Michigan Law Review

Volume 53 | Issue 8

1955

Criminal Law - Scope of Lawful Search and Seizure Without Warrant When Incident to Arrest

Richard M. Adams S.Ed.
University of Michigan Law School

CRIMINAL LAW—SCOPE OF LAWFUL SEARCH AND SEIZURE WITHOUT WARRANT WHEN INCIDENT TO ARREST—Acting on information that defendants were engaged in the "numbers racket" in violation of the Michigan gambling laws, police officers picked up three of the defendants in an automobile, took them to the police station, and proceeded to the home of their accomplice, Abbey Clay. On being admitted to the residence, the officers placed Abbey Clay under arrest and, despite her objections, promptly searched the L-shaped room in which they were standing when the arrest was made. Although the officers did not have a search warrant, they looked through defendant's pocketbook, magazine rack, and a cardboard box which was in full view on the dining room table. The box revealed a number of duplicate policy slips with defendant's code number thereon which were introduced as evidence at the trial. The defendant contended that because the officers had sufficient time to acquire a search warrant and failed to do so, they had violated the "unreasonable search and seizure" clauses of the federal and state constitutions. Disposing of this argument, the lower court found that the evidence was admissible. On appeal, *held,* affirmed. Evidence acquired in a private home by search and seizure without a warrant could be admitted when obtained in conjunction with a valid arrest. *People v. Taylor,* (Mich. 1954) 67 N. W. (2d) 698.

the benefit of the light because it has changed . . . the plaintiff may be guilty of contributory negligence as a matter of law for failure to observe." Principal case at 258.

It is well recognized that if incident to a proper arrest, a limited search of a private residence by an officer without a search warrant is not a violation of the "unreasonable search and seizure" clause of the Fourth Amendment[1] or the corresponding provision of the Michigan Constitution.[2] If the arrest is also made without a warrant, such arrest and subsequent search must be justified by facts sufficient to give the officer probable cause to believe that the defendant had committed a felony.[3] The reasonableness of the search, therefore, is measured by the information the officer had prior to making it, and not by the character of the evidence obtained. But even where the arrest is sustained by a warrant, the officers may not search any part of the house except that which it was necessary to enter in making the arrest.[4] Applying these several rules to the principal case, the decision can hardly be challenged. But the reasoning which the court used in reaching this result leaves room for question. The opinion begins with the statement that there was "no showing that the officers would have or did have sufficient time after the arrest of defendants . . . [those apprehended in the automobile] . . . to get a search warrant and come . . . to the home of Abbey Clay . . . before word would get to Abbey Clay of the arrest of her three confederates. . . ."[5] Once informed, the court reasoned, the defendant could easily destroy any evidence before the police arrived. This line of reasoning is significant because of the emphasis on the idea of necessity and time. The implication appears to be that search and seizure without a warrant would not be reasonable if there was sufficient time to obtain a warrant. In support of this point the court draws analogy to *Carroll v. United States*, where it was held that as a matter of necessity the search of automobiles without a warrant should be treated more liberally than searches of a private dwelling because the automobile can be moved so readily out of jurisdiction.[6] This analogy, however, is not a very strong one. In the *Carroll* case "necessity" was considered as a factor to liberalize the search of automobiles as a class. Here the court appears to be using "necessity" as a condition to reasonableness in each individual case. The idea of necessity, therefore, is being used in two different senses. When applied as a condition to any particular instance of search and seizure of a private dwelling, the effect is to impose a higher standard on the investigating officers because in each case they will have to be extremely cautious to secure a warrant unless prohibited from doing so for lack of time. This interpretation takes on added significance when compared to the doctrine of practicability which was briefly

[1] Agnello v. United States, 269 U.S. 20, 46 S.Ct. 4 (1925).

[2] For general discussion and collection of Michigan cases in this field, see 2 GILLESPIE, MICHIGAN CRIMINAL LAW AND PROCEDURE, 2d ed., §875, p. 1147 (1953).

[3] People v. Ward, 226 Mich. 45, 196 N.W. 971 (1924); People v. Miller, 245 Mich. 115, 222 N.W. 151 (1928); People v. Goss, 246 Mich. 524, 224 N.W. 364 (1929).

[4] People v. Conway, 225 Mich. 152, 195 N.W. 679 (1923).

[5] Principal case at 701.

[6] Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280 (1925).

followed in the federal courts. In *Trupiano v. United States*[7] it had been held that if federal officers had sufficient time to secure a search warrant and failed to do so, the evidence thereby acquired would be excluded automatically.[8] But by 1950 the United States Supreme Court concluded that such a test of practicability imposed too high a standard upon the prosecution, and the *Trupiano* doctrine was expressly overruled in *United States v. Rabinowitz.*[9] There it was found that mere adequacy or inadequacy of time was not enough to test the validity of any given search under the Fourth Amendment. Rather, reasonable search and seizure should be measured by all the circumstances of the case. It is interesting to note that in the instant case brief reference is made to *United States v. Rabinowitz,*[10] yet the opinion fails to acknowledge that this very decision overruled the line of argument which the court itself is apparently pursuing. What then are the implications of this somewhat ambiguous opinion? On the one hand, it is possible to interpret it as meaning that Michigan has now adopted the "practicability" test as a condition to legal search and seizure. Even though rejected in the federal courts, it could still be followed in Michigan. On the other hand, inasmuch as "necessity" was the doctrine urged by the defendant, the court may simply have intended to show that even by defendant's own principles, without adopting the same, the evidence was properly secured.[11] Though the latter construction seems the more probable, the case certainly leaves in doubt the scope of legal search and seizure in Michigan. In failing to clarify its reasoning the court has simply added one more element of doubt to an already uncertain area of the law.

Richard M. Adams, S.Ed.

[7] Trupiano v. United States, 334 U.S. 699, 68 S.Ct. 1229 (1948).

[8] It does not necessarily follow, of course, that any search would automatically be deemed reasonable if the practicability test was satisfied, for there may be other limitations on reasonable search and seizure, e.g., if the arrest took place in defendant's living room on the first floor, it is unlikely that the officers could lawfully search the whole house.

[9] United States v. Rabinowitz, 339 U.S. 56, 70 S.Ct. 430 (1950).

[10] Principal case at 702.

[11] In Michigan, motion must be made before trial to have evidence excluded on grounds that it was unlawfully obtained. People v. Marxhausen, 204 Mich. 559, 171 N.W. 557 (1919); People v. Miller, 217 Mich. 635, 187 N.W. 366 (1922). Under Michigan Court Rule 10, §2 there must also be a four-day notice of such motion to suppress, defendant in this instance having failed to give such notice.