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ARREST - SEARCHES AND SEIZURES - REASONABLE GROUND FOR ARREST WITHOUT WARRANT

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RECENT DECISIONS

ARREST — SEARCHES AND SEIZURES — REASONABLE GROUND FOR ARREST WITHOUT WARRANT — The defendant was indicted for receiving and concealing seventy grains of heroin unlawfully imported into the United States. The government proposed to introduce the seized drug in evidence at the trial of the defendant. It appeared that the federal narcotic agent who had made the arrest without a warrant had seen the defendant enter and leave a grocery store in which narcotic transactions were known to have taken place. He knew the defendant to be an addict, and immediately preceding the arrest, in accordance with a prearranged code, he had been informed by a companion of the defendant, known to be reliable, that the defendant would have narcotics in her possession. *Held*, the defendant's motion to suppress the evidence was sustainable, for the arrest and the subsequent search and seizure without a warrant were unlawful since there was no showing that the officer had reasonable grounds to believe that a felony had been committed, other than information received from a third person, which itself was not more than mere speculation or guesswork. *United States v. Clark*, (D. C. Mo. 1939) 29 F. Supp. 138.¹

It has generally been recognized that an officer can lawfully make an arrest without a warrant when he has reasonable grounds to believe that a felony has been committed by the person arrested, and such an arrest is lawful although the arrestee may in fact be innocent.² If the arrest is lawful, then the subsequent search and seizure of goods on the arrestee without a warrant is also considered lawful and not violative of the Fourth Amendment of the Federal Constitution or of analogous provisions in the respective state constitutions.³ The court in the instant case held unlawful the arrest of a person who at the time of the arrest was violating the law and should have been arrested. The courts are in conflict as to exactly what will constitute a reasonable and probable cause for an arrest without a warrant, for this is really a question of the judicial reaction of each court to the particular fact situation which is under consideration. If, in holding the arrest in this case unlawful, the court intended to repudiate the rule that information received from a credible third person may constitute reasonable

¹ On a petition for rehearing, it was alleged that the arrest had been in fact made by a municipal officer who acted on the direction of the federal agent. *Held*, assuming the allegation to be true, the arrest was nevertheless unlawful, since the immunities granted citizens by the Fourth Amendment would be valueless if they could be circumvented by a direction by a federal officer, himself unable to make the arrest, to a state officer to make the arrest.

² See Wilgus, "Arrest without a Warrant," 22 MICH. L. REV. 541, 673 (1924). In this article Professor Wilgus discusses all of the general problems which arise under arrest without a warrant.

³ *Agnello v. United States*, 269 U. S. 20, 46 S. Ct. 4 (1925); see 51 A. L. R. 424 (1927); also, 32 A. L. R. 680 at 681 (1924), "The right without a search warrant to search the person of one lawfully arrested, and to seize articles found on him or in his custody, such as weapons, evidences of the crime charged, etc., is well established."

grounds which will justify an arrest without a warrant,⁴ then it would seem to be abandoning a rule which is essentially sound and desirable from a practical standpoint; but if the court meant to hold that on the facts of this particular case the federal agent had no reasonable grounds for believing the defendant guilty, then it would seem that the court's reaction to, and interpretation of, the facts is unsound. All that should be required of the arresting officer in a case of this kind is that he have before him such facts as would lead a reasonably cautious man to believe the defendant guilty of a felony. Here, the information from the informer would appear plausible to the officer, in view of the officer's other knowledge of the situation involved, and it could easily be said that the officer acted reasonably in making the arrest. It is not necessary that the officer have all the evidence necessary to convict the defendant of the suspected illegal acts;⁵ it should be enough if he has facts, including information from third persons, that would lead a prudent man to believe that the suspect is committing a felony. A survey of the facts in this case would lead one to the conclusion that the court was unnecessarily strict.⁶ In considering the strength of the facts on which the agent acted in this case, the court is undoubtedly in line with the authorities in giving no weight, in the absence of statute, to the fact that the officer was later proved to be correct in his conclusion that the arrestee was committing a crime.⁷ However, this view necessarily makes law enforcement very difficult, and it is also open to criticism because it cannot be said that the fact of a defendant's guilt has no relation to the reasonableness of the grounds on which the officer acted.⁸ It would seem that the result reached in the instant case, whether it be because the court was repudiating a sound rule, or because of the court's evaluation of the facts on which the agent acted, is undesirable, and the defendant's motion to suppress the evidence should have been denied.

⁴ 6 C. J. S. 599 (1937); *Grau v. Forge*, 183 Ky. 521, 209 S. W. 369 (1919). In *Gaines v. State*, 28 Okla. Cr. 353, 230 P. 946 (1924), the court held an arrest without a warrant valid and the search and seizure of the narcotics lawful, on the ground that a felony had been committed and the officers had reasonable grounds to believe that the defendant was the perpetrator. The officers' belief was partially based on an affidavit filed in the county court accusing the defendant of violating the narcotics law.

⁵ *Husty v. United States*, 282 U. S. 694, 51 S. Ct. 240 (1931), where the court held lawful an arrest which was predicated on a telephonic accusation of the defendant, the officer's knowledge of the suspect's reputation, and the attempt of the defendant's companions to escape at the approach of the officers, factors which together constituted reasonable basis for the inference that the defendant's car illegally contained liquor.

⁶ Cf. *State v. Hum Quock*, 89 Mont. 503, 300 P. 220 (1931).

⁷ *Testolin v. State*, 188 Wis. 275, 205 N. W. 825 (1925), noted 24 MICH. L. REV. 504 (1926).

⁸ See Waite, "Public Policy and the Arrest of Felons," 31 MICH. L. REV. 749 (1933).