marijuana[1] on evidence which police officers had seized when, unannounced and without a warrant, they entered petitioner's apartment by means of a passkey and arrested him. Relying on *Mapp v. Ohio*,[2] petitioner contended the evidence was the product of an unreasonable search and seizure[3] and therefore inadmissible. The California Court of Appeals upheld the conviction,[4] and the California Supreme Court denied hearing. On certiorari the United States Supreme Court affirmed. *Held*, evidence obtained by a state through search and seizure will be admissible in a state court if the search and seizure meets basic standards of reasonableness applicable to both state and federal procedures as determined by the Supreme Court under the fourth amendment. *Ker v. California*, 374 U.S. 23 (1963).[5]

The fourth amendment of the United States Constitution establishes a right to be secure against "unreasonable searches and seizures." *Weeks v. United States*[6] held evidence seized in violation of this amendment to be inadmissible, upon timely objection, in federal criminal prosecutions.[7] This rule of exclusion originally was applicable only to evidence seized by federal of-

1. CALIF. HEALTH & SAFETY CODE § 11530.

2. 367 U.S. 643 (1961).

3. "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

4. People v. Ker, 195 Cal. App. 2d 246, 15 Cal. Rptr. 767 (1961).

5. The majority opinion (8-1) dealt only with the law to be applied. On the merits, there was no majority. Four Justices voted for affirming the decision of the California court (Clark, Black, Stewart, and White); four for reversal (Warren, C.J., Goldberg, Douglas, and Brennan); and one Justice (Harlan) concurred in the vote for affirmance while echoing a fading dissent from the decision in *Mapp v. Ohio*.

6. 232 U.S. 383 (1914).

7. *Weeks* actually held that evidence seized in violation of the fourth amendment must be returned upon timely demand by the defendant, but it has become the authority for the proposition that the evidence is inadmissible. Agnello v. United States, 269 U.S. 20 (1925). See generally appendix to Harris v. United States, 331 U.S. 145, 155 (1946).

ficers[8] for use in federal courts;[9] by judicial expansion, evidence unreasonably seized by state officers was excluded from federal courts,[10] and that unreasonably seized by federal officers from state courts.[11] The sole criterion for testing the constitutionality of the seizure was a broad standard of reasonableness[12] — purely a matter for judicial determination.

Prior to *Wolf v. Colorado*[13] no case suggested that state searches and seizures were restricted by the fourth amendment or its underlying principles through the fourteenth amendment.[14] Nor was there any suggestion that the federal exclusionary rule had to be applied in state courts.[15] In *Wolf*, the Supreme Court held that the right to privacy, which is at the "core of the fourth amendment,"[16] was enforceable against the states through the due process clause of the fourteenth amendment.[17] Although the Court did not delineate the bounds of the core of the fourth amendment, it seems certain from this language that, though some restrictions were placed on state searches and seizures, they would not be coextensive with every limitation imposed by the fourth amendment itself. However, the Court limited the effectiveness of this holding by further indicatiing that the exclusionary rule of *Weeks* was not an essential element of the fourth amendment, but rather a judicially created rule of evidence for federal courts not obligatory on the states.[18] Con-

8. See, *e.g.*, Lustig v. United States, 338 U.S. 74 (1949); Byars v. United States, 273 U.S. 28 (1927).

9. Wolf v. Colorado, 338 U.S. 25 (1949).

10. Elkins v. United States, 364 U.S. 206 (1960).

11. Rea v. United States, 350 U.S. 214 (1956). *But cf.* Wilson v. Schnettler, 365 U.S. 381 (1961). The applicability of the federal rule of exclusion has thus been broadened from the original requirement of participation by both federal courts and federal officers to cover situations in which *either* a federal officer or a federal court was a party.

12. See generally Comment, *Law of Search and Seizure — Federal Standards of Reasonableness*, 28 BROOKLYN L. REV. 302 (1962).

13. 338 U.S. 25 (1949).

14. The first eight amendments had consistently been held to have no application to the states. Adamson v. California, 332 U.S. 46 (1947); Palko v. Connecticut, 302 U.S. 319 (1937); Twining v. New Jersey, 211 U.S. 78 (1908).

15. At common law, relevant evidence was admissible regardless of the manner in which it was obtained. 8 WIGMORE, EVIDENCE § 2183 (3d ed. 1940).

16. "The security of one's privacy against arbitrary intrusion by the police — which is at the core of the fourth amendment — is . . . implicit in the 'concept of ordered liberty' and as such enforceable against the states through the due process clause." 338 U.S. 25, 28 (1949).

17. No state shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV.

18. 338 U.S. 25, 28-29 (1949). Consequently, in state courts the exclusionary rule could be accepted or rejected as the lawmakers of the various states chose. See People v. Cahan, 44 Cal. 2d 434, 282 P.2d 905 (1955) (adopted exclusionary rule in California); People v. Defore, 242 N.Y. 13, 150 N.E. 585 (1926) (rejected

sequently, in cases subsequent to *Wolf*, evidence seized in a manner offensive to the fourth amendment was not inadmissible in a state court under the Federal Constitution unless it could be said that a conviction based on such evidence violated the due process clause.[19]

The Supreme Court overruled *Wolf* in *Mapp v. Ohio*,[20] holding that the fourth amendment was applicable to the states through the fourteenth amendment, and that the exclusionary rule was constitutionally required by both amendments.[21] This pronouncement was explicit in its command — that evidence seized in violation of the federal constitution was inadmissible in a state court — but no definitive criteria were established for the future determination of the constitutionality of a state search and seizure. It was unclear whether the criteria to be utilized in determining admissibility in state courts under the fourteenth amendment were the same as those applicable to federal courts under the fourth amendment.[22]

The Court in the instant case resolved this uncertainty[23] following in the wake of the *Mapp* decision by holding that the states were to be governed by the same constitutional standards of reasonableness that the Supreme Court had evolved for the federal government.[24] However, the Court emphatically asserted

exclusionary rule in New York). See also Elkins v. United States, 364 U.S. 206, 224-32 (1961) (appendix by the Court).

19. See Irvine v. California, 347 U.S. 128 (1954) (evidence obtained by electronic listening device held not violative of due process); Rochin v. California, 342 U.S. 165 (1952) (forcibly extracting contents of defendant's stomach held to "shock the conscience of the people").

20. 367 U.S. 643 (1961).

21. "Therefore, in extending the substantive protections of due process to all constitutionally unreasonable searches — state or federal — it was logically and constitutionally necessary that the exclusion doctrine — an essential part of the right to privacy — be also insisted upon as an essential ingredient of the right newly recognized by the *Wolf* case." *Id.* at 655-56. In reaching this decision, the Court conceptually distorted the *Wolf* holding. *Wolf* seemed to talk of the right to privacy which was enforceable against the states through the due process clause as being, incidentally, the same right which was at the core of the fourth amendment, although not derived therefrom; whereas, *Mapp* indicated that the right to privacy in *Wolf* was the result of *Wolf's* holding that the fourth amendment was enforceable against the states.

22. Since the search and seizure in *Mapp* were clearly unconstitutional under any standard, no necessity was presented for developing definitive criteria. 367 U.S. 643 (1961).

23. For discussion of some of the problems left by the *Mapp* decision, see Traynor, *Mapp v. Ohio at Large in the Fifty States*, 1962 DUKE L.J. 319; Wilson, *Perspectives of Mapp v. Ohio*, 11 KAN. L. REV. 423 (1963); Comment, *Aftermath of Mapp v. Ohio — Collateral Problems in the Law of Evidence*, 29 BROOKLYN L. REV. 98 (1962).

24. "We specifically held in *Mapp* that this constitutional prohibition [of convicting a man of crime by using evidence seized in violation of the fourth amend-

that this holding did not force the states to adopt all the intricate rules governing admissibility of evidence in federal criminal trials; evidence there may be excluded as a result of the Supreme Court's exercise of its supervisory jurisdiction over lower federal courts[25] as well as for constitutional noncompliance.[26] In state courts, however, admissibility was restricted only by constitutional proscriptions since the Supreme Court asserted no such supervisory power over state courts.[27]

Although the standard of reasonableness to be applied in state courts is predetermined, it may be difficult to discern whether a pronouncement by the court in a particular case was constitutional or supervisory.[28] Nevertheless, states are free to develop their own rules[29] governing search and seizure according to the practical demands of local law enforcement provided they do not transgress the fourth amendment proscription of unreasonableness;[30] if they fall within the bounds of reasonableness, these rules need not be wholly consistent with federal rules in analogous situations.[31]

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ment] is enforceable against the states through the fourteenth amendment. This means . . . that the fourth amendment 'is enforceable against them [the states] by the same sanction of exclusion as is used against the federal government,' by the application of the same constitutional standard prohibiting 'unreasonable searches and seizures.'" 374 U.S. 23, 27 (1963).

"[T]he reasonableness of a [state] search is . . . [to be determined] . . . from the facts and circumstances of the case and in the light of the 'fundamental criteria' laid down by the fourth amendment and in *opinions of this court in applying that amendment.*" 374 U.S. 23, 28 (1963). (Emphasis added.)

25. The Supreme Court is given statutory power to formulate rules of evidence and procedure to be applied in federal criminal prosecutions, 62 Stat. 846, 18 U.S.C. § 3771 (1958); United States v. Papworth, 156 F. Supp. 842 (N.D. Tex. 1957). Thus evidence may be excluded even though not violative of the Constitution if the Court in exercise of this supervisory jurisdiction deems such evidence inadmissible. See Elkins v. United States, 364 U.S. 206 (1960); McNabb v. United States, 318 U.S. 332 (1943).

26. See, *e.g.*, Weeks v. United States, 232 U.S. 383 (1914).

27. *But see* Cleary v. Bolger, 371 U.S. 392 (1963); Rea v. United States, 350 U.S. 214 (1956); Stefanelli v. Minard, 342 U.S. 117 (1951).

28. Only those constitutional pronouncements will be valid as precedents for application in state courts. See, *e.g.*, Chapman v. United States, 365 U.S. 610 (1961); Silverman v. United States, 365 U.S. 505 (1961); Goldman v. United States, 316 U.S. 129 (1942); Bickel, *The Supreme Court — 1960 Term*, 75 HARV. L. REV. 40, 157-58 (1961).

29. The term "rules" as here employed encompasses both statutory law and judicial decisions. It should be noted that insofar as statutes are concerned, even under the decision in *Wolf*, "were a state affirmatively to sanction such [unconstitutional] police incursion into privacy, it would run counter to the guaranty of the fourteenth amendment." See Salesburg v. Maryland, 346 U.S. 545 (1954); People v. Gonzales, 356 Mich. 247, 97 N.W.2d 16 (1959).

30. The court in the instant case applied the constitutional test of reasonableness to each facet of the action by the police — the existence of probable cause, the arrest without a warrant, the unannounced entry, and the incidental search.

The court found the fact that police officers had observed petitioner rendezvous with a known narcotics supplier, and had received information from a reliable

The protection of citizens against police conduct in disregard of constitutional rights is now secured by probably the most effective device available — the removal of the incentive to disregard it.[32] Yet, in protecting this right, the practical demands of effective criminal law enforcement must not be overlooked. In the final analysis, the difficult though not impossible task of attempting to achieve a workable balance between conflicting interests becomes the basic determinant. By permitting states to design their most effective rules governing search and seizure, conditioned only upon their compliance with judicially ascertained minimum standards on constitutionality under the

"informer" that petitioner was selling marijuana from his apartment was sufficient to satisfy the requirements of probable cause; consequently, the arrest without a warrant was reasonable. United States v. Rabinowitz, 339 U.S. 56 (1950); Harris v. United States, 331 U.S. 145 (1947).

The unannounced entry was the issue which prevented the court from reaching a majority in applying the law to the facts. See note 5 *supra*. CALIF. PENAL CODE § 844 permitted a forcible entry for the purpose of effecting a lawful arrest after a demand for admittance and an announcemnt of authority had been made; but a judicial exception to the statute allowed entry without such announcement if announcement would increase the peril or frustrate the arrest. People v. Maddox, 46 Cal. 2d 301, 294 P.2d 6 (1956). The Supreme Court held that the California rule was reasonable in view of the easily disposable nature of narcotics, but noted that it had expressly reserved the question of the validity of such an exception under the similar federal statute. 62 Stat. 820, 18 U.S.C. § 3109 (1958). See Wong Sun v. United States, 371 U.S. 471 (1963); Miller v. United States, 357 U.S. 301 (1958). The four dissenters (Warren, C.J., Douglas, Goldberg, and Brennan, JJ.) believed that the unannounced intrusion into petitioner's privacy by the arresting officers violated the fourth amendment.

The Louisiana statute and judicial exception tracks that of California. LA. R.S. 15:72 (1950); Louisiana *ex rel.* Naylor v. Walker, 206 F. Supp. 544 (E.D. La. 1962), *cert. denied*, 371 U.S. 957 (1963); State v. Aias, 243 La. 946, 149 So. 2d 400 (1963). It is contemplated that this judicial exception be incorporated into the revision of the Code of Criminal Procedure by the Louisiana State Law Institute. Title V, *Arrest* § 24 (Exposé des Motifs No. 2, May 15, 1959).

The examination of the reasonableness of the incidental search concerned two different parcels of marijuana seized: the first was plainly open to view when the officers entered the apartment, and the second was uncovered during the course of a search of petitioner's apartment. As to the first, the Court found that the fourth amendment had no application since no search was involved. United States v. Lefkowitz, 285 U.S. 452 (1932); United States v. Lee, 274 U.S. 559 (1927). The Court declined to rule on the validity of a search which preceded the lawful arrest even though such was condoned under California law as long as probable cause for the arrest existed at the outset. Willson v. Superior Court of San Diego County, 46 Cal. 2d 291, 294 P.2d 36 (1956). As to the second, the Court found that the search was reasonable under the fourth amendment. It accepted as settled that a search incident to a lawful arrest was likewise lawful. Harris v. United States, 331 U.S. 145 (1947); Marron v. United States, 275 U.S. 192 (1927); State v. Cade, 244 La. 534, 153 So. 2d 382 (1963).

31. See People v. Dinan, 11 N.Y.2d 1057, 184 N.E.2d 184 (1962), *cert. denied*, 371 U.S. 877 (1963); Williams v. Ball, 294 F.2d 94 (2d Cir. 1961), *cert. denied*, 368 U.S. 990 (1962), holding that the *Mapp* decision did not prohibit a state's receiving evidence merely because the seizure and divulgence of the evidence would violate a federal statute. Would evidence seized in violation of a state statute be likewise admissible in the courts of that state if the seizure be reasonable though illegal?

32. Elkins v. United States, 364 U.S. 206, 217 (1960).

fourth amendment, the decisions in *Mapp* and *Ker* help to attain this balance.

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CRIMINAL LAW — CONSTITUTIONALITY OF DRUG ADDICT STATUTE

Relators had pleaded guilty to a charge of drug addiction under Louisiana R.S. 40:962A.[1] They later instituted habeas corpus proceedings attacking this statute on grounds that any punishment for the status of addiction is cruel and unusual in violation of the eighth and fourteenth amendments of the United States Constitution since addiction may well be involuntary. The district judge dismissed the proceedings. On certiorari the Louisiana Supreme Court affirmed. *Held,* the Louisiana drug addict statute penalizes the intentional and habitual use of narcotics leading to addiction — not merely the resultant status or condition. *State* ex rel. *Blouin v. Walker,* 244 La. 699, 154 So. 2d 368 (1963).

It is now well settled that regulation of narcotics and drugs is a valid exercise of a state's police power.[2] The very serious nature of the biological and psychological consequences, the close relationship of crime and addiction, and the alarming increase of addiction since World War II have prompted the states to provide severe penalties to curb the narcotics problem.[3] Such statutes should be construed in light of their underlying purpose to protect public health from the insidious consequences of the unauthorized use of these drugs.[4]

In *Robinson v. State of California*[5] the United States Supreme Court held unconstitutional a California law making narcotic addiction a criminal offense with a mandatory imprison-

1. LA. R.S. 40:962A (1950): "It is unlawful for any person to manufacture, possess, have under his control, sell, give, deliver, transport, prescribe, administer, dispense, or compound any narcotic drug, except as provided in this Sub-part, *or to be or to become an addict as defined in R.S. 40:961.*" (Emphasis added.)

2. Minnesota *ex rel.* Whipple v. Martinson, 256 U.S. 41 (1921); 17A AM. JUR. *Drugs and Druggists* § 9 (1957). *Accord,* State v. Martin, 192 La. 704, 189 So. 109 (1939); State v. Kumpfert, 115 La. 950, 40 So. 365 (1905); Allopathic State Board of Medical Examiners v. Fowler, 50 La. Ann. 1358, 24 So. 809 (1898). See also State v. Thomas, 224 La. 431, 69 So. 2d 738 (1954).

3. See *Drug Addiction: Crime or Disease?,* 1961 A.B.A.—A.M.A. JOINT COMMITTEE ON NARCOTIC DRUGS REP.

4. Territory v. Hu Seong, 20 Hawaii 669 (1911).

5. 370 U.S. 660 (1962).