Michigan Law Review

Volume 47 | Issue 7

1949

CONSTITUTIONAL LAW-SEARCH AND SEIZURE AS AN INCIDENT TO LAWFUL ARREST

Zolman Cavitch
University of Michigan Law School

CONSTITUTIONAL LAW—SEARCH AND SEIZURE AS AN INCIDENT TO LAWFUL ARREST—Petitioners, suspected of carrying on an illegal lottery, had been under police observation for several months, during which time one of the petitioners maintained a room in a rooming house in the District of Columbia. On the day of the arrest, a police officer, without a warrant, but believing the unlawful lottery to be in operation, climbed through a window of the landlady's room, and admitted two other officers. They proceeded to the petitioner's room, where one of the officers looked through the transom. Seeing the petitioners working on an illegal lottery, the officers entered the room, arrested the petitioners and seized various articles in plain view that were used in the lottery. Petitioners made a timely motion for suppression of the evidence so seized, alleging that the seizure was a violation of their constitutional rights[1], making the evidence inadmissible.[2] The trial court denied the motion and the petitioners were convicted; the court of appeals affirmed.[3] On certiorari to the United States Supreme Court, *held,* reversed. Even though the arrest may have been lawful, seizure of the lottery equipment without a search warrant was unreasonable and, therefore, a violation of petitioners' constitutional rights. *McDonald v. United States,* 335 U.S. 451, 69 S.Ct. 191 (1948).

Prior to 1948, the law was well settled that an officer, on making a lawful arrest, might search, to a certain extent, the premises where the arrest was made without a search warrant and seize at least the fruits and instrumentalities of the crime that were in plain sight and under the immediate control of the accused.[4] In two recent cases, the Court extended the scope of search and seizure as an incident to a lawful arrest to a point theretofore unknown.[5] Very recently, however, in *Trupiano v. United States,*[6] the Court went to the opposite extreme, holding that the seizure of illicit distillery equipment in plain view of the arresting officer at the time of the arrest was unconstitutional, because the officer had ample time to secure a search warrant before making the arrest. The principal case, relying on the same factor of "time,"[7] is in line with the *Trupiano* case and, apparently, expands the meaning of the Fourth Amendment to limit search and seizure, as an incident to a lawful

[1] The Fourth Amendment prohibits "unreasonable searches and seizures" and places limitations on the issuance of search warrants.

[2] Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341 (1914). See LASSON, HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION 106-117 (1937).

[3] McDonald v. United States, (App. D.C. 1948) 166 F. (2d) 957.

[4] Marron v. United States, 275 U.S. 192, 48 S.Ct. 74 (1927); limited by Go-Bart Importing Co. v. United States, 282 U.S. 344, 51 S.Ct. 153 (1931); and United States v. Lefkowitz, 285 U.S. 452, 52 S.Ct. 420 (1932). See LASSON, HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION 128 (1937).

[5] Davis v. United States, 328 U.S. 582, 66 S.Ct. 1256 (1946); Harris v. United States, 331 U.S. 145, 67 S.Ct. 1098 (1947), 45 MICH. L. REV. 605 (1947).

[6] 334 U.S. 699, 68 S.Ct. 1229 (1948), 48 COL. L. REV. 1257 (1948).

[7] Although this factor was relied on for the first time in the Trupiano case, it had previously been suggested in dicta in Go-Bart Importing Co. v. United States, 282 U.S. 344, 51 S.Ct. 153 (1931); Taylor v. United States, 286 U.S. 1, 52 S.Ct. 466 (1932); Johnson v. United States, 333 U.S. 10, 68 S.Ct. 367 (1948).

arrest, to the *body* of the arrested person, unless such search without a warrant is made imperative by the unusual circumstances of the case. It is impossible to ascertain from the Court's opinion what significance, if any, is given to the officers' forced entry into the rooming house. Clearly, the entry was an invasion of the landlady's constitutional rights, but, although the Supreme Court has never passed on this question, the lower federal courts have consistently maintained that the admissibility of evidence is not affected by the invasion of a third person's constitutional rights.[8] In a concurring opinion in the principal case, however, Justice Jackson apparently repudiates this view and asserts that the acts of the officers, subsequent to the forced entry, were tainted with the illegality of the entry. Whether Justice Jackson bases his conclusion on the invasion of the landlady's constitutional rights or on the criminal character of the entry,[9] it seems doubtful that the proper balance between individual rights and effective law enforcement requires such a broad extension of the protection afforded by the Fourth Amendment.

Zolman Cavitch

[8] Hardwig v. United States, (C.C.A. 6th, 1928) 23 F. (2d) 922; Holt v. United States, (C.C.A. 6th, 1930) 42 F. (2d) 103; United States v. Stappenback, (C.C.A. 2d, 1932) 61 F. (2d) 955; approved in dictum in Goldstein v. United States, 316 U.S. 114, 62 S.Ct. 1000 (1942). See, also DAX AND TIBBS, ARREST, SEARCH, AND SEIZURE 121 (1946).

[9] The Supreme Court has held that mere illegality in securing evidence does not affect its admissibility. Olmstead v. United States, 277 U.S. 438, 48 S.Ct. 564 (1928). Furthermore, in the principal case, a preceding act, not the actual acquisition of evidence, was illegal; this should make weaker the argument for the exclusion of the evidence.