Michigan Law Review

Volume 54 | Issue 8

1956

Criminal Procedure - Availablity of Federal Court Injunction to Prevent Federal Officer from Testifying in State Court as to Illegally-Obtained Evidence

Edward C. Hanpeter
University of Michigan Law School

CRIMINAL PROCEDURE—AVAILABILITY OF FEDERAL COURT INJUNCTION TO PREVENT FEDERAL OFFICER FROM TESTIFYING IN STATE COURT AS TO ILLEGALLY-OBTAINED EVIDENCE—Prosecution of petitioner in federal court for the unlawful acquisition of marihuana[1] failed when the court granted petitioner's motion to suppress[2] the marihuana as evidence because it was obtained by a

1 50 Stat. L. 555 (1937), 26 U.S.C. (1952) §2593 (a).

2 Made pursuant to rule 41 (e) of the Federal Rules of Criminal Procedure, 18 U.S.C.

search based on an invalid search warrant.[3] The federal officer who had seized the marihuana then swore to a complaint before a state judge, and a warrant for petitioner's arrest for violation of state law[4] issued. While awaiting trial, petitioner filed a motion in federal district court to enjoin the federal officer from testifying in the state court. The district court denied the injunction, and the court of appeals affirmed.[5] On certiorari, *held,* reversed, four justices dissenting.[6] To enjoin the federal officer from testifying is merely to enforce the federal rules regulating search and seizure against those persons owing obedience to them. The policy of the rules is to protect the privacy of citizens; that policy is defeated if the federal officer can flout them and use the fruits of his unlawful act in either federal or state proceedings. *Rea v. United States,* 350 U.S. 214, 76 S.Ct. 292 (1956).

Although illegally-obtained evidence is not excluded at common law,[7] federal courts must exclude evidence obtained by federal officers in violation of the Fourth Amendment if the person from whom the evidence was seized makes a timely[8] motion to suppress.[9] The rule of exclusion is a rule of evidence. It is not a constitutional mandate, but is judicially derived from the Fourth Amendment to deter[10] violations of its guarantees by federal officers.[11] Only the victim of the unlawful search and seizure may invoke the rule,[12] and only evidence obtained by federal officers is excluded.[13] The rule is an exercise by the Supreme Court of its power over

(1952). Petitioner did not request return of the marihuana because under 28 U.S.C. (1952) §2463, property so seized is not repleviable but is deemed to be in the custody of the law and subject only to the orders of the federal court having jurisdiction over it.

3 Rule 41, Federal Rules of Criminal Procedure, 18 U.S.C. (1952) regulates the conduct of searches and seizures. Rule 41 (c) was violated in particular because the warrant was insufficient on its face, no probable cause existed, and the affidavit supporting the warrant was based on unsworn statements.

4 N.M. Stat. Ann. (1953) c. 54, §54-5-14.

5 Rea v. United States, (10th Cir. 1954) 218 F. (2d) 237.

6 Justice Harlan wrote the dissenting opinion, with Justices Burton, Minton, and Reed joining.

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

8 See Edwards, "Seasonable Protests Against Unreasonable Searches and Seizures," 37 MINN. L. REV. 188 (1953).

9 Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341 (1914).

10 The judicial motive for constructing the rule of exclusion is the notorious ineffectiveness of normal criminal and civil remedies against the offending officer. See Edwards, "Criminal Liability for Unreasonable Searches and Seizures," 41 VA. L. REV. 621 (1955); Foote, "Tort Remedies for Police Violations of Individual Rights," 39 MINN. L. REV. 493 (1955).

11 Wolf v. Colorado, 338 U.S. 25, 69 S.Ct. 1359 (1949); Irvine v. California, 347 U.S. 128, 74 S.Ct. 381 (1954).

12 Connolly v. Medalie, (2d Cir. 1932) 58 F. (2d) 629; Wilson v. United States, (10th Cir. 1955) 218 F. (2d) 754. See Edwards, "Standing to Suppress Unreasonably Seized Evidence," 47 N.W. UNIV. L. REV. 471 (1952).

13 Byars v. United States, 273 U.S. 28, 47 S.Ct. 248 (1927); Burdeau v. McDowell, 256 U.S. 465, 41 S.Ct. 574 (1921); Serio v. United States, (5th Cir. 1953) 203 F. (2d) 576.

the admission of evidence to achieve a non-evidentiary purpose, i.e., law enforcement consistent with constitutional guarantees. In the principal case the Court permits the use of a district court injunction as a means of achieving this purpose and thus adds a new weapon to deter federal officers from violating federal search and seizure regulations. The injunction permits the victim to go beyond the federal forum, where he is protected by the exclusionary rule, to block state use of evidence illegally obtained by federal officers. This new right is important because the Fourteenth Amendment does not require the states to apply the exclusionary rule.[14] Although freedom from unreasonable search and seizure is "implicit in the concept of ordered liberty,"[15] exclusion of evidence so obtained is not.[16] Thus, an unreasonable search and seizure by state officers is a deprivation of liberty and property without due process of law, but state courts may choose to admit or exclude evidence so obtained. The question, then, is whether, in order to discipline a federal officer, a federal court should enjoin him from testifying in a state court and thereby prevent, or at least seriously hamper, the state's prosecution of a defendant. The threat of such an injunction will deter federal officers who disregard rules of search and seizure to obtain evidence for use by state officers. But the injunction will be no deterrent to federal officers intent only upon the enforcement of federal law, since state use of such evidence is not the motive for the unlawful search and seizure. Moreover, federal officers may thwart the injunction by simply turning real evidence over to state authorities before the injunction issues.[17] However, the injunction will probably always be sufficient to prevent a federal officer from testifying in the state trial, and if the state is relying solely on his testimony the prosecution will fail.

In general, federal courts will not interfere in state criminal proceedings by enjoining the prosecuting officials[18] or the tribunal.[19] In accord with this policy the Supreme Court has refused to enjoin use in a state court of evidence obtained by state officers by an unreasonable search and seizure, although the Civil Rights Act[20] authorizes equitable relief against

14 Wolf v. Colorado, note 11 supra.

15 Palko v. Connecticut, 302 U.S. 319 at 325, 58 S.Ct. 149 (1937).

16 Wolf v. Colorado, note 11 supra.

17 A federal court may summarily direct the return of illegally-obtained property in the possession of an officer of the court. Wise v. Henkel, 220 U.S. 556, 31 S.Ct. 599 (1911); Weeks v. United States, note 9 supra. But if the illegally-obtained property is in the possession of an officer of the government who is not an officer of the court, there is no jurisdictional basis for the court to direct a return of the property. An attorney or person acting under a court warrant is an officer of the court. In re Behrens, (2d Cir. 1930) 39 F. (2d) 561; In re Meader, (D.C. N.Y. 1945) 60 F. Supp. 80.

18 In re Sawyer, 124 U.S. 200, 8 S.Ct. 482 (1888); Harkrader v. Wadley, 172 U.S. 148, 19 S.Ct. 119 (1898); Davis & Farnum Mfg. Co. v. Los Angeles, 189 U.S. 207, 23 S.Ct. 498 (1903); Cline v. Frink Dairy Co., 274 U.S. 445, 47 S.Ct. 681 (1927).

19 28 U.S.C. (1952) §2283.

20 Rev. Stat. 1979 (1873-74), 42 U.S.C. (1952) §1983.

deprivation of constitutional rights by state officers acting under color of law.[21] Since the petitioner in the principal case sought to enjoin a federal officer, the Court argued that there is no direct interference. However, the practical impact will be just as great as if the injunction were directed at the state prosecutor, for it is the state that intends to use the illegally-obtained evidence, not the federal officer. The result is that the state may not use evidence which, even if it were used, would not deny the petitioner due process of law or any statutory right. Surely there is a better method to deter federal officers than to apply the rationale of the exclusionary rule to the use of the injunctive power so as to place relevant, constitutionally admissible evidence beyond the reach of the state court.[22] This is especially so when the necessity and effectiveness of the exclusionary rule itself is so widely disputed.[23] The injunction, like the exclusionary rule, "directly serves only to protect those upon whose person or premises something incriminating has been found."[24] The slight extent to which the principal case will encourage federal officers to adhere to search and seizure regulations does not warrant the substantial interference with local law enforcement which it entails.

Edward C. Hanpeter

21 Stefanelli v. Minard, 342 U.S. 117, 72 S.Ct. 118 (1951).

22 More effective tort remedies with substantial minimum recoveries have been suggested. See Foote, "Tort Remedies for Police Violations of Individual Rights," 39 MINN. L. REV. 493 (1955).

23 See the appendix to Justice Frankfurter's opinion in Wolf v. Colorado, note 11 supra, at 33. Authorities favoring admissibility: 8 WIGMORE, EVIDENCE, 3d ed., §§2183, 2184 (1940); Harno, "Evidence Obtained by Illegal Search and Seizure," 19 ILL. L. REV. 303 (1925); Waite, "Police Regulation by Rules of Evidence," 42 MICH. L. REV. 679 (1944); Waite, "Judges and the Crime Burden," 54 MICH. L. REV. 169 (1955). For exclusion: Atkinson, "Admissibility of Evidence Obtained Through Unreasonable Searches and Seizures," 25 COL. L. REV. 11 (1925); Allen, "The Wolf Case: Search and Seizure, Federalism, and the Civil Liberties," 45 ILL. L. REV. 1 (1950).

24 Justice Frankfurter in Wolf v. Colorado, note 11 supra, at 31.