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POLICE OFFICER'S HANDBOOK

THE CRIMINAL LAW

PART XVI

LIMITED 'TERRY' SEARCH OF VEHICLE FOR WEAPONS (US V. STEVENS)

SEARCH WARRANTS TO BE EXECUTED BY BONDED OFFICERS

MUNICIPAL COURTS...POWER TO TRY STATE VIOLATIONS

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(1A) Frisk Search on Information of Felony Committed
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LAW ENFORCEMENT - ETV TRAINING PROGRAM

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TO TRY STATE VIOLATIONS

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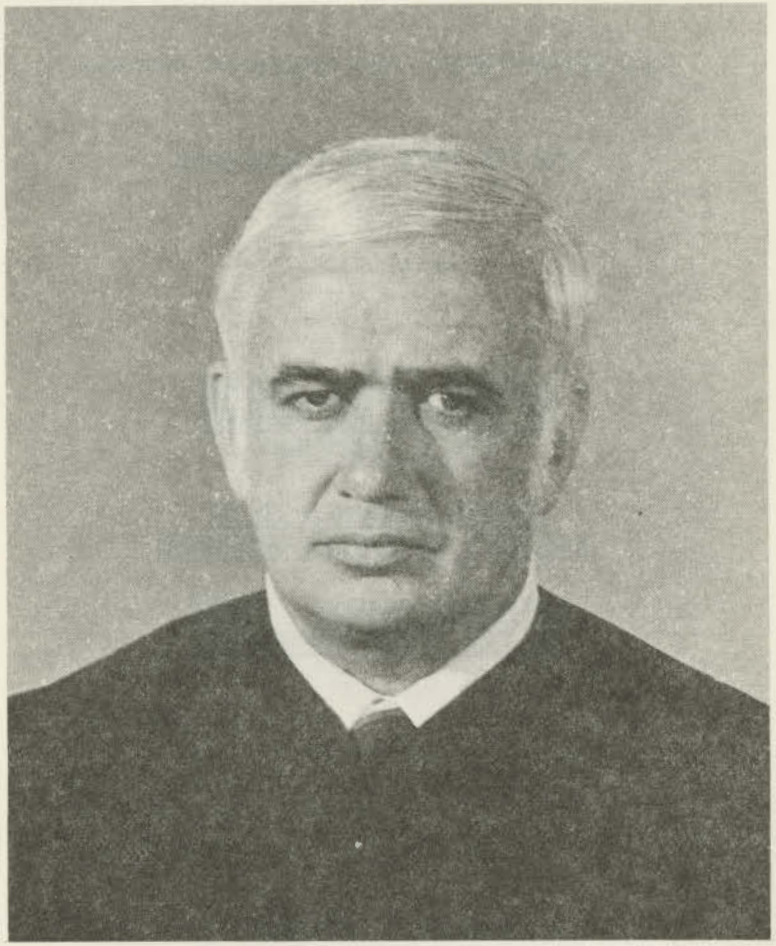

Hon. Thomas E. Lydon, Jr.
Associate Municipal Judge
Columbia, South Carolina

"The privacy of an individual in his person and with regard to his motor vehicle must yield to an investigatory intrusion involving a limited search for weapons only, called a 'Terry' frisk, when there are grounds justifying an investigation and there is good reason to suspect that such individual is armed and dangerous."

Thomas E. Lydon, Jr.
Associate Municipal Judge
Columbia, South Carolina

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LIMITED SEARCH OF VEHICLE FOR WEAPONS

The Supreme Court of the United States ruled in 1968 (Terry v. Ohio, 20 L ed 2D 889) that a suspect could be frisked for weapons by law enforcement officers in proper circumstances for the protection of the officers while conducting an investigation. A Federal Court of Appeals has extended the Terry ruling to include a motor vehicle near the suspects and readily accessible to them. US v. Stevens, 509 F2d 683 (1975).

Two suspects were stopped by police officers in St. Louis for a traffic offense. An inquiry by radio to the station-house brought the report that the car was wanted in connection with a recent burglary. Officers, under the Terry frisk rule, made a weapons search of the suspects before questioning them further, and a shotgun shell was found on one of them. One of the officers then

made a limited search of the inside of the automobile, finding a sawed-off shotgun under the front seat. No locked part of the car...such as the trunk...was searched.

A Federal Court, reviewing the conviction, held that a limited search of the car was reasonable... and therefore lawful...in the circumstances, because the car was nearby and any weapon secreted inside it was readily accessible to the suspects. The shotgun shell found on one of the suspects gave the officers reason to believe there might be a shotgun nearby. Among other things, the Court said in upholding the conviction:

RIGHT TO FRISK OCCUPANTS

"Although at the time the vehicle was pulled over for the traffic offense, there was no probable cause to search it, it was nonetheless reasonable for the officers to assume that they could and should question all occupants on the basis of information revealed by the warrant check (burglary report). Under these circumstances, it was not unreasonable that the officers, for their own protection, cautiously required the occupants to... submit to a limited 'frisk' before questioning.

"The privacy of an individual must yield to a limited investigatory intrusion of this sort (frisk search) where there is good reason to believe that he may be armed and dangerous.

RIGHT TO 'FRISK' VEHICLE

"The vehicle was only 4 to 6 feet away from the suspects at the time the shotgun shell was discovered. The officers could reasonably infer that the shell belonged to a shotgun either concealed on the subject or in the nearby car.

"Officer Sheldon's search (of the vehicle) was a limited one obviously made only for the purpose of discovering possible weapons.

MEANING OF 'REASONABLE'

"Hindsight reasoning might convince one that the officers were being overly cautious or that they could have dealt with their concern by moving the suspects farther from the vehicle, but we must view their conduct in terms of what could be considered reasonable under the circumstances then existing. US v. Peep, 490 F2d 903."

SEARCH WARRANTS MUST

BE EXECUTED BY BONDED OFFICER

Although State law does not require that all law enforcement officers in the State be bonded, it does insist that execution of a search warrant be done only by an officer who is bonded. Sheriffs, deputy sheriffs, Governor's constables without pay, SLED officers, and members of the State Highway Patrol must be bonded, but State statute does not require that city or town police officers be bonded. Some county police are required to be bonded; others are not.

Some town councils require their police to be bonded, as do most county councils with respect to their county police. There are still quite a few law enforcement officers in the State who are not bonded, however.

SECTION 17-259, S.C. CODE

South Carolina law provides, with respect to execution of search warrants:

"Provided, however, that only law-enforcement officers under bond shall be permitted to execute a search warrant."

RECORDERS AND MAYORS

MAY TRY STATE VIOLATIONS

In the past it has not been within the authority of municipal courts to try cases involving violations of certain State criminal laws. For example, the Sumter City Court some years ago permitted a defendant to plead guilty in that court to the charge of petty larceny...the City having no ordinance to cover such a crime. Petty larceny was a violation of State law. Keels v. Sumter, 95 SC 203, 78 SE 893.

The State Supreme Court reversed the conviction. (Note: A plea and sentence theron constitutes a 'conviction'). The Court held that municipal courts had power to try only those cases brought under municipal ordinance.

By special statutes, municipal courts could handle violations of the State uniform traffic code

and certain liquor law violations in which penalties could not exceed $100 or 30 days.

Questionable also under the Keels decision was the power of municipal courts to issue arrest warrants in cases beyond their jurisdiction to try (general sessions court offenses) and their authority to hold preliminary hearings.

The General Assembly of South Carolina in 1975 enacted legislation empowering the mayors, recorders, and other municipal judges to do all these things... but the Act applies only to municipalities having more than one thousand population.

ACT 249...ACTS OF 1975

Act 249 amends Section 15-1010, 1962 Code of Laws of South Carolina, to read:

"Such municipal court (municipalities of 1,000 population or more) shall have jurisdiction to try and determine all cases arising under the ordinances of the city in which the court is established and generally shall have all such judicial powers and duties as are now conferred upon the mayor of such city, either by its charter or by the laws of this State.

"The municipal court shall also have all such powers, duties and jurisdiction in criminal cases made under municipal or State law as are now conferred by law upon the magistrates appointed and commissioned for the county in which the court is established, except that such court shall not have the authority of a magistrate to appoint a constable."

COMMENT

This Act permits the presiding judge of a municipal court in cities and towns with population of 1,000 or more to:

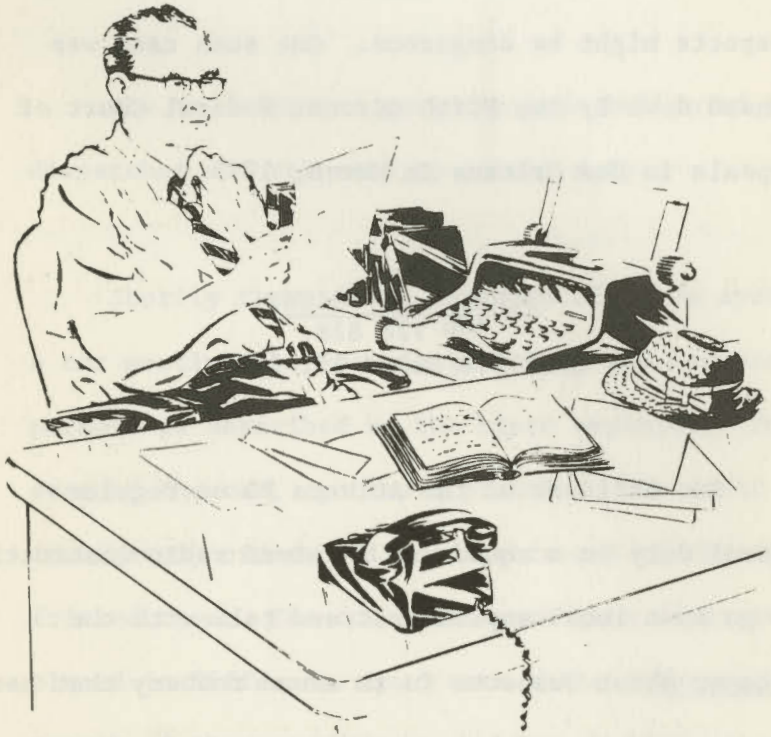
(1) Try cases involving violations of State law when the penalty does not exceed $100 or 30 days.

(2) Issue arrest warrants in all criminal cases in which the offense occurred within the municipality.

(3) Hold preliminary hearings on arrest warrants involving criminal cases bound over to general sessions court in cases in which the warrant was issued by the municipal court.

NOTE: Act 249 does not alter the power of mayors in municipal courts in towns of less than 1,000 population.

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK...Chapter 116:

Courts seem to be getting more liberal with the rights of police officers to protect themselves by a weapons search of suspects and their motor vehicles when there is cause to suspect that the suspects might be dangerous. One such case was handed down by the Fifth Circuit Federal Court of Appeals in New Orleans in March, 1975.

JOHNSON V. WRIGHT
509 F2d 828
USCA 5TH MARCH 13, 1975

Two officers of the Atlanta PD on regular patrol duty in a squad car received radio instructions to go to a local supermarket and talk with the manager about suspects in an armed robbery that had occurred in the market recently.

A female employee of the store told the officers that a man who had participated in the robbery had

just been in the store again, but had left with others in a red Ford Fairlane with a jacked up rear end and with its license plate wired on. The man who had been in the store was described as a 'tall black male in his early twenties wearing a floppy hat'.

The two officers gave the information to the dispatcher and returned to patrol duty.

Shortly thereafter, the same officers spotted a car meeting the description given and occupied by persons as described by the store employee. They stopped the car, spotted a pistol on the front seat, immediately ordered all occupants out of the car and frisked them. The occupants were then separated and placed in different squad cars while a thorough search of the suspect car was done. (Other squad cars had arrived by this time.) A sawed-off shotgun was found in the locked trunk of the car.

All occupants were convicted of possession of a pistol...which had been found on the front seat. The driver was convicted of possession of a sawed-off shotgun and of armed robbery of the supermarket.

APPEAL QUESTIONS

One of the occupants of the car appealed his conviction of possession of the pistol in a habeas corpus proceeding in Federal Court, raising several questions:

I.

DID THE POLICE HAVE A RIGHT TO SEPARATE THE OCCUPANTS OF THE CAR WHILE THEY SEARCHED IT?

The officers acted properly and reasonably in separating the occupants, said the Court. It made search safer, more effectively preventing the suspects from bolting to escape or get to weapons in the car.

II.

DID POLICE HAVE A RIGHT TO FRISK THE SUSPECTS IN THE FIRST PLACE?

"Yes!", said the Court. They had a description of the car and at least one occupant (the driver) of the car, and reliable information that both had been involved in an armed robbery. With such information, it was the duty of the officers to stop the car and arrest the driver. There was good reason to suspect that any or all might be armed and dangerous. All occupants were lawfully subjected to a frisk search. The driver, being under arrest, could be subjected to a thorough search.

III.

WAS SEARCH OF THE LOCKED TRUNK OF THE CAR JUSTIFIED?

"Yes!", said the Court again. The officers had probable cause to believe that the car had been involved in an armed robbery. They had every right to search it thoroughly for evidence.

EDITORIAL COMMENT BY EFM:

The defendants in the Johnson case were convicted of possession of an unlicensed pistol. In his charge to the jury, the trial judge said that all that had to be shown by the prosecutor was that the pistol was possessed by the defendants and that, thereafter, the burden was on the defendants to prove that the pistol was licensed. They did not do so.

In other words, the trial judge ruled that the State was not required to prove that the pistol was unlicensed, but only that the defendants possessed it. If the defendants wished to defend on the ground that the gun was licensed it was their burden to offer such proof. If no such proof was given, the jury could find that there was no license.

"Not so! Error by the trial judge!", said the Court of Appeals. It is never constitutional to

require that a criminal defendant prove his innocence. The State or the Government must prove his guilt...which means every element of the crime charged. One element of the crime charged here was 'possession of an unlicensed pistol'. It was, therefore, the duty of the prosecutor to prove not only that the defendants possessed the pistol, but also that the pistol was unlicensed. Conviction was reversed.

Does this mean that in unlawful pistol cases made in South Carolina it will be necessary that the solicitor prove that the defendant did not have a license for the pistol, or that he was not otherwise exempt from the pistol law? If so, it might be necessary to prove that he was not a law enforcement officer and not entitled to any other of the listed exemptions. See the United States Supreme Court decision of In re Winship, 25 Led 2d 368.

Arguendo, South Carolina's pistol law is different from Georgia's in that the law of this State prohibits 'possession' of a pistol, then lists numerous exemptions. General law in the past has held that when one relies upon an exemption in the law, it is his duty to prove that exemption. Will the Winship case as interpreted by Johnson change that rule by holding that there is no real difference in the two laws? It will be interesting to see the answer when it comes from the courts.

30...EFM

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