Washington Law Review

Volume 5 | Issue 2

4-1-1930

Constitutionality of a Search and Seizure, Without Warrant, of an Automobile—Reasonable Cause—Anonymous Tips

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Washington therefore adopts what seems to be a middle ground and will permit such a sale to be good against creditors sa far as the proceeds are applied to reduce the lien.

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CONSTITUTIONALITY OF A SEARCH AND SEIZURE, WITHOUT WARRANT, OF AN AUTOMOIBLE—REASONABLE CAUSE—ANONYMOUS TIPS. Since the case of *Carroll v. United States,*[1] it has become a generally recognized principle of law that an officer may make a search and seizure of an automobile without a warrant, provided that the officer has probable cause to make the search. The Fourth Amendment to the Constitution of the United States specifically is aimed to protect the people against "unreasonable searches and seizures."[2] The *Carroll* case is based on the theory that if the other has probable cause the search of an automobile is not an unreasonable search." The distinction drawn is that while the warrant can easily be issued to search a dwelling house,[3] yet because of the necessity of the situation when an officer has probable cause to believe that a moving object such as an automobile or motor boat contains contraband, it would be actually unreasonable to expect the officer to then get a search warrant, because in the meantime the moving object would likely be far beyond the reach of the officer. The *Carroll* case, *supra,* which was decided in 1925, has settled the law as far as the United States Supreme Court is concerned, and the principle has since been applied several times in other Federal cases.[4]

The constitutionality of a search and seizure of an automobile without a warrant has been upheld recently in the State of Washington in the case of *State v. Knudsen.*[5] In this case a Federal prohibition officer received a tip from an unknown person that the defendant was supplying intoxicating liquors in a certain locality The officer knew that the defendant had been previously convicted of the crime of possession, and acting upon the tip he had received, he and some other officers located the defendant's truck, followed it, noticed that it was loaded heavily, and saw it turn into

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[1] 267 U. S. 132, 69 L. ed. 543, 45 Sup. Ct. Rep 280, 39 A.L.R. 790 (1924). Mr. Justice McReynolds and Mr. Justice Sutherland dissenting.

[2] Article IV of the Amendments to the United States Constitution.

[3] *Boyd v. United States,* 116 U. S. 616, 29 L. ed. 746, 6 Sup. Ct. Rep. 524 (1886) *Weeks v. United States,* 232 U. S. 383, 58 L. ed. 652, L.R.A. 1915B 834, 34 Sup. Ct. Rep. 341, Ann. Cas. 1915C. 1177 (1914) *Agnello v. United States,* 269 U. S. 20, 70 L. ed. 145, 46 Sup. Ct. Rep. 4, 51 A. L. R. 409 (1925).

[4] *United States v. One Reo Truck,* 6 Fed. (2d) 412 (1925) *Lytle v. United States,* 5 Fed. (2d) 622 (1925), holding a search and seizure valid as long as the officers had probable cause; *Pinder v. United States,* 4 Fed. (2d) 390 (1925), where an inspector seized liquor in a parker car· *Lafazia v. United States,* 4 Fed. (2d) 817 (1925), where the officers in following a truck saw through its lattice sides that it contained cases of liquor.

[5] 54 Wash. Dec. 39, 280 Pac. 922 (1929).

a private garage mentioned in the tip. One of the officers ran into the garage, saw several kegs of liquor in the truck, and then called the other officers who made the seizure and arrest. The Court held that a mere tip from an unknown person that one is bootlegging is not sufficient probable cause to make a lawful search, but knowledge that the defendant had been guilty of possession, together with the fact that one of the officers saw several kegs in the back of the defendant's truck, is sufficient probable cause to justify a search and seizure without a search warrant.

The search and seizure involved in the *Knudsen* case, *supra,* was attacked upon the ground that the search and seizure without a warrant was invalid in view of the Fourth Amendment to the Constitution of the United States, inasmuch as the search was made by Federal officers.[6] As stated before, that an automobile may be lawfully searched and its contraband seized without a warrant is clearly laid down in *Carroll v. United States, supra,*[7] provided there is reasonable cause to believe that the contents of the automobile offend against the law. *State v. Secrest,*[8] a Washington case, recognizes the rule that no search warrant is necessary to seize liquor in an automobile where the car was wrecked and the liquor scattered around the car. The rule that no search warrant is necessary when the liquor was in plain view in the defendant's automobile, is also laid down in *State v. Nilnch.*[9] The *Carroll* case further says that "the right to search and the validity of the seizure are not dependent upon the right to arrest." In this view the Washington case of *State v. Gibbons,*[10] where the arrest of the defendant and search of his automobile without a warrant of arrest or a search wararnt was held without authority of law, might possibly be reconciled, because in the *Gibbons* case the charge of possession being only a misdemeanor there could have been no lawful arrest without a warrant unless the crime was actually committed within the presence of the officers, while in both the *Carroll* and the *Knudsen* cases the Courts proceed on the theory that the seizures came before the arrest, and as long as they were reasonable and the officers had probable cause they would not violate the Fourth Amendment to the Constitution of the United States. The *Knudsen* case

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[6] As the search and seizure was made by Federal officers, the claim for protection under the Fourth Amendment to the Constitution of the United States was properly invoked. *Weeks v. United States,* see Note 3, *supra.* While the Supreme Court of Washington has stated in *State v. Gibbons,* see Note 10, *supra,* that Sec. 7 Art. I of the state constitution that "No person shall be disturbed in his private affairs, or his home invaded, without authority of law," must be interpreted to uphold substantially the same rights as the Fourth Amendment to the United States Consitution, yet the Federal Constitution would have no application to a search and seizure made solely by State officers. *Burdeau v. McDowell,* 256 U. S. 465, 41 Supr. Ct. 475, 65 L. ed. 1048, 13 A. L. R. 1159 (1921), Mr. Justice Holmes and Mr. Justice Brandeis dissenting.

[7] See Note 1, *supra.*

[8] 131Wash. 344, 230 Pac. 129 (1924.)

[9] 131 Wash. 344, 230 Pac. 129 (1924).

[10] 118 Wash. 171, 203 Pac. 390 (1924).

acknowledges that the rule laid down in *State v. Gibbons, supra,* is still good law, notwithstanding, the two cases are hard to reconcile unless on the slight distinction already mentioned. Both the *Knudsen* case and the *Carroll* case appear to be inconsistent with *State v. Gibbons* in so far as the latter says, in *dictum,* that a person in his automobile on a public street has as much right to be protected "against arrest and search without authority of a warrant of arrest, or a search warrant, as fully as he would have been protected had he and his possession been actually inside his own dwelling."

All courts agree that mere suspicion is not sufficient ground to constitute probable cause to make a search and seizure. The difficulty, however, arises in drawing a line between mere suspicion and reasonable grounds to believe that a crime is being committed. What is probable cause is defined in *Stacey v. Emory*[11] as follows. "If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that an offense has been committed, it is sufficient." That merely receiving a tip from an unknown person is not sufficient probable cause for a search and seizure of an automobile is well brought out in *United States v. Allen.*[12] That this is correct is recognized by the Washington Court in the *Knudsen* case, *supra,*[13] though the Court concluded that what the officer saw when he entered into the garage and noticed the kegs in the back of the truck, could support a reasonable belief that the defendant was violating the law, and would thus constitute probable cause for the subsequent search and seizure. It would seem to follow, however, that a mere tip would not warrant search of an automobile where the machine to all outward appearances is innocent and does not itself, or by the conduct of its occupants, create reasonable grounds to believe that it is being used in violation of law.

In conclusion, as far as the Federal courts are concerned, it is settled that an officer may make a search and seizure of an automobile without a warrant provided he has probable cause to believe that it contains contraband liquor. As far as the Supreme Court of Washington is concerned, it without doubt recognizes the general principle as already laid down. The question in all cases will be whether the officer in making the search and seizure has probable cause, and this question is one of fact according to the circumstances of each particular case. SHERMAN R. HUFFINE.

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[11] 97 U. S. 642, 24 L. ed. 1035 (1878).

[12] 16 Fed. (2d) 320 (1926).

[13] See Note 5, *supra.*