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CRIMINAL LAW-SEARCH AND SEIZURE-ADMISSIBILIY IN STATE COURT OF EVIDENCE ILLEGALLY SEIZED BY FEDERAL AUTHORITIES

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CRIMINAL LAW—SEARCH AND SEIZURE—ADMISSIBILIY IN STATE COURT OF EVIDENCE ILLEGALLY SEIZED BY FEDERAL AUTHORITIES—Two federal narcotic officers accompanied by two state officers went into the defendant's residence, under the authority of a search warrant which authorized search only for marihuana. The search was fruitless. Observing an automobile in front, the two federal officers said something to the defendant, to which he replied, "why sure—look it over; you won't find anything in there." The federal officers were already searching the automobile when the state officers approaching the automobile saw a bottle of whiskey on the floor-board of the car. So far as can be gathered from the opinion, the state officers did not participate in the search by the federal officers until they saw the bottle of whiskey. Defendant was convicted of unlawful possession of liquor. On appeal, *held*, reversed. The evidence obtained by the search was inadmissible. *Edwards v. State*, (Okla. 1947) 177 P. (2d) 143.

Ever since the *Carroll* case[1] the courts have declared that search of an automobile without a warrant is a reasonable search if the officers have acted upon probable cause. The principal case is not an exception to this rule, since it appears that no probable cause for search existed. But the important issue of whether the search and seizure provision of the Oklahoma state constitution, which is identical with the Fourth Amendment of the federal Constitution, has application to searches and seizures by federal officers as well as by state officers, seems to have been completely ignored. The federal courts have long held that the unlawfulness of an independent search and seizure by state officers, not participated in by federal officers, by means of which evidence is obtained, does not render such evidence inadmissible in a prosecution in a federal court.[2] So long as the state officers are not acting directly or indirectly in behalf of the United States,[3] or the purpose is not to secure evidence of a violation of a federal law,[4] or there is no collusion,[5] or the search is not under immediate supervision of a federal agent,[6] or they do not have an "understanding,"[7] the evidence so obtained is admissible in a federal court. The presence of a federal officer at the time of an unlawful seizure of evidence by state officials is not sufficient to show that the search was a part of a federal procedure.[8] However, the laws of search and seizure have never been entirely rational, and with the general confusion therewithin abounding, it is not surprising to notice that the state courts which have passed on the subject split on following the federal limitation upon the inadmissibility rule.[9] The rule, that evidence obtained by illegal search and seizure is not admissible, was adopted from the federal courts by those states that now so hold, only a short time after the advent of the unpopular prohibition law.[10] There is serious doubt as to whether this rule is of any social benefit; since the problem is one of policy and not of law, it is disappointing to see a court extend this principle even further than the federal cases from whence it was originally adopted, without even a discussion of the relative utility values of effective criminal law enforcement and the social desire for minimum police interference with an individual's activities.[11]

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[1] Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280 (1924).

[2] Twining v. New Jersey, 211 U.S. 78, 29 S.Ct. 14 (1908); Schroeder v. United States, (C.C.A. 2d, 1925) 7 F. (2d) 60; Rettich v. United States, (C.C.A. 1st, 1936) 84 F. (2d) 118.

[3] Aldridge v. United States, (C.C.A. 10th, 1933) 67 F. (2d) 956.

[4] Ibid.

[5] United States v. Suttenberg, (D.C. N.Y. 1940) 35 F. Supp. 861.

[6] United States v. Clark, (D.C. Mo. 1939) 29 F. Supp. 138.

[7] Sutherland v. United States, (C.C.A. 4th, 1937) 92 F. (2d) 305.

[8] Malacrauis v. United States, (C.C.A. 4th, 1924) 299 F. 253; Rettich v. United States, (C.C.A. 1st, 1936) 84 F. (2d) 118.

[9] In accord with the federal limitation, State v. Rebasti, 306 Mo. 336, 267 S.W. 858 (1924); People v. Touhy, 361 Ill. 332, 197 N.E. 849 (1935); State v. Gardner, 77 Mont. 8, 249 P. 574 (1926). *Contra:* Little v. State, 171 Miss. 818, 159 S. 103 (1935); Vick v. Commonwealth, 204 Ky. 513, 264 S.W. 1079 (1924).

[10] People v. Marxhausen, 204 Mich. 559, 171 N.W. 557 (1919); Youman v. Commonwealth, 189 Ky. 152, 224 S.W. 860 (1920).

[11] For a discussion of these problems, see Waite, "Reasonable Search and Research," 86 UNIV. PA. L. REV. 623 (1938).