Duquesne Law Review

Volume 6 | Number 1 Article 6

1967

Constitutional Law - Search Warrants - Health and Safety Inspections

John M. Campfield

search for any type of object. In *Poller* Mr. Justice Hand criticized the "mere evidence rule" stating:

> If the search is permitted at all, perhaps it does not make so much difference what is taken away, since the officers will ordinarily not be interested in what does not incriminate, and there can be no sound policy in protecting what does.[38]

It is clear that confusion in the application of the "mere evidence rule" led to much criticism of it. Now, with the literal interpretation of the Fourth Amendment in *Hayden* the confusion over instrumentalities, fruits, contraband and "mere evidence" is eliminated. Perhaps an argument made by the petitioner, but which the court did not mention was a policy reason for abandoning the "mere evidence rule."[39] This argument was that in *Miranda v. Arizona*[40] the court encouraged the police to place a heavier emphasis on scientific investigation, and if the ability to seize evidentiary objects was limited, as it was prior to this case, much scientific investigation would be frustrated. Thus this decision, logical and sound in its own right, may also be an attempt to balance the rights of the accused and the power of the police in the field of evidence and investigation.

Robert A. Kelly

CONSTITUTIONAL LAW—SEARCH WARRANTS—Health and Safety Inspections—The Fourth Amendment guarantees that a person may not be convicted for refusing to consent to a health or safety inspection of his residence or place of business to be made without a search warrant.

Camara v. Municipal Court, 87 S. Ct. 1727 (1967). *See v. City of Seattle*, 87 S. Ct. 1737 (1967).

In *Camara v. Municipal Court* petitioner was convicted for violating the San Francisco Housing Code by refusing to permit an inspection of his residence on two different occasions when no search warrant had been issued.[1] Petitioner argued that the ordinance under which he was con-

38. *Id.*

39. Brief for Appellant at 38, 39, Warden, Maryland Penitentiary v. Hayden, 87 S Ct. 1642 (1967).

40. 384 U.S. 463 (1966).

1. SAN FRANCISCO, CALIF., MUNICIPAL CODE § 503; RIGHT TO ENTER BUILDING. Authorized employees of the City departments or City agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code. § 507 PENALTY FOR VIOLATION. Any person, the owner or his authorized agent who violates, disobeys, omits, neglects, or refuses to comply with, or who resists or opposes the execution of any of the provisions

victed was unconstitutional in that it authorized municipal officers to enter a private dwelling without a search warrant and without porbable cause to believe that a violation of the Housing Code existed therein.

In *See v. City of Seattle* petitioner was convicted for refusing to allow a representative of the City of Seattle fire department inspect his locked commercial warehouse without a warrant. The Supreme Court of Washington in affirming the conviction suggested that the Supreme Court of the United States "has applied different standards of reasonableness to searches of dwellings than to places of business,"[2] citing *Davis v. United States*.[3]

In *Camara* Mr. Justice White, speaking for the majority in a six to three decision,[4] agreed with the first of petitioner's two contentions, that municipal officers cannot enter a private dwelling without a search warrant, by holding that the Fourth Amendment,[5] applicable to the states through the due process clause of the Fourteenth Amendment,[6] guarantees a person the right to insist that a building inspector, before entering his residence, obtain a warrant to search.[7]

In *See* the majority of the Court (the division was the same as in *Camara*) distinguished *Davis*[8] and held that the Fourth Amendment forbids warrantless inspections of commercial structures as well as private residences.[9]

---

of this Code, or any order of the Superintendent, the Director of Public Works, or the Director of Public Health made pursuant to this Code, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500.00 or by imprisonment, not exceeding six months or by both such fine and imprisonment, unless otherwise provided in this Code, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect or refusal shall continue.

2. 87 S. Ct. 1737, 1739 (1967).

3. 328 U.S. 582 (1945).

4. The majority consisted of Warren, C.J., Fortas, J., Brennan, J., Black, J., White, J. and Douglas, J. Clark, J. wrote the dissent in which Harlan, J. and Stewart, J. concurred.

5. 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, 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.

6. U.S. CONST. amend. XIV, § 1:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State Deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

7. 87 S. Ct. 1727, 1730 (1967).

8. In *See* the Court said, 87 S. Ct. at 1740, that *Davis* involved the reasonableness of a particular search of business premises but did not involve a search warrant issue.

9. 87 S. Ct. at 1738-39.

In deciding *Camara* and *See, Frank v. Maryland*[10] was expressly overruled to the extent that it sanctioned inspections without a warrant. In discussing health inspections made without a search warrant, the *Frank* Court, by a five to four majority, had concluded that the battle for the rights guaranteed by the Fourth Amendment was fought on the issue of the right to be secure from "searches for evidence to be used in criminal prosecution or for forfeitures."[11] The *Frank* Court further said that municipal fire, health, and housing inspection programs "touch at most upon the periphery of the important interests safeguarded by the fourteenth Amendment's protection against official intrusion. . . ."[12] because the inspections are merely to determine whether physical conditions exist which do not comply with minimum standards prescribed in local regulatory ordinances. The majority in *Camara* agreed that there is a difference between health and safety inspections and police searches but disagreed that the Fourth Amendment interests at stake in these inspection are merely "peripheral."[13] The majority said that inspections besides posing "a serious threat to personal and family security . . . do in fact jeopardize 'self protection' interests of the property owner."[14]

The minority in *Camara* considered this issue settled by the *Frank* decision and stated that they would adhere to that decision and its reasoning.[15]

The change in the Supreme Court's position on petitioner's first argument in the relatively short time period between *Frank* and *Camara* is not that surprising if an overall view is taken of the Fourth and Fourteenth Amendments' evolution since *Frank* was decided. Approximately one month after the *Frank* decision the Court noted probable jurisdiction in *Ohio ex rel. Eaton v. Price*[16] which was concerned with the same issue decided in *Frank*. In deciding the case the Court, while equally divided, affirmed a conviction for a refusal to admit an inspector requesting entry under a statute authorizing general periodic inspections.[17] The four affirming Justices considered *Frank* as completely controlling even though the case before them involved a more restrictive ordinance.[18] The dissent-

10. 359 U.S. 360 (1959).
11. *Id.* at 365.
12. *Id.* at 367.
13. 87 S. Ct. at 1731-32.
14. *Id.* at 1732.
15. *Id.* at 1742 (dissenting opinion).
16. 360 U.S. 246 (1959).
17. 364 U.S. 263 (1960).
18. DAYTON (OHIO) CODE OF GENERAL ORDINANCES § 806-30(a): The Housing Inspector is hereby authorized and directed to make inspections to determine the condition of dwellings. . . . For the purpose of making such inspections and upon showing appropriate identification the Housing Inspector shall have free access to such dwelling . . . at any reasonable hour for the purpose of such inspection. BALTIMORE (MD.) CITY CODE, art. XII, § 120

ing Justices, while distinguishing the case from *Frank* on a factual basis,[19] indicated that the majority in *Frank* had taken a rejected view of the due process clause of the Fourteenth Amendment in measuring its application to the states. This conclusion was derived from the part of the majority in *Frank* that did not subscribe to the doctrine of *Wolf v. Colorado*[20] that the right of privacy against arbitrary intrusions by the police goes to the core of the Fourth Amendment and is basic to a free society. The *Wolf* Court concluded that this basic right is implicit in the concept of ordered liberty and is therefore enforceable against the states through the due process clause of the Fourteenth Amendment. The observation of the *Eaton* dissenters that part of the *Frank* majority did not subscribe to this doctrine became evident when the *Wolf* doctrine was reiterated in *Elkins v. United States*[21] which was decided the same day that *Eaton* was decided. Part of the *Frank* majority dissented in *Elkins*.[22]

Subsequent to *Eaton* the Supreme Court decided two cases of significance concerning the Fourth Amendment's application to the states: *Mapp v. Ohio*[23] and *Ker v. California*.[24] The *Mapp* decision held that all evidence obtained by a search and seizure in violation of Fourth Amendment prohibitions was inadmissible in a criminal trial in a state court. *Ker* more fully defined the Fourth Amendment's effect on state and municipal action by declaring that the standard of reasonableness applied to searches is the same under the Fourteenth Amendment as under the Fourth Amendment.

The *Mapp* and *Ker* cases more fully defined the Fourth Amendment's incorporation into the due process clause. These decisions indicated that the basis of the *Frank* decision no longer existed since *Frank* was premised on the belief that the interest invaded by the warrantless search was not protected by the Fourteenth Amendment.

The *Frank* Court also vigorously argued from an historical point that the inspections were designed to make the least possible demand on the

---

(1950): Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the day time, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars.

19. Ohio *ex rel.* Eaton v. Price, 364 U.S. 263, 270-71 (1960) (dissenting opinion). Besides the ordinance being more restrictive in *Eaton* than in *Frank*, in *Eaton* the inspectors made general demands for inspection supported by no particular justification, whereas in *Frank* there was a specific demand for inspection which was justified by the surrounding circumstances.

20. 338 U.S. 251 (1949).

21. 364 U.S. 206 (1960).

22. *Id.* at 237 (dissenting opinion).

23. 367 U.S. 643 (1961).

24. 374 U.S. 23 (1962).

individual occupant because they were hedged with safeguards.[25] It is also evident from the decisions upholding these inspections without warrants that the state courts imposed a general reasonableness requirement.[26] The argument of the practical application of the warrantless inspections is a strong one, but the majority in Camara stated that the effect of such a system leaves the occupant subject to the discretion of an inspection official, which is precisely what the Court has consistently attempted to avoid by requiring that a disinterested party warrant the need to search.[27]

Although the majority in *Camara* agreed with petitioner's first contention as stated above, they disagreed with his second contention that warrants should issue only when the inspector possesses probable cause to believe that a *particular dwelling* contains violations of the minimum standards prescribed by the code being enforced.[28] After weighing the public interest of the inspection programs against the private interest to be invaded, the majority concluded the area inspections, of the type involved here, were a reasonable search of private property.[29] The majority further concluded "if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling"[30] then " 'probable cause' to issue a warrant to inspect *must exist*. . . ."[31] (Emphasis Added.)

On this point the minority in *Camara* voiced a strong protest calling the majority's standard a "legalistic facade"[32] and indicating that such a standard would destroy the integrity of search warrants and degrade the judicial process which issues them. The minority felt that such a system will prove costly to the city in the work incident to the issuance of the warrants, in the waste of time to inspectors and magistrates and that it will result in annoyance to the public since under a search warrant the inspector can enter a building whenever he chooses. The minority also indicated that the majority's limitation on the holding to area inspections results in destruction of the health and safety inspections as they apply to individual inspections for specific problems.[33]

The significance of the *Camara* decision lies in the majority's position that the probable cause to issue a warrant for a health or safety inspection

25. Frank v. Maryland, 359 U.S. 360, 367 (1959).

26. Givner v. State, 210 Md. 848, 124 A.2d 764 (1956); City of St. Louis v. Evans, 337 S.W.2d 948 (Mo. 1960); Ohio *ex rel.* Eaton v. Price, 168 Ohio St. 123, 151 N.E.2d 523 (1958), *aff'd* by an equally divided Court, 364 U.S. 263 (1960).

27. 87 S. Ct. at 1733.

28. *Id.* at 1734.

29. *Id.* at 1735.

30. *Id.* at 1736.

31. *Id.*

32. *Id.* at 1745.

33. *Id.*

need not meet the traditional requirements of the term as it applies to police searches. As indicated by the minority, the significance lies in the effect of such a ruling more so than its rationale. For by the majority's insistence upon the formal requirements of the Fourth Amendment, tempered by their realization of the necessity of the inspections involved here, the substantive guarantees of the Fourth Amendment may necessarily be attenuated. The net effect of a standard of "reasonableness" and "probable cause" as created by the majority may relax or compromise any effective protection against unreasonable searches afforded by the Fourth Amendment; for what judicial officer will refuse to acquiesce in the allegations that "probable cause" exists to issue a warrant for an area municipal health or safety inspection under such a standard.

John M. Campfield

CRIMINAL LAW—RIGHT TO COUNSEL—The Pennsylvania Superior Court more explicitly defines an understandingly and intelligently made waiver of counsel by an accused.

Commonwealth ex rel. Mullins v. Maroney, 209 Pa. Super. 270, 228 A.2d 1 (1967).[1]

Relator was one of three men accused of armed robbery in Pennsylvania. He was arrested in Ohio, where he fought extradition, utilizing the services of an Ohio attorney. Unsuccessful, he was returned to Pennsylvania where he pleaded guilty to the charges and was sentenced. Relator then filed a petition for a writ of habeas corpus alleging deprivation of counsel. In the court below, it was decided that relator had not intelligently waived counsel, and a new trial was granted. The Commonwealth appealed, and the superior court, in reversing the decision of the lower court and dismissing the petition of habeas corpus, *held* that the defendant did not sustain his burden of proving by a preponderance of the evidence that the waiver was not understandingly and knowingly made by him.

A fundamental concept in our legal system has been a defendant's right to counsel. The Bill of Rights is clear on this issue, stating that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."[2] In the landmark United States

1. This decision is pending allocature to the Pennsylvania Supreme Court. Under the *Pennsylvania Rules of Civil Procedure*, all criminal appeals, with the exception of capital cases, have their final appeal in the Pennsylvania Superior Court. Counsel for the relator, Edward Klett, Esq., is filing for allocature in the Pennsylvania Supreme Court, claiming that the defendant was deprived of his rights under the Pennsylvania and United States Constitutions. If unsuccessful on appeal or allocature, relator will appeal to the United States Supreme Court on similar grounds.

2. U.S. CONST. amend. VI.