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John A. Ellis

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SEARCH AND SEIZURE INCIDENT TO TRAFFIC VIOLATIONS

Recently the conflict between effective law enforcement and the constitutional rights of citizens who have violated one of the many traffic regulations has come into focus.¹ The question whether a person and his vehicle may be searched following a traffic violation is a complex one and the courts confronted with the problem have resolved the issue differently. This discussion will consist of recent California decisions concerning the validity of the search and seizure when the offender has violated a traffic regulation.

The starting point for a discussion concerning search and seizure must be the Constitution. The Constitutions of the United States² and California³ have provisions specifically condemning unreasonable searches and seizures. However, neither the Constitution nor judicial decisions give absolute immunity. The law enforcement officers do have authority to search and seize under certain circumstances. The constitutional amendments speak in terms of "unreasonable" searches and seizures and only these "unreasonable" searches are condemned. Whether a search or seizure was reasonable or not is a question of law to be determined by the trial court.⁴

Power of the Police Department

The members of the California Highway Patrol, by explicit statute,⁵ are vested with the power of peace officers. This power, however, is limited to the enforcement of the provisions of the vehicle code and of other laws respecting the use and operation of vehicles on the public highways. They have the power to require the driver to stop and submit to an inspection of the vehicle when they are under a reasonable belief that the vehicle is being operated in violation of any of the provisions of the vehicle code.⁶

The power of police officers to arrest without a warrant depends on whether the arrest is for a felony or a misdemeanor. The circumstances under which an arrest without a warrant may be made by a peace officer are set out by statute. He may arrest without a warrant: for a public offense committed or attempted in his presence; when a person arrested has committed a felony, although not in his presence; when a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.⁷

¹ *People v. Cahan*, 44 Cal. 2d 434, 282 P.2d 905 (1955). Before this decision the California law of searches and seizures was little litigated and ill-defined.

² 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 person or things to be seized."

³ CAL. CONST. art. I, § 19 (An essentially identical guarantee of personal privacy as is set forth in the U.S. Const. amend. IV.)

⁴ *People v. Allen*, 142 Cal. App. 2d 267, 298 P.2d 714 (1956).

⁵ CAL. VEH. CODE § 2409.

⁶ *Ibid.*

⁷ CAL. PEN. CODE § 836; For an offense amounting to a misdemeanor, an arrest without a warrant is justifiable. *People v. Nibell*, 144 Cal. 200, 77 Pac. 916 (1904). Although no provision to this effect, when there is reasonable cause to believe a person is about to commit a felony, the officer has the right to make an arrest. *People v. Dallen*, 21 Cal. App. 770, 132 Pac. 1064 (1913).

Before an arrest is made without a warrant, officers must have reasonable grounds to believe that a crime has been committed and that the defendant is the person who committed the offense.⁸ What constitutes reasonable cause has been defined in *In re McCarty*:⁹ "By 'reasonable or probable cause' is meant such a state of facts as would lead a man of ordinary caution or prudence to believe, and conscientiously entertain a strong suspicion, that the person accused is guilty."¹⁰ In *People v. Lewis*,¹¹ police officers knew numerous burglaries had been committed in the area and they were on alert. They saw an automobile, with its lights off, make a "U" turn and park in a closed service station. When the officers drove into the station, the suspect fled. The arrest of the suspects under these circumstances was not an unreasonable arrest.¹²

Search Incident to Arrest

Whenever the search is incidental to an arrest, the police have the power and right to search without a warrant. The Supreme Court of the United States,¹³ as well as the courts of California,¹⁴ have recognized this right. In *Agnello v. United States*,¹⁵ the Supreme Court stated: "The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody, is not to be doubted."¹⁶

The question has arisen whether the constitutional protection against search and seizure includes the automobile. And in accordance with the general principle of a search made incident to a lawful arrest both the Supreme Court of the United States¹⁷ and the courts of California¹⁸ have held that a search of both the person and his vehicle is lawful.

In *Carroll v. United States*,¹⁹ the defendant was charged with and convicted of transporting liquor. After an arrest, a search was made of the defendant's

⁸ CAL. PEN. CODE § 836; *People v. Gale*, 46 Cal. 2d 253, 294 P.2d 13 (1956); *People v. Lujan*, 141 Cal. App. 2d 143, 296 P.2d 93 (1956).

⁹ 140 Cal. App. 473, 35 P.2d 568 (1934).

¹⁰ *Id.* at 474, 35 P.2d at 568.

¹¹ 187 Cal. App. 2d 373, 9 Cal. Rptr. 659 (1960).

¹² See *People v. Simon*, 45 Cal. 2d 645, 290 P.2d 531 (1955) for an instance where there were no reasonable grounds for arrest.

¹³ *United States v. Rabinowitz*, 339 U.S. 56 (1950); *Agnello v. United States*, 269 U.S. 20 (1925).

¹⁴ *People v. Maddox*, 46 Cal. 2d 301, 294 P.2d 6 (1956); *People v. Brown*, 45 Cal. 2d 640, 290 P.2d 528 (1955); *People v. Cahan*, 44 Cal. 2d 434, 282 P.2d 905 (1955); *People v. Lujan*, 141 Cal. App. 2d 143, 296 P.2d 93 (1956); *People v. Johnson*, 139 Cal. App. 2d 663, 294 P.2d 189 (1956).

¹⁵ 269 U.S. 20 (1925).

¹⁶ *Id.* at 30.

¹⁷ *Brinegar v. United States*, 338 U.S. 160 (1949); *Carroll v. United States*, 267 U.S. 132 (1925).

¹⁸ *People v. Lewis*, 187 Cal. App. 2d 373, 9 Cal. Rptr. 659 (1960); *People v. Sanson*, 156 Cal. App. 2d 250, 319 P.2d 422 (1957); *People v. Lujan*, 141 Cal. App. 2d 143, 296 P.2d 93 (1956); *People v. Johnson*, 139 Cal. App. 2d 663, 294 P.2d 189 (1956).

¹⁹ 267 U.S. 132 (1925).

automobile and liquor was found. The court said that in a search of an automobile 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.²⁰

But in granting authority to search incident to an arrest, the courts have laid down certain qualifications for the search to be lawful. In *People v. Brown*,²¹ the court indicated that the legality of an arrest is not necessarily determinative of the lawfulness of a search incident thereto; to be lawful the search must be reasonable. But reasonableness does not automatically follow because the search is incident to an arrest.²² Rather it was indicated that a search is reasonable only to the extent that it is made necessary by the arrest.²³

Perhaps the most important area of difficulty lies in a determination of the constitutionality of a search without warrant which is incidental to a valid arrest. In the federal courts the legality of a search depends on the validity of the arrest; therefore an arrest must precede a search.²⁴ In California, however, it would seem that a search is lawful even though it precedes, and thereby in effect engenders, an arrest.²⁵ In *People v. Simon*, the court indicates that "important considerations are whether the officer had reasonable cause before the search to make an arrest and whether the search and any seizures incident thereto were or were not more extensive than would reasonably be justified as incident to an arrest. So a search is not unlawful merely because it precedes rather than follows the arrest."²⁶

Search and Seizure and Traffic Violations

Numerous cases have upheld searches and seizures following an arrest for a traffic violation, reasoning that a search incident to an arrest is lawful; the defendant has violated a traffic law; and therefore the defendant is subject to

²⁰ *Id.* at 153; *People v. Gale*, 46 Cal. 2d 253, 294 P.2d 13 (1956).

²¹ 45 Cal. 2d 640, 290 P.2d 528 (1955); *Accord*, *People v. Simon*, 45 Cal. 2d 645, 290 P.2d 531 (1955).

²² The United States Supreme Court emphasized this point in decisions reaching contrary results. "A search or seizure without a warrant as an incident to a lawful arrest has always been considered to be a strictly limited right. It grows out of the inherent necessities of the situation at the time of the arrest. But there must be something more in the way of necessity than merely a lawful arrest. The mere fact that there is a valid arrest does not ipso facto legalize a search or seizure without a warrant." *Trupiano v. United States*, 334 U.S. 699, 708 (1948). In overruling that decision, the court still emphasized that while "some authority to search follows from [arrest] . . . such searches turn upon the reasonableness under all the circumstances. . . ." *United States v. Rabinowitz*, 339 U.S. 56, 65-66 (1950).

²³ *Brinegar v. State*, 97 Okla. Crim. 299, 262 P.2d 464 (1953).

²⁴ *Johnson v. United States*, 333 U.S. 10 (1947).

²⁵ "The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law." *Carroll v. United States*, 267 U.S. 132, 158-59 (1925); *People v. Martin*, 45 Cal. 2d 755, 290 P.2d 855 (1955); *People v. Boyles*, 45 Cal. 2d 652, 290 P.2d 535 (1955).

²⁶ 45 Cal. 2d 645, 648-49, 290 P.2d 531, 534 (1955). However, the court held in this instance that the arrest and search were beyond the lawful authority of those who executed them.

search. Typical of these decisions is a Michigan case²⁷ where the defendant was convicted of possessing liquor. He was arrested for speeding, his automobile searched and the liquor found. The court said that since the arrest was lawful, it was proper for the officers to search the person of defendant and the vehicle in which he was then riding.

In recent years, however, a number of decisions have concluded that a search is valid only when the search is made for the fruits of the crime for which the defendant is arrested,²⁸ or is reasonably necessary to protect the officer from attack,²⁹ or to prevent the offender from escaping a serious charge.³⁰ But in traffic violations, other limitations have been placed on the power to search.

In *People v. Molarius*,³¹ the court had occasion to examine the legality of a search of an automobile in which suspects were riding when arrested for making an unlawful "U" turn. The court held the search could not be justified as incident to the arrest where it bears no relation to the traffic violation or to a vagrancy charge on which the suspects were booked.

Similarly, in *People v. Sanson*,³² where officers stopped a car that was being driven slowly in the early morning with defective lights, the driver of the car could have been given a citation for having illegal lights; but that would not have justified a search of the car because it would have no relation to the traffic violation.

Most traffic offenses, however, are not the type of violations that amount to a criminal offense. In fact there is serious doubt whether an "arrest" even takes place in such circumstances.³³ This question is one that is unsettled in California. In *Barrier v. Alexander*³⁴ the court held that the issuance of a citation is not an arrest. However, in a more recent case³⁵ the court seems to hold that California Vehicle Code sections 736 and 739 contemplate a situation in which an arrest has been accomplished. Even though the question is unsettled, the problem seems academic and unlikely to produce a practical result. Whether the issuance of a citation constitutes an arrest or not, the question still remains whether the principles regarding search following a traffic violation should be any different.³⁶ It appears that they would not be, because "the legality of an arrest is not necessarily determinative of the lawfulness of a search incident

²⁷ *People v. Davis*, 247 Mich. 536, 226 N.W. 337 (1929).

²⁸ *People v. Molarius*, 146 Cal. App. 2d 129, 303 P.2d 350 (1956).

²⁹ *People v. Lujan*, 141 Cal. App. 2d 143, 296 P.2d 93 (1956).

³⁰ *People v. Sanson*, 156 Cal. App. 2d 250, 319 P.2d 422 (1957).

³¹ 146 Cal. App. 2d 129, 303 P.2d 350 (1956).

³² 156 Cal. App. 2d 250, 319 P.2d 422 (1957); The mere fact that the front end of an automobile is damaged does not justify arresting the driver for hit-run driving so as to warrant a search of the vehicle as incident to the arrest. *People v. Gale*, 46 Cal. 2d 253, 294 P.2d 13 (1956).

³³ RESTATEMENT, TORTS § 112 defines an arrest as "the taking of another into the custody of the actor for the actual or purported purpose of bringing the other before a court or of otherwise securing the administration of the law." CAL. PEN. CODE § 834 defines an arrest as taking a person into custody in a case and in the manner authorized by law.

³⁴ 100 Cal. App. 2d 497, 224 P.2d 436 (1950).

³⁵ *People v. Randolph*, 147 Cal. App. 2d Supp. 836, 306 P.2d 98 (App. Dept. Super Ct., San Bernardino, 1957).

³⁶ See Perkins, *The Tennessee Law of Arrest*, 2 Vanderbilt 509, 616 (1949).

thereto; to be lawful, the search must be reasonable."³⁷ In addition to this problem, there are no "fruits of the crime" to seek when a person is arrested for an ordinary traffic offense. Hence, the search cannot be justified on this ground.

Ultimately, the test to determine whether a search of the person and his property may be made is simply, "was the search reasonable?" To justify the search there must be additional circumstances beyond the mere violation of some traffic law. The California Court said: "A citation for driving an automobile with defective lights does not justify a search. But when defendants, fearing apprehension for possessing narcotics, immediately made movements which led police to believe that they were hiding something, it was proper to search the car."³⁸

Admissibility of Evidence

In the absence of additional circumstances, a search of the person and vehicle following an arrest for a minor traffic violation would be in violation of the constitutional provisions. The provisions themselves do not expressly answer the question whether evidence obtained in violation thereof is admissible in criminal actions. Neither Congress nor the California Legislature has given an answer, and the courts of the various states are divided on the question. When consideration is directed to the question of the admissibility of evidence obtained in violation of constitutional provisions, the court is concerned with the constitutional right of all the people to be secure in their homes, persons, and effects. In the *Cahan* case, the court held that evidence obtained in violation of the constitutional guarantee against unreasonable searches and seizures is inadmissible.³⁹ In *People v. Gale*⁴⁰ the fact that the front end of defendant's car was damaged did not give officers reasonable cause to arrest defendant for hit-and-run driving and warrant a search of the vehicle as incidental to the arrest resulting in the discovery of narcotics. Since the discovery was a result of an illegal search, it was obtained in violation of defendant's constitutional rights and could not be used as evidence against him.

However, as a rule of evidence,⁴¹ the California Courts have held that admission of illegally seized evidence necessitates reversal of a conviction only if such evidence results in a miscarriage of justice⁴² and have also refused to exclude evidence solely on the basis of collateral illegal conduct.⁴³

It is interesting to note at this point that a recent decision in the Supreme Court of the United States⁴⁴ has held that "all evidence obtained by searches and seizures in violation of the Constitution is inadmissible in a state court." What effect this decision will have on the present California law has not yet been judicially determined. It is not clear that this would alter the situa-

³⁷ *People v. Brown*, 45 Cal. 2d 640, 290 P.2d 528 (1955).

³⁸ *People v. Sanson*, 156 Cal. App. 2d 250, 253, 319 P.2d 422, 425 (1957).

³⁹ *People v. Cahan*, 44 Cal. 2d 434, 282 P.2d 905 (1955).

⁴⁰ 46 Cal. 2d 253, 294 P.2d 13 (1956).

⁴¹ *People v. Cahan*, 44 Cal. 2d 434, 450, 282 P.2d 905 (1955).

⁴² *People v. Maddox*, 46 Cal. 2d 301, 294 P.2d 6 (1956); *People v. Boyles*, 45 Cal. 2d 562, 290 P.2d 535 (1955).

⁴³ *People v. Tarantino*, 45 Cal. 2d 590, 290 P.2d 505 (1955).

⁴⁴ *Mapp v. Ohio*, 367 U.S. 643 (1961).