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sustain a conviction in the hypothetical hereinbefore presented, it is suggested that a statute such as that in force in Canada[45] is desirable. Under the Canadian statute, the elements of the offense are two: (1) impairment of the defendant's ability to drive a motor vehicle by alcohol; and (2) having the care or control of a motor vehicle during such impairment. Such a statute properly relieves the courts of the burden of trying to reconcile the need for full proof of guilt of the accused with the conflicting need for protection of the public on the highways. It properly raises a presumption against one who is found in such circumstances, yet it does not foreclose a showing by the defendant that he was not actually in control[46] of the vehicle, and was not, therefore, creating the danger which is to be obviated.

LUKE R. CORBETT

Criminal Procedure—Arrest Without a Warrant—Informer's Tip as Constituting Reasonable Grounds

In *Draper v. United States*[1] a federal narcotics agent was notified by a hired informer that defendant was peddling dope to several addicts in the Denver area. Four days later the informer revealed that defendant would go to Chicago to get heroin on a certain day and that he would return on a morning train on either of two given days. The informer's tips had always been reliable in the past. The agent had never heard of defendant before and it was not shown whether or not he had a criminal record. A complete description of physical characteristics, clothing, and manner of walking was given. On the morning of the second day the agent saw a man leaving the Chicago train who matched the description given by the informer. Defendant was approached and seized by the agent. When he gave a name which did not correspond with the tip his wallet was taken and his true identity learned. He was placed under arrest and a search of his person revealed two ounces of heroin and a syringe. The agent had no warrant.

Before trial[2] defendant moved to suppress the evidence on the ground that the search was unreasonable under the fourth amendment[3] because made incident to an unlawful arrest. Thus the sole issue on the

[45] CAN. REV. STAT. c. 36, § 285(4) (1927) (later amended, Criminal Code, 1954, 2-3 ELIZ. 2, c. 51, §§ 222-24 (Canada)).

[46] Rex v. Johnston, [1950] 97 Can. Crim. R. 345, 3 D.L.R. 48 (dictum). *Cf.* Jowett-Shooter v. Franklin, [1949] 2 All E.R. 730 (K.B.) (Defendant who got into a car, but not under the steering wheel, and not intending to drive, found to be in charge of vehicle, but driving permit not suspended because no intent to drive).

[1] 248 F.2d 295 (10th Cir. 1957).

[2] United States v. Draper, 146 F. Supp. 689 (D. Colo. 1956).

[3] U.S. CONST. amend. IV.

defendant's motion was the lawfulness of the arrest. The motion was denied and defendant was tried and convicted. The court of appeals, in affirming, found the arrest valid because "the information furnished, together with the verification thereof after appellant alighted from the train, was sufficient to give the agent reasonable grounds to believe that appellant was committing a violation of the Narcotics Act."[4]

A strong dissenting opinion argued that the arrest was unlawful because, *inter alia,* hearsay information alone, with no other indication of guilt within the officer's knowledge, is not a reasonable ground for belief of guilt.[5] This contention presents a problem which has not infrequently been before the federal courts, *viz.,* the weight to be given an informer's tip in determining whether an officer arresting without a warrant had "reasonable grounds."[6]

To be given any effect at all the information must come from one who is reliable. An uncorroborated tip by an informer whose identity

[4] 248 F.2d at 299.

[5] Judge Huxman, writing the dissent, also stated that the arrest was unlawful because the exigencies of the situation did not call for arrest without a warrant. Such a requirement is not generally said to be a prerequisite for a valid arrest. The common law rule is that "where an officer, in good faith, believes that a person is guilty of a felony, and his belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise, he has such probable cause for his belief as will justify him in arresting without a warrant." 6 C.J.S., *Arrest* § 6, at 596 (1937). No case has been found where it was held that the fourth amendment required any more where the issue was the validity of an arrest. Some jurisdictions have, by statute, added the requirement that there be a danger that the suspected felon will escape if not arrested. See, *e.g.,* N.C. GEN. STAT. § 15-41 (Supp. 1957). Federal narcotics agents are not common law peace officers, but the statute under which the agent in the principal case acted authorizes arrest without a warrant where the agent has "reasonable grounds" to believe that the person to be arrested has violated the narcotics laws. Narcotic Control Act of 1956, 70 STAT. 567, 26 U.S.C. § 7607(2) (Supp. 1957). This in effect gives narcotics agents the same power that common law peace officers have to arrest without a warrant. The two cases on which Judge Huxman relied on this point, McDonald v. United States, 335 U.S. 451 (1948), and United States v. Vleck, 17 F. Supp. 110 (D. Neb. 1936), dealt with searches of dwellings without warrants and the federal courts have been consistently critical of invasion and search of houses without a warrant in the absence of exceptional circumstances requiring immediate action. Johnson v. United States, 333 U.S. 10 (1948). In Agnello v. United States, 269 U.S. 20, 32 (1925), the Court said: "[I]t has always been assumed that one's house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest therein." See also Worthington v. United States, 166 F.2d 557 (6th Cir. 1948).

[6] The question is usually presented by the defendant's pre-trial motion to suppress evidence seized incident to the allegedly unlawful arrest. At least two cases have rejected such information altogether on the ground that the arresting officer must be possessed of facts that would be competent evidence in a jury trial and not mere hearsay information. Grau v. United States, 287 U.S. 124 (1932); Worthington v. United States, *supra* note 5. But this view, as pointed out by the district judge in the principal case, was disapproved in Brinegar v. United States, 338 U.S. 160 (1949), on the ground that the issue on defendant's motion was not his guilt or innocence but was rather the reasonableness of the officer's belief in guilt at the time of the arrest.

and reliability are unknown is not considered.[7] In *United States v. Blich*[8] the arrest was invalidated because the source of the information was not given so that the court could pass on its reliability, while in *Ard v. United States*[9] the implication is that it was sufficient that the officer considered the source reliable.

In a few cases there is dicta to the effect that reliable information alone would be sufficient grounds on which to base an arrest without a warrant.[10] But the general rule is that such information, unless supplemented by further facts, is insufficient.[11] In a majority of the cases where arrests prompted by tips were upheld, the "further facts" were things observed by the officers which of themselves tended to indicate guilt independent of the informer's tip.[12] In several cases the only supplementary information the officers had was a knowledge of prior criminal activity and the arrests were held lawful.[13] Two district court cases stand in opposition to the two last-mentioned views, however. In *United States v. Clark*[14] the officers knew that a grocery store was illegally selling narcotics, saw defendant enter the store with the informer, and by pre-arranged signal were tipped off by the informer that defendant had narcotics in her possession when she came out. The arrest was held unlawful because there was no showing (to the officers) that "the informer's information was itself more than mere guess-work

[7] Contee v. United States, 215 F.2d 324 (D.C. Cir. 1954).

[8] 45 F.2d 627 (D. Wyo. 1930).

[9] 54 F.2d 358 (5th Cir. 1931), *cert. denied*, 285 U.S. 550 (1932). See also Cannon v. United States, 158 F.2d 952 (5th Cir. 1946), *cert. denied*, 330 U.S. 839 (1947).

[10] Cannon v. United States, *supra* note 9, at 954; United States v. Heitner, 149 F.2d 105, 106 (2d Cir. 1945), *cert. denied*, 326 U.S. 727 (1945); Somer v. United States, 138 F.2d 790, 791 (2d Cir. 1943).

[11] United States v. Bianco, 189 F.2d 716, 720 (3d Cir. 1951) (dictum); United States v. Sebo, 101 F.2d 889, 891 (7th Cir. 1939) (dictum); Wisniewski v. United States, 47 F.2d 825, 826 (6th Cir. 1931) (dictum); United States v. Turner, 126 F. Supp. 349, 352 (D. Md. 1954) (dictum); MACHEN, SEARCH AND SEIZURE 51, 52 (1950).

[12] Husty v. United States, 282 U.S. 694 (1931) (two passengers fled when officers stopped defendant's car); United States v. Bianco, *supra* note 11 (defendant carried abnormally large suitcase for one day trip and was seen with two known offenders); United States v. Li Fat Tong, 152 F.2d 650 (2d Cir. 1945) (defendant dropped a bottle of opium wine on being approached by the officer); United States v. Heitner, 149 F.2d 105 (2d Cir. 1945), *cert. denied*, 326 U.S. 727 (1945) (defendants drove away rapidly after seeing the officers); Stobble v. United States, 91 F.2d 69 (7th Cir. 1937) (defendant seen carrying two small envelopes of the usual size and color in which heroin is contained); Coupe v. United States, 113 F.2d 145 (D.C. Cir. 1940), *cert. denied*, 310 U.S. 651 (1940) (officers saw what looked like "numbers" pads through the window of defendant's car); Wisniewski v. United States, *supra* note 11 (officers saw defendant get a jug and burlap bag out of a known bootlegger's car and put them in his own car).

[13] United States v. Walker, 246 F.2d 519 (7th Cir. 1957); Ard v. United States, 54 F.2d 358 (5th Cir. 1931), *cert. denied*, 285 U.S. 550 (1932); United States v. Turner, 126 F. Supp. 349 (D. Md. 1954).

[14] 29 F. Supp. 138 (W.D. Mo. 1939).

and speculation."[15] In *United States v. Baldocci*[16] narcotics agents were informed that defendant, a known previous offender, was throwing dope over a prison's walls to inmates at night. The agents hid by the wall and arrested defendant when he drove up in a car. The arrest was invalidated because made "merely upon suspicion."

In the principal case there were no "further facts" within the agent's knowledge. Nothing the defendant did independently aroused suspicion and the agent had no knowledge of any past criminal activity. "Reasonable grounds" consisted of the tip plus the fact that defendant's appearance and movements conformed with the information given. At least four cases would seem to be in accord. In *Brady v. United States*[17] the defendants' vehicles were stopped and arrests made after the movements and makes of the vehicles had been checked against the information supplied. In *King v. United States*[18] the movements of defendant's auto were consistent with the tip. In *White v. United States*[19] defendant was arrested as he walked up to a house where addicts were said to be awaiting his arrival with a quantity of narcotics. In *United States v. Hill*[20] the court paid lip service to the rule laid down in the *Clark* case, *viz.*, that information from third persons, no matter how reliable, must be shown to be more than mere speculation, but then proceeded to hold that personal verification by the officers of defendants' movements as described by the informer was sufficient. The quantum of guilt-indication required by these cases was described in the *Hill* case when the court said that reliable information alone was not sufficient but that reasonable grounds existed when "the information received . . . was verified, insofar as it could be, by personal observation and found to be accurate in its particulars."[21] The facts of these cases show that the verification does not have to extend to conduct which would tend of itself to indicate guilt of the crime.

While this line of cases, including the principal case, constitutes a liberal departure from the reliable information plus further facts rule, the decisions are considered sound.[22]

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[15] *Id.* at 140. The fact that the search turns up evidence of guilt has no bearing on the question of whether the arresting officer had "reasonable grounds" at the time of the arrest. United States v. Di Re, 332 U.S. 581 (1948); Byars v. United States, 273 U.S. 28 (1927).
[16] 42 F.2d 567 (S.D. Cal. 1930).
[17] 300 Fed. 540 (6th Cir.), *cert. denied*, 266 U.S. 620 (1924).
[18] 1 F.2d 931 (9th Cir. 1924).
[19] 16 F.2d 870 (9th Cir. 1926), *cert. denied*, 274 U.S. 745 (1927).
[20] 114 F. Supp. 441 (D.D.C. 1953).
[21] *Id.* at 442.
[22] It would appear that the views best illustrated by the following quotation have some support.
"As we look at some of the uses which the criminal classes have made of