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Search And Seizure --Statutory Authority to Search Without Warrant

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juror's testimony to facts evidencing outside influence, but he cannot testify that such outside influence affected his verdict.[15]

In the instant case, the juror remained silent when the verdict of guilty was read aloud in open court. If he objected to such verdict, that was time to be heard.[16] The Supreme Court said that matters presented in the juror's affidavit showed it essentially inhered in the verdict itself,[17] and was inadmissible. Florida follows the general rule,[18] except as to matters which do *not* inhere in the verdict,[19] or as otherwise provided by statute.[20]

The universal adoption of the rule has been a matter of public policy which seeks to preserve the stability of the courts. "Such evidence, though not irrelevant, must be excluded, since experience has shown it is more likely to prevent than promote the discovery of truth".[21] Not to refuse jurors testimony is a dangerous principle to follow. It permits tampering with jurors. By various and improper influences, affidavits could be obtained from jurors upon which to ground motions for new trials in almost every case.[22] It is conceded the rule leaves something to be desired since some persons may become the victims of chance or mistake. However, it is better than to introduce a rule which could be productive of infinite mischief, whereby no verdict could be permitted to stand.[23] *In Perry v. Bailey,* [24] Justice Brewer said:

> When a juror is heard to impeach his own verdict because of some matter resting in his own consciousness, the power is given him to nullify the expressed conclusions under oath of himself and eleven others.

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SEARCH AND SEIZURE-STATUTORY AUTHORITY TO SEARCH WITHOUT WARRANT

Defendant's license was suspended when gambling implements were found on the premises. The licensee instituted a certiorari proceeding to quash the order, on grounds that the evidence had been procured as a result

15. State v. McKay, 63 Nev. 118, 165 P.2d 389 (1946).
16. United States v. Nystrom, 116 F.Supp. 771 (W.D. Pa. 1953); State v. Pollock, 57 Ariz.415, 114 P.2d 249 (1941); Lawson v. Com., 278 Ky. 1, 127 S.W.2d 876 (1939); State v. Priestley, 97 Utah 158, 91 P.2d 447 (1939).
17. Brackin v. State, 31 Ala. App. 228, 14 So.2d 383 (1943); Linsley v. State, 88 Fla. 135, 101 So. 173 (1924).
18. *Ibid.*
19. Turner v. State, 130 Fla. 801, 178 So. 833 (1930); Linsley v. State, 88 Fla. 135, 101 So. 273 (1924); Perry v. Bailey, 12 Kan.539 (1874).
20. FLA. STAT. § 920.04; see note 8, *supra;* and FLA. STAT. § 920.05, which provides that misconduct of jurors is grounds for motion for new trial.
21. Blodgett v. Park, 76 N.H. 435, 84 Atl. 42, Ann.Cas. 1913B, 853 (1912).
22. Norris v. State, see note 6, *supra.*
23. Tyler v. Steven, see note 6, *supra.*
24. 12 Kan. 539 (1874).

of unreasonable, illegal, and unlawful search and seizure. *Held,* the import of the statute[1] is plain that the commission had authority to enter and inspect the premises without a search warrant and that the censurable conduct and language of the inspector did not make the entire inspection illegal. *In re Smith,* 74 So.2d 353 (Fla. 1954).

Few principles of our jurisprudence have been less appreciated or more the object of virulent contention than the doctrine which protects the citizen from unreasonable search and seizure. The question of how far past the strict limits of the statute an officer can go before his action is void because of infringment of constitutional guaranties[2] of the defendant depends on the reasonableness of the search.[3] The term "unreasonable search and seizure" is not defined in the Federal[4] and Florida [5] Constitutions, and in *Milan v United States*[6], the phrase was said to have no fixed, absolute, or unchanging meaning. The Supreme Court has recently said that the relevant test of whether or not a search is reasonable depends upon the facts and circumstances—the total atmosphere of the case.[7] Since the right of search and seizure is in derogation of constitutional guaranties,[8] the statute authorizing or regulating searches must be strictly construed against the state[9] and liberally construed in favor of the individual.[10] In *Solomon v. State,*[11] the statute vested in the sheriff the right to forcibly enter a house without a warrant if he had good reason to believe gambling was being conducted. It was held that the search was illegal because it was conducted by a deputy sheriff. An Idaho case,[12] wherein a statute provided for the search of a place where there was probable cause to believe that intoxicating liquor was sold, held that the authority of an officer to search a certain place cannot be extended so as to constitute authority to search a person not connected in any way with the place being searched, and who

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1. FLA. STAT. § 511.11 (1953).
2. U.S. CONST. Amend. IV.
3. District of Columbia v. Little,178 F. 2d 13 (D.C. Cir. 1949). (The constitutional prohibition against unreasonable searches, by implication, permit, reasonable searches); Church v. State, 151 Fla. 24, 9 So. 2d 164 (1942).
4. Agnello v.U.S., 290 Fed. 671 (2d Cir. 1923).
5. FLA. CONST. Declaration of Rights § 22.
6. 296 Fed. 629 (4th Cir. 1924).
7. U.S. v. Rabinowtiz, 339 U.S. 46 (1950); Drayton v. U.S., 205 F.2d 35 (5th Cir. 1953); U.S. v. Hill,114 F. Supp.441 (D.C. Cir. 1953); Brinegar v. State, 262 P.2d 464, (Okl.1953).
8. State v. Jones, 358 Mo. 398, 214 S.W. 2d 705 (1948).
9. Wilson v. Quigg,154 Fla.348, 17 So. 2d 697 (1944); Gildrie v. State,94 Fla.134, 113 So. 704 (1929); *accord,* Hart v. State, 89 Fla. 202, 103 So. 633 (1925); Jackson v. State,87 Fla. 262, 99 So. 548 (1924); Edwards v. State, 83 Okl.Crim. 340, 177 P.2d 143 (1947).
10. Sgno v. U.S., 287 U.S. 206 (1923); *accord,* U.S. v. Nichols, 89 F.Supp. 935 (D.C. Ark. 1950); Marron v. U.S., 275 U.S. 192(1927); Boyd v. U.S., 116 U.S. 616 (1886).
11. 115 Fla. 310, 156 So. 401 (1934).
12. Purkey v. Mabey, 33 Idaho 281, 193 Pac. 79 (1920); *accord,* Town v. Beam, 104 S. C. 146, 88 S. E. 441 (1919); *cf.,* State v. Kollat, 190 Wis 255, 208 N.W. 900 (1926).

merely happens to be on the premises. However, it has been stated that the statute should not be construed so strictly as to thwart reasonable and proper efforts to detect crime.[13] In *Commonwealth v Courtney*,[14] officers while making a search committed acts not authorized by the warrant. The court held that all that was done was not tainted with illegality, and that the acts were illegal only to the extent that they were not authorized by the warrant. Again, in a federal case,[15] it was held that there was an unlawful destruction of liquor, but this did not make unlawful the seizure of property which could *rightfully* be taken.

The Supreme Court bases its decision in the instant case upon the ruling of *In re Advisory Opinion to the Governor Florida*,[16] where the Court previously said that the Hotel Commission has authority to go upon the premises of the establishments and inspect them without a search warrant for the purpose of determining whether or not any law with reference to the hotel, including the gambling laws, were being violated. The majority of the Court admits that the inspecting officials are charged with the duty of exercising care to see that no abuse or unnecessary severity occurs,[17] but they adopt the underlying principle of *Commonwealth v Courtney*.[18] The dissent, on the other hand, admits that some flexibility of judgment on the part of officers is necessary in carrying out justice, but that considering the facts and circumstances,[19] the search was unreasonable. By these conflicting opinions we can see two somewhat opposed views in cases of search and seizure. One view adheres to the principle that the state has a duty to protect its citizens in enjoyment of privileges and immunities as guaranteed by the constitution.[20] The other view is that the state also has a duty to prevent and suppress unlawful conduct.[21]

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13. Pong Ying v. U.S., 66 F. 2d 67 (3rd Cir. 1930); *accord*, U.S. v. Snow, 9 F.2d 978 (D.C. Mass. 1925); *cf.*, Perry v. State, 72 Okl.Crim. 149, 114 P. 2d 185 (1929); Wagner v. State, 72 Okl. Crim. 393, 117 P.2d 162 (1941).

14. 243 Mass. 363, 138 N.E. 16 (1923); *accord*, Adams v. N.Y., 192 U.S. 585 (1904); Quandt Brewing Co. v. U.S., 47 F.2d 199 (2d Cir. 1931); Commonwealth v. Intoxicating Liquors, 203 Mass. 585,89 N.E. 918 (1909); *cf.*, State v. Brown, 91 W.Va. 709, 114 S.E. 372 (1922).

15. McGuire v. U.S., 273 U.S. 95 (1926); *accord*, Giacolone v. U.S., 13 F.2d 108 (9th Cir. 1926); Hurley v. U.S., 300 Fed. 75 (1st Cir. 1924); In re Quirk, 1 F. 2d 484 (D.C. N.Y. 1924).

16. 63 So. 2d 321 (Fla. 1953).

17. Marshall v. Commonwealth, 140 Va. 542, 125 S.E. 329, (1924); *accord*, McMahan's Admi'x v. Droffen, 242 Ky. 785, 47 S.E. 2d 716 (1932); *cf.*, State v. Frye, 58 Ariz. 409, 120 P.2d 793 (1942); Girard v. Anderson, 219 Iowa 142, 257 N.W. 400 (1934); Krehbeil v. Henkle, 142 Iowa 677, 121 N.W. 378 (1909).

18. See note 14 *supra*.

19. Mathews v. Correa, 135 F. 2d 534(1934); U.S. v. Hotchkiss, 60 F. Supp. 405 (D.C. Md. 1945); U.S. v. Esposito, 45 F. Supp. 39 (D.C. Pa. 1942); Lango v. State, 157 Fla. 668, 26 So. 2d 819 (1946); Buckley v. Beaulieu, 104 Maine 56, 71 Atl. 70 (1908); Cleek v. State, 192 Tenn. 457, 241 S.W. 2d 529 (1951); *accord*, Ellis v. State, 92 Fla. 275, 109 So. 622 (1926); Haile v. Gardner, 82 Fla. 355, 91 So. 376 (1921).

20. Weeks v. U.S., 232 U.S. 384 (1941); Boyd v. U.S., 116 U.S. 616 (1886); *accord*, Youman v. Commonwealth, 189 Ky. 152,224 S.W. 860 (1921); *cf.*, Manning v. Roberts, 179 Ky. 550, 200 S.W. 937 (1918).

21. Angello v. U.S., 269 U.S. 20 (1925); Carrol v. U.S., 267 U.S. 132 (1925); Elliot v. Haskin, 20 Cal. App. 2d 591, 67 P.2d 698 (1937); *accord*, Tranum v. Stlinger, 216 Ala. 522, 113 So. 541 (1927).

It is respectfully submitted that the Florida Supreme Court, in weighing these two principles, may have placed too much emphasis on the protection of the public welfare to the detriment of an individual's constitutional right. There is no question that a reasonable inspection of apartment houses, restaurants, and hotels is necessary for the protection of public welfare.[22] But laws which authorize such inspections must respect the individual's guaranties against unreasonable search and seizure.

Since the "reasonable" test depends upon the facts and circumstances-" the total atmosphere of the case,"[23] and since this Court has held that a statute which purports to delegate authority to certain officers be strictly construed,[24] it is difficult to say that when a state officer commits a physical assult on an individual and subjects him to verbal abuse that the search was reasonable.[25] Certainly, no broad power bestowed upon the law enforcement officer warrants an assault upon the person. As Justice Brandeis so ably stated:

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands of the citizen.... To declare that the government may commit crimes in order to secure the conviction of a private criminal would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.[26]

I. G. Christie

WORKMEN'S COMPENSATION UNLAWFULLY EMPLOYED MINORS

An unlawfully employed minor attempted to sue at law for injuries sustained in the course of the employment. *Held,* the minor is limited to an exclusive remedy under the Workmen's Compensation Act. *Winn-Lovett Tampa v. Murphree* 73 So.2d 287 (Fla. 1954).

Workmen's Compensation statutes fall into four general types as regards the treatment of unlawfully employed minors.

Type one makes no provision for minors unlawfully employed. Under this type statute, one group of decisions permits the minor to sue at law,[1] the

22. Elliot v. Haskins, 20 Cal. App. 2d 591, 67 P. 2d 698 (1937); Camden Country Beverage Co. v. Blair, 46 F. 2d 648 (2d Cir. 1930); Kelleher v. Minshull, 11 Wash. 380, 119 P.2d 302 (1941).
23. See note 7 *supra.* See Matherne, *Search and Seizure—U.S. v. Rabinowitz,* 21 TENN. L. REV. (1951).
24. See note 9 *supra.*
25. People v. Fields, 15 N.Y.S. 2d 561 (1939); Marshall v. Commonwealth, 140 Va. 541, 125 S.E. 329, (1924); *cf.* Reininger v. State, 49 Okl. Crim. 463, 60 P.2d 629 (1936).
26. Olmstead v. U.S., 277 U.S. 438,485 (1928).

1. Widdoes v. Laub, 33Del.4, 129 Atl. 344 (1952); Lee v. Kansas City Public Service Co., 137 Kan. 759, 22 P.2d 942 (1933); Wm. B. Tilghman Co. v. Conway 150 Md. 525, 133 Atl. 593 (1926); Rock Island Coal Mining Co. v. Gilliam, 89 Okl. 49, 213 Pac. 833 (1923); Knoxville News Co. v. Spitzer, 152 Tenn. 614, 279 SW 1043 (1926); Wlock v. Fort Drummer Mills, 98, Vt. 449, 129 Atl. 311 (1925).