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POLICE OFFICER'S HANDBOOK

UNLAWFULLY SEIZED EVIDENCE

1914 THROUGH 1974

(A CASE HISTORY)

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CALANDRA CASE

STATE DOCUMENTS

USE OF TAINTED EVIDENCE

IN PROCEEDINGS OTHER THAN TRIAL

(NEW DECISION...1974)

FLEMING'S NOTEBOOK...Chapter 97:

Search of Suitcases Seized by Police
Delay in Arrest Technique
Arrest by Officer's Upon Instructions of a Superior(s)
Refusal to Sign Written Acknowledgement of Warning
Pursuant to a Confession
Search Warrant Affidavit (quality)
An Investigatory Stop of Suspect Car
Warning Suspect of Right to Refuse Search
Electronic Surveillance
Photo Identification

Prepared under the direction of E. Fleming Mason
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provided through the South Carolina Criminal
Justice Academy.

LAW ENFORCEMENT - ETV TRAINING PROGRAM

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By

Joseph C. Coleman
Deputy Attorney General
State of South Carolina

Endorsed by

South Carolina Governor, John C. West
South Carolina Law Enforcement Division
South Carolina Sheriffs' Association
South Carolina Enforcement Officers' Association
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Hon. John K. Grisso
U.S. District Attorney
State of South Carolina

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FOREWORD

It has been generally accepted that evidence seized unlawfully by police officers is thereby rendered absolutely useless for any court purpose. We tend to forget that the rule prohibiting the admission of evidence seized by police officers in circumstances constituting an unreasonable search and seizure...in violation of the constitutional prohibitions against such searches and seizures...is not really a right to be claimed by the defendant in a criminal trial, but is, instead, a simple rule of court designed, not to protect the criminal against conviction, but to enforce the law relating to such searches and seizures.

In other words, a criminal defendant does not have a constitutional right to have illegally-seized evidence thrown out of a criminal trial...it is simply a rule created by the courts in an effort to see that unlawful searches and seizures by police officers are penalized.

A decision of the United States Supreme Court filed last month, entitled United States v. Calandra, illustrates this distinction very clearly. In this booklet we shall discuss the possible result of that decision.

John K. Grisso

U.S. District Attorney

State of South Carolina

LANDMARK DECISIONS ON

UNLAWFULLY OBTAINED EVIDENCE

WEEKS RULE...1914

"EVIDENCE SEIZED UNLAWFULLY BY FEDERAL OFFICERS
MAY NOT BE USED IN EVIDENCE AGAINST THE DEFENDANT
AT TRIAL"

In Kansas City, Mo., local police officers, upon suspicion and without a search warrnat, entered into the home of one Weeks and found policy slips. Later, as a result of the local officers' findings, a Federal marshal entered the house to search for additional evidence...also without a search warrant. The marshal found letters further implicating Weeks in gambling operations.

Weeks was prosecuted and convicted in Federal court for unlawful gambling operations. Evidence seized in the unlawful searches was used in evidence against him. He appealed on the ground that the unlawfully seized evidence should not have been admitted against him at trial.

The United States Supreme Court held for the first time in a clear ruling that evidence unlawfully seized by Federal officers could not be used against the defendant in a criminal prosecution. The ruling did not apply to evidence seized unlawfully by local police officers.

The Weeks ruling also held, incidentally, that a person lawfully under arrest for any crime may be searched thoroughly by police officers for evidence. This was the ruling followed in the very recent decisions on searches of traffic offenders...
Robinson and Gustafson.

The United States Supreme Court said in Weeks (1914):

"We therefore reach the conclusion that the letters in question were taken from the house of the accused by an official of the United States, acting under color of his office, in direct violation of the constitutional rights of the defendant... In holding them and permitting their use upon the trial, we think

prejudicial error was committed. (This ruling applies only to)...the Federal government and its agencies."

US v. Weeks, 232 US 383.

MAPP RULE (1961)

"UNLAWFULLY SEIZED EVIDENCE MAY NOT BE USED
AT TRIAL IN FEDERAL OR STATE COURT"

Police of Cleveland, Ohio, suspected that a Mrs. Mapp, who resided in the second floor of a two-apartment house in Cleveland, was involved in gambling operations. They were interested particularly in policy slips and gambling paraphenalia of that kind. They also suspected that a person wanted in connection with bombings might be in the house. They had no search warrant...and, evidently, did not have probable cause upon which to obtain one.

After keeping the house under surveillance for several hours, police demanded admittance, were refused, and made forcible entry into the Mapp apartment. Mrs. Mapp resisted their efforts and was arrested and handcuffed for her trouble.

A thorough search of the house was conducted, but no policy slips were found, and no other evidence of

gambling operations. The suspect in the bombings was not in the house. In the course of the search, however, the Cleveland police found certain obscene literature and pictures. They charged Mrs. Mapp with possession of obscene materials, a violation of Ohio State law. The seized material was used in evidence against Mrs. Mapp in State court, and she was convicted. She appealed, one ground being the introduction of the obscene material seized in the course of an unlawful search.

It is difficult to realize that only 23 years ago in the United States such evidence would have been admissible in State court criminal trials. The Weeks decision of 1914 applied only to evidence seized unlawfully by Federal officers. The State Supreme Court of Ohio upheld the conviction...stating that although it deplored the tactics used by the Cleveland police officers, the evidence they had seized could be admitted at trial.

Mrs. Mapp asked the United States Supreme Court to reconsider its position on this question. The Court agreed to do so.

In its ruling, the Court changed the law with reference to the admission of unlawfully seized evidence in state criminal trials. Henceforth, the Court said, the same rules will apply in all courts. When evidence is unlawfully obtained through an unauthorized search or seizure, it may not be used in evidence in a criminal trial against the person from whom it was seized. The conviction was reversed.

It is interesting that the crucial Mapp decision of the United States Supreme Court resulted from a conviction that could have been punished by as light a sentence as \$200 fine...the minimum penalty for the offense under Ohio State law.

Supreme Court Justice Tom Clark of Texas, who wrote the Mapp opinion, and is a well-known supporter of law enforcement, had this to say in that opinion:

"The ignoble 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 right to privacy embodied in the Fourth Amendment is enforceable

against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice."

The Weeks decision (1914) and the Mapp case (1961) established that evidence seized directly by police as a result of an unlawful search or seizure could not be used in evidence against the person from whom it was seized in a criminal trial. Left unanswered was this

question, "What about evidence obtained by police indirectly as a result of an unlawful search?" For example, police obtain information during an unlawful search that leads to other evidence obtained in a lawful manner. Will this 'second-step' evidence be admissible. The answer came the year after Mapp... in 1962...in a decision entitled Wong Sun.

WONG SUN RULE (1962)

"WHEN POLICE OBTAIN INFORMATION UNLAWFULLY,
EVIDENCE OBTAINED AS A RESULT OF THAT INFORMATION
MAY NOT BE USED IN A CRIMINAL TRIAL"

The facts in the Wong Sun case sound like the plot to a Three Stooges comedy or Marx Brothers movie. Federal narcotics officers in San Francisco had had under surveillance for about six weeks a man named Hom Way. They finally arrested Hom Way, who told them that he had bought heroin the night before from a man called 'Blackie Toy'. Toy operated a laundry.

Agents went to a laundry called Oye's Laundry, operated by a James Wah Toy. It is not stated how the officers found the place, or whether or not 'Blackie Toy' was the same man as James Wah Toy.

The officers, without a warrant, forced their way into the laundry and searched Toy's living quarters. No narcotics were found, but Toy told the officers that Johnny Yee kept heroin and sold it from time to time.

The plot thickens as the officers then charged over to Johnny Yee's house...again without a warrant. They entered Johnny Yee's house and found about a 'piece' of heroin. Johnny Yee told the officers that he had bought the heroin from a man known as 'Sea Dog'...later determined to be Wong Sun.

So the officers were off again to the house of Wong Sun, where a search unearthed no narcotics...but Wong Sun was arrested on Johnny Yee's statement.

All three...James Wah Toy, Johnny Yee, and Wong Sun...also known as Sea Dog...gave statements to the police. Wong Sun and James Wah Toy were tried and convicted, their statements being used against them at trial.

Upon appeal, the crucial question was whether or not the 'piece' of heroin seized from Johnny Yee could be used in evidence to corroborate the confessions of Wong Sun and Johnny Yee. What happened to Hom Way and James Wah Toy, we do not know. Unless the heroin seized from Yee was admissable, the confessions would not sustain the convictions. We will 'flash back' to the heroin seizure to have the picture clear.

James Wah Toy's house was forcibly entered without a warrant by the police. Toy told them that Johnny Yee had heroin. Thus, the information that Johnny Yee had heroin was the result of an unlawful entry into Toy's house. The heroin seized from Johnny Yee was the fruit of the poison tree, i.e. the unlawful entry into Toy's house. For this reason, said the Court, the heroin, although surrendered voluntarily by Johnny Yee, could not be admitted at a criminal trial.

The Supreme Court by its decision extended the Weeks and Mapp rulings to exclude not only evidence seized directly in an unlawful search, but also evidence seized lawfully...but which resulted from information obtained unlawfully. Wong Sun v. US 371 US 471.

Still unanswered was the question of whether or not evidence obtained unlawfully...or as a 'fruit of the poison tree'...would be inadmissible in all legal proceedings, or, if not in all, in which proceedings it could be used. Part of the answer to this question came last month in a case called Calandra.

CALANDRA RULE (1974)

"THE RULE AGAINST USING UNLAWFULLY OBTAINED EVIDENCE DOES NOT APPLY IN ALL LEGAL PROCEEDINGS, BUT TO CRIMINAL TRIALS ONLY"

Calandra's place of business in Cleveland, Ohio, was searched by police on an invalid search warrant for gambling paraphernalia. None was found, but the police came upon certain information that pointed to loan-sharking violations. They took this evidence and gave it to the Federal attorney.

Calandra was called before a Federal grand jury that was investigating loansharking activity. He was asked questions drawn from the information discovered by the police officers during the unlawful search. The witness refused to answer, claiming that the questions were based on illegally-seized material and were the 'fruit of the poison tree'.

The United States Supreme Court answered that its rule excluding evidence unlawfully seized and evidence discovered from wrongfully obtained information did not apply to all legal proceedings...specifically, not to grand jury proceedings. The language of the decision strongly indicates that the Court was saying that the 'exclusionary rule' applies to criminal trials only.

One significant statement made in the Calandra decision is this:

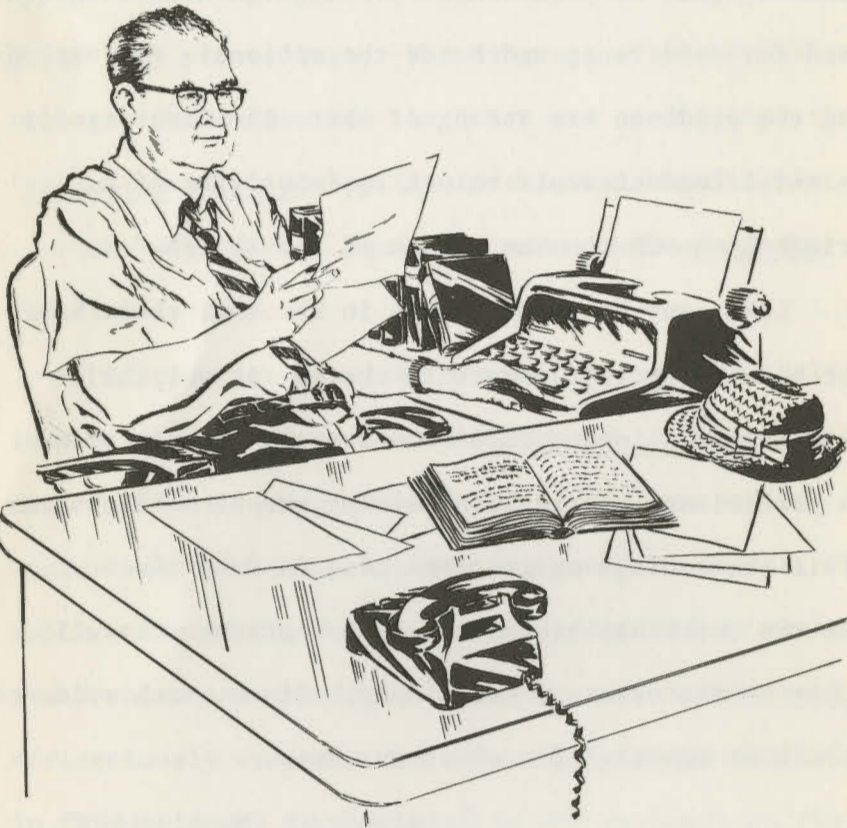
"Despite its broad deterrent purpose, the exclusionary rule has never been interpreted to proscribe the use of illegally-seized evidence in all proceedings or against all persons. As with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served. The balancing process implicit in this approach is expressed in the contours of the standing requirement. Thus, standing to invoke the exclusionary rule has been confined to situations where the Government seeks to use such evidence to incriminate the victim of the unlawful search.

Brown v. United States, 411 US 223 (1973); Alderman v. United States, 394 US 165 (1969); Wong Sun v. United States, supra; Jones v. United States, 362 US 257 (1960). This standing rule is premised on a recognition that the need for deterrence and hence the rationale for excluding the evidence are strongest where the Government's unlawful conduct would result in imposition of a criminal sanction on the victim of the search."

Like many broad questions in the law, there has not been a specific answer to whether or not the so-called 'exclusionary rule' would apply in such areas as preliminary hearings, obtaining arrest warrants, or civil proceedings against vehicles in drug cases... but the Court has hinted strongly that its rule will apply to the criminal trial only. If so, such evidence should be admitted for other purposes.

Calandra v. US, 42 LW 4095.

FLEMING'S NOTEBOOK



FLEMING'S NOTEBOOK...Chapter 97:

SEARCH OF SUITCASES SEIZED BY POLICE

Police officers had a sound tip from a reliable informer that suspect auto contained unlawful drugs ...they sighted car, stopped it, and arrested the occupants on other charges. Three suitcases were taken from the car...they were opened and searched without a search warrant, disclosing narcotics. Defendants claimed an unlawful search.

RULING: Police should have obtained a warrant. The occupants of the car were under arrest and the suitcases in custody of police. There was no danger of the suitcases being taken away before a warrant could be obtained. US v. Soriano, 482 F2d 469.

DELAY IN ARREST TECHNIQUE?

Police made several 'buys' of narcotics from the same individual...arrest was made after final transaction and a charge was made for each 'buy'. Defendant claimed police should have arrested him after the first transaction...and asked to have all charges quashed except the first. He claimed entrapment in all except the first case.

RULING: No entrapment involved...Defendant was not an innocent person in whose mind the officers had implanted the idea of crime...he was involved in the activity with criminal intent and the officers only afforded him an opportunity to violate the law. All charges sustained. US v. Fallings, 482 F2d 1352, US Court of Appeals, 5th Circuit.

ARREST BY OFFICERS UPON
INSTRUCTIONS OF A SUPERIOR(S)

A woman appeared at headquarters stating she had been kidnapped and raped...She described the defendant and told where he was. The officer who took the report instructed other officers, who had not talked with the woman, to make the arrest...The defendant was found and arrested by the two officers...he claimed a warrantless arrest by officers who had no personal knowledge of probable cause of a felony was unlawful. His claim was that only the officer who talked with the woman had probable cause to arrest him.

RULING: Officers working with another officer who knew the facts could rely upon information from the other officer. It was not necessary that they have personal knowledge that probable cause existed.
US v. Simpson, 484 F2d 467, US Court of Appeals, 5th Circuit.

REFUSAL TO SIGN WRITTEN ACKNOWLEDGMENT
OF WARNINGS PURSUANT TO A CONFESSION

The defendant confessed to a crime in lawful circumstances and agreed to sign a writted acknowledgement of warnings...after it was typed, however, he refused to sign it. At trial, testimony as to his oral confession was admitted. He appealed on grounds that there was no written acknowledgement that he had been properly warned of his Miranda rights.

RULING: Oral testimony can establish that proper warnings were given...Written acknowledgement is not essential. US v. Griffin, 483 F2d 957, US Court of Appeals, 5th Circuit.

SEARCH WARRANT AFFIDAVIT (QUALITY)

Is this affidavit sufficient upon which to issue a search warrant?:

"Affiant is advised by reliable informer who is familiar with drug trafficking that marijuana would be removed from number 20 Giloy Street within 24 hours."

RULING: Affidavit insufficient. It does not state (1) why informer is thought to be reliable. (2) How informer knew marijuana would be removed. US v. Chaviz, 482 F2d 1268, US Court of Appeals, 5th Circuit.

AN INVESTIGATORY STOP
OF SUSPECT CAR

A tavern was robbed at 1:00 a.m. in an area of light traffic...police car, responding to call, met car headed away from tavern, but still in the general area...they stopped the car and searched it...(open area) Evidence was found in open area of car.

RULING: Investigatory stop and search of open areas of car were justified in the circumstances. McNeary v. Stone, 482 F2d 804, US Court of Appeals, 9th Circuit.

WARNING SUSPECT OF RIGHT

TO REFUSE SEARCH

Narcotics suspects were in motel room...police, without warrant, knocked and were admitted...they asked permission to search duffel bags, which was granted...marijuana was found in bags. DEFENSE: The suspects were not warned of their right to refuse the officers permission to search without warrant.

RULING: Search was legal. Suspect need not be warned that he has right to refuse officers permission to search. US v. Irion, 482 F2d 1240, US Court of Appeals, 9th Circuit.

ELECTRONIC SURVEILLANCE

Blackmail victim enlisted aid of police and was wired with recording device on his person...a subsequent conversation between victim and blackmailer was recorded and used in evidence. DEFENSE: Illegal electronic surveillance.

RULING: The electronic recording of a conversation with the knowledge and consent of one of the participants was lawful. US v. Sanchez, 483 F2d 1052, US Court of Appeals, 2nd Circuit.

PHOTO IDENTIFICATION

The police displayed a series of photo mug shots to victim of armed robbery at station house... defendant was identified, picked up, and charged.

DEFENSE: Photo identification is similar to a line-up, and suspect had right to have lawyer present.

RULING: Suspect, either before or after arrest, has no right to presence of a lawyer at a photo identification. US v. Alston, 483 F2d 1264, US Court of Appeals, D.C.

...30 EFM...

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