Michigan Law Review

Volume 57 | Issue 5

1959

Constitutional Law - Search and Seizure - Admissibility in a Federal Court of Evidence Illegally Obtained by State Officers

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CONSTITUTIONAL LAW—SEARCH AND SEIZURE—ADMISSIBILITY IN A FEDERAL COURT OF EVIDENCE ILLEGALLY OBTAINED BY STATE OFFICERS—In response to a call from a citizen whose suspicions had been aroused by the actions of the defendant and a companion, Maryland police unlawfully arrested the companion and searched the premises occupied by him and the defendant. As a result of this search, money was found which had been stolen in the District of Columbia. Although the search was illegal under Maryland law and in violation of the Fourteenth Amendment, this money was used as evidence to convict the defendant of housebreaking and larceny in the District of Columbia federal court. On appeal, *held,* conviction reversed and remanded for a new trial excluding such evidence. As the evidence was obtained in violation of the Constitution, it should be excluded on principle and as a matter of sound judicial policy even though only state officers participated in the unlawful proceedings. *Hanna v. United States,* (D.C. Cir. 1958) 260 F. (2d) 723.

At common law the admissibility of evidence at a trial was not affected by the illegality of the means of acquisition.[1] In light of the constitutional protection against illegal searches and seizures, however, the federal courts have excluded all evidence thus obtained by federal officers.[2] In *Weeks v. United States,*[3] the Supreme Court stated that since the Fourth Amendment does not apply to the states, evidence illegally obtained by a state officer would be admissible in the federal courts. The Court, however, did not directly consider whether the act involved in that case violated the Fourteenth Amendment. In the later case of *Wolf v. Colorado*[4] it was held that freedom from unreasonable search and seizure is implicit in the "concept of ordered liberty" and consequently is embodied in the protection afforded under the due process clause of the Fourteenth Amendment. Nevertheless, the Court in *Wolf* further held that whether evidence obtained by an unconstitutional act is admissible in state criminal proceedings is a question not controlled by the Fourteenth Amendment, but is for the states to decide.[5] Even after the *Wolf* case lower federal courts have continued to allow, on the authority of *Weeks,* the introduction of evidence illegally acquired by

1 8 WIGMORE, EVIDENCE, 3d ed., §2183 (1940).

2 Weeks v. United States, 232 U.S. 383 (1914).

3 Id. at 398.

4 338 U.S. 25 (1949). See 50 COL. L. REV. 364 (1950), for a good discussion of this case.

5 But see the dissenting opinions of Justices Douglas, Murphy, and Rutledge in that case, where it is argued that such evidence should be excluded from state criminal proceedings.

state officers.[6] In reaching a contrary conclusion the court in the principal case stated that *Wolf* had overruled the idea upon which the *Weeks* decision had predicated the allowance of state-seized evidence—the idea that such state action is not unconstitutional—and that therefore *Weeks* is no longer controlling authority.[7] The court's reasoning, however, seems erroneous. *Weeks* stated only that such actions by state officers did not violate the Fourth Amendment, and the effect of *Wolf* was merely to extend through operation of the Fourteenth Amendment the unconstitutionality of illegal searches and seizures to state action. This extension did not affect the ultimate question whether the Fourth Amendment requires exclusion of evidence which, though illegally seized, was not obtained in violation of that amendment.

Whether the holding of the principal case is sound may depend on how the federal rule which excludes illegally-seized evidence is characterized. Generally this rule has been interpreted as merely a rule of evidence.[8] In support of this view, it should be noted that the Supreme Court has indicated that the admissibility of illegally-obtained evidence is largely a matter of judicial discretion[9] and has also stated that without a rule of exclusion the Fourth Amendment might as well be stricken from the Constitution.[10] The implication of such statements is that the exclusionary rule is not embodied in the Constitution, but rather is merely designed by the courts to insure protection of the constitutional freedom from unreasonable search and seizure. The state courts which admit such evidence have emphasized that exclusion neither curtails the unconstitutional acts nor punishes the offenders, but instead aids the guilty party to the detriment of society.[11]

[6] E.g., Watson v. United States, (5th Cir. 1955) 224 F. (2d) 910; Williams v. United States, (9th Cir. 1954) 215 F. (2d) 695; United States v. Moses, (7th Cir. 1956) 234 F. (2d) 124, where it is said at 125 that the duty of the federal courts to enforce the Constitution "neither necessitates nor justifies the exclusion of evidence so obtained by state officials. Weeks v. United States. . . ." See also Byars v. United States, 273 U.S. 28 (1927), which stated in dictum that the federal government could avail itself of evidence improperly seized solely by state officers.

[7] Principal case at 726.

[8] See Irvine v. California, 347 U.S. 128 (1954). See also Wolf v. Colorado, note 4 supra, concurring opinion at 39, where Justice Black stated that he agreed with the majority's implication that the rule is judicially created and not a command of the Fourth Amendment. See also Rule 26, Fed. Rules Crim. Proc. 18 U.S.C. (1952). For discussions on the admissibility of evidence acquired through an illegal search and seizure, see 134 A.L.R. 819 (1941); comment, 64 HARV. L. REV. 1304 (1951).

[9] See Irvine v. California, note 8 supra, at 134.

[10] See Weeks v. United States, note 2 supra, at 393. Concerning other methods to protect a citizen from violations of his constitutional rights, see Rudd, "Present Significance of Constitutional Guarantees Against Unreasonable Searches and Seizures," 18 UNIV. CIN. L. REV. 387 (1949). For a discussion of remedies available to a citizen for unreasonable searches and seizures by police, see Foote, "Tort Remedies for Police Violations of Individual Rights," 39 MINN. L. REV. 493 (1955).

[11] E.g., State ex rel. Kuble v. Bisignano, 238 Iowa 1060, 28 N.W. (2d) 504 (1947);

This reasoning, however, should not cause a reversal of the principal case since the intended federal protection from invasions of privacy is extended to everyone and there has never been any indication that such protection is to enure only to the innocent.[12] The central thesis of the Supreme Court's position regarding exclusion has not been that federal agents should not obtain the tainted evidence but, rather, that federal courts should not make use of it. In view of this, it would be incongruous to hold that a federal court must protect a citizen's constitutional right when the actions of a federal officer are involved but need not afford protection of the same right merely because a state officer was the wrongdoer. As a rule of evidence controlling federal courts, the rule of exclusion was thus properly applied in the instant case.

The other possible basis for the inadmissibility of such evidence in the federal courts is that exclusion is commanded by the Fourth Amendment.[13] Before it can be determined whether the evidence in the principal case must be excluded on this basis, however, it is necessary to determine the purpose of the Fourth Amendment. The purpose of this amendment may be singular in that it is merely to protect a citizen from unreasonable search and seizure by federal officers. This purpose is effectuated, first, by prohibiting federal officers from engaging in the unconstitutional acts, and, second, if they do violate this rule, by excluding all evidence obtained as a result of their unlawful conduct. Thus under this view the evidence obtained by state officers in the principal case through a violation of the Fourteenth Amendment *need not* be excluded, as the Fourth Amendment would have no effect on the state action. If on the other hand the purpose is dual—first, to prohibit federal officers from unconstitutional searches and

Huff v. State, 82 Ga. App. 545, 61 S.E. (2d) 787 (1950). Cases which exclude evidence obtained by illegal search and seizures are State v. Hunt, (Mo. 1955) 280 S.W. (2d) 37 and People v. Cahan, 44 Cal. (2d) 434, 282 P. (2d) 905 (1955), which overruled previous decisions in California and followed the rule of exclusion on the ground that it was the only way to enforce the constitutional guarantee of the Fourteenth Amendment. For adoption of the exclusionary rule by statute, see N.C. Gen. Stat. (1953) §15-27; R.I. Gen. Laws (1956) §9-19-25; Tex. Code Crim. Proc. (Vernon, 1941) tit. 8, art. 727a.

12 See People v. Cahan, note 11 supra, where the court stated that it is impossible to protect the rights of innocent people if the police are permitted to justify unreasonable searches and seizures on the ground that they assumed their victims were criminals.

13 See Wolf v. Colorado, note 4 supra, at 28, where it is said: "In *Weeks* . . . this Court held that . . . the Fourth Amendment barred the use of evidence secured through an illegal search and seizure." See also the dissenting opinion of Justice Douglas in Irvine v. California, note 8 supra, where it is stated that such *"unconstitutional"* evidence should not be used in state criminal proceedings. But compare the majority opinion of Justice Douglas in Rea v. United States, 350 U.S. 214 (1956), allowing an injunction against a federal officer to prevent him from using illegally-seized evidence as the basis of testimony in a state court, on the ground, not of constitutional mandate, but supervisory power over federal officers. See generally Grant, "Constitutional Basis of the Rule Forbidding Use of Illegally Seized Evidence," 15 So. CAL. L. REV. 60 (1941), where the writer criticizes the constitutional basis for the rule of exclusion.

seizures and second, to prevent federal courts from availing themselves of any unconstitutionally obtained evidence[14]—then the evidence in the principal case acquired through a violation of the Fourteenth Amendment must be excluded. Of the two interpretations, the sounder view would recognize only the single purpose. Certainly it is hard to conceive that the Fourth Amendment is a direction toward federal courts independent of any acts of federal officers,[15] particularly when the language of the amendment specifically prohibits only the act of unreasonable search and seizure. It would thus appear that the exclusion of evidence in the principal case on the basis of a constitutional command would be quite tenuous. The result, which can safely be supported as a rule of evidence, nevertheless is sound in giving efficacy to the constitutional mandate requiring freedom from unreasonable search and seizure.

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[14] See Justice Douglas' dissenting opinion in Irvine v. California, note 8 supra.

[15] See Chief Justice Warren's statement in Benanti v. United States, 355 U.S. 96 at 102, n. 10 (1957), to the effect that: "It has remained an open question in this Court whether evidence obtained solely by state agents in an illegal search may be admissible in federal court despite the Fourth Amendment." Apparently Chief Justice Warren feels that the Fourth Amendment may not operate to preclude a federal court from availing itself of such evidence. His statement also seems to indicate that the Weeks case, which stated that such evidence is admissible, may no longer be controlling.