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 had in her possession and under her control certain lewd and lascivious books, pictures and photographs in violation of § 2905.34 of Ohio's Revised Code. [1/] As officially stated in the syllabus to its opinion, the Supreme Court of Ohio found that her conviction was valid 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 St. 427, 166 N.E. 2d 387. The State says that even though under our cases the search violated the Fourth Amendment, it is not prevented from using the unconstitutionally seized evidence at trial, citing Wolf v. Colorado, 338 U.S. 25 (1949). This Court did indeed hold "that in a prosecution in a

state court for a state crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure." At p. 33. On this appeal, wherein we have noted probable jurisdiction, 346 U.S. 868, it is urged once again that we review that holding. 2/

I.

Seventy-five years ago, in Boyd v. United States, 116 U.S. 616, 630 (1886), considering the Fourth and Fifth Amendment as almost "running into each other" on the facts before it, this Court held that the doctrines of the Fourth Amendment

> "apply to all invasions, on the part of the government and its employees, of the sanctity of man's home and the privacies of life. It is not the breaking of the doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property . . . ."

The Court noted that

> "[C]onstitutional provisions for the security of person and property should be liberally construed . . . . It is the duty of courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachment thereon," at

p. 635, and specifically excluded the use of the papers as "unconstitutional." In this the Court was following Madison's prediction that "independent tribunals of justice . . . will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights." I Annals of Congress, 439 (1789). Less than thirty years later, in Weeks v. United States, 232 U.S. 383 (1914), the Court stated that

> "[T]he Fourth Amendment . . . put the courts of the United States and Federal officials in the exercise of their power and authority, under limitations and restraints . . . and to forever secure the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the guise of law . . . and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws." At p. 383.

Specifically dealing with the use of the evidence unconstitutionally seized, the Court concluded:

> "If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an

> offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land." At pp. 391-393.

Finally, the Court in that case clearly stated that use of the seized evidence involved "a denial of the constitutional rights of the accused." At p. 398. Thus, in the year 1914, in the Weeks case, this Court "for the first time" held that "in a federal prosecution the Fourth Amendment barred the use of evidence secured through an illegal search and seizure." Wolf v. Colorado, supra, at p. 28. This Court has ever since required of federal law officers a strict adherence to that command which this Court has held to be a clear, specific, and constitutionally required -- even if judicially implied -- deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to "a form of words." Holmes, J., Silverthorne Lumber Co.

v. United States, 251 U.S. 385 (1920). It meant, quite simply, that "conviction by means of unlawful seizures and enforced confessions . . . should find no sanction in the judgments of the courts . . . ." Weeks v. United States, supra at , and that such evidence "shall not be used at all." Silverthorne Lumber Co. v. United States, supra at 392.

II.

Thirty-five years after Weeks was announced this Court in Wolf v. Colorado, supra, again for the first time, discussed the effect of the Fourth Amendment upon the States by its incorporation through the Due Process Clause of the Fourteenth Amendment. It said:

> " . . . we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment." At p. 28.

Nevertheless, after declaring the Fourth Amendment "implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause" and announcing that it "stoutly

adhere[d]" to the Weeks decision, the Court decided that the Weeks exclusionary rule would not then be carried over against the States as "an essential ingredient of the [Fourth Amendment] right." The Court's reasons for not incorporating in the Fourth Amendment as carried over against the States what had decades before been posited as part and parcel of the Fourth Amendment constitutional right against federal encroachment was bottomed entirely on factual considerations.

While they are not essentially relevant to a decision that the exclusionary rule is part and parcel of the Fourth Amendment as it is visited upon the States through the Fourteenth, we will note these factual grounds on which Wolf was based.

The Court in Wolf first stated that the "contrariety of views" of the States on the adoption of the exclusionary rule of Weeks was "particularly impressive;" and, in this connection, that it could not "brush aside the experience of the states which deem the incidence of such conduct by the police too slight to call for a deterrent

remedy . . . by overruling the [States'] relevant rules of evidence." At pp. 31-32. We note, however, that without the assistance of this Court, since 1949, of the 37 States that have passed on the Weeks exclusionary rule, 21 have by their own decision adopted or adhered to it. While in 1949, prior to the Wolf case, almost two-thirds of the States were opposed to the use of the exclusionary rule in the State cases, now, despite the Wolf case, 57% of those passing upon it have adopted the Weeks rule. See Elkins v. United States, 364 U.S. 206, Appendix pp. 224-232 (1960). Significantly, among those now following the rule is California which, according to its highest court, was "compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions . . . ." People v. Cahan, 44 Cal.2d 434, 445, 282 P.2d 905, 911 (1955). In connection with this California case, we note that the second basis elaborated in Wolf in support of its failure to enforce the exclusionary doctrine as part of the Fourth Amendment against the States is that "other means of protection"

have been afforded "the right to privacy." The experience of California that such other remedies have been worthless and futile is buttressed by the experience of other States. [3/] In fact, this Court has decided only one case [Monroe v. Pape, 365 U.S. 167 (1961)] in which private remedies have been pursued in an effort to redress such invasions of privacy. The obvious futility of relegating the Fourth Amendment to the protection of other remedies has been recognized by this Court since Wolf. Irvine v. California, 347 U.S. 128, 136 (1954).

Likewise, time has set its face against what Wolf called the "weighty testimony" of People v. Defore, 242 N.Y. 13, 22, 150 N.E. 585, 588 (1926). There Justice [then Judge] Cardozo, rejecting the use of the Weeks exclusionary rule in New York, said that "[t]he federal rule as it stands is either too strict or too lax." 242 N.Y. at 22, 150 N.E. at 588. However, that reasoning has been the force of entirely vitiated by recent cases of this Court. These include the recent discarding of the "silver platter" doctrine which abided federal judicial use of evidence seized unlawfully by State agents,

Elkins v. United States, supra; and relaxing the formerly strict requirements as to standing so that now the procedure of exclusion, "ultimately referable to constitutional safeguards" is available to anyone even "legitimately on the premises" unlawfully searched, Jones v. United States, 362 U.S. 257 (1960); and recognition of means to prevent State use of evidence unconstitutionally seized by federal agents, Rea v. United States, 350 U.S. 214 (1956).

In addition, some five years after Wolf, this Court, in answer to a plea that we overturn its doctrine on applicability of the Weeks exclusionary rule, indicated that such should not be done until the States had "adequate opportunity to adopt or reject the doctrine." Irvine v. California, supra at 134. There again it was said

> "Never until June of 1949 did this Court hold the basic search and seizure prohibition [of the Fourth Amendment] in any way applicable to the States under the Fourteenth Amendment." At p. 134.

And only last Term in Elkins v. United States, supra, the Court pointed out that "the controlling principles" as to search and

seizure and the problem of admissibility "seemed clear" (at p. 212) until the announcement in Wolf "that the Due Process Clause of the Fourteenth Amendment does not itself require State courts to adopt the exclusionary rule" of the Weeks case. At p. 213. At the same time the Court pointed out, "the underlying exclusionary doctrine which Wolf established . . . that the Federal Constitution . . . prohibits unreasonable searches and seizures by State officers" had undermined the "foundation upon which the admissibility of State seized evidence in a federal trial originally rested . . ." At p. . This "Constitutional doctrine of Wolf," the Court added, "operated to undermine the logical foundation of the Weeks admissibility rule . . ." At p. . The Court concluded that it was therefore obliged to hold that all evidence obtained by an unconstitutional search and seizure was inadmissible in a federal court regardless of its source. And today the Wolf holding leads us to close the only door remaining open, i.e., to hold that all evidence so obtained is Constitutionally inadmissible in a State court.

It, therefore, plainly appears that the factual considerations supporting the failure of the Wolf Court to include the Weeks exclusionary rule against the States when it recognized the incorporation of the Fourth Amendment against them in 1949, while not basically relevant to any Constitutional consideration, could not now be deemed controlling.

III.

There are in the cases of this Court some passing references to the Weeks rule as being one of evidence. [4/] But the plain and unequivocal words of Weeks and its later paraphrase in Wolf to the effect that the Weeks rule is of Constitutional origin, remain entirely undisturbed. In the last case prior to Wolf directly considering the point, McNabb v. United States, 318 U.S. 332 (1943), we note this statement:

> "[A] conviction in the federal courts, the foundation of which is evidence obtained in disregard of liberties deemed fundamental by the Constitution cannot stand. Boyd v. United States . . . Weeks v. United States . . . . And this Court has, on Constitutional grounds, set aside convictions, both in the federal and State courts, which were based upon confessions 'secured by protracted and repeated questioning of

> ignorant and untutored persons, in whose minds the power of the officers was magnified' or 'who have been unlawfully held in communicado without advice of friends or counsel . . . ." At pp. 339-341.

Significantly, in McNabb, the Court did formulate a rule of evidence saying, "[i]n the view we take of the case, however, it becomes unnecessary to reach the Constitutional issue . . . for . . . the principles governing the admissibility of evidence in federal criminal trials have not been restricted . . . to those derived solely from the Constitution." At p. 341.

IV.

Since the Fourth Amendment has been incorporated through the Due Process Clause of the Fourteenth against the States, it is enforceable against them in the same manner and to the same extent as it is against the federal government. At the time that the Court held in Wolf that the Amendment was applicable to the States through the Due Process Clause, the cases of this Court, as we have seen, held that as to federal officers the Fourth Amendment included the exclusion of the evidence seized in violation of its provisions. Even

Wolf "stoutly adhered" to that proposition. The doctrine, when incorporated against the States, was not susceptible of destruction by the process of emending its sanctions from the Constitutional right to the protection of which it had always been deemed prerequisite under the Boyd, Weeks and Silverthorne cases. Therefore, in extending the substantive protections of due process to all unreasonable searches -- state or federal -- it was logically and Constitutionally necessary that the exclusion doctrine -- part and parcel of the Fourth Amendment -- be also an essential ingredient of the right newly recognized by the Wolf case. In short, the admission of the new constitutional right by Wolf could not consistently tolerate denial of its most important constitutional privilege, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure. To hold otherwise is to grant the right but withhold its privilege and enjoyment.

Indeed, we know of no such restraint, rejected today, being placed upon the enforcement of any other basic constitutional right.

The right to privacy, no less important than any other right carefully and particularly reserved to the people, would stand in marked contrast to all other rights declared as "basic to a free society." Wolf v. Colorado, supra at 27. This Court has not hesitated to enforce as strictly against the States as it does against the federal government the rights of free speech and of a free press, the rights to notice and to a fair, public trial, including, as it does, the right not to be convicted by use of a coerced confession, however "logically relevant" it be, and without regard to its reliability. Cf. Rogers v. Richmond, 365 U.S. 534 (1961). And nothing could be more certain than that when a coerced confession is involved, "the relevant rules of evidence" are overridden without regard to "the incidence of such conduct by the police," slight or frequent. Why should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc. We find the two relevant amendments "running into each other," Boyd v. United States, supra, and the philosophy of

each is the same -- no man is to be convicted on unconstitutional evidence. Cf. Rochin v. California, 342 U.S. 165, 173 (1952).

V.

Moreover, our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical culmination of cases, but it also makes very good sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the federal Constitution which it is bound to uphold. Moreover, as was said in Elkins, "[t]he very essence of a healthy federalism depends upon the avoidance of needless conflict between state and federal courts." At p. 221. Such a conflict, now needless, arose this very Term, in Wilson v. Schnettler, 365 U.S. 581 (1961) in which we gave full recognition to our practice in this regard by

refusing to restrain a federal officer from testifying in a State court as to evidence unconstitutionally seized by him in the performance of his duties. Yet the double standard now recognized hardly puts such a thesis into practice. In non-exclusionary States, federal officers, being human, were by it invited to and did, as our cases indicate, step across the street to the State's attorney with their unconstitutionally seized evidence. Prosecution on the basis of that evidence was then had in a State court in utter disregard of the enforceable Fourth Amendment. If the fruits of an unconstitutional search had been inadmissible in both State and federal courts, this inducement to evasion would have been sooner eliminated. There would be no need to reconcile such costs as Rea and Schnettler, each pointing up the hazardous uncertainties of our heretofore ambivalent approach.

Federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their then mutual obligation to respect the same fundamental criteria in their approaches. "However much in a particular case insistence upon

such rules may appear as a technicality that inures to the benefit of a guilty person, the history of criminal law proves that tolerance of shortcut methods in law enforcement impairs its enduring effectiveness." Miller v. United States, 357 U.S. 301, 313 (1958). Barring shortcuts to only one of two cooperating law enforcement agencies tends naturally to breed legitimate suspicion of "working arrangements" whose results are equally tainted. Cf. Byars v. United States, 273 U.S. 28 (1927); Lustig v. United States, 338 U.S. 74 (1949); Anderson v. United States, 318 U.S. 350 (1943).

There are those who say, as did Mr. Justice (then Judge) Cardozo, that under our Constitutional exclusionary doctrine "[t]he criminal is to go free because the constable has blundered." People v. Defore, 242 N.Y. at 21, 150 N.E. at 587. In some cases this will undoubtedly be the result. But, as was said in Elkins, "[t]here is another consideration -- the imperative of judicial integrity." 364 U.S. at p. . The criminal goes free, if he must, but it is the law that makes him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence. As Mr. Justice Brandeis,

dissenting, said in Olmstead v. United States, 277 U.S. 438, 469 (1928): "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by example . . . . If the government becomes a lawbreaker, it breeds contempt for law; it invites everyman to become a law unto himself; it invites anarchy." The ignoble but doubtless efficient shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized that the Fourth Amendment is enforceable against the States and that its rights are, therefore, constitutional in origin, we can no longer permit those rights to remain as empty promises rather than solemn constitutional obligations enforceable in the same manner and to like effect as other basic rights secured by our great charter.

The judgment is vacated and the course remanded for further proceedings not inconsistent with this opinion.