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Admissibility in Federal Courts of Evidence Wrongfully Obtained by Persons Other Than Federal Officers or by Cooperation Between Such Persons and Federal Officers

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NOTES AND COMMENT

ADMISSIBILITY IN FEDERAL COURTS OF EVIDENCE WRONGFULLY OBTAINED BY PERSONS OTHER THAN FEDERAL OFFICERS OR BY COOPERATION BETWEEN SUCH PERSONS AND FEDERAL OFFICERS—It is a firmly established rule in the federal courts, that evidence obtained by an illegal search and seizure, within the purview of the Fourth Amendment to the Constitution of the United States, is not admissible providing timely steps are taken for its exclusion or return.[1] However, that rule is limited in its application to federal officers or agents, so that quite generally it may be said, that evidence obtained by private individuals or municipal or state officers, acting as such, is admissible in federal courts, regardless of the manner in which it is obtained.

Thus in *Weeks v. United States*[2] it was held that lottery tickets and papers secured through an illegal search and seizure by a United States marshal, were not admissible in evidence, when a

[1] *Boyd v. U. S.*, 116 U. S. 616, 29 L. ed. 746, 6 Sup. Ct. 524 (1886) *Weeks v. U. S.*, 232 U. S. 383, 58 L. ed. 652, 34 Sup. Ct. 341, L. R. A. 1915 B, 834, Ann. Cas. 1915 C, 1177 (1913).

[2] See Note 1, *supra*.

seasonable application was made for their return. But papers seized by police officers in the same manner, were competent evidence, because "the Fourth Amendment is not directed to individual misconduct of such officials. Its limitations reach the Federal Government and its agencies."

In *Burdeau v. McDowell*,[3] which is the leading case on this point, papers stolen by private citizens and later turned over to the Attorney General, were held to be competent evidence. No officers or agents of the United States Government took any part in securing the papers nor did they know of it until after the papers were turned over to them. The court says, therefore, that there was no invasion of the security afforded by the Fourth Amendment, since its origin and history show that it was intended as a restraint upon the activities of sovereign authority and was not intended as a limitation upon other than governmental agencies. Likewise where a private diary of the defendant was seized by British authorities at Capetown, South Africa, and turned over to United States authorities, the diary was admissible in evidence.[4]

It would seem that this doctrine afforded a comfortable method of circumventing the Fourth Amendment, by enabling federal officers to make arrangements with state or municipal officers to search for evidence in any manner whatsoever, to be turned over immediately to the federal authorities for prosecution. And this seems to have been done, especially with reference to liquor, but the courts promptly interfered with such a practice whenever it could be shown that the state or municipal officers were in any way acting as agents of the federal government in making the search and seizure, and, if so, the evidence so secured was subjected to the same scrutiny as if it had been obtained by federal officers.

Thus in *Flagg v. United States*[5] police officers made an illegal seizure of defendant's papers and turned them over immediately to the Postal authorities. The court held that the evidence was not admissible, because the officers must have been acting as accredited agents of the United States and so the search was made by the United States, through its agents, in violation of the Fourth Amendment. And where state officers made an unlawful search and turned the evidence over to federal officers, in accordance with their general practice, it was held that the evidence was not admissible, because in effect, the officers were recognized federal agents and their acts had to be governed by the limitations imposed by the federal constitution.[6] And *In re Schuetze*[7] the court says that to make the search in effect one by the federal governmen, it is not necessary that the police have specific orders to make the

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[3] 256 U. S. 465, 41 Sup. Ct. 574, 65 L. ed. 1048, 13 A. L. R. 1159 (1921). Mr. Justice Holmes and Mr. Justice Brandeis dissented.

Pedersen et al. v. U. S., 271 Fed. 187 (1921)

[5] 233 Fed. 481 (1916)

[6] *U. S. v. Falloco*, 277 Fed. 75 (1922).

[7] 299 Fed. 827 (1924).

search in question, it being sufficient if there is a general arrangement or express or implied understanding that the police will make searches and then turn the evidence over to the federal officers.[8] Then in *Gambino et al v. United States*[9] the Supreme Court made a further extension of the agency rule. State troopers in New York made an unlawful search and seizure of defendants' car and the evidence was turned over to federal officers. The search was not made in co-operation with or as agents of, federal officials, but at that time the state enforcement act had been repealed and the state officers believed that they were required by law to aid in enforcing the National Prohibition Act. They made the arrest and search solely for the purpose of aiding federal prosecution. It was held that the evidence was not admissible as the wrongful search and seizure was made solely on behalf of the United States. This case was distinguished from the *Weeks' case*[10] and *Burdeau v. McDowell*[11] in that in neither of those two cases did it appear that the search and seizure were made for the purpose alone, of aiding the United States in the enforcement of its laws.

The next question arises as to the admissibility of evidence secured by an illegal search in which both federal, and state or municipal officers or private citizens participate. These cases, more than the preceding ones, are decided so much on the facts of each case, that an extended review of the cases will not be made, but merely an outline given of the tendency of the decisions.

The courts have taken several views. One is that in such cases the federal officers may be participating in the search in the capacity of private citizens, so that regardless of the validity of the search, the evidence is competent in a federal court. This is probably the basis of the decision in *Crawford v. United States*[12] where evidence secured by police accompanied by a federal prohibition agent was held admissible. The court stresses the fact that there was no display of federal authority

But the best view would seem to be that the participation of federal officers in an illegal search and seizure, of itself, renders the evidence incompetent in a federal court, and this is supported by some of the later cases. It seems a quibble to say that the federal officer is concerned solely as a private citizen, for obviously in almost every case his presence on a search is requested solely for the reason that violations of federal laws are likely to be observed. And it would be impossible to say, that a certain portion of evidence was secured by a federal officer and therefore not competent, but that another portion of the evidence secured by the searching

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[8] See the same rule expressed in *U. S. v. Dossi*, 12 Fed (2nd) 956 (1926), and *U. S. v. Costanzo et al.*, 13 Fed (2nd) 259 (1926), where the federal prohibition agent had made an arrangement whereby police entered homes without a search warrant and turned the evidence over to him.

[9] ——— U. .S ——— 48 Sup. Ct. 137, 72 L. ed. ——— (1927).

[10] See Note 1, *supra.*

[11] See Note 3, *supra.*

[12] 5 Fed. (2nd) 672 (1925).

party was obtained by state officers and therefore competent. Hence the general rule may be laid down, that where federal officers participate in a wrongful search and seizure, with state or municipal officers or private citizens, the evidence so secured will not be admissible in a federal court, providing of course, that timely steps are taken for its exclusion or return.[13]

Thus, in *Legman v. United States*[14] a conviction was reversed, since it was based in part upon evidence secured through an illegal search by government officials working in cooperation with state officers. This case indicates that it might be possible to use such evidence as was secured by the state officers alone, or in other words, as mentioned above, that the evidence might be sub-divided and that which was secured solely through the efforts of the state officers admitted in evidence. But this is *obiter dictum* for the purposes of this case, and it would seem that it is wholly impracticable to try and make any such refined division of evidence secured on a search conducted jointly by both state and federal officers. Who can say, how much of the evidence is secured, without some help, direct or indirect from the others?

And this theory of segregation of the evidence, if it may be called that, is impliedly rejected in the case of *Byars v United States*.[15] The prosecution was based on counterfeit stamps, secured by an illegal search conducted by municipal officers, and a federal agent. Some of the stamps were found by the federal agent in one room, and some by the police in another room and turned over to the federal officer while they were still in the house. The court says, that evidence secured by a wrongful search and seizure, in which the federal government, through its agents, participates, cannot be used in a federal court in a prosecution against those defendants. The court does not say that only the evidence secured by the federal agent was incompetent, while that found by the police was competent, but that all of the evidence was inadmissible.

In this case and in *Thompson v. United States*[16] the court in an *obiter dictum* says, that the *mere* participation of a federal agent in an illegal search, does not render evidence secured incompetent in a federal court, but neither court gives us any indication of what "mere participation" would be. As stated above, it would be difficult to conceive of a case where a federal officer participates in any search, merely as a disinterested private citizen.

In summary, the situation in the federal courts seems to be this. Evidence secured by federal officers acting alone or in conjunction with state or municipal officers or private citizens, by means of an illegal search and seizure, will not be admitted in evidence, if the proper procedural steps are taken for its suppression or re-

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[13] *Marrow et al. v. U. S.*, 8 Fed. (2nd) 251 (1925) *Thompson v. U S.*, 22 Fed (2nd) 134 (1927).

[14] 295 Fed. 474 (1924).

[15] 273 U. S. 28, 47 Sup. Ct. 248, 71 L. ed. 520 (1926)

[16] See Note 13, *supra.*

turn. Evidence secured by private citizens or officers of other jurisdictions, is admissible regardless of the manner in which it is obtained, unless they were acting under express orders from federal officers on that occasion or unless they acted in accordance with a general understanding with federal officers, or unless they intended to act solely on behalf of the federal government, even if there was no previous understanding, express or implied, that they should do so.

MARION A. MARQUIS.

RECENT CASES

CONDITIONAL SALES—SIGNATURE OF VENDOR. A salesman for the vendor secured an order for certain machinery. The order was made out on a conditional sale contract form which provided that the contract was subject to the approval of the vendor at its home office. The name of the vendor corporation was printed beneath the signature of the salesman, and appeared again at the end of the form accompanied by blanks for the personal signature of the proper approving officer. No such signature was ever entered, but the goods were delivered and the form filed within ten days. In this action by the vendor to recover the goods from the vendee's receiver after default in payments, *held*, that the sale was absolute as to the receiver, there being no signature by the vendor as required by Rem. Comp. Stat. sec. 3790. *State ex rel. Yates American Machine Co. v. Superior Court*, 47 Wash. Dec. 244, 266 Pac. 134 (1928).

The rule of the case is not new in this state. *Jennings v. Schwartz*, 82 Wash. 209, 144 Pac. 39 (1914) *Kennery v. Northwestern Junk Co.*, 108 Wash. 656, 185 Pac. 636, 190 Pac. 330 (1919) *Rychen v. Tacoma Farmers' Creamery*, 127 Wash. 359, 220 Pac. 780 (1923) *Seymour v. Landon*, 128 Wash. 682, 224 Pac. 3 (1924). The decision rests solely on the doctrine of stare decisis, and Justice Tolman concurring specially denounces it as illogical in light of the Statute of Frauds cases and recommends that the court unite in a reversal of the rule so often laid down.

It must be conceded that handwriting is not the only valid form of signature. Stamped, printed or typewritten names have been consistently recognized as proper signatures. 36 CYC. 448. It is necessary only that the signer adopt such symbols as his signature. *Weston v. Myers*, 33 Ill. 424 (1864) *Midkiff v. Johnson County Savings Bank*, 144 S. W 705 (Tex. 1912).

In the principal case, there being nothing to indicate express adoption, it must appear if at all by implication from the facts of delivery of the goods and filing of the document. Delivery might be referable to an absolute sale, but the filing would seem to be sufficiently conclusive evidence of adoption of the printed name as a signature binding on the vendor. Opposed to this there is only the suggestion arising from the blanks that the instrument is to be completed in a certain way. In this respect the Statute of Frauds cases and those involving wills and commercial paper are distinguishable, but there seems no very good reason why the vendor may not waive provisions inserted solely for its own benefit. The Washington cases cited proceed on the theory that policy demands a stricter rule in conditional sales cases to protect third persons. However, it would seem that an examination of the records would certainly apprise a third person of sufficient facts as to the vendee's interest in the property.

Directly opposed to the doctrine of the principal case is *In re Covington Lumber Co.*, 225 Fed. 444 (1914), decided in the local federal court shortly prior to the first of the Washington cases. In the later case of *In re Frankel*, 225 Fed. 129 (1915), the same court seems to explain its former decision on the ground that the contract was signed by the salesman. This