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POLICE OFFICERS' HANDBOOK

SEARCH AND SEIZURE

(1972)

"THE BASIC TOOL
OF LAW ENFORCEMENT"

PART I

(THE MOTOR VEHICLE)

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POLICE OFFICERS HANDBOOK

ON

SEARCH AND SEIZURE

1972

"THE BASIC TOOL
OF LAW ENFORCEMENT"

PART I

THE MOTOR VEHICLE

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F O R E W O R D

Without the right to search...for weapons and evidence...the law enforcement officer could do little to give real effect to the criminal laws enacted by our legislators and inserted in our constitutions to protect us all in the enjoyment of our everyday lives in this Nation.

Lest we underestimate the importance of this area of our profession, imagine, if you will, the utter helplessness of the officer who could not search a subject he had under arrest for weapons, or the plight of the investigating officer who was forbidden to search and find the murder weapon needed to establish proof of guilt of the murderer!

Upon this necessary right to search, however, the law places strict conditions. No citizen shall be subjected to an unreasonable search of his person, his papers, his home...or his automobile! There are two broad categories of permissible

search by law enforcement officers: ONE, with a court order, or search warrant, and TWO, in much narrower circumstances, without a warrant.

The courts, both Federal and State, have effective means of enforcing lawful restrictions placed upon the right of the enforcement officer to search...the most effective method being to bar from evidence at trial anything discovered as a result of an unlawful search. Thus, it is a basic part of professional law enforcement to know how to conduct a lawful search!

As is true in most every field of instruction, a full treatment of search-and-seizure will encompass some well-known principles...because the 'new' is always evolved from the 'old'. Hardly anything every bursts upon us 'full-blown'!

Every law enforcement officer must know every basic rule of search-and-seizure and react to them

almost automatically. Without a sound grasp of these rules, he cannot hope to be a real 'pro'! And, they're not really all that involved!

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SEARCH...THE GENERAL RULE

Search of a person, his place of residence, his luggage, or his automobile, rather than being the right of the government...whether Federal, State, or local...is prohibited by our Constitutions. There can be no difference in this respect between the substantial citizen, on the one hand, and the known or suspected criminal on the other. Each has an equal right to this protection afforded by the basic law of our Land.

ENFORCEMENT OF RIGHT

There are at least three ways in which the right not to be searched unlawfully may be enforced under our system of government:

- (1) Suit under State law based on false arrest, unlawful entry, or other prohibited act.
- (2) Suit or prosecution in Federal court under the Civil Rights Act.

(3) Refusal by the courts to admit in evidence anything found as a result of an illegal search.

This is not pointed out to make the police officer overly-cautious or apprehensive in doing his job. Instead, it is intended to encourage all police officers to acquire a thorough knowledge of the laws governing search and seizure...so that they can act with speed and confidence when the occasion demands it. Nothing is quite so likely to produce error as uncertainty.

RIGHT TO SEARCH...AN EXCEPTION

The right of the police officer to search in certain circumstances is an exception to the rule ...rather than being a rule itself. Basically, no legal search may be made without a search warrant, which is nothing more than the order of a court based on sound information justifying the search. There must be, and there are, some exceptions to

this rule, of course. One area in which lawful exception was made at an early date relates to the easily movable vehicle...particularly the motor vehicle. It was recognized early by our courts that there must be some relaxation of the rigid requirement of a search warrant when motor vehicles could be so swiftly and easily moved from the scene.

RULE OF CARROLL

A MOTOR VEHICLE ON A HIGHWAY MAY BE SEARCHED THOROUGHLY WITHOUT A WARRANT WHEN THERE IS GOOD REASON TO BELIEVE TO CONTAINS CONTRABAND OR OTHER EVIDENCE.

In 1921, during the era of prohibition, a known bootlegger or rum-runner named Carroll was observed by Federal and local officers driving an automobile on a public highway from the direction of Detroit toward the city of Grand Rapids. Carroll lived in Grand Rapids and was known by the officers to be

engaged there in an illegal liquor business. Detroit was a well-known distribution point for illegal liquor from Canada. Previously, the officers had seen Carroll in the same automobile, an Oldsmobile Roadster, while engaged in activity related to bootlegging.

In these circumstances, the police officers stopped Carroll and made a thorough search of his car. A number of bottles of gin and whiskey were found secreted in the cushion of the back seat. He was charged with violation of the Volstead Act, and convicted.

In an appeal that finally reached the United States Supreme Court, Carroll claimed that the search of his car and the seizure of the gin and whiskey...later used in evidence against him... was unlawful.

In its decision in the Carroll case, United States v. Carroll, 267 US 132, the Court for the first time stated clearly that an automobile on the highway might lawfully be searched thoroughly by police officers without a warrant when there was good reason to believe that the car contained contraband. Chief Justice Taft said:

"...the guaranty of freedom from unreasonable searches and seizures by the 4th Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motorboat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."

And, speaking of circumstances in which such warrantless search of a vehicle would be lawful, Taft said:

"The right to search (a vehicle) and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law."

The facts supporting probable cause in the Carroll case are weak in view of today's court rulings. It is suggested that our courts today, might well not consider them sufficient. The basic rule of Carroll is sound, however, having been recently reaffirmed by the Court.

RULE OF PRESTON

(later changed)

When it first considered the question, "May a motor vehicle be searched thoroughly without a warrant at the station-house when its owner is in jail...when there is good reason to believe it contains contraband?" the United States Supreme Court said, "No!". In the case of Preston v. United States, 376 US 364, the Court held such a search unlawful on the ground that in such circumstances the very reason for the exception to the general rule no longer existed. There was time and opportunity for police officers to obtain a search warrant. The owner was in jail and police had custody of the car. There was no valid reason for a warrantless search.

RULE OF CHAMBERS

WHEN THERE IS GOOD REASON TO BELIEVE A CAR CONTAINS CONTRABAND OR OTHER EVIDENCE, IT MAY BE SEARCHED THOROUGHLY AT THE STATION-HOUSE WITHOUT A WARRANT...EVEN THOUGH THE OWNER IS IN JAIL...WHEN THE ARREST WAS MADE ON THE HIGHWAY.

The Supreme Court changed its mind about the right of police officers to make thorough search of a motor vehicle at the station-house. In Preston, the Court had said a warrantless search would not be permitted in such circumstances. In the case of Chambers v. Maroney, 399 US 42, the Court later decided that there was no good reason to require that police officers obtain a search warrant before making such a search.

An armed robbery had occurred and police had a discription of the robbers...four males...and the

motor vehicle in which they left the scene of the robbery...a light blue compact station wagon. A car fitting the discription, occupied by four males, was seen and stopped. The clothing of two of the men, a green sweater and a trench cost, matched discriptions reported to the police. Police arrested the four men, impounded the car, and searched it thoroughly at the station-house without a warrant. Two revolvers, ammunition, and property stolen in the robbery were found in a locked glove compartment and used in evidence at trial.

The Supreme Court, holding the search lawful, reasoned:

"It was not unreasonable in this case to take the car to the station-house. All occupants in the car were arrested in a dark parking lot in the middle of the night. A careful search at that point was impractical and perhaps not

safe for the officers, and it would serve the owner's convenience and (the) safety of his car to have the vehicle and the keys together at the station-house." Ref.: Footnote 10, majority opinion, Chambers.

In order to justify a warrantless thorough search of a motor vehicle at the station-house when the owner is in jail, these conditions must exist:

- (1) Arrest of the owner in or near his motor vehicle on the highway.
- (2) Probable cause to believe that the motor vehicle contains contraband or other evidence of crime.

A random search of the locked areas of a motor vehicle without good reason to believe it contains contraband or other evidence is not lawful

...with or without a search warrant.

When reasonably possible, the safest course to follow when probable cause exists is to obtain a search warrant based on the facts supporting probable cause before the search is made. When this is not done, however, the searching officer would be well advised to make permanent notes of the facts justifying a warrantless search. It is probable that he will be called upon at trial to justify such search by revealing the facts upon which he acted.

Attention is called to the circumstances that the station-house search of the Chambers car was made at night when it was not practicable for police to obtain a search warrant. It is suggested that a search warrant be obtained before the search in every case in which it is practicable to do so, such as when the arrest is made on a week-day during regular office hours.

RULE OF COOLIDGE

WARRANTLESS SEARCH OF A MOTOR VEHICLE IS
NOT LAWFUL WHEN THE ARREST WAS NOT MADE ON
THE HIGHWAY OR IN OR NEAR THE MOTOR VEHICLE
...EVEN WHEN PROBABLE CAUSE EXISTS.

A young girl was found murdered beside a highway in New Hampshire. The defendant Coolidge was connected with the case as a suspect by an informer. He volunteered to take a lie detector test. During the test conducted at the station-house, Coolidge confessed to a theft from his employer, the test being inconclusive as to the murder. He was held in jail on the theft charge, but was released the next day. Two and a half weeks later, Coolidge was arrested and jailed on the murder charge... additional evidence having been obtained.

Coolidge's car, thought to have been used in the murder, was taken from his driveway at home,

impounded by the police, and taken to the station-house, where it was vacuumed for evidence on three occasions...once two days after its seizure, the second time about a year later, and a third time several months later...all without a valid search warrant. Vacuum sweepings from the car were used in evidence against Coolidge at his trial.

On appeal, Coolidge claimed the vacuum sweepings were obtained as the result of an unlawful search of his automobile. The State argued that probable cause existed to believe the Coolidge car contained evidence of the crime and that, under the rule of Chambers, no search warrant was required. The conviction was reversed on the ground that search of the car without a valid warrant was unlawful in the circumstances.

The Supreme Court said the rule of Chambers, permitting warrantless search of a motor vehicle at the station-house...probable cause existing...

when its owner was in jail, applied only when the arrest was made on the highway or in or near the motor vehicle. In the Coolidge case, the defendant was arrested in his home...not on the highway...and at no time had there been lawful grounds for a search of the car without a warrant.

The rule of Chambers is still the law. The case of Coolidge merely illustrating that it must be exercised only in the restricted circumstances stated in the Chambers case.

The effect of the warrantless search of the Coolidge automobile is that the vacuum sweepings may never again be used against Coolidge at trial for the murder.

Apparently the distinction made in the two cases is that in Chambers the arrest was made in a parking lot while the defendants were in the car or in its immediate vicinity. Police, having

probable cause to believe the car might contain evidence of the robbery, could have searched the car thoroughly at the scene without a warrant. In Coolidge, however, the defendant was arrested in his house, while his car was parked in the drive. In those circumstances, at no time was there the right to search the car without a valid warrant...even with probable cause. Because there was no right to make a warrantless search at the scene of the arrest, there was no right to do so later at the station-house.

FLEMING'S NOTEBOOK...Chapter 72:

Another holding in the case of Coolidge v. New Hampshire, 39 LW 4795, was that a search warrant must be issued by a judge...no matter what the law of the state might say! New Hampshire law permitted the Attorney General of the State to issue search warrants. The Court said that the Constitution of the United States required that all search warrants must be issued by a neutral and detached magistrate. A judge may not authorize anyone else to issue search warrants for him or in his name... the requirement of the Constitution being that the judge himself look at the facts and make a judicial determination of whether or not the warrant should be issued.

Also condemned as unlawful by the Supreme Court was the practise of appointing law enforcement officers to act as justices of the peace or ministerial recorders in issuing warrants of any

kind! Such procedure violates a fundamental premise of both the Fourth and Fourteenth Amendments said the Court in Coolidge. No arrest or search warrant issued by such person is valid.

How much did a quart of gin or whisky cost during prohibition...? The price asked in 1921 in the Carroll case was \$130 per case! That's almost \$11 per quart...in 1921, no less!

The United States Supreme Court stated again in the recent Coolidge case that 'shotgun' search warrants permitting general searches are worthless...for example, a warrant authorizing search of a building for 'evidence of larceny at Ajax Department Store' would not meet the standards of a lawful warrant. The particular thing sought must be described in the warrant.

The Coolidge decision again affirmed the 'plain view' doctrine, however...that is, when an

officer is making a lawful search, with or without a search warrant, and happens upon contraband or other evidence of crime not listed in the warrant, he may seize such articles...He is not required to abandon them until he can get a search warrant.

Police in 'hot pursuit' of a robbery suspect followed him into a house...in a search of the house for the suspect and weapons that might be used against them, police found articles of clothing identified as having been used in the robbery. Seizure of the clothing was held to be lawful, since they were found in the process of a lawful search. Warden v. Hayden, 387 US 294.

Officers with a search warrant for illegal liquor raided a 'speakeasy'...while searching a closet for liquor, they came upon the books and accounts of the illegal liquor business being conducted there and took custody of them as evidence. This seizure was held to be lawful under

the 'plain view' doctrine. Marron v. United States, 275 US 192.

In the Coolidge case, while the defendant was in jail, police officers went to the Coolidge house to question the wife about her husband's whereabouts on the day of the murder. She readily admitted there were four guns of her husband in the house, got them, and gave them to the police voluntarily... One of the guns was the murder weapon. The Court held this evidence was lawfully obtained because the police had made no search for the weapons, nor had they done or said anything to force Mrs. Coolidge to obtain the guns for them.

When one defendant tells police that he and another person committed a robbery, is this enough from a strictly legal point of view to obtain an arrest warrant against the other person? In order to base a warrant on information, the informant must be shown to be reliable! That's enough, say

the Federal Courts! If an accused confesses to a crime committed with another, this is a statement against his own interest...and, for this reason... is considered to be reliable!

How far does the 'plain-sight' doctrine on search go?! A dealer was offered auto wheels by two men in a car. Police happened by, and the dealer voiced his suspicions of theft. Without a warrant, police looked through windows of car and saw auto wheels with 'pry' marks! Seizure of the stolen wheels without a warrant was OK!

MIRANDA WARNINGS do not have to be waived in writing...a verbal waiver is every bit as effective ...U.S. v Lonzo, 445 F2d 305...but it's still a good idea to get the waiver in writing as a matter of record!

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R E F E R E N C E M A T E R I A L

SEARCHES OF VEHICLES

AND OTHER MEANS OF TRANSPORTATION

The guaranty of freedom from unreasonable searches and seizures is construed as recognizing a necessary difference between a search of a dwelling house or other structure in respect of which a search warrant may readily be obtained and a search of a ship, motorboat, wagon, or automobile for contraband goods, when it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. However, those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless it is known to an officer authorized to search that there is probable cause for believing that the vehicles are carrying contraband or illegal

merchandise. The measure of the legality of such a seizure is, therefore, that the seizing officer shall have reasonable or probable cause for believing that the automobile which he stops and seizes contains contraband goods which are being illegally transported. In cases where the security of a warrant before seizure of property being transported on a highway is reasonably practicable, it must be secured, and when properly supported by affidavits and issued after judicial approval, it protects the seizing officer against a suit for damages. When seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.

It appears to have been clearly determined that the powers of the federal government do not include the right to search the occupant of an automobile without a warrant, at least in cases not arising under the National Prohibition Act, either

before his arrest or after his arrest if such arrest was not justified. In applying the former National Prohibition Act, the United States Supreme Court declared the rule to be that if a search and seizure without warrant are made upon probable cause, that is, upon the belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which, by law, is subject to seizure and destruction, the search and seizure are valid. State courts have announced a similar rule, however not all states have accepted it. In several cases in state courts which have involved searches made in connection with the alleged violation of state statutes relating to the transportation or sale of intoxicating liquors, the search of an occupant of a motor vehicle before arrest has been held not to be justified, whether or not a search of the car was permissible on the ground of the existence of a reasonable belief that it contained intoxicating liquor in violation of a

statute, but search of the occupant made after his lawful arrest has been held justifiable.

An arrest need not precede the search, nor does the right to search depend upon the right to arrest the one in charge of the vehicle. While the search of an automobile standing in a highway and the seizure of liquor found therein without warrant for either the search or the arrest of the owner of the car have been held to violate the constitutional guaranty against unlawful searches and seizures, circumstances may justify an officer in stopping automobiles upon the public highway and searching them for intoxicating liquors without a warrant. It is not necessary that the officer know beyond a doubt or beyond necessity for any identification that the vehicle is the property of any given person or that violation of the liquor laws may not be enough to warrant the search without a warrant. The substance of all definitions of probable cause has been said to be a reasonable

ground for belief in guilt.

A vessel moored at a wharf is a 'place' to be searched for liquor, within the meaning of a statute authorizing the search of any store, shop, warehouse, or other building or place. It has been held that under a statute authorizing officers of the Coast Guard to seize on the high seas, beyond the 12-mile limit, American vessels subject to forfeiture for violation of any law respecting the revenue, such officers may proceed to search and seize vessels when there is probable cause to believe them to be subject to seizure for violation of revenue laws, and to arrest persons there engaged in such violation.

A distinction should be noted between vehicles already in the country and those crossing international boundary lines. Travelers crossing an international boundary may be stopped and their vehicle searched without warrant, because of

national self-protection reasonably requiring one entering a country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in.

Notes from WHARTON'S CRIMINAL PROCEDURE

Section 1537

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