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# Constitutional Law--Suppression of Evidence Obtained by Search and Seizure Without a Warrant (McDonald v. United States, 93 L.Ed. 144 (1948))

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tical legislation might be upheld as constitutional. The court stating in the *Herndon* opinion that utterances "inimical to the general welfare" and "involving danger of substantive evil" may be penalized in the exercise of the state's police power,[6] and that a state's "police statutes may only be declared unconstitutional where they are *arbitrary* or *unreasonable*[7] attempts to exercise authority vested in the state in the public interest." In the *Thomas* case that part of the Texas court's opinion was upheld which stated that "The State under its police power may enact laws which interfere indirectly and to a limited extent with the right of speech or the liberty of the people where they are reasonably necessary for the protection of the general public."[8]

The court in the principal case supported its holding with the reasoning of a prior Supreme Court decision,[9] and held that the slight restriction of the freedom of the press prescribed by the statute is fully justified when the situation of the victim of the assault and the handicap under which prosecuting officers labor in such cases, is weighed against the benefit of publishing the identity of the victim in connection with the details of the crime. This prior case involved a New Hampshire statute similar to the one in the principal case which was attacked as violating one's right to freedom of speech. The Supreme Court therein said: "It has been well observed that such utterances (those which by their very utterance *inflict injury*[10] or tend to incite an immediate breach of the peace) are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that might be derived from them is clearly outweighed by the social interest in order and morality." The Wisconsin statute was held to have been intended to protect the victim from embarrassment and offensive publicity which, the court felt, had a strong tendency to affect her future standing in society. The legislation was thus justified.

D. S.

CONSTITUTIONAL LAW—SUPPRESSION OF EVIDENCE OBTAINED BY SEARCH AND SEIZURE WITHOUT A WARRANT.—The petitioner McDonald was convicted on charges of carrying on a lottery known as the numbers game based on evidence obtained by a search made without a warrant. Upon trial it appeared that police officers, having kept McDonald under surveillance for several months, raided his quarters after one of them unlawfully entered the building through

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[6] See note 2 *supra.*
[7] Italics ours.
[8] See note 3 *supra.*
[9] Chaplinsky v. New Hampshire, 315 U. S. 568, 86 L. ed. 1031 (1942).
[10] Italics ours.

the landlady's bedroom window and then opened the front door to admit the others. After searching the rooms on the ground floor, they proceeded to the second floor and upon coming to a closed door an officer stood on a chair and peered through the transom and observed McDonald and another in the room, as well as numbers slips, money and adding machines. Under orders from the police officer, McDonald opened the door whereupon he was arrested and the numbers slips, money and adding machines were seized. At the trial the petitioner moved to suppress the evidence seized at the time of the arrest; the motion was denied. On appeal of this ruling to the Court of Appeals for the District of Columbia the order of the lower court was sustained on the grounds that McDonald had no right to complain of the unlawful entry into the rooming house because he had no interest in the premises searched or the property seized.[1] Upon certiorari to the United States Supreme Court, *held,* conviction reversed; evidence obtained by the search should have been suppressed and the property returned to petitioner as search was made without a warrant and no emergency or compelling reasons justified its nonprocurement, hence it violated the Fourth Amendment to the Constitution of the United States.[2] *McDonald v. United States,* — U. S. —, 93 L. ed. 144 (1948).

In order to safeguard the right of privacy, the courts have repeatedly held that the Fourth Amendment should be construed liberally [3] and its protective shield extended to both the guilty and innocent alike.[4] The instant case, in extending the protection of the amendment to a roomer in a rooming house rejects the view held in the case of *Gibson v. United States* [5] wherein a mere guest was denied the right to object to admission of evidence obtained in violation of the Fourth Amendment on the grounds that such objection may be raised only by one who claims ownership in or right to possession of the premises searched or the property seized. The lower courts' proposal to extend this feudalistic concept of estate in land to the case of a roomer was rightly rejected as was aptly pointed out by Mr. Justice Jackson in his concurring opinion in the principal case

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

[2] U. S. CONST. AMEND. IV provides: "The right of the people to be secure . . . , against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, . . . particularly describing the place to be searched, and the persons or things to be seized."

[3] United States v. Lefkowitz, 285 U. S. 452, 76 L. ed. 877 (1932); Go-Bart Importing Co. v. United States, 282 U. S. 344, 75 L. ed. 374 (1931); Byars v. United States, 273 U. S. 28, 71 L. ed. 520 (1927); Gouled v. United States, 255 U. S. 298, 65 L. ed. 647 (1921); Boyd v. United States, 116 U. S. 616, 29 L. ed. 746 (1886).

[4] *In re* Go-Bart Importing Co., *supra* note 3; Agnello v. United States, 269 U. S. 20, 70 L. ed. 145 (1925); *In re* Gouled, *supra* note 3; Weeks v. United States, 232 U. S. 383, 58 L. ed. 652 (1914).

[5] 149 F. 2d 381 (App. D. C. 1945), *cert. denied sub nom.* O'Kelley v. United States, 326 U. S. 724, 90 L. ed. 429 (1945).

wherein he says ". . . it seems to me that each tenant of a building, while he has no right to exclude from the common hallway those who enter lawfully, does have a personal and constitutionally protected interest in the integrity and security of the entire building against unlawful breaking and entry." [6]

In recognizing the constitutional right of a roomer to be free from unreasonable search and seizure the Supreme Court seems to follow the reasoning of three lower court decisions which recognized the rights of a lessee or a licensee,[7] guest or employee [8] and a roomer in a private dwelling house.[9]

The effect of the decision in the instant case in no way affects the well settled principle of law that a reasonable search and seizure may be made as an incident of a lawful arrest,[10] however, *a fortiori,* a search made without a warrant can not be justified as an incident of arrest unless the arrest itself was lawful.

In reversing the lower courts the Supreme Court followed the decisions in *Johnson v. United States* [11] and *Trupiano v. United States* [12] which held that where there is ample opportunity to secure a search warrant and no emergency or compelling reasons exist such warrant must first be obtained before a valid search may be made. Where the Fourth Amendment has been violated and the evidence obtained as a result thereof is tendered in a federal court, such evidence will be suppressed.[13]

The facts of the instant case fall within the proscription of the Fourth Amendment,[14] and justifiably so, when we reduce the issue to the maintenance of the security of the individual against unreasonable searches and seizures versus the suppression of acts malum prohibitum; to hold otherwise would be contrary to the fundamental principles of liberty and an invasion of one's indefeasible right of personal security and private property.

J. C. B.

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[6] *See* McDonald v. United States, — U. S. —, 93 L. ed. 144, 149 (1948).
[7] United States v. DeBousi, 32 F. 2d 902 (Mass. 1929).
[8] Alvau *et al.* v. United States, 33 F. 2d 467 (C. C. A. 9th 1929).
[9] Brown *et al.* v. United States, 83 F. 2d 383 (C. C. A. 3d 1936).
[10] United States v. Lefkowitz, 285 U. S. 452, 76 L. ed. 877 (1932); Marron v. United States, 275 U. S. 192, 72 L. ed. 231 (1927); Agnello v. United States, 269 U. S. 20, 70 L. ed. 145 (1925); Weeks v. United States, 232 U. S. 383, 58 L. ed. 652 (1914).
[11] Johnson v. United States, 333 U. S. 10, 92 L. ed. 323 (1948).
[12] Trupiano v. United States, 334 U. S. 699, 92 L. ed. 1198 (1948).
[13] Weeks v. United States, 232 U. S. 383, 58 L. ed. 652 (1914).
[14] For an interesting exposition of the history of the Fourth Amendment see Mr. Justice Bradley's opinion in Boyd v. United States, 116 U. S. 616, 624-30, 29 L. ed. 746, 749-51 (1886).