No. 236 - October Term, 1960

Dollree Mapp, etc.,	)	
	)	
Appellant,	)	
	)	On Appeal from the Supreme
v.	)	Court of Ohio.
	)	
Ohio.	)	

[April , 1961.]

MR. JUSTICE CLARK delivered the opinion of the Court.

Appellant stands convicted of knowingly having in her possession certain lewd and lascivious books, pictures, and photographs in violation of § 2905.34 of Ohio's Revised Code.[1] The Supreme Court of Ohio in a syllabus to its opinion has found that her conviction is valid even though "based primarily upon the introduction in evidence of lewd and lascivious books and pictures unlawfully seized during an unlawful search of defendant's home . . . ." 170 Ohio Stat. 427. The State says that even though under our cases the search violated the Fourth Amendment, it is not prevented from using the seized evidence at trial, citing Wolf v. Colorado, 338 U.S. 25 (1949). This Court did so hold under the circumstances existing at that time. However, on this appeal wherein

Cooperation	Reps w/o wars Employers	Standing	EP	Credibility US use	DP Rochi
Lustig	Robinowitz	Jeffers	Salsbury	Walden	Irvine
Rea	Shelton	Lewis			Breathnott
Elkins	Kremen	Jones			Rodin
Rios	Miller				
Wilson	Jones				
	Draper				
Val of Wars	Henry				
Giordello	Abel				
	Jones				

In the 17 years ~~between~~ since Wolf ~~and Irvine~~ the Court has dealt with facets of the Fourth Amendment problem in some 21 of opinions. In ~~only~~ one of those cases ~~was the~~ (were we) required to deal with a state rule tolerating admission of illegally seized evidence. ~~The rule~~ Considering it ~~was~~ as a "rule of evidence" in fashioning what ~~the~~ a state had wide discretion. The Court was unable to find ~~as~~ a ~~violation~~ denial of equal protection of the laws merely because the rule did not operate in all types of criminal prosecutions. Salsburg v. Maryland 346 U.S. 545. In another we held that ~~evidence~~ a ~~coerced~~ conviction obtained by use of evidence seized in a manner so shocking as to be "incredible were it not admitted" offended basic notions of decency) Rochin v. California ~~ignoring for those~~ purposes of that case the Fourth Amendment and the rule of Wolf. ~~Where suggestion~~ The state had ~~not yet~~ chosen not to follow.

In the years since Wolf was decided a score of opinions have been handed down by this Court dealing with search and seizure made in violation of the constitutional standards. In large measure they have been concerned with satisfaction of the Fourth Amendment criterion of reasonableness in a particular factual instance. ~~But that~~ By a process not devoid of logic they have gradually but surely made more meaningful the explicit command of its transmitted core.

"The remedies of private action and such protection as the internal discipline of the police" which led the Court to find the exclusionary rule not necessary to "minimal standards assured by the Due Process Clause" have proven to be so worthless and futile that they are of no earthly use in protecting the people in their right to privacy; nor do we find that more protection is secured through the exertion of "local opinion, sporadically aroused . . . against oppressive conduct on the part of the police;" Likewise time has proven the "weighty testimony" incorporated from People v. Defore, 242 N.Y. 13, to be countervailing and by hindsight unsupportable in practice; and, finally, the cases of this Court in the past few years have brushed aside many of the technical exceptions to the exclusionary rule cited in Irvine v. California, supra, at p. 136, as additional reasons for continuing in effect at that time the doctrine of the Wolf case. While as was pointed out in People v. Defore, supra, "There are dangers in any choice," at p. ____, and the enforcement of the exclusionary rule may not prove to be an effective bar to police defiance of a constitutional mandate "second to none in the Bill of Rights," Harris

Even in an exclusionary state, in a single court in a single city, challenges to evidence unlawfully seized were made in 4,673 of the 6,649 cases handled in one year. Almost incredibly, 4,593 such motions were granted. Notably, those cases were for the most part related to gambling and involved defendants who, we may consider it somewhat practical to believe, are unlikely organizers of an effective body of respectable public opinion. In the same state, however, the murderers of unarmed scared in graver offenses is slight.

Moreover, logical faults of mentioned

For, as of that time this Court had not seen fit to exclude illegally seized evidence in federal cases unless a federal officer perpetrated the wrong. But only last year that objection was demolished by our decision in Elkins v. U.S. 364 U.S. 206. Similarly, as of the Irvine decision, the limits on availability of the remedy of exclusion were required some proprietary or possessory interest in that which was unlawfully searched or seized", At p. 136, whereas today, in light of Jones v. U.S., 362 U.S. 257 all that is required is that the person asserting the right to exclusion had been "legitimately on the premises." At p. 267.

Not long after Irvine, and as a consequence of considering the Irvine rule merely one of evidence, an interest in it to affect state judicial use of unlawfully seized evidence tendered by federal agents was effected not through constitutionally imposed restraints, but through decline of a disciplining power. Even that exercise has narrow limits, however, and will not be made in many cases. Wilson v Rea v. U.S 350 U.S. 214. Schnettler 365 U.S 455

But the ~~restraint~~ hesitance in Wolf to ~~announce~~ constitutionally implement ~~[illegible]~~ the rule of Weeks ~~[illegible]~~ fostered the doctrine that decided Rochin v. US and brought some issue to this Court. The re-evaluation of Wolf at that time was considered premature, as we have noted above, and was not even suggested by the later opinion in Breithaupt v. Abram. If nothing else, Rochin carved out of the permissive area described by Wolf those instances in which discretionary rules of evidence must bow before more deeply imbedded notions, of fairness however inchoate, which the Due Process clause presumes in its assurance of a fair trial. But for a long while before Rochin this Court construed the Due Process clause as requiring exclusion of confessions obtained by coercion, and such confessions were no less violative of the Fifth Amendment for the Court that decided Weeks than was disclosure of unlawfully seized evidence in a federal court a violation of the Fourth. "The tendency ... to obtain convictions by means of unlawful seizures and enforced confessions ... should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights." 232 U.S. at 392. Why a greater degree of brutality is prerequisite to barring use of unlawfully seized evidence than is necessary for voiding a conviction based on a coerced confession is a distinction between trials fair and unfair made necessary only because of this Court's understandable hesitancy to acknowledge as necessary what had been urged as desirable for decades. ~~If, in addition to the "core" of the Fourth Amendment,~~

By including within the XIV the only remedy which makes the core of the IV A worthwhile the ~~independent~~ ban on use of such evidence need not be severed from assurance of a fair trial and distinctions between degrees of brutality, stressed in confessions cases, become irrelevant,

v. United States, 331 U.S. 145, dissenting opinion p. 157, we do know that it will be an effective sanction for the people against whom its violation is visited. We, therefore, have "no reluctance in condemning as unconstitutional a method of law enforcement so reckless and so fraught with danger and discredit to the law enforcement agencies themselves," Mr. Justice Jackson in McDonald v. United States, 335 U.S. 451, 461 (1948), and in rendering the fruits of such practice unavailable against its victims in the enforcement of our criminal laws.

we have noted probable jurisdiction, 346 U.S. 868, we have presented the recurring question of whether it is now timely to review that holding. It is pointed out that in Irvine v. California, 347 U.S. 128 (1954) this Court indicated that the states had not at that time had "adequate opportunity to adopt or reject the doctrine" of Weeks v. United States, 232 U.S. 383 (1914) since "Never until June 1949 did this Court hold the basic search and seizure prohibition in any way applicable to the states under the Fourteenth Amendment." At p. 134. In addition, it is said, that in the past twelve years the basic reasoning of Wolf has been undercut by changed conditions as well as the subsequent development of the case law as to search and seizure, not only in relation to the exceptions previously recognized in the field but also in its application in the administration of justice in our dual federalism. We find much plausible ground in this contention. "The contrariety of views of the states" which Wolf found "particularly impressive" is now less so. Recommitted as recently as last June, the has reversed itself; "the remedies of private action and such

States continuing to admit unconstitutionally seized evidence, which had numbered 31 when Wolf was decided, numbered 24. Whereas 16 states then agreed with the Weeks rule, as of last year their number was 26.

Elkins v. United States, 364 U.S. at p. 225

S&S Cases Since Wolf

Wolf	338	25
Lustig	338	74 ✓ coop
Rabinowitz	339	56
Jeffers	342	48 ✓✓ Standing
Rochin	342	165
On Lee	343	747
Shelton	346	270
Salsburg	346	545
Walden	347	62 - credit -
Irvine	347	128
Lewis	348	419 ✓✓
Rea	350	214 ✓
Breithaupt	352	432
Kremen	353	346
Miller	357	301
Giordenello	357	480
Jones	357	493
Draper	358	307
Frank	359	360
Henry	361	98
Abel	362	217
Jones	362	257 ✓✓
Elkins	364	206 ✓
Rios	364	253 ✓
Wilson	365	381 ✓
Silverman	365	505
Coppolla		pending ✓

O.T. 48

Wolf v. Colorado 338/25 6/27/49 FF

Rustig v. US 338/74 6/27/49 FF
US by State in which fed participated ≠ adm in fed ct
not nec to consider result if US by state only

US v Rabinowitz 339/56 SM 2/20/50
Allowing SW whenever practicable ≠ sine qua non of "reasonableness" Trupiano 334/699 overruled Black dissents saying merely rule of evid & not const problem FF dissents re scope incident to arrest
Stefanelli v. Minard 342/

US v. Jeffers 342/48 TCC 11/13/51
Standing he challenges SS narcs in friends hotel room. Had property int for excl rule purpose even if not for return.

On Lee v. US 343/747 Jackson 6/2/52
radio transmitter laundry shop ≠ SS viol IV FF WOD Burton = viol IV
overrule Olmstead

Shelton v. US 346/270 6/15/53 per cur
SG conf error CA affd denial 4/e
MS - illegal + Sh return all but stolen.

Salsburg v Maryland 346/545 HBurton 6/11/54
Md statute allows use of illegal evid
in certain misds in one Cnty + not elsewhere or
for similar misds ≠ viol EPL
"Rules of evidence being procedural in their
nature are peculiarly discretionary". Can't say
stat = affirmative sanction of ULS of Wolf at 28
(Gambling offenses - cf Chicago Racket Court. data.
= viol DP XIV

Walder v. U.S 347/62 2/1/54 FF
Con use illegal SS narcs to depeat credibility
of deft died testifying that never buy any.

IRvine v. Calif 347/128 2/8/54 Jackson (CJ, Reed, Minton)
made key to enter home + install mike = trespass
Decline to overrule Wolf = after make distinction
based on shocked conscience under Rochin. To
upset Wolf before States have had adequate
opportunity to adopt or reject ~~exclusion~~ the
rule in light of Wolf's holding IV thru XIV
would be unwarranted exercise of fedl power.
TCC concurs. HLB (WOD) V amendment re
tax stamps. FF dissents Rochin + see p 148

Misc Quotes

(1) On recurring problem of "reasonableness" see Minton in Rabinowitz 339 at 63

"... the Amendment does not place an unduly oppressive ~~burden~~ weight on law enf officers but merely interposes an orderly procedure under the aegis of judicial impartiality that is necessary to attain the beneficial purposes intended Johnson v. U.S. 333 US 10 (1948) officers instead of obeying this mandate chose too often, as shown by the numerous cases in this Court, taken matters into their own hands and invaded the security of the people against unreasonable search and seizure."

TCC in Jeffers 342/48/51

Brennan in Miller 357 at 313 re short cuts vs. effectiveness

WOD dissent in Draper 358 at 304 rebuts Defoe's murder case - red handed. see also Brennan in Abel 362 at 216

to effect useless to permit appeals in Rochin case. WOD dissents on knock applicability

Lewis v. U.S 348/419 3/14/55 SM

tax on wages Δ didn't buy stamp so no standing to say buying stamp furnishes probable cause for search & seizure w/o II

Rea v. US 350/214 1/16/56 WOD (no II for return contraband)

Wars (Stds) defective, MSuppress granted, govt moved to dismiss indictment. Then fed agt swore to affdt before new Mex judge + now Δ chgd w/ poss narcs viol NM law. Δ M cig from DCt vs agt testifying re narcs + reacquire narcs thereof affdt [No const problem - merely disciplinary pwr Reversed.

Harlan dissents (Reed Burton Minton) concern only of execution since procedg not unfed ct as McNabb

Breithaupt v. Abram 352/432 2/25/57 TCC

blood sample intox veh homicide - even if VSS Hall adeq under Wolf. Not shocking like Rochin

Warren dissent (HLB WOD) Rochin governs. Douglas dissent (HLB) confession case, subtly like Irvine governs as well as Rochin

Kremen v. US 353/346 5/13/57 per cur.
seizure of entire contents of home + moved
200 miles = VLS Burton TCC dissent
validity ≠ ? of quantity

Miller v US 357/301 WJB 6/23/58
break down door w/o notice
JMH conc no op TCC HB dissent.

Grordenello v US 357/480 6/30/58 JMH
Comm'n had no prob cause to issue warr under Rules arr
can't rely on presumption of agts pers knowledge
TCC dissents (HB, CEW)

Jones v. US 357/493 6/30/58 JMH
srch w/o warr on grd prob cause to
believe home contained contraband (still)
perj used in comm'n of crime. Distinguish
Rabinowitz - no arrest prior to srch here
TCC dissents (HB) grd enter to arrest.

Draper v US 358/307 1/26/59 CEW
agt had probable cause to arrest Δ at
Sta on basis of description etc. upon such
incident Δ to be held. WOD dissent

Frank v Maryland 359/360 FF 5/4/59

rat check not case where can assert IV right - no crim evid sought - no self protection Harbored roots for such insp w/o warr for genl welfare CCW conc + unreas sch WOD dissent (CJ, HLB, WB)

shadow on IV in civil cases. and anyway this could lead to misd conviction of fail to comply

Henry v US 361/98 WOD 11/23/59

prob cause to arrest = reas grds = same as IV covers both < arr srch - radios in car

HLB concurs FFC + CJ dissent

stopping car + arrest (even tho grnd conceded)

Abel v US 362/217 FF 3/28/60

adm warr

Jones v. US 362/257 FF 3/28/60

atchd - standing + probable cause

WOD diss on prob cause.

JONES v. U.S.
362 / 257 3/28/60 (FF)

261 The restrictions upon searches and seizures were obviously designed for protection against official invasion of privacy and the security of property. They are not exclusionary provisions against the admission of kinds of evidence deemed inherently unreliable or prejudicial. The exclusion in federal trials of evidence otherwise competent but gathered by federal officers in violation of the Fourth Amendment is a means for making effective the protection of privacy

264 Qualification in Rule re discretion of TJ to allow MS @ trial
"proves that we are dealing with carrying out an important social policy and not a narrow, finicky procedural requirement

266 As to who has standing —
We are persuaded, however, that it is unnecessary and ill-advised to import into the law surrounding the constitutional right to be free from unreasonable searches and seizures subtle distinctions, developed and refined by the common law in writing the body of private property law . . . . [Such distinctions] ought not to be determinative in fashioning procedures ultimately

refusable to constitutional safeguards"

267 Rule now —

"any one legitimately on premises where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are proposed to be used against him.

Elkins v US 364/206 PS 6/27/60

overrules Rustig Silver platter doctrine

state OLS w/o fed agt + adm in fed cts.

FF TCC JMH CEW dissent

Rios v US 364 US 253 PS

Wilson v Schnettler.

II

[Reasons in Wolf.]
For That Result

① 4th is enforceable vs. states.
② 31 states rejected laws
16 accepted laws.

Weeks 232/383

392 "The effect of the Fourth Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints ... and the duty of giving to [~~this~~ the Fourth Amendment protection] force and effect is obligatory upon all entrusted under our federal system with the enforcement of the laws. The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizure and enforced confessions ... should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights.

393 [Evidence]... can then be seized and held and used... The protection of the FA... is of no value, and, so far as those placed are concerned, might as well be stricken from the Const.

394 To sanction such proceedings would be to affirm by judicial decree a manifest neglect if not open defiance of the prohibitions of the C

398 "... there was involved in the order refusing the application a denial of the constitutional rights of the accused ..."

ns Gould - IV + V viols (Ltss)
Olmstead II reg'mes suppression.
Byars no rule = plain disregard of IV
Schen Norris = cons't III (cong's no V right)

(were they mostly papers in V cases?

Adamson's no problem

Wolf

Palko 302 319
Adamson 332 46

27

"basic rights do not become petrified as of any one time . . . . It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right"

"we must hesitate to treat this remedy as an essential ingredient of the right."

Brandeis - dis. Olmstead 277 - 488

472 Regulations which "a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive." Village of Euclid v. Ambler Realty Co., 272 US 365 387

473 Rights declared in words might be lost in reality Weems v US 217 US 349 373

McKenna, J

Without the enjoyment of this right, all others would lose half their value

~~Interstate Commerce Comm v. Brimson 154 US 447, 479~~

In re Pacific Railway Commission, 32 Fed 241, 250

[redacted] WO 7-2162

~~To Progress to~~

In our continuing progress toward evolution of a society founded upon order and security

that requires the conduct of federal loso employees may sometimes be subject to restrictions more

aspect of the argument,

The Court noted the futility of seeking to statistically establish the negative, i.e. that private citizens in ~~the~~ exclusionary states suffer fewer unconstitutional invasions of their privacy than those in non-exclusionary states. ~~We do not~~ It has been observed however that not even in the former, and therefore quite assuredly in the latter, the Fourth Amendment is sacrificed on the altar of harassment of petty criminals, recidivists of minor offenses.

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