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Criminal Law

John W. Latella

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CRIMINAL LAW — Introducing Evidence Obtained by an Illegal Search and Seizure for Impeachment Purposes.

Commonwealth v. Wright, 415 Pa. 55, 202 A.2d 79 (1964).

The Pennsylvania Supreme Court in *Commonwealth v. Wright*¹ has, for the first time, indicated that evidence obtained through an illegal search and seizure can be admitted at trial to impeach a defendant's credibility, even though *Mapp v. Ohio*² states that such evidence may not be used on the merits.

The defendant was arrested for a murder committed during the perpetration of a robbery.³ While the defendant was being held at police headquarters, police detectives entered the defendant's residence without a search warrant and seized part of the holdup money.⁴

The defendant was being tried for first degree murder under the felony murder rule. Therefore it was necessary for the state to prove the defendant's participation in the robbery in order to obtain a conviction. The state was not permitted to use the holdup money in its case against the defendant,⁵ because it was secured in violation of the fourth amendment.⁶ However, on cross examination of the defendant, the state was permitted to ask the defendant whether he had received any of the holdup money.⁷ Over objection, the defendant then testified that he did receive part of the money. The defendant objected to the question because it pertained to the exact evidence that had been secured through an illegal search and seizure. The Pennsylvania Supreme Court held that this testimony was not admissible.⁸ However, the court established that evidence obtained

1. 415 Pa. 55, 202 A.2d 79 (1964).

2. *Mapp v. Ohio*, 367 U.S. 643 (1961). The Supreme Court held that all evidence obtained by search and seizure in violation of the Constitution is constitutionally inadmissible in state courts.

3. The defendant and one Daniel Clemons were perpetrating a robbery of a cafe. During the course of the robbery, Clemons shot and killed the bartender.

4. The police detectives told the defendant's wife that her husband had confessed to his participation in the crime and had "sent them for the stuff." These statements were untrue.

5. *Commonwealth v. Wright*, 411 Pa. 81, 190 A.2d 709 (1963).

6. U.S. CONST. amend. IV.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated. . . .

7. Record, p. 131a-134a, *Commonwealth v. Wright*, *supra* note 1.

8. *Commonwealth v. Wright*, *supra* note 1.

through an illegal search and seizure can be admitted for impeachment purposes under certain conditions. In order to view this problem in the proper context, it is necessary to review some of the landmark cases in this area.

The United States Supreme Court in *Weeks v. United States*⁹ held that evidence seized through an illegal search or in violation of the fourth amendment to the United States Constitution may not be used substantively to prove a crime against a defendant. The essence of the *Weeks* rule is, evidence so acquired shall not be used directly or indirectly.¹⁰ This rule however, was only applicable to prosecutions in the federal courts. The state courts were not required to follow it. The Pennsylvania courts did not follow *Weeks*, and admitted any evidence that helped prove the defendant guilty of a crime.¹¹ After *Weeks*, the United States Supreme Court in *Mapp* forced the rule in *Weeks* on all the state courts. After *Mapp*, as they were required, the Pennsylvania courts began applying the rule.¹²

The prohibition enunciated in *Weeks* is not an absolute one for after *Weeks* the United States Supreme Court, in *Walder v. United States*,¹³ stated that evidence seized through an illegal search and seizure can be used to impeach a defendant's credibility if certain conditions are met. The Pennsylvania Supreme Court, in *Wright*, follows the *Walder* case which established the criteria necessary to make such evidence admissible in Pennsylvania courts. The court in *Wright*, explicitly stated:

To make such evidence available for impeachment purposes and thereby constitute a waiver by the defendant of his constitutional protection against its use, three conditions are essential: (1) The defendant must elect to take the stand; (2) His testimony which conflicts with the illegally secured evidence must do more than deny the elements of the crime for which he is being tried; (3) The inadmissible evidence should be received only to the extent that it does not admit the very acts which are essential elements of the crime charged.¹⁴

9. *Weeks v. United States*, 232 U.S. 383 (1914).

10. *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920).

11. *Commonwealth v. Dugan*, 143 Pa. Super. 383, 18 A.2d 84 (1941).

12. *Commonwealth v. Bosurgi*, 411 Pa. 56, 190 A.2d 304 (1963). Held, evidence obtained by unreasonable search and seizure may not be used in state courts for any purpose.

13. *Walder v. United States*, 347 U.S. 62 (1954).

14. *Commonwealth v. Wright*, *supra* note 1 at 60, 202 A.2d at 81.

The court stated that this exception to the exclusionary rule of *Weeks* "concerns itself only with perjurious testimony directly made by the defendant in his examination in chief."¹⁵

The lower court, in applying the rule in *Walder* to the *Wright* case, foresaw that the Pennsylvania Supreme Court would follow the federal law in regard to the use of suppressed evidence for impeachment purposes. This court held that the defendant on direct examination implied¹⁶ that he didn't receive any of the money and thus, opened the door to the state's cross examination. The Pennsylvania Supreme Court held that the lower court erred in admitting this evidence because the facts of *Wright* do not meet the necessary conditions advanced in *Walder*. The supreme court stated that the defendant's testimony in chief was no more than a denial of the elements of the crime charged.¹⁷

The facts in *Wright* can be distinguished from *Walder* in that the defendant in *Walder*, on direct examination, blatantly perjured himself in relation to a tangible physical fact — his prior possession of a narcotic capsule.¹⁸ The United States Supreme Court stated that the evidence was admissible for impeachment purposes, as the defendant had gone beyond a mere denial of the crime.¹⁹

There is no Pennsylvania precedent dealing with the use of suppressed evidence for purposes of impeachment. *Wright* is the first Pennsylvania case that deals with this point, and in doing so, the court is strictly adhering to the rule in *Walder*. It seems that the *Mapp* decision had more of an influence on the Pennsylvania courts than meets the eye, because since *Mapp*, the Pennsylvania courts have been following, as required, federal case law as to the exclusionary

15. *Ibid.*

16. Record, p. 215a, Commonwealth v. Wright, *supra* note 1.

17. Commonwealth v. Wright, *supra* note 1.

18. On direct examination the defendant testified that he had never dealt in narcotics. To impeach him, the United States was permitted to introduce testimony pertaining to a narcotic capsule, which was seized from him previously, and suppressed in another action which had been dismissed.

19. The Supreme Court stated that "The Constitution guarantees a defendant the fullest opportunity to meet the accusation against him. He must be free to deny all the elements of the case against him without thereby giving leave to the Government to introduce by way of rebuttal evidence illegally secured by it and therefore not available for its case in chief. Beyond that, however there is hardly justification for letting the defendant affirmatively resort to perjurious testimony in reliance on the Government's disability to challenge his credibility Such an extension of the *Weeks* doctrine would be a perversion on the fourth amendment."

rule enunciated in *Weeks*. And the Pennsylvania Supreme Court indicates that it will also follow the federal law as to the *Walder* exception of the *Weeks* rule, which under *Mapp* it is not required to do.

JOHN W. LATELLA

TORTS — Statute of Limitations — Claims for Damages for Personal Injury — Under Uniform Commercial Code, statute of limitations for personal injury claims now four years, instead of two.

Gardiner v. Philadelphia Gas Works, 413 Pa. 415, 197 A.2d 612.

In the case of *Gardiner v. Philadelphia Gas Works*,¹ the Pennsylvania Supreme Court enunciated a somewhat startling and far-reaching rule of law. It interpreted certain provisions of the Uniform Commercial Code² to mean that there is now a four year statute of limitations for all actions for personal injury arising out of a breach of a contract of sale. In so doing, the court departed from a long-standing rule which prescribed a two year statute of limitations for all such actions. The facts of the case which brought about this change now follow.

Due to an allegedly defective underground conduit maintained by the defendant gas works, gas escaped into the home of the plaintiffs, Mr. and Mrs. Gardiner, causing personal injury to them. Thereupon, they instituted an assumpsit action in the Court of Common Pleas of Philadelphia County for an alleged breach of "agreement, warranty, and promise." The plaintiffs maintained that under the contract of sale for gas,³ the defendant impliedly and expressly warranted that the gas would be transmitted to them in a safe manner.

The injuries complained of were sustained on January 7, 1961. The action was not commenced until January 15, 1963, exactly two years and eight days later. The Gas Works filed a preliminary objection to the complaint averring that plaintiffs' action was barred by the two year statute of limitations on personal injury claims as set forth in

1. 413 Pa. 415, 197 A.2d 612 (1964).

2. Hereinafter referred to as the Code.

3. It is undisputed that the supplying of gas to the Gardiners' home on a month-to-month basis falls within the definition of a "contract for sale" within §2-106 of the Code, 12A P.S. §2-106.