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SEARCHES AND SEIZURES - REASONABLENESS OF ARREST - USE OF EVIDENCE SECURED THROUGH UNREASONABLE ARREST- STATUTORY CHANGES

SEARCHES AND SEIZURES — REASONABLENESS OF ARREST — USE OF EVIDENCE SECURED THROUGH UNREASONABLE ARREST — STATUTORY CHANGES — Police officers patrolling Detroit streets in a radio-equipped police car stopped a taxicab in which defendants Stein and Massie were riding. From the statement of the court, the officers' attention was attracted to the cab "because it was 'driving pretty fast,' about 32 miles per hour." The police car pursued it for a block or more; as it drew abreast of the cab defendant Stein was seen to reach into his pocket as if to take something out and put it behind him. "There was something about the cab, probably aside from its speed, which suggested to officer Sullivan that he ought to look over the occupants. When he saw Stein make the motion, his suspicions were aroused generally and, like a good officer, he decided to investigate further." The police car forced the cab to the curb, the officers got out, arrested Stein and Massie and searched them. On Massie's person was found a revolver and on the seat behind Stein a pistol. The two were charged with carrying concealed weapons without a permit, which is a felony in Michigan whether the weapon be on the person or in the vehicle occupied.[1] The trial judge refused to admit evidence as to these weapons, on the ground that it had been "obtained by illegal arrest and search." As there was no other evidence, he discharged the defendants. The People asked a writ of mandamus "to compel the magistrate to reinstate the proceedings and receive the weapons in evidence." [2]

[1] Mich. Comp. Laws (1929), sec. 16753; Mason's Supp. (1933), sec. 17115-227.
[2] Under Michigan procedural law the matter could not be handled by appeal as

Held, the action of the trial judge was proper.[3] *People v. Stein and Massie*, (Mich. 1933) 251 N. W. 788.

This decision is of the utmost practical importance to the public. Quasi-official records indicate that one out of every four guilty gun-men arrested in Detroit is promptly turned loose upon society, not because there is doubt of his guilt, but because the judicial rule of the State precludes proof of the fact if the evidence has been secured by what the court considers unlawful search.[4] How many felons of other types have likewise been released because of the rule, the records do not show. But the rule, of course, applies to evidence of burglary as well as of bootlegging; to concealed murders[5] as well as to concealed weapons. The Michigan court's original assertion of the rule that evidence of guilt obtained through an unlawful arrest is unusable for conviction was not forced by existing precedents; it appears to have been a judicial choice of public policies. The Michigan Constitution contains the common provision prohibiting "unreasonable" searches and seizures. After the advent of National Prohibition the Michigan Supreme Court discovered in the federal rule excluding evidence obtained by unreasonable search virtues to which it had theretofore been oblivious.[6] In *People v. Marxhausen*[7] it committed Michigan to what is still the minority view of wise policy — that proper effectiveness of the constitutional prohibition necessitates exclusion of evidence secured in disregard of it.[8] With this choice of policies determined, the problem in concrete Michigan cases was narrowed to whether or not the particular search was or was not "unreasonable" in the constitutional sense. Search following on "unlawful" arrest has generally been held unreasonable. And by the majority, though not necessarily the better reasoned, common law view, the actual guilt or innocence of the person arrested by a police officer has nothing whatever to do with the legality of the arrest. Arrest of an innocent man was lawful if the arresting officer had reasonable ground to believe him guilty; arrest of a guilty man was not lawful unless the arresting officer did have reasonable ground to believe him guilty. Thus far the court had justification in precedent for its decision in the *Stein-Massie* case. In 1927, however, the Michigan legislature changed this judge-made rule by an explicit declaration that every arrest is lawful if the person arrested is in fact guilty of felony.[9] This

the People have no right of appeal from a trial judge's rulings in a criminal case no matter how demonstrably improper. The procedure here used had precedent in Voorhies v. Judge of Recorder's Court, 220 Mich. 155, 189 N. W. 1006 (1922).

[3] Sharpe and Butzel, JJ., thought the dismissal proper as to Massie, whose weapon was found on his person, but thought that Stein, whose gun was found on the seat, might properly have been convicted. Weadock, J., thought both arrests lawful.

[4] For the data see 31 MICH. L. REV. 749, 763 (1933).

[5] The danger to the public in some such probability is what led the New York Court of Appeals to reject the rule of exclusion. People v. Defore, 242 N. Y. 13, 150 N. E. 585 (1926).

[6] Compare Rosenthal v. Circuit Judge, 98 Mich. 208, 57 N. W. 112 (1893); Cluett v. Rosenthal, 100 Mich. 193, 58 N. W. 1009 (1894). And see Gault, "Requirements as to Search Warrants [etc.]," 4 MICH. ST. BAR J. *163 (1925).

[7] 204 Mich. 559, 171 N. W. 557 (1919).

[8] The division of States is noted in Atkinson, "Prohibition and the Doctrine of the Weeks Case," 23 MICH. L. REV. 748 (1925).

[9] Mich. Comp. Laws (1929), sec. 17149. Similar statutes have been enacted in at least 14 other States. See 31 MICH. L. REV. 752 n. (1933).

statute does not in any way derogate from the innocent citizen's constitutional immunity from arrest. An officer who interferes with an innocent person is acting precisely as unlawfully and is as liable as though there were no statute. The statute does no more than legalize the arrest of a guilty person, so that the evidence secured by the arrest can be used. Defendants Stein and Massie had in fact committed a felony and were still engaged in it when arrested. Under the statute, therefore, there was no doubt of the lawfulness of the arrest. And the arrest being lawful, the accepted rule is that consequent search is lawful and evidence so secured is admissible. The court, however, seems to have been unaware of the existence of this statute. Though it has been on the books for six years, trial judges in Detroit have either been ignorant of it, or have made a practice of ignoring it.[10] It was not called to the supreme court's attention in any of the briefs filed in the principal case, nor does the court's opinion advert to it in any way. This being so, it is to be hoped that a rehearing of the case will be granted, with the possibility of a decision more in accord with the necessities of public safety.[11]

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[10] Its existence has heretofore been called to judicial attention, in, e.g., "Arrest of Crime — 'The Law's Crazy Business,'" 30 MICH. L. REV. 1288 (1932).

[11] As to the constitutionality of the statute, see Waite, "Public Policy and the Arrest of Felons," 31 MICH. L. REV. 749 (1933).