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Criminal Procedure - Search and Seizure - Federal Court Injunction Against State Officer to Suppress Illegally Obtained Evidence in State Court

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CRIMINAL PROCEDURE — SEARCH AND SEIZURE — FEDERAL COURT INJUNCTION AGAINST STATE OFFICER TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE IN A STATE COURT—Federal customs enforcement officers suspected plaintiff of theft from a waterfront pier. In the course of their investigation they searched plaintiff's home without a search warrant and detained plaintiff for questioning without first bringing him before a federal commissioner. Both acts violated the Federal Rules of Criminal Procedure.[1] Defendant, a state officer, although not a participant in the search, was present during the illegal detention at the invitation of the federal officers. Plaintiff obtained an order in federal district court enjoining defendant from giving any testimony or producing any evidence in state criminal proceedings against him with respect to property illegally seized during the search and to statements obtained during the illegal detention.[2] On appeal, *held,* affirmed, one judge dissenting. In the exercise of its supervisory powers over federal law enforcement agencies a federal court has the power to enjoin a state official from testifying in a state proceeding to information obtained by federal officers in an illegal search and an illegal detention. *Bolger v. Cleary,* 293 F.2d 368 (2d Cir. 1961).

In *Rea v. United States*[3] the Supreme Court held that a federal court, in the exercise of its discretion as a court of equity, should enjoin a federal officer from testifying in a state criminal trial with respect to evidence obtained by him under an invalid search warrant. Equitable relief was warranted in that case because the state court at that time admitted illegally obtained evidence;[4] thus there was no adequate remedy at law against the federal officers' violation of the Federal Rules of Criminal Procedure. Putting all constitutional questions aside, the Court derived the power to issue an injunction from its supervisory control over federal law enforcement agencies and its correlative duty to enforce the Federal Rules of Criminal Procedure.[5] But federal courts have declined to enjoin state officers in similar situations.[6] In *Stefanelli v. Minard*[7] the Supreme Court refused to enjoin state officers from testifying in a

1 FED. R. CRIM. P. 5 (a), 41.

2 Bolger v. United States, 189 F. Supp. 237 (S.D.N.Y. 1960).

3 350 U.S. 214 (1956).

4 When plaintiff applied for the injunction in the principal case, illegally obtained evidence was admissible in New York courts. People v. Variano, 5 N.Y.2d 391, 157 N.E.2d 857, 185 N.Y.S.2d 1 (1959).

5 See Mallory v. United States, 354 U.S. 449 (1957); McNabb v. United States, 318 U.S. 332 (1943).

6 Pugach v. Dollinger, 365 U.S. 449 (1957) (per curiam) involved evidence obtained by state officers in violation of § 605 of the Federal Communications Act, 48 Stat. 1103 (1934), 47 U.S.C. § 605 (1958). In Doyle v. Webb, 237 F.2d 335 (3d Cir. 1956), the evidence was obtained by state officers during a forcible search without a warrant.

7 342 U.S. 117 (1951).

state court about evidence which they had obtained in an illegal search and seizure. The decision was based on the Court's concern for the preservation of the balance between the protection of federal rights and the state's administration of its own laws.[8] The importance of the latter interest was emphasized in *Pugach v. Dollinger*[9] where the Supreme Court, on the basis of *Stefanelli*, affirmed a federal district court's refusal to enjoin state officers from testifying in a state criminal trial with respect to wiretap evidence they had obtained in violation of the Federal Communications Act.[10] Although plaintiff had been deprived of a federally created right, the Court held that this violation was not sufficient to warrant interference with state criminal proceedings.

The problem in the principal case arises from the fact that the fruits of the illegal federal search and detention were passed on to the state through defendant before the trial. If the suppression of evidence is to remain an effective deterrent against illegal activity by federal officers,[11] the injunction must issue against a state officer and will therefore interfere to some extent with the administration of state criminal proceedings, a result which the *Stefanelli* rule was designed to prevent. Although the court distinguishes *Stefanelli* by explaining that defendant is enjoined, not in his capacity as a state officer, but only as an invited observer of illegal federal activity, this distinction has little practical significance. Regardless of the label given to the defendant, the injunction has a definite limiting effect on state court proceedings, especially where the state's case is based entirely on the evidence and testimony in question.

Furthermore, it is not entirely clear that the court may safely rely on the *Rea* rationale. Although the assertion in *Rea* that "no injunction is sought against a state official"[12] may have been intended merely to emphasize the limited scope of the holding, it might easily be read as a reaffirmation of the *Stefanelli* rule, or at least as a hint that the Supreme Court was not prepared to enjoin a state officer in this situation.[13] Furthermore, the Supreme Court's decision in *Wilson v. Schnettler*[14] leaves some doubt about the factors necessary to justify federal equity intervention. In that case the Court affirmed a federal

8 Congressional concern for this balance may be seen in 28 U.S.C. § 2283 (1958): "A court of the United States may not grant an injunction to stay proceeding in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

9 365 U.S. 458 (1961) (per curiam).

10 § 605, 48 Stat. 1103 (1934), 47 U.S.C. § 605 (1958).

11 See Elkins v. United States, 364 U.S. 206, 217 (1960).

12 350 U.S. at 216, 217.

13 See Doyle v. Webb, 237 F.2d 335 (3d Cir. 1956).

14 365 U.S. 381 (1961).

district court's refusal to enjoin a federal officer from testifying in a state criminal trial concerning evidence obtained in a search made without a search warrant on the ground that plaintiff had failed to allege that the search was made without probable cause. However, the Court went on to distinguish *Rea* on the fact that the plaintiff there had previously obtained a federal injunction suppressing the illegally seized evidence in a federal court. The concurring opinion by Mr. Justice Stewart[15] and the dissenting opinion by Mr. Justice Douglas[16] indicate that the absence of prior suppression at the federal level in *Wilson* was a material factor in the majority's refusal to authorize the injunction. If this is so, the *Wilson* decision represents a retreat from the *Rea* position[17] and leaves the court in the principal case, where there were no prior federal proceedings, with little authority to expand the application of the *Rea* doctrine.

Although the search of plaintiff's home was apparently a violation of the fourth amendment,[18] the majority characterized the search only as a violation of the federal rules and thus avoided the implications of *Mapp v. Ohio*,[19] which holds that a state court must exclude all evidence obtained in an unconstitutional search and seizure. The legal remedy provided by *Mapp* would seem to eliminate the justification for suppressing the evidence obtained in the illegal search and would therefore limit the scope of the injunction to the evidence obtained during the illegal detention. The circuit court's failure to recognize the potential constitutional violation suggests that *Mapp* may be avoided as a bar to a federal injunction suppressing evidence if the party seeking the injunction purposely ignores the constitutional aspects of the search and pleads only the federal rules violation.

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15 Wilson v. Schnettler, 365 U.S. 381, 388 (1961).

16 *Ibid.*

17 See George, *"The Potent, the Omnipresent Teacher": The Supreme Court and Wiretapping*, 47 VA. L. REV. 751, 784 (1961).

18 The district court held that the search was "illegal," 189 F. Supp. at 254. But it is not clear whether "illegal," as opposed to "unreasonable," refers to a violation of the fourth amendment or only to a violation of the federal rules. Judge Anderson, dissenting from the Second Circuit's decision, believes the words are synonymous. Principal case at 371.

19 367 U.S. 643 (1961).