

Tulsa Law Review

Volume 7 | Issue 2

1971

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Recommended Citation

Katherine A. Gallagher, *Criminal Law: Constitutional Search*, 7 Tulsa L. J. 197 (2013).

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CRIMINAL LAW: CONSTITUTIONAL SEARCH

With regard to the search and seizure provision of the fourth amendment¹ the constitutional distinction between houses and cars enunciated in *Carroll v. United States*² has been exacerbated by two recent decisions of the Supreme Court: *Vale v. Louisiana*³ and *Chambers v. Maroney*.⁴

In *Vale* the appellant, a known narcotics addict, was arrested on the front steps of his house by officers who had established surveillance of the premises. He was convicted on the admission into evidence of a quantity of narcotics obtained from a rear bedroom of his house. The decision was reversed by the Supreme Court.

In *Chambers*, the petitioner was arrested in an automobile following a police radio alert and was convicted on evidence taken from the car after the occupants had been removed from the vehicle and it had been taken to the police station. The conviction was upheld. In neither of these cases did the arresting officers have search warrants.

It is recognized within the field of criminal procedure that there are times in which the exigency of the situation

¹ The fourth amendment provides: 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. U.S. CONST. amend. IV.

² *Carroll v. United States*, 267 U.S. 132 (1925).

³ *Vale v. Louisiana*, 399 U.S. 30 (1970).

⁴ *Chambers v. Maroney*, 399 U.S. 42 (1970). This note is confined to the fourth amendment aspects of these two cases. In *Vale*, the issues of harmless error and whether petitioner was afforded effective assistance of counsel were also discussed.

excuses failure to obtain a search warrant. If the search has been consented to⁵ or is incident to a lawful arrest⁶ no warrant is needed; nor is a warrant required if the officer is in "hot pursuit" of a suspect.⁷

Furthermore, no warrant is necessary when an emergency situation exists. If there is probable cause to believe the goods no longer will be present when the officer returns with the warrant, either because they have been destroyed⁸ or have been removed from the jurisdiction,⁹ a lawful search may be conducted without a warrant. The general rule has been established, however, that searches conducted without warrants are unreasonable unless "those who seek exemption from the constitutional mandate [show] that the exigencies of the situation made that course imperative."¹⁰

⁵ *Zap v. United States*, 328 U.S. 624 (1946) (to obtain government business petitioner agreed to permit inspection of his accounts and records).

⁶ *United States v. Rabinowitz*, 339 U.S. 56 (1950) (upheld the search of desk and file cabinets in one room office though there was time to obtain a search warrant and overruled *Trupiano v. United States*, 334 U.S. 699 (1948) which allowed search only when obtaining a warrant would have been impractical; both these decisions were modified by *Chimel v. California*, 395 U.S. 752, 763 (1969) which held the search must be confined to "the area from within which he might gain possession of a weapon or destructible evidence.")

⁷ *Warden v. Hayden*, 387 U.S. 294 (1967) (involving armed robbery where police entered and searched suspect's home within five minutes after the robbery had taken place).

⁸ *Schmerber v. California*, 384 U.S. 757 (1966) (taking blood sample from petitioner accused of driving while intoxicated).

⁹ *Carroll v. United States*, 267 U.S. 132 (1925) (search and seizure of automobile).

¹⁰ *McDonald v. United States*, 335 U.S. 451, 456 (1948).

Both *Vale* and *Chambers* turn on the question of whether or not the exigencies of the particular situation were sufficient to not require a search warrant.

In *Vale* policemen had the appellant's home under surveillance and while they were watching the home witnessed what they believed to be an illegal narcotics transaction taking place on Vale's driveway. The officers subsequently arrested Vale on the front steps of his home, informed him that they were going to search the house and advised him of his Constitutional rights. After entering the front room and ascertaining there was no other person in the house, the police were about to commence their search when Vale's mother and brother returned home.

The majority in *Vale* disagreed with the Louisiana Supreme Court holding the search was not within the immediate vicinity of the arrest and thus was not a search made incident to arrest. The Court stated "if a search of a house is to be upheld as incident to an arrest, that arrest must take place *inside* the house."¹¹ Quoting from *Agnello v. United States*,¹² the Court maintained that "[b]elief, however well founded, that an article sought is concealed in a dwelling house furnishes no justification for a search of that place without a warrant,"¹³ and further noted that this "basic rule has never been questioned in this Court."¹⁴

Having established the situation did not qualify as a search incident to a valid arrest, the *Vale* Court turned to the exigencies which might permit a search without a warrant. The Court based its decision on two grounds, both of which are attacked by dissenting Justices Black and Burger.

¹¹ 399 U.S. at 33-34.

¹² 269 U.S. 20, 23 (1925).

¹³ 399 U.S. at 34.

¹⁴ 399 U.S. at 34, *quoting* *Stoner v. California*, 376 U.S. 483, 487 n. 5 (1964).

Initially, the majority ruled the Louisiana court erred in holding the search valid because it involved easily disposable narcotics. The record indicated the searchers had ascertained that no one was in the house when they began their search, the majority therefore maintained the emergency rationale could not apply as the evidence was in no immediate danger of being destroyed.

However, the dissent pointed out Vale's mother and brother returned home before the fruitful search had been executed and they were capable of destroying the evidence. It is a general rule that the reasonableness of the search varies with the circumstances¹⁵ and the dissent believed the circumstances justified a search without a warrant. The dissent added it made no difference whether the search was incidental to an arrest or not; the mere fact that the mother and brother had arrived home placed this search under the emergency exception. The majority observed the goods were not in the process of destruction at the time of entry; the dissent countered with the observation that contraband need not be in the process of destruction for the rule to apply. It would be sufficient, the dissent stated, if "[the] evidence or contraband was threatened with removal or destruction".¹⁶

In addition, the Vale majority leaned on the fact that the officers had already procured two warrants for the appellant's arrest; it pointed out there was "no reason . . . to suppose it impracticable for them to obtain a search warrant as well."¹⁷

¹⁵ Compare *Henry v. United States*, 361 U.S. 98 (1959) with *Brinegar v. United States*, 338 U.S. 160 (1949); Comment, *Search and Seizure of an Automobile Incident to an Arrest for an Offense Other than a Traffic Violation*, 31 Mo. L. REV. 436 (1966). See Comment, *Interference With the Right to Free Movements: Stopping and Search of Vehicles*, 51 CALIF. L. REV. 907 (1963).

¹⁶ 399 U.S. at 39 (dissenting opinion), quoting, *Johnson v. United States*, 333 U.S. 10 (1948).

¹⁷ *Id.* at 35.

The dissent argued, however, the arrest warrants were issued because *Vale's* bond had been increased on two charges pending against him, not because of present misconduct. Thus, the dissent believed that the officers would have had no probable cause to obtain the warrants. The probable cause did not arise until the officers saw what they believed to be an illegal narcotics transaction minutes before they arrested *Vale* and conducted the search.

In *Chambers*, the Court distinguished *Vale* by saying the same consequences of *Chambers* may not follow when there is unforeseeable cause to search a *house*. The court justified the distinction by adding “. . . as *Carroll* . . . held, for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars.”¹⁸

The facts of the *Chambers* case were somewhat different from those of *Vale*. A Gulf service station was robbed and one of the attendants was instructed to place the money in a right hand glove. Two teenagers, who witnessed the happenings, reported the incident to the police and a police bulletin was issued describing the car and the clothing of the robbers. Within the hour, a car fitting the description given by the teenagers was stopped and the clothes of the occupants matched the description given by the service station attendant. The occupants were arrested and the car was driven to the police station. The first search of the car revealed nothing; but after interrogating the occupants, the police conducted a thorough search of the car which revealed revolvers, a right hand glove filled with change, and credit cards bearing the name of a service station attendant who had been robbed the previous week.

As in *Vale*, the *Chambers* Court held the arresting officers had probable cause to make the arrest, but the search could

¹⁸ 399 U.S. at 52.

not be justified as being incident to the arrest. This search was made at the police station some time after the arrest and "[o]nce the accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest."¹⁹ Therefore, the Court proceeded as it did in *Vale*, by examining the exigencies of the particular situation to determine if a search could be sustained without a warrant. Again, it was a matter of probable cause as to whether an emergency arose such that if a search was not made at that moment, the evidence would be destroyed or moved out of the jurisdiction. Whereas in *Vale* the Court held that there was not probable cause that the goods would be destroyed, in *Chambers* it felt that the search was justified.

In *Chambers* there is little doubt there existed probable cause at the time of the arrest. The majority of the Court maintained that since the probable cause factor was present at the arrest, it continued until the car was safely at the station house, the occupants removed, one fruitless search had taken place, the occupants interrogated and the car searched a second time. The majority stated:

Arguably, because of the preference for a magistrate's judgment, only the immobilization of the car should be permitted until a search warrant is obtained; arguably, only the 'lesser' intrusion is permissible until the magistrate authorizes the 'greater'. But which is the 'greater' and 'lesser' intrusion is itself a debatable question and the answer may depend on a variety of circumstances. For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment. . . . The probable-cause factor still obtained at the

¹⁹ *Id.* at 47, quoting, *Preston v. United States*, 376 U.S. 364 367 (1944).

station house and so did the mobility of the car unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured.²⁰

There are two cases which must be mentioned in order to understand the distinction between the majority and the dissent in this case. While the dissent relied on *Preston v. United States*²¹, the majority relied on *Cooper v. California*²² and attempted to distinguish it from *Preston*. In *Preston*, occupants of a car were arrested for vagrancy and their car was impounded upon their arrest. The car was not searched at the time of the arrest, but was towed to a garage where a search produced enough evidence to convict the petitioner and others of conspiracy to rob a federally insured bank. A unanimous Court reversed, stating “. . . since the men were under arrest at the police station and the car was in police custody at a garage [there was no] danger that the car would be moved out of the locality or jurisdiction.”²³ Thus a warrantless search failed to “meet the test of reasonableness under the Fourth Amendment.”²⁴ Justice Harlan, dissenting in *Chambers*, construed this statement to “. . . have been based on the premise that the more reasonable course was for the police to retain custody of the car for the short time necessary to obtain a warrant.”²⁵

On the other hand, *Cooper* involved the warrantless seizure of heroin from the glove compartment of the petitioner's impounded car after the petitioner was arrested for a narcotics violation. A five to four majority of the Court upheld the conviction. An attempt was made by the majority to distinguish *Cooper* from *Preston* by pointing

²⁰ 399 U. S. at 51-52.

²¹ 376 U.S. 364 (1964).

²² 386 U.S. 58 (1967).

²³ 376 U. S. at 367.

²⁴ *Id.*

²⁵ 399 U.S. at 65.

out that the police seized the car in *Cooper* pursuant to state law and were required to hold it until forfeiture proceedings were terminated some four months after it was lawfully seized.²⁶ The Court held it would have been unreasonable to rule the police could not search the car, even for their own protection, if they were to retain it in their garage. The *Cooper* majority interpreted the *Preston* case as being incident to arrest and thus inapplicable in the *Cooper* situation. Although *Preston* was decided predominantly on that basis, Justice Harlan in *Chambers* pointed out the case was not strictly limited as being one of a search incident to an arrest. He substantiates his conclusion by pointing to that statement in *Preston* in which the Court attempted to decide if the situation was “. . . such as to fall within *any* of the exceptions to the constitutional rule that a search warrant must be had before a search may be made.”²⁷ Justice Harlan added however, “[f]idelity to this established principle requires that, where the exceptions are made to accommodate the exigencies of particular situations, those exceptions be no broader than necessitated by the circumstances presented.”²⁸ Thus Harlan feels discarding the *Preston* principle for the ruling in *Chambers* which purports to follow *Cooper* is at odds with the fourth amendment.

It is difficult to reconcile these two cases unless one accepts the distinction in *Carroll* that there is a constitutional difference between cars and houses and extends that distinction to include cars and houses *per se*. When one examines the exigencies in *Vale* and in *Chambers* and considers the ruling and the dissents, no other conclusion logically can be reached. In the *Vale* case, where the mother and brother

²⁶ California state law required the seizure of a car after an arrest for narcotics violation. Law of June 22, 1955, ch. 1209 §1, [1955]. Calif. Laws 1955 (repealed 1967).

²⁷ 399 U.S. at 65 (dissenting opinion), *quoting*, *Preston v. United States*, 376 U.S. 364, 367 (1964).

²⁸ 399 U.S. at 61 (dissenting opinion).

could have destroyed the contraband evidence had the officers left to obtain a warrant, the court held the search invalid. In the *Chambers* case, where the car was at the station and the occupants under arrest, the same Court, sitting the same day, upheld the search. Logically, it would appear that the exigencies would dictate opposite conclusions. The distinction perceived in *Carroll* provides some logic for these holdings; however, that distinction does not go far enough. The Court in *Carroll* was concerned with the admissibility of contraband liquor seized in a warrantless search of a car on the highway. The Court stated:

. . . the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.²⁹

Had the Court in *Chambers* not chosen to justify its decision on the basis of *Carroll*, one validly could assume that the Court was recognizing a distinction between the two enclosures. However, there remains some doubt because *Carroll* and the cases following have justified the distinction by stating if the goods are left in the car there is a danger of their being transported out of the jurisdiction. In *Chambers*, there was no danger of the car's being moved at that time. Nor did the Court choose to dismiss the case solely on the *Cooper* holding that the police should have been afforded an opportunity to search the car for their own protection, albeit the time element may have been a deciding factor in *Cooper*.

²⁹ 267 U.S. at 153.