

Authentic Case Assessment on Laws

The Fourth Amendment

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The law that governs arrests, searches and seizures, and issuance of warrants (arrest warrants and search warrants) is the Fourth Amendment to the Constitution, above cited *in toto*. The Fourth Amendment is applicable only to government arrests as opposed to privately conducted ones, and in cases when the privacy of a person is intruded upon as when a search or arrest is conducted. The provision implicitly advances the exclusionary rule in criminal procedure which states to the effect that no evidence is admissible in court that was obtained in violation of the Fourth Amendment (Bacigal 2008 p.147).

This rule was asserted in the landmark case of *Mapp v Ohio*, 367 US 643 (1961) where a woman's house was searched by police authorities, who has acted on a tip that she was hiding certain bomb suspects, without a search warrant. Finding no bomb suspect, the police instead arrested her for the lewd pictures and books found in her basement on the strength of an Ohio law which prohibited their possession. After convicted in the lower court, a conviction that was affirmed by the Court of Appeals and the Supreme Court of Ohio, Mapp went to the US Supreme Court. The Court reversed the decision and held that the exclusionary rule was applicable not

only in federal courts but state courts as well, which means that the evidence gathered against Mapp cannot be used to convict her in the state court because they were obtained illegally.

Probable Cause

In the case at bar, the authorities conducted a search and an arrest, both without corresponding warrants. Eventually, as a consequence of the holster found on the suspect's body and by his admission that he owned the gun thrown nearby, the suspect was charged with criminal possession of a weapon, assault, theft, and possession of illegal drugs. The issue here is whether the search and arrest conducted by the police authorities against the defendant was lawful or not, and whether the evidence obtained during such search were admissible in court to sustain a finding of guilt on the charges made against him.

As a rule, arrests and searches are conducted after a warrant has been issued by a court, but the law allows authorities to conduct them under certain circumstances. In issuing a warrant, the court must first determine probable cause and similarly, if police authorities conduct the search and arrest without a warrant, the legality of such act is determinable by establishing the existence of probable cause, or the lack of it. Police authorities must show that they have conducted such warrantless arrest, search and seizure only after initially determining probable cause. "The general rule is that every arrest and every seizure having the essential attributes of a formal arrest is unreasonable unless it is supported by a probable cause" was held in the case of *Michigan v Summers* 452 US 692 (1981) (del Carmen 2006 p. 74). Probable cause refers to the sufficiency and trustworthiness of the basis, i.e. facts and circumstances, which led the authorities to believe that an offense has been or is being committed. The appreciation of such facts and circumstances

must be made from a reasonable man's standards point of view (del Carmen 2006 p. 74). It refers not only to the quantity but also to the quality as well of such facts and circumstances and although on a scale of probability, it ranks lower than that of proof beyond reasonable doubt it must rank higher than that of mere hunch or suspicion (Bloom & Brodin 2006 p. 42).

In the present case, the police officers were informed by a woman that she had just been raped and gave description of the suspect with the additional information that he was carrying a gun. She also told them of the direction he took, which was inside a nearby supermarket. Upon entering said place, the police officer who went inside saw a man who fitted the description and was about to accost him when the suspect ran towards the store exit and the police officer gave chase. The description which matched that of the alleged woman victim, which "particularized the suspicion," and the subsequent flight of the defendant, which is a badge of guilt, together would lead a reasonable man to believe that the defendant has probably committed an offense.

In *Peters v New York*, which was a companion case to *Sibron v New York*, 392 US 40, 66-67 (1968) the Court sustained the defendant's conviction on the ground that furtive prowling in the dark and subsequent flight when approached by a police officer is probable cause for arrest and search, which yielded burglary tools found on the suspect's person. In addition, *United States v Amuny* 767 F 2d 1113 {5th Cir, 1985) held that "if a police officer identifies himself while approaching and the suspect flees, the suspect's conduct suggests that he knowingly seeks to evade questioning or capture. Such conduct ordinarily supplies another element to the [probable cause] calculus" (cited Bloom 2006 p. 58).

In several decided cases, the court had stressed that probable cause is a question of fact and must be determined from an overall view of all circumstances rather than from a single consideration. The police officer must have objectively viewed the circumstances together to come up with a reasonable ground to believe that the suspect is guilty of an offense. In *Omelas v United States* 517 US 690, 696 the Court held that in order to establish that the police authorities had probable cause in arresting a suspect; the court must examine all the circumstances that led to the arrest. Only after reviewing these facts could the court determine whether the police officer had reasonably appraised them as probable cause viewed from the point of view of a reasonable police officer.

Applying this dictum to the present case, there is every reason for a reasonable person to believe that the defendant is indeed guilty of the offense alleged by the woman because the latter gave a description that matched his and worse; he took flight from the police officer. In addition, in *Illinois v Gates* 462 US 213, 231 (1983) the Court held that the determination of probable cause is a “practical, nontechnical conception” and a process that deals with “probabilities” upon “which reasonable and prudent men, not legal technicians, act.”

Furthermore, the Court equated ‘probable cause’ with ‘reasonable ground for belief of guilt’ when it stated said in *Maryland v Pringle* 540 US 366 (2003) that “The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of circumstances. We have stated however that ‘[t]he substances of all the definitions of probable cause is a reasonable ground for belief of guilt, and that the belief of guilt must be particularized with respect to the person to be searched or seized’ (cited del Carmen 2006 p. 77).

Search Incident to Arrest

In the present case, the police officer is within the bounds of the law regarding search-as-an-incident to arrest when he frisked the suspect and found an empty holster strapped on the latter's body. In the first place, not only was he protecting himself by ensuring that he was not harmed by any weapon that the suspect might have, but he was also acting upon the information given by the alleged victim that the rape suspect was armed and therefore, dangerous. The gun also constituted evidence against the suspect in this case. Since the gun, which was ditched only nearby, was within the immediate vicinity where the arrest was made, the search made by the police officer with respect to the gun did not entail any controversial implication.

The search-incident-to arrest doctrine governs the conduct of searches that are made without warrants but accompany arrests. The precedent case for this doctrine is the *Chimel v. California* 395 US 752 (1969) where it was held by the US Supreme Court that police officers who are conducting a lawful arrest against a suspect in his home cannot conduct an accompanying search on the entire house but only on that part of the house to which they have immediate control. In this case, the authorities applied and were granted a warrant of arrest for the suspect for a coin shop burglary. There was no application for a search warrant, however. The authorities, armed with the arrest warrant, went to the suspect's house but he was not home. The suspect's wife admitted them, however, and allowed them to sit and wait for her husband in the living area. Upon the suspect's arrival, the police served the warrant and asked him if they could look around the three-level house to which the suspect objected. The authorities nevertheless proceeded with the search of the entire house and seized several items, which were used as evidence against the suspect during the trial. When the case reached the SC, it reversed the decision of conviction

made by the trial court, which was sustained by the CA and the California SC. The Court held that a search incident to an arrest can be confined only to the person of the person arrested and the immediate vicinity primarily for the protection to the arresting officer as the suspect might reach for a gun concealed in his body or in the immediate area to which he has access to. This is also allowable to prevent any evidence concealed by the suspect from being destroyed.

The Chimel effect was, however, diluted by the 1990 case of *Maryland v Buie* 494 US 325 (1990) where the Court introduced the doctrine of protective sweep. Protective sweep, which allows the authorities to search all other areas outside of the immediate vicinity where the lawful arrest was made, is applicable when the authorities have probable cause to believe that there are other persons present in the area that could pose great danger to them. This could be also applicable if the authorities had reason to believe that the contraband or evidence relevant to the arrest is in danger of being destroyed or removed by other persons concealed within the area as was held in the case of *Yale v Louisiana* 399 US 30 (1970) (Cited Emanuel 2009 pp. 81-89).

On the other hand, the case of *Michigan v Long* 463 US 1032 (1983), extended and clarified the landmark case of *Terry v Ohio*, 392 US 1 (1968) which patented the ‘terry stop’ or ‘stopping and frisking’ on account of probable cause to arrest. In *Long*, the Court allowed the search to go beyond the person of the accused when conducting a terry stop and in the surrounding area on the ground of reasonable suspicion as part of protective search.

Hot Pursuit

Another justification for the warrantless arrest and search and seizure is the doctrine of hot pursuit. In *Payton v New York*, 445 US 573, 576, 100 Ct. 1371, 63 L Ed 2d 639 (1980), the Court

made mention of exigent circumstances that could constitute exceptions to the prohibition of warrantless arrests and searches under the Fourth Amendment. Such circumstances may include the prevention of destruction of material evidence, the avoidance of harm happening to persons and searching in hot pursuit (Emanuel 2009 p. 96).

When the alleged victim, in the present case, informed the two police officers that she was raped, describing the perpetrator and that he had a gun and escaped into a supermarket, the police officers were on a hot pursuit for a person suspected of having committed an offense. The search subsequently conducted on his person and the recovery of the gun on account not only of protective search but for the recovery and preservation of the evidence can be justifiable as part of the hot pursuit operation.

Confessions and Admissions

The facts of the present case also detailed that the arresting police read the Miranda rights to the defendant when he formally arrested the latter. In addition, it was also stated that he would answer questions without an attorney. This could be a problematic aspect of the arrest and custody because there is a possibility that the arresting police officer would not be able to satisfy the legal requirement in extracting the confession from the defendant. In addition, it is also noticeable that the arresting officer did not read the Miranda rights immediately after he handcuffed him but only after he asked the suspect where the gun is and retrieved it.

However, this aspect could be justified under the public safety exception essayed under the case of *New York v Quarles* 467 US 649, 104 S.Ct. 26:26, 81 L. Ed.2d. 550 (1984). In that case, the Court held that the delay in reading the Miranda rights was justifiable by exigent circumstances,

which is concern for safety of the arresting officer and the public. The implication of this dictum to the case at bar is that the gun is admissible despite the fact that it was taken before the police officer read the Miranda rights to the defendant because it was within the ambit of the public safety exception. Since the defendant was already handcuffed in this case, what remained as a concern was public safety which could be endangered if the gun will be discovered by persons loitering in the area.

The fundamental laws that are at odds with a confession or admission are the Fifth Amendment on right against self-incrimination and the Sixth Amendment on right to counsel. These are the rights that are supposed to be protected when the Miranda is read to any person being arrested. However, like any other right, the rights enshrined under it can be waived. The courts, however, historically imposed stringent measures against any waiver by an arrested person of his Miranda rights. Even when a waiver is made in writing it will not stop the court from scrutinizing if the waiver was made as a product of informed decision. In the case of *North Carolina v Butler* 441 US 369, 99 S.Ct. 1755, 60 I. Ed. 2d 286 (1979), the North Carolina Supreme Court reversed the trial court's decision allowing the admissibility of the defendant's confession even though he refused to sign the waiver of his Miranda rights. This was however, effectively reversed by the US Supreme Court on the ground that any waiver of the Miranda right cannot be determined by form but by establishing whether the defendant "knowingly and voluntarily waived the rights delineated in the Miranda case" and that an express waiver specifically made is indispensable to establish waiver in fact.

Considering the Court's aforesaid decision, the waiver of the defendant in the present case and his subsequent confession may be admissible in court if the prosecution can prove that such

waiver made by the defendant after he was read and apprised of his Miranda rights was made knowingly and voluntarily. It is important for the prosecution to establish at this point that the defendant is literate and is able to understand the meaning of his rights and the subsequent waiver he made.

The Charges against the Defendant

The facts of the present case reveal that there are subsequent four charges brought against the suspect: criminal possession of a weapon, assault, theft and possession of illegal drugs. It is surprising to note that rape, which was the crime alleged by the victim, is not included among the charges. This could be either because the woman was lying about that fact or that the wrong suspect was apprehended.

In the criminal possession of a firearm, the gun is admissible in court as proof against the defendant because it was obtained lawfully as an incident to an arrest which is lawful as earlier discussed, albeit there was no corresponding search warrant for it. Assuming that the woman lied about the defendant when she informed the policemen about him, the gun could not be considered unlawfully obtained or fruit of a poisoned tree because the police arrested him in good faith believing that the woman was indeed raped. The good faith exception to the exclusionary rule, which was established in *United States v Leon* 468 US 897 (1984), should be applicable in this case. In the *Leon* case, the police authorities relied on a defective search warrant, which turned out to have been lacking in probable cause. The evidence obtained during the search was nevertheless deemed to be admissible by the Court because the police conducted the search in good faith believing that it was made according to the prescribed form.

The charge of assault is a bit mysterious because there is no showing in the facts presented that the suspect has attempted to assault the policeman who was pursuing him and there is no evidence at hand to prove this charge. Neither can the charge of theft clearly outlined by the facts. Assuming that the policeman was able to recover any item from the person of the suspect that was stolen by him, this can be used in court as evidence against him only if the item was recovered in a warrantless search is within the ambit of the exclusionary rule to be admissible in court. In *US v Edwards* 415 US 800 (1974), the Court held that unreasonable searches into the body of the person is not covered by the search-incident-to arrest exclusionary rule exception. A further search conducted on the personal effects of the suspect at the detention place is allowable even without warrant according to the case but it must be subject to the rule of reasonability and manner of perpetration.

Similarly the charge of possession of illegal drugs can be sustained if the evidence to be used against the defendant was taken after the arrest incident and in the detention place taking into consideration the dictum in the Edwards case. Since the arrest was lawful, the subsequent search is likewise lawful even if done without a warrant. However, in the Edwards case discussed in the preceding paragraph, any intrusion into the body made through “unreasonable search” is not admissible. The illegal drugs if found subsequently in the person of the defendant is admissible so long as the search was done lawfully and reasonably and no unlawful intrusion into the body of the defendant was made such as drawing of blood.

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