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WHAT ARE REASONABLE GROUNDS FOR AN ARREST?

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A POLICEMAN'S LOT has never been a particularly happy one. Today, it is less happy than ever before—because of the demands we make of our policeman. We expect him to do an aggressive, imaginative job of holding crime in check. We also expect him to be downright religious in observing the constitutional rights of those with whom he deals. We make him walk a fine line in balancing the protection of society and the protection of the individual. Unfortunately, we have done little to give him the working knowledge of the law which he needs in walking this fine line.

A point of particular concern is the moment preceding an arrest, where the policeman is acting without a warrant. At this instant he must decide—then and there—whether he has reasonable grounds for the arrest. This decision is hard enough in the busy districts of Chicago, where a man keeps his knowledge and practice of arrest at his fingertips because he has frequent occasions to make arrests. The decision is far more difficult in the smaller cities and suburbs. Regardless of how thorough the training a policeman receives upon joining the force, his knowledge fades from active memory because of infrequent occasions to recall it. If his initial training was sketchy, he is that much worse off.

This article has only one purpose: to help you, the lawyer,

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work with your police in training and re-training them in the law of arrest, search, and seizure as it relates to making an arrest without a warrant. This means helping the policeman hone to a fine edge his grasp of the law on reasonable grounds so that he knows how to make the right decision at the crucial moment.

The "he" is significant because, increasingly, police officers go about their duties alone. Today, there are more one-man squad cars than ever before. Those of us who would help the policeman master the fine points in this area of the law must assume he is likely to be working alone, as a general rule—even though he does take part in teamwork police action from time to time.

There is one effective way to train a policeman: instill in his mind enough rules from our case law so that he has some guideposts he can use. Equipping him with a number and variety of specific rules gives him confidence. Further, when he asks a question and you can say, "Yes. The Illinois Supreme Court said so," and then proceed to answer his question by relating a specific case, you are doing much to strengthen his self-confidence.

Note the "you" in the preceding sentence. You don't have to hold an official position to offer your help to the police. You should not assume that the people who train police give the policemen everything they need. In fact, a telephone call to your local chief of police, in which you offer to review the law of reasonable grounds with his men is likely to elicit an enthusiastic reaction.

The need of the policeman on the beat to be up to date on the law as it relates to reasonable grounds is what prompted the writing of this article. However modest its contents may be, it does represent some looking up of the law and some arranging of the cases that you won't have to do yourself. My hope is that it gives you a tool—a tool to share with your own police. To assist you in breaking down the subject for the policeman, the article divides into nine main segments:

I. Basing the arrest on what the officer sees himself.
II. Applying teamwork to making an arrest.
III. Knowing the offense but not the offender—before the arrest.
IV. Using a description to find the person to arrest.

V. Acting on the word of an unidentified informant.
VI. Basing the arrest on what another sees and reports.
VII. Arrests that go wrong—and reasonable grounds prove lacking.
VIII. Problems of the search incidental to an arrest.
IX. Disputing the exact time the arrest takes place.

The ever-hovering protection of the Fourth Amendment to the Constitution of the United States constantly mentions the work of our police. The basic requirement of a valid arrest is that it must not violate this amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article II, Section 6 of the Illinois Constitution of 1870 contains substantially the same wording, except that the words "supported by affidavit" appear in place of "supported by oath or affirmation."

The power of arrest rests on statute. Prior to January 1, 1964, the governing provision was that of Section 657, Chapter 38, Illinois Revised Statutes.[1] On that date the Code of Criminal Procedure of 1963 took effect. Its provisions relating to an arrest without warrant reads as follows:

> A police officer may arrest a person when:
> (a) He has a warrant commanding that such person be arrested; or
> (b) He has reasonable grounds to believe that a warrant for that person's arrest has been issued in this State or in another jurisdiction; or
> (c) He has reasonable grounds to believe that the person is committing or has committed an offense.[2]

A separate section covers an arrest by a private person:

> Any person may arrest another when he has reasonable grounds to

[1] It reads as follows: "An arrest may be made by an officer or by a private person without a warrant, for a criminal offense committed or attempted in his presence, and by an officer when the criminal offense has in fact been committed and he has reasonable grounds for believing that the person to be arrested has committed it." Ill. Rev. Stat. ch. 38, § 657 (1961).

[2] Ill. Rev. Stat. ch. 38, § 107-2 (1963).

believe that an offense other than an ordinance violation is being committed.[3]

Sec. 107-5, covering the method of arrest, has four key points:

(a) An arrest is made by an actual restraint of the person or by his submission to custody.
(b) An arrest may be made on any day and at any time of the day or night.
(c) An arrest may be made anywhere within the jurisdiction of this State.
(d) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.[4]

Of particular interest in relation to making an arrest without a warrant is the statutory provision governing search without warrant:

When a lawful arrest is effected a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:
(a) Protecting the officer from attack; or
(b) Preventing the person from escaping; or
(c) Discovering the fruits of the crime; or
(d) Discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, an offense.[5]

When making an arrest for an offense which he did not see, a police officer faces a difficult choice. There are no hard and fast rules, no "go" or "no go" guideposts. The policeman must make up his mind on whether reasonable grounds exist in the light of whatever the circumstances are at the time. Further, he has to be cautious as well as reasonable. As the Illinois Supreme Court said in 1933 in *People v. Davies*:[6]

. . . (T)he officer making such an arrest must have a well-grounded belief that the person arrested is guilty of the commission of a crime. His belief must be such as would lead a prudent and cautious man acting under like circumstances to the same belief.

Some thirty years later, a federal district court explored the question of what constitutes reasonable grounds. *Monroe v. Pape*[7] involved a civil rights action against some policemen. After two

3 Ill. Rev. Stat. ch. 38, § 107-3 (1963).
4 Ill. Rev. Stat. ch. 38, § 107-5 (1963).
5 Ill. Rev. Stat. ch. 38, § 108-1 (1963).
6 354 Ill. 168, 176, 188 N.E. 337, 340 (1933).
7 221 F. Supp. 635 (N.D. Ill. 1963).

Negro men allegedly killed the husband of one Mrs. Saisi, she looked through police files and pointed out the plaintiff. "It looks like him," she said. The police went to his home early the next morning. After they arrested him and took him to the station, Mrs. Saisi was unable to identify him. She later admitted complicity in her husband's death, thus clearing Monroe.

Of special interest to this discussion of reasonable grounds are the instructions the trial judge gave. He told the jury that

> . . . (P)robable cause is a reasonable ground of probability supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused guilty. "Probable cause" or "reason to believe," therefore, is like a third-quarter percentile; it is more information than would justify the officer saying, "From all the circumstances I suspect this man," but it need not be such information as would justify the officer in saying, "From all the circumstances, I know this is the man."[8]

The judge further explained that what is reasonable is just what the term implies; under all the facts and considering all the circumstances, what thought or conduct would be founded upon reason. To apply this concept one must place himself in the position of the person involved and in that position he must think and act as a reasonable man.[9]

The trial judge further pointed out the many ambiguous situations which confront policemen. He stated that there must be allowance for uncertainties on their part; that they should never have to do more than act as reasonable men. Asking more of them would hamper law enforcement. At the same time, he said, allowing less would leave the citizen at the mercy of the policeman's whim or caprice.[10]

Hand in hand with deciding what is reasonable, the policeman must decide that a criminal offense has been committed. The courts do not limit "criminal offense" simply to felonies and misdemeanors. Thus in *City of Chicago v. Lee*,[11] the Appellate Court held that the violation of a municipal ordinance subjecting the offender to the penalty of a fine is a criminal offense within

8 *Id.* at 642-3.
9 *Id.* at 643.
10 *Id.* at 644.
11 3 Ill. App. 2d 422, 122 N.E.2d 438 (1st Dist. 1954).

the statute permitting an arrest by a police officer without a warrant.

I. Basing the Arrest on What the Officer Sees Himself

In *People v. Davies*[12] two police officers went to the defendant's residence to question him. They had no warrant and had no intention at the time to arrest him or anyone else. They went to the back door and rang the bell. The defendant came to the window, pointed a pistol at them, called them a vile name, and ordered them off the porch. The policemen were in plain clothes and one of them showed the defendant his star. The defendant cocked the pistol, which was loaded, and told them to leave.

The officers left but returned with two other policemen, rapped on the door, gained admittance, arrested the defendant, and searched his home. When the case ultimately reached the Illinois Supreme Court, it upheld the defendant's conviction thus affirming the right of the policemen to make an arrest for an offense committed in their presence. Because the arrest was valid, so was the subsequent search. Here it resulted in finding a weapon with the identifying numbers obliterated. The court said:

> By the aiming of the loaded, cocked pistol at the officer, threatening to shoot them and calling them the vile name he did (bastard), the defendant was then and there guilty of an assault upon the officers, in violation of the Criminal Code of this State. In entering the home of the defendant and searching him and the premises without a search warrant the officers were not acting without authority. A criminal offense had been committed in the presence of the officers, and they had the lawful right to take possession of the deadly weapon with which the defendant had threatened to take their lives.[13]

In contrast to *Davies* where the defendant committed the offense before the policemen entered the building is the case of *City of Evanston v. Hopkins.*[14] The policemen did not see the offense until they got inside, but they had a right to enter because there was a sign "Public Telephone" at the entrance of a rooming house and the door was open. When they got inside the policemen saw numerous couples undressed and in bed—and the couples admitted not being married to each other.

12 345 Ill. 168, 188 N.E. 337 (1933).
13 *Id.* at 176-7, 188 N.E. at 340-1.
14 330 Ill. App. 337, 71 N.E.2d 209 (1st. Dist. 1947).

The Appellate Court held that the policemen were justified in arresting the operator of the rooming house on a charge of keeping a house of ill fame in violation of a city ordinance. Further, the court held that they were justified in making a further search of the premises and that their testimony was admissible in a prosecution for a violation of this ordinance.

Arrests Involving Automobiles

One of the common situations confronting a policeman is where he sees a criminal offense committed on, in, or near an automobile. Frequently, the investigation of a traffic violation leads to evidence of a more serious offense. Thus, in *People v. Clark*,[15] the defendant parked his car with the front and rear wheels twenty-one and eighteen inches, respectively, from the curb. The policemen who approached him to question him about this violation saw that there were some policy slips in his pockets. A handkerchief in the defendant's pocket only partially obscured the slips. The policeman asked what they were and the defendant replied, "Policy slips." An officer reached for them and since they were protruding, he was able to get them out of the defendant's pocket without actually reaching into the pocket.

The officer arrested the defendant for a policy offense. The defendant was convicted, and he appealed, questioning the right of the police to make the arrest and seizure, since they never did arrest him for the parking violation.

The Illinois Supreme Court held that the police had the right to arrest the defendant for the parking violation as well as the policy offense. The basis for the arrest on the traffic charge was there—even though the policemen neither charged nor arrested the defendant for it. The court noted that where the policemen called the parking violation to the defendant's attention and he voluntarily submitted to their control, and the officers intended to arrest him, the elements of a valid arrest were there—without regard to whether the charge (parking violation) was ever sustained.

In *People v. West*,[16] the policemen found the basis for an

[15] 9 Ill. 2d 400, 137 N.E.2d 820 (1956).
[16] 15 Ill. 2d 171, 154 N.E.2d 286 (1958).

arrest simply by looking into a car. A police officer stopped opposite the defendant's automobile and looked in. When he saw some policy slips, he arrested the defendant. At that moment, a second defendant returned to the waiting car, and the officer arrested him too. The officer searched both defendants and found more policy slips.

Sustaining the convictions and sentences, the Supreme Court upheld the arrest. The defendants had contended the policy slips were in a bag and not exposed to view. The court, however, accepted the testimony of the policemen that the slips were exposed to view.

A similar situation arose in *People v. Berry*.[17] Police officers observed the defendant sitting in a car without state or city licenses. They saw a man sitting alongside the defendant hand the defendant some policy slips. Although the defendant quickly put these in his pocket, the policemen opened the car door, took the package of policy slips and arrested the defendant. On appeal of the resulting conviction, the Supreme Court held that there had been a valid arrest. The court said: "Since this violation was clearly apparent to the police officers and continued in their presence, they were justified in making the arrest and accompanying search without a warrant having previously been issued. It is immaterial that such search revealed evidence of a different crime."[18]

Although not involving a traffic violation, the case of *People v. McDonald*[19] illustrates a valid arrest by an officer who found the basis for the arrest upon observing the conduct of a motorist. From across a street, the sheriff of Douglas County watched the defendant take a bag from the trunk of his car, parked in the rear of a club building. Upon approaching the car, the sheriff saw some other bags, one with a tip board protruding. He then arrested the defendant, took from his hand a bag containing some forty-nine tip boards. Subsequently, the County Court of Douglas County denied the defendant's motion to suppress and found him guilty of unlawfully keeping gambling paraphernalia. On

17 17 Ill. 2d 247, 161 N.E.2d 315 (1959).
18 *Id.* at 251, 166 N.E.2d at 317.
19 26 Ill. 2d 325, 186 N.E.2d 303 (1962).

appeal, the Supreme Court affirmed the conviction, holding that at the moment the sheriff saw the tip board protruding from the bag in the trunk of the defendant's car, the defendant was violating the statute in the sheriff's presence, and he was justified in making the arrest.

In *People v. Davis*,[20] the Criminal Court of Cook County convicted the defendant of unlawfully possessing narcotics. The defendant appealed the conviction and sentence, contending his motion to suppress should have been sustained. The Supreme Court affirmed the conviction.

The Chicago police had arrested the defendant at 1:20 a.m. for making an improper turn and for driving without a light on the rear license plate. The defendant got out of the car when one of the policemen approached him and asked for his driver's license. At that moment the officer saw a tinfoil package on the driver's side of the floor of the front seat. After opening it and finding that it contained a white powder the policeman arrested the defendant. Upon searching the car, the policeman found another tinfoil packet and sent it to the police crime laboratory.

The Supreme Court held that the finding of the first packet provided sufficient circumstances to indicate to the policeman that they were dealing with something more than an ordinary traffic violator. The court held that the arrest and the search were lawful. Further, the court noted that finding the first packet did not involve a search.

The defendant's contention was that he had loaned the car to somebody else and that this person might have put the packets in the car. The court held, however, that where the narcotics were found on premises under the defendant's control, it may be in-

20 33 Ill. 2d 134, 210 N.E.2d 530 (1965). In holding the officer had the right to search the driver, the court cited *People v. Thomas*, 31 Ill. 2d 212, 213, 201 N.E.2d 413, 414 (1965): ". . . We set forth the principle that if circumstances reasonably indicate that the police may be dealing not with the ordinary traffic violator but with a criminal, then a search of the driver and his vehicle is authorized in order to insure the safety of the police officers and to prevent an escape."

There was no search for the first packet. A search implies a prying into hidden places for that which is concealed, and it is not a search to observe that which is open to view. People v. Heidman, 11 Ill. 2d 50, 144 N.E.2d 580 (1957); People v. Marvin, 358 Ill. 426, 193 N.E. 202 (1935). In support of the lawfulness of the arrest and the search: People v. Elmore, 28 Ill. 2d 263, 192 N.E.2d 219 (1935); People v. Harper, 26 Ill. 2d 85, 185 N.E.2d 865 (1962); People v. Stewart, 23 Ill. 2d 161, 177 N.E.2d 237 (1961).

ferred that the defendant had both knowledge and control of them. In affirming the conviction, the court also held that the fact that the packets were where the defendant could or should have been aware of them was sufficient evidence of his knowledge and control to sustain the conviction.

The preceding five cases, *Clark, West, Berry, McDonald,* and *Davis,* teach the police the importance of being observant in approaching automobiles. Those involving traffic violations show that alert policemen can spot something more serious than a traffic offense. The cases not involving traffic violations stress the value of simply being observant. Members of the bar concerned with teaching the law of arrest, search, and seizure to the police should drive home the point that constant vigilance is the price of success in law enforcement.

Close Observation Vital

An entirely different situation appeared in *People v. Sustak,*[21] and indicates the value of observation in a case where pursuit of an offender was interrupted rather than continuous. Upon hearing shots two policemen left a restaurant and saw two men running. They noted that one wore a hat and the other was bareheaded, and that both wore jackets. Upon reaching the scene of the shooting and seeing that there were wounded men there, the policemen resumed their pursuit of the men they saw running. Within minutes they saw two men both wearing jackets, one with a hat, one without, emerge from a passageway near a tavern. Instead of stopping when the policemen called out, "Halt! Police," (or words to that effect) the men ran into a tavern. One of them crouched behind a juke box and pulled a gun when the policemen entered. There was a gun battle and a fight before the policemen brought things under control. The Criminal Court of Cook County ultimately convicted the defendant of murder as a result of the shooting that first drew the attention of the police.

Even though the pursuit was not continuous and the defendant and his companion were not constantly in the view of the police, there was a valid arrest, according to the Supreme Court, which affirmed the conviction. The court stated:

21 15 Ill. 2d 115, 153 N.E.2d 849 (1958).

> Certainly the police had authority to investigate or arrest for that act (the defendant's pulling a gun and hiding behind a juke box) and in consequence of the defendant's actions, the shooting which had just occurred and his resemblance to one of the fleeing assailants, the police were justified in believing he had some connection with the crime.[22]

A somewhat different situation, where an officer made a valid arrest based on what he saw, occurred in *People v. McIntyre*.[23] A state investigator entered a tavern, went to its basement, saw people at a table with racing forms in front of them. He then placed a ten dollar bet. The defendant made a record of this bet in a book. The investigator left, went to get a search warrant, then returned and placed another bet. At that moment, the police were right behind the investigator. As the investigator was placing another bet, the chief of police then arrested the defendant for the offense of keeping a book for the registration of bets which took place in his presence. The Supreme Court approved the arrest, based on what the chief saw, without reference to the search warrant.

People v. Phillips[24] teaches that a policeman who is outside an apartment may make a valid arrest based upon seeing a criminal offense inside that apartment. It also emphasizes the importance of observation. After getting a tip from an informer (the source of the tip was not an issue in this case) policemen went to the defendant's apartment and knocked on his door. He opened it and the officer at the door showed the defendant his star. At that moment the defendant's hand opened and a cigarette package fell to the floor. The officer saw someone who was lying on a bed throw a needle and syringe to the floor. The police then arrested the defendant. Subsequently, they found that the cigarette package contained heroin packets.

The Criminal Court of Cook County convicted the defendant of unlawfully possessing narcotics and he appealed on the basis that his motion to suppress should have been sustained. In affirming the conviction, the Supreme Court held that the officer had personal knowledge of an offense when he saw the needle and syringe, which were in plain view. "The subsequent seizure and

22 *Id.* at 123, 153 N.E.2d at 854.
23 15 Ill. 2d 350, 155 N.E.2d 45 (1958).
24 30 Ill. 2d 158, 195 N.E.2d 717 (1964).

opening of the cigarette package which contained the heroin was incidental to a valid arrest," the court concluded.[25]

A slightly different set of facts involving a needle and syringe occurred in *People v. Varnadoe*.[26] In response to a tip that people were buying and selling narcotics in a certain apartment the police went there and learned from the housekeeper that the girl who occupied the room was in jail. The housekeeper gave the officers permission to check the room, and they went there and knocked on the door. A man opened it. The policemen saw a hypodermic needle on the floor and one of them went to pick it up. After pushing the officer, the defendant then reached for his pocket. However, the officer reached into the pocket and removed a packet of heroin. There were four adults in the room and the defendant's explanation was that he had been visiting a girl who shared the apartment with another.

The Criminal Division of the Circuit Court of Cook County convicted the defendant of unlawfully possessing narcotics and the defendant appealed on the basis that the trial court should have sustained his motion to suppress. The Appellate Court affirmed the conviction.

Of special interest to policemen and those who are teaching them how to make a valid arrest are the court's comments in this case. The opinion noted that the door opened immediately when the officer knocked, even though he did not identify himself as a policeman and did not use force. In holding that all the adults in the room were in constructive possession of the syringe, the court said the officer had a right to make the arrest when he saw the syringe.

25 *Id.* at 160, 195 N.E.2d at 719.

26 54 Ill. App. 2d 443, 203 N.E.2d 781 (1st. Dist. 1965). The court cited Chapter 38, Sec. 22-50, Ill. Rev. Stats. 1961, prohibiting possession of a syringe except by physicians and other designated persons. The court held the search justified by the rule in *People v. Phillips, supra* note 24, as there was no entry until after the officers saw the syringe.

The court said at 54 Ill. App. 2d at 447, 203 N.E.2d at 783:

> When a lawful arrest is effected, a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of protecting the officer from attack, preventing the person from escaping, discovering the fruits of the crime, or discovering any instruments, articles or things which constitute evidence of an offense.

The above rule, established by case law is now in the Illinois Code of Criminal Procedure, Ill. Rev. Stat., ch. 38, § 108-1 (1963).

Further, the Appellate Court commented on the probable cause afforded the defendant reaching for his pocket. "The normal apprehension would be that the defendant was reaching for a weapon. Applying both the law and common sense to the action of the policeman, he was fully justified in searching the pocket of the defendant."[27]

II. Applying Teamwork to Making an Arrest

Another aspect of the law of arrest without warrant and on reasonable grounds is where a group of policemen act as a team, such as with a controlled purchase of narcotics, or where they act jointly to arrest a criminal.

People v. Peak[28] is such an instance. This case teaches that officers working in concert can rely on each other's knowledge when effecting the arrest. Three Illinois narcotics inspectors, Manson, Silberman, and Norton, arrested Jesse Peak, brother of defendant Don Carlos Peak, at the Peak home. Jesse led Manson and Norton outside the building and down the back stairs, and then produced a quantity of marijuana for them. Next, the two inspectors and Jesse went inside a glass-enclosed back porch. While there, they saw the defendant, Don Carlos Peak, get out of a car and enter the rear yard. In reply to Manson's question who the man was, Jesse said it was his brother, "Ducky."

By this time Norton was downstairs and out of earshot of Jesse and Manson. Manson asked Jesse what Don Carlos was doing and Jesse replied that he was picking up "pot," a term Manson knew from experience to mean narcotics. Upon hearing that, and after seeing the defendant reach behind a garbage disposal unit and pick up a small package, Manson told Norton to stop the defendant.

27 *Id.* at 448, 203 N.E.2d at 784.

28 29 Ill. 2d 343, 194 N.E.2d 322 (1963). Cases cited on reasonable grounds: People v. Boozer, 12 Ill. 2d 184, 145 N.E.2d 619 (1958); People v. Kalpak, 10 Ill. 2d 411, 140 N.E.2d 726 (1957); People v. Kissane, 347 Ill. 385, 179 N.E. 850 (1932); People v. Scalise, 342 Ill. 131, 154 N.E. 715 (1931). Arrest not justified on mere suspicion: People v. Edge, 406 Ill. 490, 94 N.E.2d 359 (1951); People v. Exum, 382 Ill. 204, 47 N.E.2d 56 (1943); Henry v. United States, 361 U.S. 98, 80 Sup. Ct. 168 (1959). But less than necessary to convict: People v. Fiorito, 19 Ill. 2d 246, 166 N.E.2d 606 (1961); People v. Jones, 16 Ill. 2d 569, 158 N.E.2d 773 (1959); Draper v. United States, 358 U.S. 307, 79 Sup. Ct. 329 (1959).

Norton heard Jesse tell Manson that the defendant was his brother, and he saw the defendant pick up the package. He apparently did not hear Jesse tell Manson that the defendant was picking up "pot." After Norton arrested the defendant and took him into the house, he found the defendant had marijuana in his pockets.

The Criminal Court of Cook County convicted the defendant of unlawfully possessing narcotics and he appealed, insisting that his motion to suppress should have been sustained. However, in affirming the conviction, the Supreme Court held that the arrest was valid on the basis of what Norton saw and heard, and that it was immaterial that Norton did not hear Jesse tell Manson the defendant was picking up "pot." The court stated: "When officers are working together under such circumstances the knowledge of each is the knowledge of all, and the arresting officer had the right to rely on the knowledge of the officer giving the command."[29]

A similar set of facts arose in *People v. Boozer*,[30] where one officer made an arrest on signal from another officer. In this case, the police had arrested one Johnson for burglary and found he had traded stolen articles with the defendant for narcotics. With Johnson's consent they set up a plan and gave him a marked electric clock to take to the defendant. Johnson went into the defendant's house, came out and then signalled the waiting policemen that he had made the buy. After the transaction, the defendant came out on the porch.

The policemen moved in on Johnson's signal, arrested the defendant (who was wearing a robe) and made him dress. They searched him, his kitchen, and dining room which served as a bedroom. They found heroin in a dresser. In appealing his conviction for sale of narcotics, the defendant claimed one officer had arrested him before the other officer got the signal from Johnson. In upholding the validity of the arrest, the Supreme Court said it was immaterial which officer moved first as it was part of a plan.

In *People v. Clark*,[31] another controlled purchase case, one

29 People v. Peak, 29 Ill. 2d 343, 349, 194 N.E.2d 322, 326 (1963).
30 12 Ill. 2d 184, 145 N.E.2d 619 (1957).
31 7 Ill. 2d 163, 130 N.E.2d 195 (1955).

of the policemen setting up the plan furnished his own coat for the addict to take to the supplier. One Baker, a narcotics addict had told the policeman that the defendant was his supplier. As part of a plan to secure evidence against the defendant, Baker took some marked money and the policeman's coat to the defendant, bought heroin from the defendant, and returned to the policeman. When they went back to make the arrest, the defendant opened the door but a chain held it partly shut. At that moment the officer who owned the coat looked in and saw his own coat. The police then broke the chain and arrested the defendant. A matron searched her and found the marked money and narcotics on her person. In affirming the conviction, the Supreme Court upheld the arrest as based on reasonable grounds.

Keeping the buyer under constant surveillance is frequently an important element of a controlled purchase. Policemen seeking to make valid arrests under such circumstances should be alert to this. An example of this situation is *People v. Faulkner.*[32] Arrested with narcotics in his possession, one Koen agreed to assist the police in apprehending other violators. They stripped him, searched him, gave him $125 in marked money, and let him go to make a purchase. A federal agent shadowed him all the way.

Koen went to the defendant, who told Koen to come back later—which he did. The defendant who was talking on the telephone when Koen entered, pointed to his coat. Koen went to the defendant's coat, took an envelope from it, and gave it to agents outside the door. Their immediate field test showed the contents to be narcotics. The policemen returned with Koen. A landlady let them in, and Koen pointed out the defendant. Searching him after the arrest, the officers found $100 of the marked money.

In sustaining the conviction, the Supreme Court observed that Koen was under police surveillance at all times, and that his testimony was corroborated. The officers, the court said, had reasonable grounds to arrest the defendant and seize the incriminating evidence within his immediate control.

Another aspect of making a valid arrest in the case of a controlled purchase of narcotics is making sure of a description

32 12 Ill. 2d 176, 145 N.E.2d 632 (1957).

and location in an instance where the police do not know the seller prior to the arrest. Although primarily a case concerned with the reasonableness of the search incident to an arrest, *People v. Harvey*[33] is an example of this. A police informer told a member of the detective bureau narcotics unit that he could make a purchase from an unknown man living in the basement of a certain apartment building. The officer and his partner supplied the informer with money and recorded the serial numbers, took him to the building and let him out. He made his purchase and brought the narcotics back to the police, giving them the defendant's room number and describing the defendant. Four officers went there and knocked on the door. It "came open," so reads the report of the case, and the officers entered. They searched the defendant, moved the furniture and tore up the linoleum in the room where they found the defendant. They then found the listed money.

The Criminal Court of Cook County convicted the defendant of the unlawful sale of narcotics and he appealed the conviction and sentence. In affirming, the Supreme Court approved the arrest and the search that followed it noting that the search involved only the immediate premises—and took place only minutes after the crime occurred.

Marking The Place

A resourceful bit of police work showed up in *People v. Jones*,[34] involving a controlled purchase of narcotics. When the police took the informer to the defendant's apartment to make a purchase, they asked the informer to leave a matchbox outside the defendant's apartment door. After making her purchase, she brought back the narcotics and described the defendant to the police. Upon reaching the third floor of the building they found a matchbox outside one of the doors. They knocked on the door and said they were police officers. When they heard someone in-

[33] 27 Ill. 2d 282, 189 N.E.2d 320 (1963). In affirming, the court distinguished this case from *People v. Alexander*, 21 Ill. 2d 347, 172 N.E.2d 785 (1961) because in *Alexander* the search was more extensive than permissible, while here the search was of the immediate premises, and only minutes after the crime occurred.

[34] 31 Ill. 2d 240, 201 N.E.2d 402 (1964). Cases here cited in support of reasonable grounds: People v. Jones, 16 Ill. 2d 569, 158 N.E.2d 773 (1959); People v. Hightower, 20 Ill. 2d 361, 169 N.E.2d 787 (1961); People v. Fiorito, 19 Ill. 2d 246, 166 N.E.2d 606 (1961). No field test held necessary: People v. Boozer, 12 Ill. 2d 184, 145 N.E.2d 619 (1958), reaffirmed in People v. Redding, 28 Ill. 2d 305, 192 N.E.2d 341 (1964).

side run, they opened the door and saw the defendant throw two quarters on the floor. These quarters proved to be part of the marked and listed money they had furnished the informer to use in making the purchase. They found narcotics in the defendant's pocket.

In affirming the defendant's conviction and sentence for unlawfully selling narcotics, the Supreme Court held that the arrest was valid. The court's opinion noted that the officers saw the informer go into the building and come out with the narcotics, and that they then found the door marked by the matchbox.

A further aspect of making a valid arrest in the course of a controlled purchase plan involves the police being careful to have enough of a description of the seller to constitute reasonable grounds. *People v. Redding*[35] is a case in point. The key elements of the purchase were that the informer returned after purchasing the narcotics and described the seller as being of dark complexion, 5 feet 9 inches tall, and wearing a three-quarter length coat. Later, the informer pointed out this person to the police.

In affirming the resulting conviction for the unlawful sale of narcotics, the Supreme Court noted that the informer not only described the defendant to the police but soon thereafter pointed him out to them. This, plus the circumstances of the controlled purchase with marked money provided reasonable grounds for the arrest. Thus, the arrest being valid, so was the subsequent search of the defendant, who had the marked money and additional narcotics on his person.

People v. Hamilton[36] involved a case where the seller sought to shift the sale to an accomplice—his wife. Carrying marked money, the informer approached the defendant and his wife and asked them if they had any "stuff." The defendant then told the informer to continue walking 25 feet. After the informer walked up the street the defendant and his wife approached him and gave the informer the narcotics, and the informer gave the defendant the marked money. Then the informer took the narcotics to the

35 *Supra* note 34. Distinguished from *People v. Parren*, 24 Ill. 2d 572, 182 N.E.2d 662 (1962) in that the information in *Redding* did not come from an anonymous tip, as in *Parren*.

36 23 Ill. 2d 310, 178 N.E.2d 371 (1962).

police waiting nearby. The officers returned with the informer to the place of the sale, and arrested the defendant and his wife.

At the trial in the Criminal Court of Cook County, the defendant's wife testified that she sold the informer the narcotics, and that her husband had no knowledge of the sale until afterwards. The defendant claimed he had been getting a shoeshine. However, in affirming the defendant's conviction for the unlawful selling of narcotics, the Supreme Court rejected the defendants' contentions:

> In the light of the evidence it cannot be said that the defendant was merely present or that there was a bare suspicion he may have committed the crime. The court was warranted in finding that a common design to sell narcotics was proved and that whatever one does in furtherance of it is the act of the other.[37]

Another controlled purchase case shows that an entire set of circumstances can add up to reasonable grounds in support of an arrest. In *People v. Hightower*[38] two federal agents proposed to "a special employee" of the bureau that he buy some narcotics at a stated location. Upon going there, one Duncan told him to come back the next day, since Duncan expected a fresh supply from "Cotton." Pursuant to the precautions and instructions of the agents, and under their surveillance, the informer bought the narcotics with the listed money. Later, the agents arrested Duncan and one Moore, and interrogated them. Based on information received from Duncan and Moore, the agents went to the defendant's apartment. Defendant admitted them and they found the listed money on his dresser. In affirming the defendant's conviction for unlawfully possessing and selling narcotics, the Supreme Court held that the circumstances of the arrest afforded probable cause, and that there was no force or pretext. The entry was with the defendant's permission.

Of particular significance in understanding which facts can add up to reasonable grounds are those the court noted in this case. Duncan had given the officers the telephone number of his supplier. This was listed in the name of James Kell at the de-

[37] *Id.* at 312, 178 N.E.2d at 372.

[38] 20 Ill. 2d 361, 167 N.E.2d 787 (1961). A federal case involving a controlled purchase plan is *United States v. Gray*, 267 F.2d 106 (7th Cir. 1959), containing a set of facts resulting in a valid arrest and subsequent search.

fendant's address. A check of the bureau's records disclosed to the officers that the defendant was living there under the name of James Kell. Also, Duncan told the informer he was getting the narcotics from Mose Hightower. Further, "Cotton" was the nickname of the defendant Hightower.

III. Knowing the Offense but not the Offender before the Arrest

In *People v. Doody*,[39] police officers drove to a location where an informant told them they would find a stolen Buick car. The car was there as described. After the policeman watched the car 20 minutes, two men came to the car and entered it. The policemen got out of their car and announced themselves as police officers. Gun play followed and the chief of police was killed. In the resulting murder trial the defendant's defense was that he was resisting unlawful arrest.

The Supreme Court upheld the validity of the arrest:

> The Buick in question here had, in fact, been stolen, and the officers had reasonable grounds, from the information which they had received, to believe that whoever should claim its possession would probably be the thief who stole it.[40]

The opinion went on to explain the justification for the arrest. This language is worth noting because it points out that the officers did the only thing reasonable, since approaching the car might have scared off the thief, and to ignore the matter would have let the thief get away. The court said:

> They would have been careless of their duty had they made no investigation to determine whether the car was stolen or not, for they had no assurance that it would be left where it was parked long enough to permit them to do so. To lift the hood might frighten the thief away. They chose to follow the only course which might result in the punishment of the felon and were justified in attempting to make the arrest.[41]

A significant factor in *Doody* was the reasonableness of the message about the car being stolen. A mechanic, who had worked

39 343 Ill. 194, 175 N.E. 436 (1931). Two other cases worth noting in connection with reasonable grounds wherein the officer saw the offense: People v. Roberta, 352 Ill. 189, 185 N.E. 253 (1933), and People v. Swift, 319 Ill. 359, 150 N.E. 263 (1926).

40 343 Ill. at 206, 175 N.E. at 442.

41 *Ibid.*

on the car and was familiar with it, saw it on the street and followed it until the driver parked it. The mechanic then telephoned the police, told the desk sergeant about the car, and gave him the identifying numbers. The desk sergeant in turn relayed the message to the officers, who then proceeded to find the car and await its driver.

Another case involving a parked car is *People v. Stewart*,[42] where a lady saw a strange car parked in front of her house and asked the police to investigate it. The car had an Illinois license but a Davenport, Iowa sticker. When the officers approached the car and looked in they saw the ignition key was in place. In the back of the car they observed some burglary tools. The defendant and one Blair, carrying some objects, approached the car and got in, and the police then converged on them. The objects the men were carrying proved to be loot from the burglary of a nearby location. The defendant was convicted of burglary and larceny: and the Supreme Court reversed the case, but on other grounds than the validity of the arrest—based on what the officers saw. The basis of the court's decision to uphold the validity of the arrest without a warrant was the probable cause afforded the officers *i.e.*, the commission of the crime of possession of burglary tools.

Frequently, the police know about specific crimes in a stated area and keep a close watch on that area. In *People v. McCracken*,[43] their action in such a situation resulted in a valid arrest. The officers patrolling the area had known of daylight burglaries in the area, involving one building in particular. Further, they had the description of a possible suspect.

Between 12:25 and 12:35 p.m. an officer saw the defendant come out of an alley carrying a bundle. He matched the description the officers had and he ran when the police approached him. When they apprehended him around the corner he was carrying a car coat and a radio. His explanation was that another man had given him these items to pawn, but he could not explain why that party did not pawn them himself. The clock radio had stopped at 12:33. The officers searched the defendant and found a screw driver up his right sleeve, above the elbow. Further, upon ap-

42 23 Ill. 2d 161, 177 N.E.2d 237 (1961).
43 30 Ill. 2d 425, 197 N.E.2d 35 (1964).

proaching him, one of the officers recognized the defendant as one he had known previously as a drug offender.

The defendant appealed his conviction, contending his motion to suppress should have been sustained. The Supreme Court, however, affirmed the conviction and held that the police had reasonable grounds for this arrest.

In explaining the significance of this case to police officers it is worth stressing that definite crimes had occurred in the specific area, and at the time of day in question. This justified the officers being alert for suspects at that location and time. It would seem that even without a description to go on, the officers would have been justified in approaching anyone carrying a clock radio and a car coat in that area. The unsatisfactory explanation for the items (together with the effort to run from the police) justified the arrest, which in turn justified the search of the defendant.

A somewhat similar situation is present in the case of *People v. Jones.*[44] The officers were in the area investigating a burglary involving a camera, silverware, jewelry, a radio, and clothing. Further, they had information that a fence was working in the area, exchanging narcotics for stolen property.

As the policemen sat parked in their car, they observed the defendant come by the "L" station. He had the walk and appearance of a narcotics addict. He was carrying two open shopping bags and a silver chest was protruding from one bag. Although he was shabbily dressed, he had a camera over his shoulder.

He boarded a bus and they followed. Shortly after getting on, he got off, then entered a drug store. They watched him ten minutes until they saw that he was watching them. Next, they entered the store and arrested him. He told the police the objects were his wife's and that they were in the process of moving. However, he was unable to give them the telephone number where his wife was supposed to be working.

The Criminal Court of Cook County convicted him of burglary and he appealed. The Supreme Court affirmed the conviction, holding that the officers' prior knowledge of the burglary of

[44] 31 Ill. 2d 42, 198 N.E.2d 821 (1964).

such items, the knowledge that a fence was active in the area, the defendant's appearance of being an addict, together with his evasive explanation for having such a varied assortment of property all added up to reasonable grounds. The court noted that addicts often steal to finance their habit.

One way of teaching the law of arrest to police officers is to review with them a number of situations which are generally similar but which differ slightly in details. Discussing the subtle differences with the police helps them fix in their own minds the general principles which the specific cases teach.

Along this line, the case of *People v. Garrett*[45] is somewhat like *Jones* and yet *Garrett* has its own points worth noting. The police had instructions to pay particular attention to a professional building (containing mostly lawyers' and doctors' offices) where numerous burglaries had recently occurred. They observed the defendants coming out of this building, carrying some large objects which proved to be an adding machine and a radio. It was 8:30 p.m. and the defendants were unkempt of appearance. The police arrested them. On the way to the station they observed one of the defendants fumbling with something, evidently trying to lodge it under the seat of the police vehicle. The "something" turned out to be a tire iron and a narcotics prescription book belonging to a doctor whose office was in that building.

In affirming the defendant's conviction for burglary, the Supreme Court approved the arrest: "We believe that the circumstances of the case presented the officers with reasonable grounds to believe that an offense had been committed and the defendant and his companion committed it."[46]

IV. Using a Description to Find the Person to Arrest

In contrast to the situation where the officers knew of specific crimes but lacked advance knowledge of a specific offender or suspect are those cases where the officers based their arrests on the

[45] 50 Ill. App. 2d 69, 200 N.E.2d 7 (1st Dist. 1964). The court noted that reasonable cause for an arrest does not require the same quantum of evidence necessary to support a conviction, and cited Locke v. United States, 7 Cranch 339, 3 L. Ed. 364 (1813), reaffirmed in Brinegar v. United States, 338 U.S. 160, 93 L. Ed. 1879 (1948) and People v. Zeravich, 30 Ill. 2d 275, 195 N.E.2d 612 (1964), among others.

[46] *Id.* at 300, 200 N.E.2d 300.

description of a specific offender. *People v. Kissane*[47] is an example. The Supreme Court upheld a conviction for carrying a concealed weapon because the police had reasonable grounds for arresting the defendant since they thought he was implicated in a bank robbery.

The police officers had the description of a bank robber as being between 5 feet, 11 inches and 6 feet tall, with a sallow complexion, slender build, and a "kind of pointed nose." They concluded that this description fitted someone which one of the officers had arrested before. Upon next seeing this individual (i.e., the defendant) the officer told him he was under arrest, ordered him into a doorway, searched him and found a weapon in his overcoat pocket.

Worth noting is the detail of the description. Some descriptions are better than others, and one such as this (which offers such particulars as "a kind of pointed nose") enhances the reasonableness of a policeman's position when he arrests someone on that kind of description. It is also worth noting that the "reasonableness" which the courts consider refers to the time of the arrest and not afterward. In cases where the arrested party later proves to be innocent, the arrest may still stand as valid depending on whether the police had reasonable grounds at the moment of arrest.

In *Watkins v. Sullivan,*[48] the victim was mistaken but the arrest was valid. The Appellate Court reversed a judgment for the plaintiff in a false imprisonment action. The cashier of a theater was robbed and the defendant police officers showed up to investigate the case. They followed the established procedures and arrested the plaintiff because his description fitted that which the cashier had given. Eventually the Grand Jury returned a "no bill" and the plaintiff was discharged.

The Appellate Court held that the police had the right and the duty to arrest the plaintiff based on what they learned at the time. The court noted that the justification for the arrest does not depend on the actual guilt or innocence of the person arrested. Rather, it depends on the circumstances at the time of the arrest.

47 347 Ill. 385, 179 N.E. 850 (1932).
48 11 Ill. App. 2d 134, 136 N.E.2d 528 (1st Dist. 1956).

Well-timed police work can make its own contribution to the reasonable grounds of an arrest. In *People v. Kalpak*,[49] the validity of the arrest stemmed from the description of the defendant, knowledge of the place where he was supposed to be (and where the police found him), and from a telephone conversation they set up with him.

This was an abortion case and the complainant had signed a John Doe warrant. She identified the defendant as "Jimmy," and supplied what the court said was a reasonably accurate description of him. The investigating officers learned that he frequented a certain tavern and they telephoned that tavern and asked for him. He came to the telephone and the conversation progressed, the caller insisting he had a "personal" matter to discuss with him. In language that was earthy, colorful and unsuited for these pages, "Jimmy" asked the caller if he was concerned over some woman's pregnancy. Then, by signal, officers who were already in the tavern, arrested him, searched him, and found on him evidence relating to the abortion case.

Another case where the description of the defendant, plus a suggestion of where the police might find him, had the elements of a valid arrest, is *People v. La Bostrie*.[50] Three different people described a particular suspect to a policeman. The description was not particularly detailed but apparently all three individuals came up with the same one: a man, colored, about 60 years old, 5 feet 6 or 7 inches tall, weighing 135 to 140 pounds, and wearing a light fedora hat and a light brown suede jacket.

After watching the area in question for several days, the police spotted the defendant there, arrested him, and found narcotics in his coat lining. Later they went to his apartment, having taken the keys from him, and upon searching it, found more narcotics there.

Fortunately for the police and the prosecution, the arrest did not depend on the evidence from the apartment for its validity. The court sustained the motion to suppress as to the narcotics in the apartment, holding the officers had no right to search it. How-

[49] 10 Ill. 2d 411, 140 N.E.2d 726 (1957).
[50] 14 Ill. 2d 617, 153 N.E.2d 570 (1958).

ever, the search of the defendant's person after his arrest was valid and the Supreme Court so held.

Still another aspect of making an arrest on the basis of a description is the adequacy of the opportunity the witness had to view the accused and identify him. In *People v. Flowers*,[51] the manager of a market which the defendant robbed saw him for two minutes from a point 15 feet away. The light was good. Even though the defendant had a handkerchief over his face, she saw his eyes. She described him as 25 to 30 years old, about 5 feet, 10 inches tall, and wearing a cap and a jacket. That description contributed to the ability of the police to identify him and arrest him. From the standpoint of determining reasonable grounds for an arrest based on a description, the adequacy of the description and the opportunity the witness had of viewing the defendant are elements to note.

A description plus advice on when and where to arrest an offender may provide the necessary reasonable grounds. In *People v. McFadden*,[52] a state narcotics inspector telephoned a Chicago police officer at 12:20 p.m. to tell him that the defendant would be getting off a northbound bus at a given intersection about 2:00 p.m., and that he would have narcotics in his possession. He described the defendant and his clothes. Police officers apprehended him at that corner at 2:05 p.m. After arresting the defendant, they searched him and found narcotics on his person.

Following his conviction for the unlawful possession of narcotics the defendant appealed, contending that his motion to suppress should have been sustained. However, in affirming the conviction, the Supreme Court held that probable cause based on the past reliability of the information the officer got from the state inspector, as well as all the details he supplied to the police, justi-

51 14 Ill. 2d 406, 152 N.E.2d 838 (1958), *cert. denied*, 358 U.S. 942, 79 Sup. Ct. 349, 3 L. Ed. 349 (1959).

52 32 Ill. 2d 101, 203 N.E.2d 888 (1965). Those wishing to pursue this subject further will find many cases detailed in the opinion, including foreign, state and federal cases. Of special note in the opinion, the court held the facts here very similar to *Draper v. United States*, 358 U.S. 307, 79 Sup. Ct. 329, 3 L. Ed. 2d 327 (1959), which involved meeting a man getting off a train, identifying him, and verifing every detail except his possession of narcotics, prior to arresting him. *Draper* was recently cited with approval in *Beck v. Ohio*, 379 U.S. 89, 85 Sup. Ct. 223, 13 L. Ed. 2d 142 (1964). A federal case dealing with reasonable grounds and information from an informer, *United States v. Walker*, 246 F.2d 519 (7th Cir. 1957), stresses the importance of caution.

fied the arrest. Prior to arresting and searching the defendant the police were able to verify every detail that the inspector had given them except the presence of the narcotics on the defendant.

Using Vehicle's Description

It may be just as important to have a specific description of an automobile as of a person. In *United States v. Hopkins*,[53] federal narcotics agents learned from two different sources, one of proven reliability, that a man and a woman would deliver narcotics to the defendant at a stated address during one evening. They learned that the man and the woman would be in a red and white 1957 Ford with a continental kit on the back. They went to the location in question and while they waited a car of that description showed up and the defendant got out of it. The car drove off and one agent pursued it. The other agent pursued the defendant and overtook him. After arresting him he searched the defendant and found four ounces of heroin. Both agents had recognized the defendant as someone they knew.

After the trial court denied the defendant's motion to suppress, a conviction followed. On appeal, the Court of Appeals affirmed the conviction, basing its decision on *Draper v. United States*.[54] In *Draper*, the narcotics agents had learned that the defendant would be getting off a certain train and they got enough of the details so that they were able to verify every point except the presence of the narcotics—which they discovered following the arrest and search of the defendant.

V. Acting on the Word of an Unidentified Informant

A thorny problem in arrests based on information from an anonymous or unidentified informer is that of establishing the reliability of the information. The case of *People v. Durr*[55] gave the Supreme Court of Illinois an opportunity to air the conflicting views on the problem.

A police officer testified that a person whom he would not

53 263 F.2d 587 (7th Cir. 1959).

54 358 U.S. 307, 79 Sup. Ct. 329, 3 L. Ed. 2d 327 (1959).

55 28 Ill. 2d 308, 192 N.E.2d 379 (1963). At page 382 the court cites cases pro and con concerning the identification of the informer.

identify told him that a man named "Ray," in an old blue car, would deliver narcotics to the 200 block of Marquette Road. The informer described the man by color, age, height and weight.

When a man driving a car like the one described drove into a parking lot at that location the policeman arrested him. The officer recognized the defendant as someone he knew but he had never connected him with narcotics before. The arrest and the discovery of narcotics led to the defendant's conviction in the Criminal Court of Cook County for the unlawful possession of narcotics. The defendant appealed and the central point of the appeal was the question of identifying the informer. The Supreme Court affirmed the conviction holding that probable cause for arrest may be found in information furnished by an informer so long as the reliability of the informer has been previously established or is independently corroborated. However, the majority of the court also held that the government had a privilege to withhold the identity of the informer in the interest of aiding effective law enforcement.

Justice Schaefer dissented, indicating that the single issue was the reliability of the informer. In his dissenting opinion, he quoted the Supreme Court of the United States:

> To give vitality to the requirement of reliability the law requires, if no probable cause exists without the information from the informer, that his identity be divulged, so that his reliability may be subjected to meaningful judicial scrutiny, rather than accepted on a policeman's word.[56]

Justice Schaefer contended that in *Durr* the majority opinion foreclosed rational appraisal. He added that under the majority's view the policeman himself conclusively determines the validity of the arrests he makes.[57]

In other cases the Illinois Supreme Court has also held that reasonable grounds for believing that a person has committed a criminal offense may be found in information furnished by an in-

[56] Jones v. United States, 266 F.2d 924, 929 (D.C. Cir. 1959).

[57] See Priestly v. Superior Court, 50 Cal. 2d 812, 330 P.2d 39 (1958). Urging that the courts should look behind the policeman's assertion, Justice Schaefer cited *Scher v. United States*, 305 U.S. 251, 59 Sup. Ct. 174, 83 L. Ed. 151 (1938); *Wilson v. United States*, 59 F.2d 390 (3rd Cir. 1932); *United States v. Blich*, 45 F.2d 627 (D.C. Wyo. 1930); *United States v. Keown*, 19 F.2d 639 (W. D. Ky. 1937); and *Smith v. State*, 169 Tenn. 633, 90 S.W.2d 523 (1936).

former if the reliability of the informer has been previously established or independently corroborated.[58]

The experience of the police officers in *People v. Beattie*[59] is worth noting because it points up the caution with which a reviewing court looks at information from an informer. This caution strikes at the heart of the question of reasonable grounds for the arrest. In this case, two officers acted on a tip from an informer and went to the location described, where they saw the defendant. They apprehended him as he was entering a taxi. As one officer grabbed his right arm the defendant threw a tinfoil packet out of the taxi. The officers recovered it and identified it as heroin.

The officers had known the defendant and claimed that the night before the arrest he had told them he was a narcotics user. The Criminal Court of Cook County convicted him of unlawful possession of narcotics. He appealed on the grounds that his motion to suppress should have been sustained. In remanding the case, the Supreme Court directed a further hearing on the motion to suppress. In its opinion, the court asserted that merely because the officers knew the defendant and knew he was a narcotics user was not sufficient. The opinion called for probing the matter of what the officers learned from the informer.

Note Corroborating Circumstances

In trying to grasp the inadequacies of the information in *Beattie*, those who would advise the police on arrest, search, and seizure ought to contrast *Beattie* to *People v. Brooks*.[60] *Brooks* demonstrates the importance of adequate information plus close observation of the corroborating circumstances.

An informer told the arresting officer that a man called "Frank" would be selling narcotics near a certain hamburger stand at 35th Street and Wabash Avenue. The officer had talked

58 People v. Tillman, 1 Ill. 2d 525, 116 N.E.2d 344 (1954); People v. La Bostrie, 14 Ill. 2d 617, 153 N.E.2d 570 (1959); Draper v. United States, *supra* note 54.

59 31 Ill. 2d 257, 201 N.E.2d 316 (1964).

60 32 Ill. 2d 81, 203 N.E.2d 882 (1965). Defendant had cited *People v. Pitts*, 26 Ill. 2d 395, 186 N.E.2d 357 (1963), and *People v. Parren*, 24 Ill. 2d 572, 182 N.E.2d 662 (1962), as authority for not relying on an informer's tip. However, in *Brooks*, the court held the events occurring prior to the defendant's arrest serve to confirm the accuracy of the tip. People v. Tillman, *supra* note 58; United States v. Gray, 267 F.2d 106 (7th Cir. 1959).

with this informer previously and evidently considered his information reliable. He and other officers went to the scene. The informer told them "Frank" was about 34 years old, about 5 feet, 6 inches tall, dark skinned, and sometimes wore a raincoat. He said the man would probably be coming from the "L" station.

An hour later the officers were waiting at the appointed corner and saw the defendant come from the "L" station. He was wearing a tan raincoat. He resembled the man the informer had described. At the hamburger stand, one of the officers heard him talk to a man standing there. The man said: "I have the money, do you have the stuff?" The man reached into his pocket and brought out the money. The defendant then reached into his pocket. At that instant the officers moved in. The unidentified buyer fled but the police arrested the defendant.

The Criminal Court of Cook County convicted the defendant of the unlawful possession of narcotics and he appealed, claiming that the trial court should have sustained his motion to suppress. The Supreme Court, however, affirmed the conviction. The defendant had contended the police were not justified in relying on the informer's tip. The court held that the events prior to the defendant's arrest confirmed the accuracy of the tip.

In its opinion the court observed that the collective facts of the informer's tip and the actions and flight of the stranger were sufficient to lead a reasonable and prudent man to conclude that the defendant was in the commission of a criminal offense.

In *People v. McCray*[61] the Supreme Court examined the problems of establishing the reliability of information an officer receives from an informer. The defendant had appealed his conviction and sentence by the Criminal Division of the Circuit Court of Cook County, contending that his motion to suppress should have been sustained.

An officer testified that he and two other policemen learned from an informer that "Boobie George" was selling narcotics at a certain location. Upon going to that area later, they found the defendant about a block from where they had met the informer.

61 33 Ill. 2d 66, 210 N.E.2d 161 (1965).

They arrested and searched the defendant, whom one of the officers had known previously. He had narcotics in his possession.

One officer testified that he had known the informant a year, had gotten much useful information from him, and had obtained six or seven convictions as a result of it. Other officers testified to knowing the informer even longer, and making many arrests on the basis of his information.

In appealing the case, the defendant insisted that *People v. Durr*[62] should be overruled, or distinguished, since the defendant in *Durr* did not contradict the officer's statement, but here the defendant did dispute the officer's assertion. However, in affirming the conviction, the Supreme Court held *Durr* applicable.

The court pointed out that it is well settled in this state that the arresting officers may have reasonable grounds for believing a defendant was committing a crime based on information supplied by an informant if the reliability of the informant has been previously established or independently corroborated. The court also noted that information from a source unknown to the police officer is not sufficient in itself to establish such reasonable grounds for belief as to justify an arrest and incidental search without a warrant: "On a motion to suppress we also feel the state must show the basis of the arresting officer's belief, including facts relative to the credibility of the informant."[63]

Further, the Supreme Court disagreed with the defendant's contention that *Durr* makes the arresting officer the sole judge of the reliability of the informant. In *Durr*, and even more so here, in *McCray*, the officer testified to specific facts justifying his reliance on the informant.

Urge Caution

In training policemen to sharpen their knack of sizing up situations as to reasonable grounds for an arrest, it is important to make sure that they appreciate that reviewing courts are understandably cautious about approving police action based on information from an anonymous or unidentified source. In *People v.*

62 See discussion at note 55 *infra*.
63 33 Ill. 2d at 70, 210 N.E.2d at 163.

Parren,[64] police officers, acting solely on a tip from an anonymous source, went to the defendant's apartment and arrested him—after entering his apartment without an invitation. Noise they heard drew them to this apartment. However, the anonymous informant had supplied a description of the defendant.

The defendant moved to suppress the narcotics that the police found upon searching him. However, the trial court overruled the motion and there was a conviction for unlawfully possessing narcotics. The Supreme Court reversed the conviction.

The court drew a distinction between cases where an officer relies on information from an unknown informant but corroborates the facts before making the arrest, and those cases where the policeman makes the arrest first and then corroborates the facts. Arrests in the latter situations lack reasonable grounds. Such was the case in *Parren*.

Sometimes the police act so haphazardly that one might conclude they merely guess at the basis for an arrest. For example, in *People v. Pitts*,[65] an unknown man approached the policemen and told them they would find a man named Eddy Pitts, bareheaded, wearing a camel's hair coat, selling narcotics at a certain address. They went there, entered, and waited in the second floor hall. Later, the defendant got in with a key. The police then arrested him and searched him, finding the narcotics.

In reversing the defendant's conviction, the Supreme Court had this to say: "We cannot believe a prudent man would reasonably believe in the guilt of a person based solely on the accusation of a single unknown and unidentified informer made on a street corner."[66]

VI. Basing the Arrest on what Another Sees and Reports

Where a police officer makes an arrest on the basis of what somebody else tells him, the issue is still the reasonableness of the arrest. The training of the police should be in the direction of helping them develop a subjective feel for what is reasonable—

64 *Supra* note 60.
65 26 Ill. 2d 395, 186 N.E.2d 357 (1963).
66 *Id.* at 399, 186 N.E.2d at 359.

based on all the circumstances. *People v. Smith*[67] is an example of where the information was reasonable enough to warrant action.

The defendant, in a case of assault with intent to commit rape, had lured the complaining witness to his room, then locked the doors. The manager of the premises heard the screams of the complaining witness. He looked through the transom, saw the defendant performing the offensive acts, and then called the police. When they arrived the manager broke open the door for them. They entered, found the defendant with his trousers off and the complaining witness undressed from the waist down. The Supreme Court approved the police action as a valid arrest based on reasonable grounds.

In another situation, the reasonableness of the policemen's action rested on information which their superiors supplied them. *People v. Brinn*[68] represents a part of the so-called Summerdale police burglary cases. In essence, one Richard Morrison had made statements detailing crimes which implicated members of the Chicago police department. He said that stolen property would be found in the homes of these officers. The investigating police then got search warrants.

The plan was to make ten simultaneous calls at the homes of those involved. A captain told the assembled teams of officers that a man in custody had accused certain police officers of aiding him in burglaries and in receiving the proceeds. The captain told the officers they had ten search warrants. His instructions to the officers were to call at the ten homes at 10:30 p.m. and keep the premises as they found them until the officials doing the investigating could make the rounds from home to home.

The search warrants proved defective. However, the trial court held the searches were incidents of valid arrests. The Supreme Court affirmed the defendants' convictions and approved the arrests: "We think the detailed accusations of Morrison, together with the corroborating facts concerning the particular robberies were sufficient to form a basis for a reasonable belief

[67] 11 Ill. 2d 280, 143 N.E.2d 50 (1957).
[68] 32 Ill. 2d 232, 204 N.E.2d 724 (1965).

that a felony had been committed and that the defendants committed it."[69]

The court went on to point out that it was true that the teams of police officers making the searches had not read Morrison's statements and had not talked to him. However, the court added that the reasonableness of their actions was easily justified by the information submitted to them by their superior.

VII. Arrests that Go Wrong—and Reasonable Grounds Prove Lacking

Merely examining the cases where the police did have reasonable grounds is not enough. The proper training of policemen on the subject of reasonable grounds also calls for scrutiny of cases where the upper courts held the police did not have reasonable grounds. If the police are to meet their responsibilities properly and make the most of what the law allows them to do, they need to understand what not to do, or how things might go wrong for them.

At the same time, those responsible for teaching policemen about the law of arrest, search, and seizure must strive to instruct them as positively and as affirmatively as possible. If the teachers of the law (be they city attorneys, prosecutors, lawyers volunteering their services, or college law teachers) place excessive stress on the negative, they inhibit the police. The *emphasis* should be on how far the law restricts their action to protect the individual. The policemen obviously must walk a fine line, and they do need to know what the courts do not approve. However, the tenor of their teaching should be in terms of specific pitfalls to avoid while striving to accomplish the police purpose.

For example, *People v. Scalisi*[70] holds that merely following somebody out of curiosity and then attempting to arrest him for

69 *Id.* at 242, 204 N.E.2d at 731.

70 324 Ill. 131, 154 N.E. 715 (1926). Those interested in the law of arrest, search and seizure, will find a thorough discussion of older cases in the Manual on the Law of Arrest, Search and Seizure, by Russell Baker, published by the Chicago Crime Commission (first edition, 1944; second edition, 1946), 79 West Monroe Street, Chicago, Ill. 60603, and made available at the time, gratuitously, to any law enforcement officer on request. Mr. Baker, a member of the Chicago bar, was vice president of the commission.

questioning is not an arrest based on reasonable grounds. In *Scalisi,* a police officer was killed in the course of gun play that occurred when a police squad tried to arrest the defendants. The Supreme Court reversed the conviction of the defendants for manslaughter, saying:

> When the police squad sought to infringe upon the liberty of plaintiffs in error and arrest and detain them for questioning they had no reasonable ground to suspect that either plaintiff in error had been guilty of any crime, and plaintiffs in error were not nightwalkers or vagrants, and hence the attempt to arrest and detain them was unlawful.[71]

What had occurred was that a police squad turned around and followed the Cadillac of the defendants. A police officer testified: "The only reason for following them was out of curiosity, and that outside of the fact that the car was a Cadillac with these men in it at that time of the morning (9:00 o'clock) there was nothing about the Cadillac which attracted the attention or suspicion of the police squad."

Similarly, the Supreme Court disapproved an arrest based on bad reputation alone. In *People v. Ford,*[72] a deputy sheriff arrested the defendant merely because he was reputed to be a member of the Touhy gang. He was acting under the instructions of his superior to apprehend any members of the Touhy gang for questioning about the kidnapping of one Jake Factor. However, the officer had no reason to suspect the defendant of having committed any crime. Upon arresting him, he found the defendant was carrying an automatic pistol.

In reversing the conviction, the Supreme Court noted that the defendant had committed no overt act and had not done anything that would make the officer suspect him of having a concealed weapon. The court added that the discovery of the weapon cannot relate back to justify the arrest. Here, the defendant was arrested only because he was supposed to be a member of the Touhy gang.

People v. McGurn,[73] presents a similar situation. Police officers riding on a streetcar saw the defendant riding in a taxicab.

71 *Id.* at 150, 154 N.E. at 723.
72 356 Ill. 572, 191 N.E. 315 (1934).
73 341 Ill. 632, 173 N.E. 754 (1930).

They jumped off the streetcar, opened the door of the cab and jumped in on top of McGurn. They had no positive knowledge he was carrying a gun, but he said: "Don't get excited—don't get excited, you will find it on the right side." One of the officers took the gun from the defendant. The Supreme Court criticized the officer for making "a violent assault" on the defendant. Apparently, the officers had no specific knowledge of the weapon. They had been ordered by the chief of detectives to arrest the defendant but apparently not for any specific offense.

Advice Against Carelessness

A policeman should be very careful when acting on an outcry from some unknown source. In *People v. Mirbelle*,[74] an anonymous outcry was held not to be reasonable grounds for arrest. The Illinois Appellate Court held that hearing some unidentified person cry out, "Hold-up!", did not justify the arrest of the accused on the basis that the police made the arrest to prevent the commission of a felony.

Sometimes the police are merely careless or they simply jump to a conclusion without methodical investigation. In *Fulford v. O'Connor*,[75] there had been a burglary in a garage and the police arrested a suspect, an ex-convict, who had worked at that garage a month earlier, but who was working elsewhere at the time of his arrest. The articles taken in the burglary were heavy enough to require a truck to move them, and the suspect did have access to a truck. Upon tracking him down, the police found that the suspect had been out of the garage where he was employed at the time of the burglary. They did not bother, however, to check his employer's time cards. Instead, they arrested him as a "burglary suspect" (the court noted that there is no such charge), booked him for disorderly conduct and released him on ten dollars bail. He was later discharged, and an action for false imprisonment was then instituted. The lesson the case holds for the police and those who train them appears to be in the comment of the court that something more is required than the mere possibility that the suspect committed the crime. The court went on to observe:

[74] 276 Ill. App. 533 (1st Dist. 1934).
[75] 3 Ill. 2d 490, 121 N.E.2d 767 (1955).

"The fact that there is insufficient evidence to justify preferring charges against a criminal suspect is not an excuse for his detention but is precisely the evil which the statute is aimed at correcting."[76]

An arrest cannot rest on subterfuge, according to *People v. Chatman*.[77] The trial court convicted the defendant of the possession of indecent literature and the Appellate Court reversed the conviction.

The arresting officers observed the defendant carrying a radio wrapped in brown paper. It was 10:00 p.m. They asked him if he had a bill of sale for the radio. The suspect said the bill of sale was at home and he offered to show it to them. They went with him to his home and, upon approaching it, he ran inside and locked the door. He opened it only after the police threatened to break it down. They entered, looked for the bill of sale for the radio, and found the indecent literature and arrested him.

The court held that the policemen had no ground on which to arrest the defendant on the sidewalk, no reasonable suspicion of the larceny of any radio, and got into his home by the subterfuge concerning the radio—for which he did have a bill of sale. He let them in only because they coerced him.

In *City of Chicago v. Lee*,[78] a police officer got into a hotel room by falsely representing that he was the manager. He had no knowledge that the occupant had committed any crime. Yet he entered and arrested the occupant without a warrant on a charge of violating a city ordinance. The court held the acts were unlawful and the evidence the officer obtained was properly suppressed.

People v. Galloway[79] poses these facts: the police arrested one Jones merely because he was in the company of Galloway. They had a valid basis for arresting the defendant but none for Jones. The police had a description of Galloway but none of Jones. On searching Jones, they found narcotics. The Supreme

76 *Id.* at 500-1, 121 N.E.2d at 773.
77 322 Ill. App. 519, 54 N.E.2d 631 (1st Dist. 1944).
78 3 Ill. App. 2d 422, 122 N.E.2d 438 (1st Dist. 1955).
79 7 Ill. 2d 527, 131 N.E.2d 474 (1956).

Court reversed the conviction of Jones for unlawfully possessing narcotics and held that discovering evidence on the search of a person after unlawfully arresting him cannot relate back to operate as a justification for the arrest.

Police officers should avoid acting overzealously. One case involving an effort by the police to strain the construction of a statute is *People v. Roebuck.*[80] The defendant had previously been convicted of a felony. He and a woman, whom the police knew to be a narcotics addict and prostitute, were walking on a sidewalk. The policeman arrested the defendant for violation of a Chicago ordinance making it unlawful for such persons to assemble or congregate. At the moment of his arrest, the defendant threw an object into a parked car and the police later identified it as heroin.

In reversing the defendant's conviction for unlawful possession of narcotics, the Supreme Court held that the reasonableness of the search which led to finding the narcotics could not be sustained. The court commented on the walking on the sidewalk: ". . . It would . . . be an unreasonable construction of a penal statute to hold that two people walking down the street are assembling or congregating."[81]

The courts do not approve arbitrary action by the police. In *People v. Thomas,*[82] the defendant (in a burglary and possession of stolen property prosecution) and his companions were walking along the street. A police officer called out: "You, Red, come here!" The defendant went to the officer, who said to the defendant's companion: "I told you if I caught you on this side of Cottage again I was going to arrest you." The officer searched the defendant and his companion and found stolen merchandise. However, the officer did not know it was stolen at the moment he arrested the defendant. In reversing the defendant's conviction, the Supreme Court was critical of the arrest:

80 25 Ill. 2d 108, 183 N.E.2d 166 (1962). *Cf.* City of Chicago v. Garrity, 8 Ill. App. 2d 558, 132 N.E.2d 58 (1st Dist. 1956) (abstr.) affirmed prosecution for misuse of authority by arresting motorist who blew horn at him.

81 *Id.* at 111, 183 N.E.2d at 168.

82 25 Ill. 2d 559, 185 N.E.2d 668 (1962). In another case, *People v. Ezell,* 61 Ill. App. 2d 326, 210 N.E.2d 331 (1st Dist. 1965), the defendant was doing nothing more than walking down a street when the police arrested and searched him. This case was reversed on appeal, and the court held that the search could not relate back to justify the arrest.

> It cannot be contended that the search was justified because it accompanied a valid arrest. There is no suggestion that the defendant was arrested on any charge whatsoever; no criminal offense had been committed in the presence of the officer nor had the officer reasonable cause to believe that the defendant had in fact committed a crime. The only reason the officer stopped the defendant was that he was found on a certain street and had been warned not to be in the area.[83]

No conscientious and honest police officer needs anyone to tell him not to change his testimony in the course of a criminal case. Yet, those instructing the police ought to tell them about *People v. Catavdella.*[84] The Supreme Court reversed the defendant's conviction of burglary. At one hearing, the arresting officer testified he saw the defendants violate no law. He had seen them driving, watched them turn a corner, then stopped them and found the proceeds of a recent burglary. At a subsequent hearing, the officer testified that the defendants made an improper turn and had been weaving. He also said their car had a bent license plate. The Supreme Court held the lack of validity of the arrest made the subsequent search of the car trunk illegal. Apparently, the court regarded the second testimony as a fabrication since the officer had testified earlier that he saw no violation. The police did not know of the burglary when they stopped the car.

VIII. Problems of the Search Incidental to an Arrest

Although this article relates primarily to the question of reasonable grounds for arrest a look at a few cases dealing with the search which is incidental to a valid arrest should help give policemen and the instructors of policemen a clear understanding of the search as it relates to reasonable grounds.

In *People v. Tillman,*[85] a Chicago police officer got a phone call from an unidentified person who told him that "Trench Coat," a tall, slim, brown-skinned colored man, 25 to 30 years old,

83 *Id.* at 561-2, 185 N.E.2d at 669.

84 31 Ill. 2d 382, 202 N.E.2d 1 (1964).

85 1 Ill. 2d 525, 116 N.E.2d 344 (1954). Cases cited in support of the search: United States v. Rabinowitz, 339 U.S. 56, 70 Sup. Ct. 930, 94 L. Ed. 653 (1949); People v. McGowan, 415 Ill. 375, 114 N.E.2d 407 (1954); People v. Tabet, 402 Ill. 93, 83 N.E.2d 329 (1941); People v. Exum, 382 Ill. 204, 47 N.E.2d 56 (1943); People v. Marvin, 358 Ill. 426, 193 N.E. 202 (1935); People v. Brown, 354 Ill. 168, 188 N.E. 357 (1934); and People v. Hord, 329 Ill. 117, 160 N.E. 135 (1928).

with a gold tooth in the front of his mouth, living in Room 212 of a given hotel, had been peddling narcotics and had sold some the previous evening. Further, the informant said "Trench Coat" was living with a heavy-set woman.

The officer went to Room 212 and saw a heavy-set woman outside. The door was partly open. One officer looked in and saw the defendant in bed. He fitted the description. The police arrested the woman, searched her, and found heroin. They woke up the defendant, heard him admit that some people called him "Trench Coat," and found heroin under the mattress on which he was sleeping. He admitted the drugs were his.

The Criminal Court of Cook County found the defendant guilty of the unlawful possession of narcotics. The defendant appealed, and the Illinois Supreme Court affirmed the conviction. Aside from the details of the arrest, the point of special interest is that the court approved the search of the bed as a reasonable search incident to a valid arrest.

People v. Watkins[86] deserves special scrutiny because it contains a thorough discussion of the problem of searching a person upon arresting him in connection with a traffic violation. In *Watkins,* officers of the gambling detail arrested the defendant and he had policy slips. They knew him because they arrested him before. What drew their attention to him at this time was that he parked his car too close to a crosswalk. The defendant appealed his conviction for the unlawful possession of policy slips, contending his motion to suppress should have been sustained. The Supreme Court affirmed the conviction and thus approved the arrest.

However, while the court in this case conceded that some traffic violations justify a search, such as the total absence of license plates,[87] or an obscured license plate on a car being driven early in the morning,[88] the court said:

[86] 19 Ill. 2d 11, 166 N.E.2d 433 (1960). In his opinion, Justice Schaefer noted that other courts have refused to establish a uniform rule permitting a search in every case of a valid arrest, even for a minor traffic violation, but have looked at the nature of the offense and the surrounding circumstances to see if the search was warranted. See People v. Blodgett, 46 Cal. 2d 114, 293 P.2d 57 (1956); Elliot v. State, 173 Tenn. 203, 116 S.W.2d 1009 (1938); and People v. Gonzales, 356 Mich. 247, 97 N.W.2d 16 (1959).

[87] People v. Berry, 17 Ill. 2d 247, 161 N.E.2d 315 (1960).

[88] People v. Esposito, 18 Ill. 2d 104, 163 N.E.2d 481 (1960).

> But when no more is shown than that a car was parked too close to a crosswalk or too far from a curb, the constitution does not permit a policeman to search the driver. To the extent that People v. Clark and People v. Barry conflict with these views they are overruled.[89]

The opinion in this case serves as a helpful reference on the question of searching a traffic violator. The discussion includes federal and foreign state citations. However, in this particular situation, the court held it was reasonable for the policemen to assume that they were dealing with something more than a traffic violation.

On this point, Justice Daily, concurring specially, contended that there has always been the right to search the person after a valid arrest, even for a misdemeanor.[90]

Three cases that deal with the limits the courts place on the search incidental to a valid arrest are *People v. Burnett*,[91] *People v. Alexander*,[92] *and People v. Van Scoyk*.[93] In *Burnett*, the Supreme Court reversed a conviction for the possession of obscene photos. The officers had made an arrest in connection with the performance of a lewd show by a nude woman. The defendant had the marked money which the officers had used to pay for the performance. Upon searching the apartment, the officers found a locked tin box and directed the defendant to produce the key. It contained the obscene photos. The court held the search was not incidental to the arrest.

In *Alexander*, after arresting one of the defendants on a warrant for the unlawful possession of narcotics, the officers made a complete search of the apartment, ripped up the linoleum and found narcotics. In reversing the conviction, the Supreme Court held the search was far more extensive than was permissible, and

89 *Supra* note 86 at 19, 166 N.E.2d at 433.

90 Justice Daily said the landmark case is *Weeks v. United States*, 232 U.S. 383, 34 Sup. Ct. 341, 58 L. Ed. 652 (1914), followed and reaffirmed in *Carroll v. United States*, 267 U.S. 132, 45 Sup. Ct. 280, 69 L. Ed. 543 (1924), and *United States v. Rabinowitz*, *supra* note 85. He said the same rule applies even in a misdemeanor, citing *Garsk v. United States*, 1 F.2d 620 (8th Cir. 1920); *Green v. United States*, 259 F.2d 180 (D.C. Cir. 1958). He added that *People v. Clark*, 1 Ill. 2d 400, 137 N.E.2d 820 (1956); and *People v. Edge*, 406 Ill. 490, 94 N.E.2d 359 (1951), are recognized as the majority view prevailing in this country. See 1959 Wis. Law Rev. 347, 357.

91 20 Ill. 2d 624, 170 N.E.2d 151 (1961).

92 21 Ill. 2d 347, 172 N.E.2d 785 (1961).

93 20 Ill. 2d 229, 170 N.E.2d 151 (1960).

held that officers cannot search an entire home without a search warrant.[94]

In contrast, *Van Scoyk* involved an incidental search which the Supreme Court approved. An officer arrested the defendant after paying her with marked money "for a good time." She had put the money in a drawer outside the bedroom. As soon as she took her dress off, the officer arrested her and immediately searched the drawer. He found it contained pornographic material. The court held the officer had made a lawful entry (having been invited in) and made a lawful arrest. He had a right to search the immediate area for the fruits of the crime, *i.e.*, the marked $10 bills.

IX. Disputing the Exact Time the Arrest Takes Place

Another aspect of reasonable grounds is the question of exactly when the arrest takes place. In *People v. Fiorito*,[95] the Criminal Court of Cook County convicted the defendant of receiving stolen property and he appealed. The Supreme Court affirmed the conviction. The defendant contended he had been arrested when the officers lacked reasonable grounds and the state contended the arrest took place later—after the reasonable grounds had become apparent.

There was a robbery of a diamond broker's office. It involved $150,000. The robbers taped up the Chicago representative of the broker, and in the course of forcibly taking a ring from his finger, made that finger bleed. Subsequently, members of the FBI saw the defendant carrying a suitcase resembling one seen in the building where the robbery had occurred. This was at 5:00 p.m. at a near north side hotel. The agents said that they wanted to question the defendant concerning a diamond robbery. He said "fine" and went along to the FBI office in Chicago. It was undisputed that he went voluntarily. He had said: "If you had called me I would have come anyway." Further, the language of the FBI men was in terms of voluntary questioning. There were no words suggesting any arrest.

94 Compare this case with *People v. Harvey*, 27 Ill. 2d 282, 189 N.E.2d 320 (1963), wherein the court approved a search that also involved tearing up the linoleum. In *Harvey* the tearing up was confined to the area of the arrest and did not involve the entire apartment, as in *Alexander*.

95 19 Ill. 2d 246, 166 N.E.2d 606 (1961).

Just before 7:00 p.m. the agents were about to excuse him. However, when they were talking to the Chicago police, they mentioned finding a spool of tape in the defendant's suitcase. The Chicago police then told the FBI men the significance of the tape. The arrest of the defendant at the FBI office followed. They searched him and found the stolen ring (with blood on it) in his shoe. Further, he was unable to explain the tape in the suitcase.

In affirming the conviction, the Supreme Court agreed with the state that the defendant's arrest took place at 7:00 p.m. at the FBI office, when the reasonable grounds were evident, and not at 5:00 p.m. when he first submitted to questioning by the FBI. Further, the court held that the officers discovered the tape with the consent of the defendant and that it was admissible.

In *Henry v. United States*,[96] the Supreme Court of the United States reversed a lower court judgment convicting the defendants of the unlawful possession of stolen goods. FBI agents had been investigating thefts of interstate shipments of whiskey involving a terminal in Chicago. They stopped the defendant after seeing him load certain cartons into a car. They searched the car, found the cartons containing radios and took the defendant and his companion to their office. Later, they placed the man under formal arrest when they found the radios had been stolen. The Supreme Court held that the arrest was complete when the agents stopped the car, interrupted the men, and restricted their liberty of movement. There was nothing to indicate the cartons contained whiskey—the offense the agents were investigating.

The dissenting opinion in this case contended that the arrest did not take place until the investigators had proceeded far enough to establish reasonable grounds. Taken together, the majority opinion and the minority opinion bring into focus the basic issues which this article posed at the outset—balancing the protection of individual rights and the protection of society.

[96] 361 U.S. 98, 80 Sup. Ct. 168, 4 L. Ed. 2d 134 (1959). *People v. Jeffries*, 31 Ill. 2d 597, 203 N.E.2d 396 (1964), holds that a search incidental to an arrest must be substantially contemporaneous with the arrest, and cites federal and state decisions in support thereof. A search of a car taken to a garage or a police station after the arrest has been held not contemporaneous. Search of the immediate area has been held to include going behind the upholstery or going into the trunk of a car.