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Criminal Procedure - Searches and Seizures - Admissibility of Evidence Obtained Through Unlawful Search and Seizure

Neil Flanagin S.Ed.
University of Michigan Law School

CRIMINAL PROCEDURE — SEARCHES AND SEIZURES — ADMISSIBILITY OF EVIDENCE OBTAINED THROUGH UNLAWFUL SEARCH AND SEIZURE — Defendants were prosecuted and convicted of conspiring to engage in horserace bookmaking and related offenses. The police had secured evidence of defendants' activities by concealing a listening device in premises occupied by them and also by unauthorized and forcible searches. The trial court admitted the evidence so obtained, notwithstanding the fact that the police action in securing it was clearly in violation of both federal and state constitutions[1] and statutes.[2] After conviction, the trial court denied defendants' motion for a new trial. On appeal, *held,* reversed, three justices dissenting. Evidence obtained in violation of the defendants' constitutional rights is inadmissible in a criminal prosecution. *People v. Cahan,* (Cal. 1955) 282 P. (2d) 905.

The problem of admissibility of evidence obtained through unlawful search and seizure has been considered by courts in virtually every jurisdiction.[3] At common law, the general rule was that such evidence was admissible,[4] the courts reasoning that the means of procurement did not effect its probative value.[5] The Fourth Amendment to the Constitution of the United States condemns unlawful searches and seizures, but does not expressly deal with the question of whether the fruits of such activity shall constitute admissible evidence.[6] However, the federal courts have long held that evidence obtained by action in violation of that amendment is inadmissible.[7] In *Wolf v. Colorado*[8] the Court held that while the Fourteenth Amendment makes the prohibition against unlawful searches and seizures

1 U.S. CONST., amend. IV; CAL. CONST., art. I, §19.

2 18 U.S.C. (1952) §§241, 242; Cal. Penal Code (Deering, 1949) §146.

3 Appendix to Wolf v. Colorado, 338 U.S. 25 at 33, 69 S.Ct. 1359 (1949).

4 8 WIGMORE, EVIDENCE, 3d ed., §2183 (1940).

5 This position was distinguished from those cases involving coerced confessions, which were felt to be inherently unreliable. 3 WIGMORE, EVIDENCE, 3d ed., §815 et seq. (1940).

6 The constitutions of every state contain provisions either exactly like or substantially similar to the Fourth Amendment. See CORNELIUS, SEARCH AND SEIZURE, 2d ed., §2 (1930), where such provisions are quoted for every state except New York, which adopted one in 1938. N.Y. CONST., art. I, §12.

7 The rule was first suggested in Boyd v. United States, 116 U.S. 616, 6 S.Ct. 524 (1886), and was laid down in Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341 (1914).

8 Note 3 supra. See Allen, "The Wolf Case: Search and Seizure, Federalism, and the Civil Liberties," 45 ILL. L. REV. 1 (1950).

applicable to the states, it does not require that the states exclude evidence obtained by such action. Later, the Court modified this concept by holding that the presence of physical force would change the result.[9] In *Irvine v. California*,[10] a case also involving the use of a listening device, a closely divided Court reaffirmed the *Wolf* decision and did not require that the state court exclude the evidence. Prior to the decision in the principal case, California had rejected the federal rule and admitted unlawfully obtained evidence.[11] In reversing its stand and adopting the exclusionary rule, the court in the principal case admits that neither the federal nor state[12] constitution requires exclusion, and that it is laying down "a judicially declared rule of evidence."[13] The court gives two reasons for its holding. First, it reads the *Wolf* and *Irvine* cases as an invitation to the states to reexamine their positions on the question. Secondly, the court indicates that, as a matter of policy, the federal exclusionary rule is the only effective sanction against constitutional violations by police officers. Strong policy arguments can be made in support of either side of the admissibility problem, but it is essentially a question of balancing the social desirability of apprehending criminals against the protection of the individual's right to privacy.[14] At the time of the *Wolf* decision thirty-one states had held evidence obtained through unlawful search and seizure admissible; sixteen had held it inadmissible.[15] However, two of the states which had judicially rejected the exclusionary rule have now adopted it by statute,[16] as has the heretofore uncommitted jurisdiction.[17] Since the *Wolf* case numerous courts have had

9 Rochin v. California, 342 U.S. 165, 72 S.Ct. 205 (1952).

10 347 U.S. 128, 74 S.Ct. 381 (1954). Justices Black, Douglas, Frankfurter, and Burton dissented, the latter two on the ground that concealing a listening device in a bedroom was sufficiently shocking to bring this case closer to Rochin v. California, note 9 supra, than to Wolf v. Colorado, note 3 supra. Cf. Goldman v. United States, 316 U.S. 129, 62 S.Ct. 993 (1942).

11 People v. Mayen, 188 Cal. 237, 205 P. 435 (1922). For the most recent statement of this view, see In re Dixon, 41 Cal. (2d) 756, 264 P. (2d) 513 (1953).

12 CAL. CONST., art. I, §19, contains language similar to that of the Fourth Amendment.

13 Principal case at 910.

14 The policy arguments are beyond the scope of this note. On the side of admissibility, see 8 WIGMORE, EVIDENCE, 3d ed., §§2183, 2184 (1940); People v. Defore, 242 N.Y. 13, 150 N.E. 585 (1926); Waite, "Reasonable Search and Research," 86 UNIV. PA. L. REV. 623 (1938); Waite, "Police Regulation by Rules of Evidence," 42 MICH. L. REV. 679 (1944); Harno, "Evidence Obtained by Illegal Search and Seizure," 19 ILL. L. REV. 303 (1925); Plumb, "Illegal Enforcement of the Law," 24 CORN. L. Q. 337 (1939). On the side of exclusion, see Allen, "The Wolf Case: Search and Seizure, Federalism, and the Civil Liberties," 45 ILL. L. REV. 1 (1950); 33 N.C. L. REV. 100 (1954); 58 YALE L. J. 144 (1948).

15 Appendix to Wolf v. Colorado, note 3 supra.

16 N.C. Gen. Stat. (1953) §§15-27; Tex. Code Crim. Proc. (Vernon, 1941; Supp. 1953) §727a. See also Md. Code Ann. (Flack, 1951) art. 35, §§5, 5A (limiting the exclusionary rule to prosecutions for misdemeanors); Ala. Code (1940; Supp. 1953) tit. 29, §210 (making evidence illegally obtained inadmissible in prosecutions for unlawful possession of liquor in a private dwelling).

17 R.I. Acts & Resolves (1955) c. 3590. Cal. Penal Code (Deering, 1949) §653h provides for criminal penalties for anyone, other than an authorized police officer, making use of a listening device or secretly intercepting conversations. The court in the prin-

an opportunity to reexamine their holdings, but only one has, like California, reversed a prior admissibility rule.[18] Thus, admissibility is still the majority position, but not to the extent that it once was. It should be pointed out that the reversal of position by the California court involves a change of mind by only two judges.[19] It may be that the new majority questions the durability of the *Wolf-Irvine* line of authority,[20] and does not want to risk a possible overruling of those cases. The court in the principal case admits that future difficulties may arise in the administration of the federal rule and its many exceptions,[21] but states that the absence of other effective sanctions against unlawful searches and seizures justifies exclusion.[22] A more satisfactory solution to the problem would be legislation, either spelling out the exclusionary rule in sufficient detail that police officers will know how to conduct themselves, or, preferably, providing other effective sanctions against constitutional violations.[23]

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cipal case interpreted the clause to relieve authorized police officers from the operation of that section, but not to legalize their acts in violation of the constitution.

[18] Richards v. State, 45 Del. 573, 17 A. (2d) 199 (1950), overruling State v. Chuchola, 32 Del. 133, 120 A. 212 (1922). For decisions from 1949 to 1953, see 8 WIGMORE, EVIDENCE, 3d ed., §2183 (1940; Supp. 1953). Since then Illinois has reaffirmed its exclusionary rule in People v. Perry, 1 Ill. (2d) 482, 116 N.E. (2d) 360 (1953), and New Jersey has reaffirmed its admissibility rule in In re 301-317 Clinton Ave., Newark, N.J., 35 N.J. Super. 136, 113 A. (2d) 208 (1955). Courts in the British Commonwealth generally follow the admissibility rule, but there has been some divergence from this view in recent years. See Cowen, "The Admissibility of Evidence Procured Through Illegal Searches and Seizures in British Commonwealth Jurisdictions," 5 VAND. L. REV. 523 (1952); Williams, "Evidence Obtained by Illegal Means," 1955 CRIM. L. REV. 339.

[19] The principal case was a 4-to-3 decision. Gibson, C. J., and Traynor, J., joined the two judges who dissented in In re Dixon, note 11 supra, to make up a new majority.

[20] See note 10 supra. Justice Clark reluctantly went along with the majority, feeling bound by the Wolf case, but expressed dissatisfaction with the present rule. See 7 ALA. L. REV. 156 (1954).

[21] See 8 WIGMORE, EVIDENCE, 3d ed., §2184 (1940); 33 TEX. L. REV. 122 (1954).

[22] Principal case at 911.

[23] The possibility of state criminal or civil prosecution, or federal criminal prosecution under 18 U.S.C. (1952) §§241, 242, or a civil action under Rev. Stat. (1874) §1979, 42 U.S.C. (1952) §1983, are generally not felt to be a sufficient deterrent. See 38 CALIF. L. REV. 498 (1950); 7 STAN. L. REV. 76 (1954).