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Article 18

Search and Seizure--Conviction Based on Evidence Obtained in Search Incident to Arrest on Unrelated Charge (Harris v. United States, 91 L.Ed 1013 (1947))

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Cole v. Phillips Lord, Inc.,[8] the appellate court reversed a dismissal of the complaint in which plaintiff sought to recover damages occasioned by defendant's exploitation of ideas which the plaintiff had evolved into a formula for a radio program. Plaintiff alleged that he had intrusted the formula to defendant for sale, but the latter had misappropriated it under the name, "Mr. District Attorney." These allegations were held sufficient to constitute a prima facie contract, under which the formula had been imparted to defendant. Such a contract would afford protection to plaintiff, even as to his mere ideas. And likewise in *Healey v. R. H. Macy & Co.*,[9] the plaintiff was allowed to recover the reasonable value of slogans and ideas with which he had furnished defendant for use in its Christmas advertising campaign.

These decisions represent a long stride forward, in that they provide a remedy to "idea men" who were obliged to go without redress while others exploited with impunity their lucrative ideas. Through decisions of this kind, the courts are manifesting a flexibility of judicial thought designed to meet the ever-changing needs of society.

J. F. K.

SEARCH AND SEIZURE—CONVICTION BASED ON EVIDENCE OBTAINED IN SEARCH INCIDENT TO ARREST ON UNRELATED CHARGE.—Subsequent to petitioner's arrest on a charge of violation of the Mail Fraud Statute [1] and the National Stolen Property Act [2] five federal officers embarked on an extensive search of the apartment wherein petitioner was arrested. After five hours searching for evidence connected with the crime charged, one of the officers found in a bureau drawer under some clothes an envelope marked: "George Harris, personal papers." In this envelope were found notice of classification cards and registration certificates the possession of which was in violation of the Selective Service Act [3] and the Federal Criminal Code.[4] Petitioner was convicted of violating both regulations. The circuit court affirmed the conviction and certiorari was granted. *Held,* conviction affirmed. *Harris v. United States,* — U. S. —, 91 L. ed. 1013 (1947).

Petitioner bases his appeal on two grounds: First, the search which produced the classification cards and registration certificates

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[8] 262 App. Div. 116, 28 N. Y. S. 2d 404 (1st Dep't 1941).

[9] 251 App. Div. 440, 297 N. Y. Supp. 165 (1937), *aff'd mem.*, 277 N. Y. 681, 14 N. E. 2d 388 (1937); *cf.* How J. Ryan & Associates v. Century Brewing Ass'n, 185 Wash. 600, 55 P. 2d 1053 (1936).

[1] 35 STAT. 1130 (1909), 18 U. S. C. § 338 (1940).

[2] 53 STAT. 1178 (1939), 18 U. S. C. §§ 413-419 (1940).

[3] 54 STAT. 885, 894, 895 (1940), 50 U. S. C. § 311 (1940).

[4] 35 STAT. 1098 (1909), 18 U. S. C. § 101 (1940).

was unreasonable and in violation of the Fourth Amendment to the Constitution of the United States; [5] second, the use of said certificates and cards in evidence at the trial was, therefore, in violation of the self-incriminating clause of the Fifth Amendment to the Constitution of the United States.[6]

It has been held that search and seizure in connection with an arrest is unreasonable where the thing seized does not relate to the specific offense for which the arrest was made.[7] Knowledge gained by the Federal Government by virtue of its own wrong through an unlawful search and seizure cannot be used by the Government in a criminal prosecution of the person so wronged.[8] However, where private persons unlawfully take possession of another's property and turn it over to federal authorities that property may be used against the one whose privacy has been violated.[9] No general exploratory search and seizure of either persons, houses or effects can ever be justified either with or without a warrant.[10]

In view of the aforementioned rules of law applicable to search and seizure, it is difficult to understand just how the court arrived at its decision in the main case. The court cites the *Lefkowitz* case [11] which seems to be opposed to the court's decision in the principal case. The *Lefkowitz* case held that a search in connection with an arrest, though lawful, did not justify a ransacking and exploratory search of the premises. The facts in the principal case describe a search meticulous and thorough in all respects. If this was a legal search, then the search in the *Lefkowitz* case was judicially angelic. One lower court decision [12] makes the broad statement that anything found upon the person arrested may be used against him. However, the facts in that case show that the papers seized were related to the crime charged.

The States generally hold that a search and seizure is unlawful when the thing seized is not that specified in the search warrant or was not connected with the crime charged where the search was made incident to arrest.[13]

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[5] 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."

[6] U. S. CONST. AMEND. V provides: "No person . . . shall be compelled in any criminal case to be a witness against himself, . . ."

[7] United States v. Brengle, 29 F. Supp. 190 (W. D. Va. 1939); *see* Landau v. United States Attorney for Southern Dist., 82 F. 2d 285 (C. C. A. 2d 1936), *cert. denied*, 298 U. S. 665, 80 L. ed. 1389 (1936); Foley v. United States, 64 F. 2d 1 (C. C. A. 5th 1933), *cert. denied*, 289 U. S. 762, 77 L. ed. 1505 (1933); United States v. Poller, 43 F. 2d 911 (C. C. A. 2d 1930).

[8] Goldstein v. United States, 316 U. S. 114, 86 L. ed. 1312 (1942).

[9] Burdeau v. McDowell, 256 U. S. 465, 65 L. ed. 1048 (1920).

[10] United States v. Rembert, 284 Fed. 996 (S. D. Tex. 1922).

[11] United States v. Lefkowitz, 285 U. S. 452, 76 L. ed. 877 (1932).

[12] United States v. Heitner, 149 F. 2d 105, 106 (C. C. A. 2d 1945).

[13] Griffin v. State, 57 Okla. Cr. 176, 46 P. 2d 382 (1935); Berg v. State,

The New York Constitution [14] and the Civil Rights Law of New York [15] prohibit unreasonable search and seizure. The New York rule is that though evidence is obtained unlawfully it may be used against the person whose privacy has been thus abused.[16]

There is almost an even division of authority among the several states in respect to interpretation of their constitutional and statutory provisions similar to the Fourth Amendment to the United States Constitution.[17] The federal rule seems to give the more logical construction of such provision. The fact that there is a remedy for unreasonable search does not seem to justify a conviction based on evidence illegally obtained. Actually, those states which hold contrary to the federal rule when they construe provisions analogous to the Fourth Amendment to the United States Constitution utilize a wrong to carry out the ends of justice. It is neither good morals nor good law to hold that the end justifies the means.

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29 Okla. Cr. 112, 233 Pac. 497 (1925); State v. Edwards, 51 W. Va. 220, 41 S. E. 429 (1902).

[14] N. Y. CONST. ART. I § 12.

[15] N. Y. CIVIL RIGHTS LAW § 18.

[16] People v. Richter, 265 App. Div. 767, 40 N. Y. S. 2d 751 (1st Dep't 1943), *aff'd*, 291 N. Y. 161, 51 N. E. 2d 690 (1943).

[17] In accord with federal rule: Callebs v. Comm., 290 Ky. 528, 161 S. W. 2d 929 (1942); State v. Wilkerson, 349 Mo. 205, 159 S. W. 2d 794 (1942); People v. Kraus, 377 Ill. 539, 37 N. E. 2d 182 (1941); Martin v. State, 190 Miss. 898, 2 So. 2d 143 (1941). *Contra:* State v. Frye, 58 Ariz. 409, 120 P. 2d 793 (1942); People v. Gonzales, 20 Cal. 2d 165, 124 P. 2d 44 (1942), *cert. denied*, 317 U. S. 657, 87 L. ed. 528 (1942); Murphy v. State, 64 Ga. App. 690, 13 S. E. 2d 870 (1941); State v. Gillam, 230 Iowa 1287, 300 N. W. 567 (1941).