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POLICE OFFICER'S HANDBOOK

PART XXIV

IMPOUNDED VEHICLE...
INVENTORY SEARCH OF LOCKED AREAS
(CABBLER V. SUPT., 528 F2d 1142)

MIRANDA WARNINGS...
NON-CUSTODY SITUATIONS
(BECKWITH V. US, 44 LW 4499)

ENTRAPMENT...
(HAMPTON V. US, 44 LW 4542)

FLEMING'S NOTEBOOK...CHAPTER 124
Traffic Enforcement on Private Parking Lot
(1976 Act R-658)

Prepared under the direction of E. Fleming Mason Producer of Crime-to-Court ETV Law Enforcement Informational Programs, in cooperation with South Carolina Educational Television Network with funds provided through the South Carolina Criminal Justice Academy.

LAW ENFORCEMENT - ETV TRAINING PROGRAM

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By

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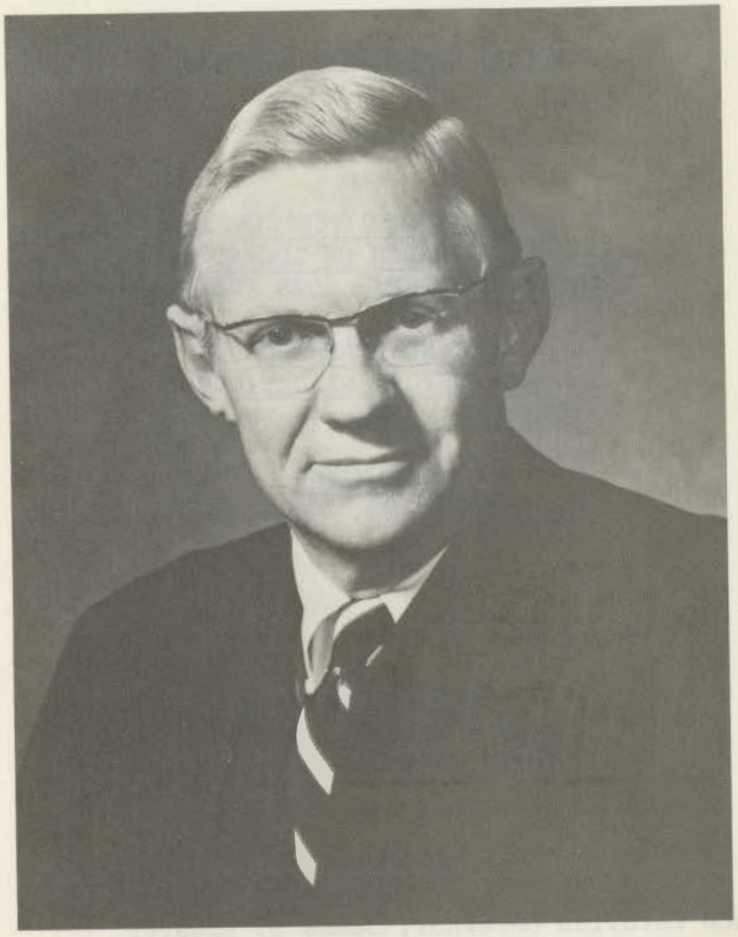

Hon. Robert F. Chapman
U.S. District Judge
South Carolina

"It is the Custodial nature of police interrogation which triggers the necessity for adherence to the specific requirements of the Miranda holding.

"Miranda warnings are not required in non-custody situations even though the suspect has become the 'focus' of a criminal investigation...in the absence of special circumstances where the behavior of officers are shown to have resulted in an involuntary statement."

In a serious criminal case, however, it is still the safest thing to give the warnings when there is doubt in the officer's mind about their necessity.

Robert F. Chapman
U.S. District Judge
South Carolina

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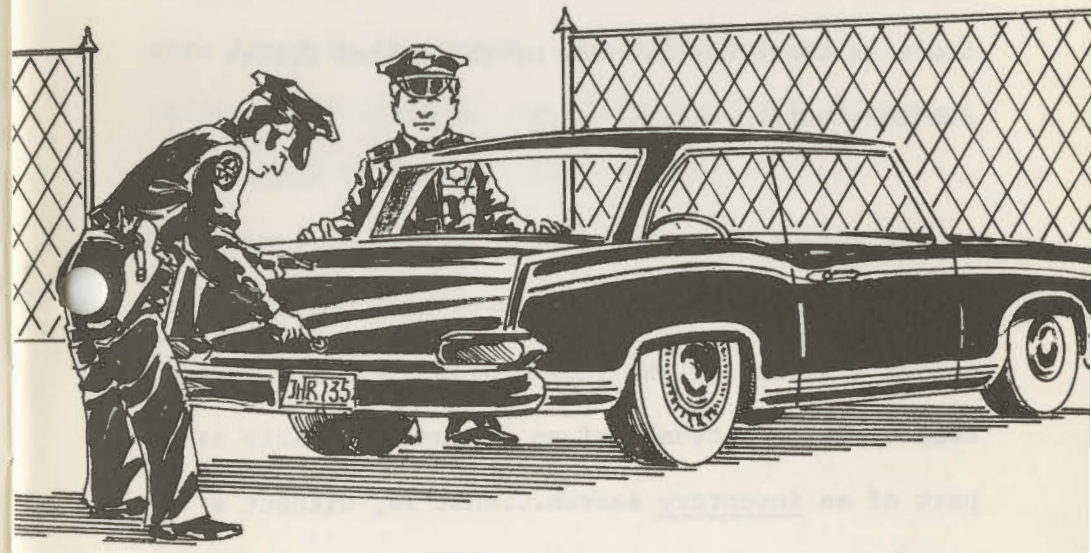


IMPOUNDED VEHICLE...

AREA OF SEARCH EXTENDED
FOR SOUTH CAROLINA OFFICERS
(Cabbler v. Supt., 528 F2d 1142)

The Fourth Circuit Court of Appeals, headquartered in Richmond, Virginia, is the Federal Court that hears appeals from the Federal trial courts of South Carolina...as well as Maryland, West Virginia, Virginia, and North Carolina. It is the highest Federal court...insofar as this State is concerned...short of the United States Supreme Court.

A recent decision of the 4th Circuit Court of Appeals recognized the lawfulness of a search by police officers of the locked areas (glove compartment and trunk) of an impounded vehicle as part of an inventory search...that is, without a search warrant, consent, or probable cause to believe that contraband was present.

In Roanoke, Virginia, police on patrol saw a car being drived by a person they knew to be wanted for a shooting incident. The crime charged was a felony in Virginia. They stopped the vehicle, arrested the driver, and had the car taken into the city garage. There, police made an inventory search of the car...including the locked trunk.

Items subsequently found to have been stolen were found in the trunk. The defendant was convicted of larceny. In his appeal, the defendant argued that the search was unlawful.

In upholding the conviction, the Court of Appeals said:

RIGHT OF POLICE TO
REMOVE CAR TO GARAGE

"When the police arrested Cabbler, they could have left the car where it was; however, it does not seem to us to be unreasonable police procedure to give protection to the personal effects of a prisoner. See UNITED STATES V. SIFUENTES, 504 F2d 845, 849 (4th Cir. 1974); CABBLER V. COMMONWEALTH, 212 Va. 520, 184 S.E.2d 781 (1971). The evidence is overwhelming that the sole purpose of the impoundment was to protect the car and its contents until Cabbler could reclaim them. This is not contested anywhere in the proceeding. As the district court observed, 'it would be anomalous to find that the Fourth Amendment, designed to insure the sanctity of private possessions, COMPELLED the police to leave the personal effects of a prisoner ...scattered in the street...' 374 F.Supp. 690, 693. Additionally, the car in this case represented a nuisance where it was parked, in the driveway to the

emergency room of a hospital. We are of opinion that when a person is arrested away from home, the police may impound the personal effects that are with him at the time to ensure the safety of those effects or to remove nuisances from the area."

RIGHT OF POLICE TO

MAKE INVENTORY SEARCH

"In summary, we hold that the police do not violate the Fourth Amendment when they impound a vehicle to protect it or to remove a nuisance after arresting the driver away from his home, and he has no means immediately at hand for the safekeeping of the vehicle. Assuming an inventory of the contents of a lawfully impounded vehicle to be a search under the Fourth Amendment, an inventory taken of a lawfully impounded vehicle to protect the property from pilferage or the officers from false claims of loss is reasonable, and hence not in violation of the Fourth Amendment.

"We think the initial impoundment was reasonable as a sound police practice to protect both the owner from loss and the city from damage claims. The routine inventory was likewise reasonable

for the same reasons. An additional justifiable reason to impound the vehicle initially was to remove it as a nuisance in the driveway to the hospital emergency room."

MIRANDA WARNINGS...
ARE THEY NECESSARY BEFORE NON-CUSTODIAL QUESTIONING?

MIRANDA WARNINGS...

NON-CUSTODIAL SITUATIONS
(Beckwith v. US, 44 LW 4499)

Until recently, it was not clear whether or not Miranda warnings must be given to a suspect who was not under arrest but who had become the focus of a criminal investigation.

The United States Supreme Court has decided that the Miranda decision does not apply to such a situation. Beckwith v. United States, 44 LW 4499, decided April 21, 1976.

Two IRS agents went to the home of a suspect in a tax fraud investigation. The suspect was questioned without Miranda warnings, and statements made as a result of such questioning, as well as records obtained thereby, were used in evidence to convict the defendant. He appealed, arguing that even though he was not under arrest at the time of

the questioning by the two investigators, the investigation focused on him and he was the prime and only suspect.

In holding that the Miranda decision did not apply in non-custody situations, the Court said:

"The important issue presented in this case is whether a special agent of the Internal Revenue Service, investigating potential criminal income tax violations, must, in an interview with a taxpayer, not in custody, give the warnings called for by this Court's decision in MIRANDA V. ARIZONA, 384, U.S. 436 (1966).

"The District Court conducted a thorough inquiry into the facts surrounding the interview of petitioner before ruling on his motion to suppress the statements at issue. After a considerable amount of investigation, two special agents of the

Intelligence Division of the Internal Revenue Service met with petitioner in a private home where petitioner occasionally stayed. The senior agent testified that they went to see petitioner at this private residence at 8 a.m. in order to spare petitioner the possible embarrassment of being interviewed at his place of employment which opened at 10 a.m. Upon their arrival, they identified themselves to the person answering the door and asked to speak to petitioner. The agents were invited into the house, and, when petitioner entered the room where they were waiting, they introduced themselves and, according to the testimony of the senior agent, Beckwith then excused himself for a period in excess of five minutes, to finish dressing. Petitioner then sat down at the dining room table with the agents; they presented their credentials and stated they were attached to the Intelligence Division and that one of their functions was to investigate the possibility of criminal tax

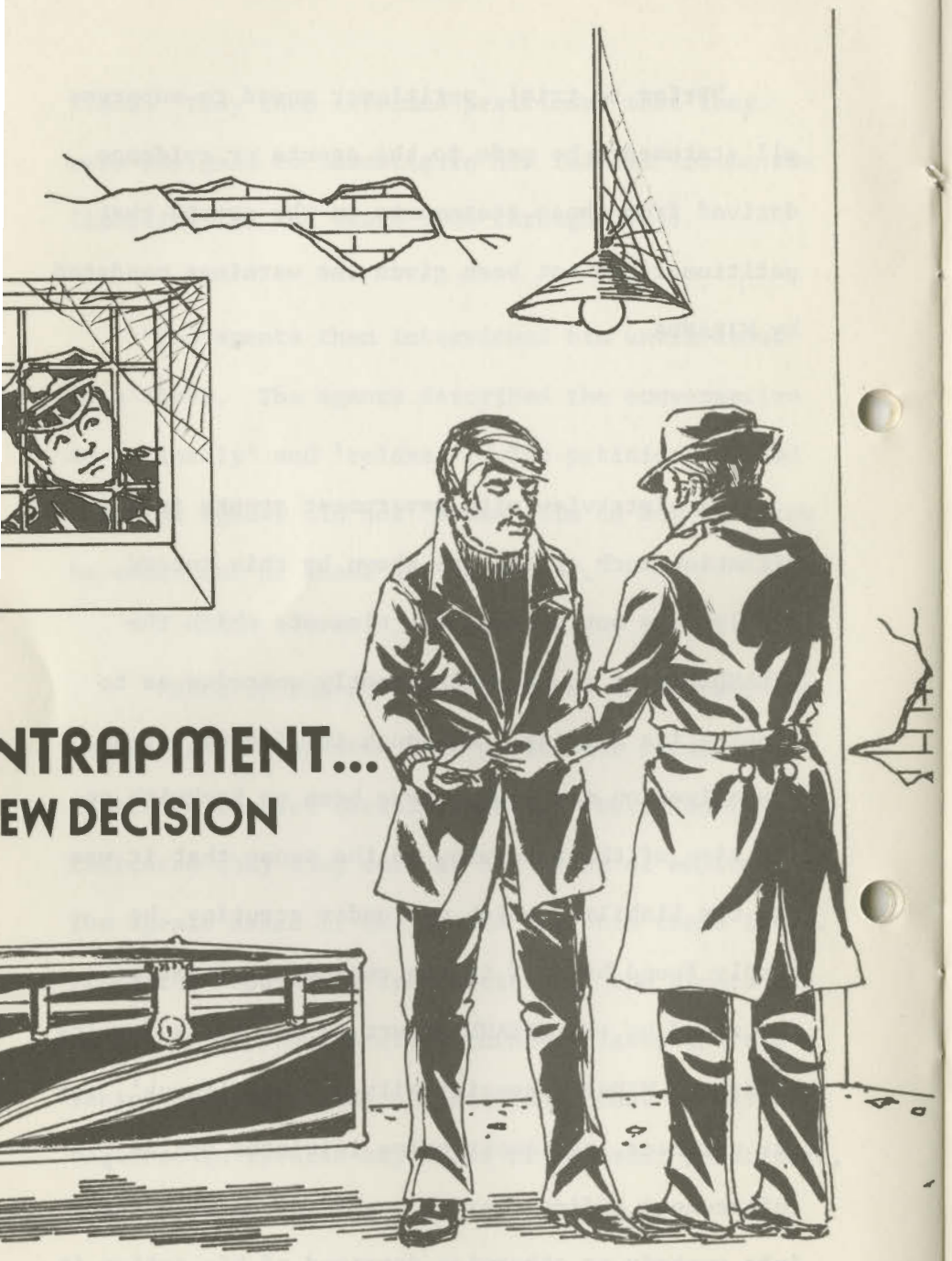
fraud. They then informed petitioner that they were assigned to investigate his federal income tax liability for the years 1966 through 1971.

"The agents then interviewed him until about 11 o'clock. The agents described the conversation as 'friendly' and 'relaxed'. The petitioner noted that the agents did not 'press' him on any question he could not or chose not to answer.

"Prior to the conclusion of the interview, the senior agent requested that petitioner permit the agents to inspect certain records. Petitioner indicated thay they were at his place of employment. The agents asked if they could meet him there later. Traveling separately from petitioner the agents met petitioner approximately 45 minutes later and the senior agent advised the petitioner that he was not required to furnish any books or records; petitioner, however, supplied the books to the agents.

"Prior to trial, petitioner moved to suppress all statements he made to the agents or evidence derived from those statements on the ground that petitioner had not been given the warnings mandated by MIRANDA.

"An interview with government agents in a situation such as the one shown by this record simply does not present the elements which the MIRANDA Court found so inherently coercive as to require its holding. Although the 'focus' of an investigation may indeed have been on Beckwith at the time of the interview in the sense that it was his tax liability which was under scrutiny, he hardly found himself in the custodial situation described by the MIRANDA Court as the basis for its holding. MIRANDA specifically defined 'focus', for its purposes, as 'questioning initiated by law enforcement officers AFTER a person has been taken into custody or otherwise deprived of his action in any significant way."



NTRAPMENT...
EW DECISION

ENTRAPMENT...

NEW U.S. SUPREME COURT DECISION
(Hampton v. US, 44 LW 4542)

A government informer was shooting pool in St. Louis with the defendant later convicted of distributing heroin.

The defendant testified that he agreed to make sales of heroin for the informer...which heroin was supplied by the informer. Sales were made to government agents. Thus, under the defendant's testimony, the government, through its informer, supplied heroin to him, which he, in turn, sold to government agents. This, he argued, amounted to nothing more than the government selling heroin to itself through an intermediary...the defendant... and then charging the intermediary with unlawful distribution.

It was claimed that such action constituted 'entrapment', a legal defense to a criminal charge.

Conviction was upheld on the ground that 'entrapment' was available as a defense only when police actually implant the criminal design in the mind of the defendant, and that no constitutional right of the defendant had been violated. Language from the decision:

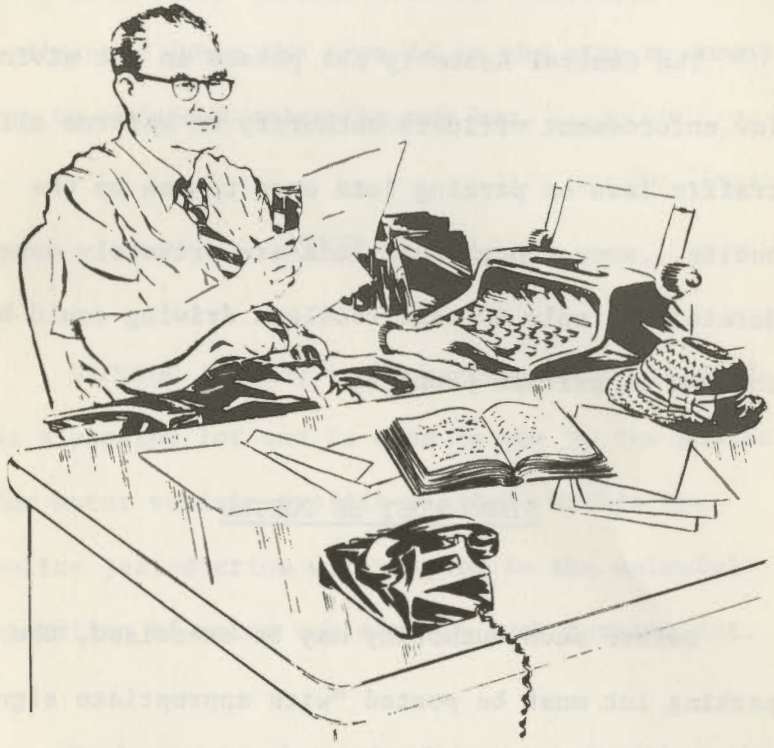
"In holding that 'it is only when the Government's deception actually implants the criminal design in the mind of the defendant that the defense of entrapment comes into play', 411 U.S., at 436, we of course rejected the contrary view of the dissents in that case and the concurrences in SORRELLS, and SHERMAN. In view of these holdings, petitioner correctly recognizes that his case does not qualify as one involving 'entrapment' at all. He instead relies on the language in RUSSELL that 'we may some

day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction'.

"The limitations of the Due Process Clause of the Fifth Amendment, and of those portions of the Bill of Rights which it has been held to incorporate, come into play only when the government activity in question violates some protected right of the DEFENDANT. Here, as we have noted, the police, the government informer, and the defendant acted in concert with one another. If the result of the governmental activity is to 'implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission...' SORRELLS, SUPRA, at 442, the defendant is protected by the defense of entrapment. If the police engage in illegal activity in concert with a defendant

beyond the scope of their duties the remedy lies, not in freeing the equally culpable defendant, but in prosecuting the police under the applicable provisions of state or federal law. But the police conduct here no more deprived defendant of any right secured to him by the United States Constitution than did the police conduct in RUSSELL deprive Russell of any rights."

FLEMING'S NOTEBOOK



FLEMING'S NOTEBOOK...Chapter 124:

PARKING LOT JURISDICTION

1976 Act (R-658) May 11

The General Assembly has passed an act giving law enforcement officers authority to enforce all traffic laws on parking lots open to use by the public...even though such lots are privately owned. Heretofore, only DUI and reckless driving could be charged on private property.

SIGNS MUST BE POSTED

Before such authority may be exercised, the parking lot must be posted "with appropriate signs to inform the public that the area is subject to police jurisdiction with regard to unlawful operation of motor vehicles."

EDITOR'S COMMENT: The act is not clear as to whether or not a police agency has authority to post such signs if the owners should object.

Both State traffic laws and municipal ordinances (when the area is in the city or town) may be enforced under the new law.

TEXT OF LAW

SECTION 1. Any real property which is used as a parking lot and is open to use by the public for motor vehicle traffic shall be within the police jurisdiction with regard to the unlawful operation of motor vehicles in such parking lot.

Such parking lots shall be posted with appropriate signs to inform the public that the area is subject to police jurisdiction with regard to unlawful operation of motor vehicles. The extension of police

jurisdiction to such areas shall not be effective until the signs are posted.

In any such area the law enforcement agency concerned shall have the authority to enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and highways immediately adjoining or connecting to the parking area.

30...EFM

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