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Constitutional Law—Detentions for the Purpose of Obtaining Fingerprints are Subject to the Fourth Amendment's Constraints Against Unreasonable Searches and Seizures

Gregory Stamm

CONSTITUTIONAL LAW—DETENTIONS FOR THE PURPOSE OF OBTAINING FINGERPRINTS ARE SUBJECT TO THE FOURTH AMENDMENT'S CONSTRAINTS AGAINST UNREASONABLE SEARCHES AND SEIZURES

On the evening of December 2, 1965, an elderly woman was raped in her Meridian, Mississippi home. The victim described her assailant as a Negro youth. The only other lead available to the police was a set of finger and palm prints taken from a windowsill in the victim's home. On the next day, the Meridian police began their investigation of the crime by detaining twenty-four young Negroes. While detained, the youths were taken to the police station, fingerprinted, questioned and released. Davis, a fifteen year old boy, who had once worked for the victim, was among the group fingerprinted. The following week, Davis was among forty to fifty other youths who were questioned. During this same period, he was viewed by the victim in her hospital room but was not identified. On December 12, the Meridian Police, without an arrest warrant, took Davis into custody. He was jailed for two days in Jackson, Mississippi, and then returned to Meridian where he was again fingerprinted. These prints were forwarded to the F.B.I., which found that they matched the prints taken from the victim's windowsill. Davis was charged with the crime of rape and was subsequently brought to trial at which the fingerprints obtained on December 14 were introduced into evidence over his objection. He was found guilty and his conviction was affirmed by the Supreme Court of Mississippi. The Supreme Court of the United States reversed. *Held*, investigatory detentions for the purpose of obtaining fingerprints are subject to fourth amendment constraints against unreasonable searches and seizures. Consequently, fingerprints obtained during a period of illegal detention are inadmissible in evidence. *Davis v. Mississippi*, 394 U.S. 721 (1969).

The fourth amendment insures that the people will be secure from unreasonable searches and seizures.[1] As a further safeguard, objects obtained as the product of an unreasonable search or seizure will be excluded from evidence.[2] A search or seizure will be considered reasonable if carried out under authority of a warrant, issued in the presence of probable cause. Probable cause has been defined to exist when, "the facts and circumstances within [the officers'] knowledge and of which [there was] reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief"[3] that an offense has been or is being com-

1. U.S. CONST. amend. IV, provides:
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.

2. The exclusionary rule applies to both federal and state prosecutions according to the decisions in Weeks v. United States, 232 U.S. 383 (1914) and Mapp v. Ohio, 367 U.S. 643 (1961), respectively.

3. Carroll v. United States, 267 U.S. 132, 162 (1925).

mitted. Probable cause is a prerequisite to a legal search and seizure to insure that law enforcement officers do not invade a person's security on inarticulate hunches or suspicions; simple good faith on the part of the officer is not sufficient.[4] A warrant is usually required so that an objective predetermination of probable cause can be made by a neutral judicial officer.[5] "It is settled doctrine that probable cause . . . cannot of itself justify a search without a warrant."[6] Although Supreme Court decisions have repeatedly underscored the fact that the essential purpose of the fourth amendment is to shield the citizen from unwarranted intrusions into his privacy,[7] warrantless searches and arrests are permitted in certain circumstances. The courts have long recognized that warrantless searches may be made incident to a lawful arrest[8] or with the consent of the individual to be searched.[9] Similarly, searches without warrants have been sanctioned while in hot pursuit,[10] at border checkpoints,[11] and in the case of suspicious moving vehicles.[12] The warrant requirement has been even more relaxed in the arrest or "seizure of the person" situation, despite the fact that arrest pursuant to a warrant remains the ideal procedure.[13] For example, an officer may make an arrest

4. *See* Terry v. Ohio, 392 U.S. 1 (1968); Aquilar v. Texas, 378 U.S. 108 (1964).

5. "An arrest without a warrant by-passes the safeguards provided by an objective predetermination of probable cause, and substitutes instead the far less reliable procedure of an after-the-event justification for the arrest or search, too likely to be subtly influenced by the familiar shortcomings of hindsight judgment." Beck v. Ohio, 379 U.S. 89, 96 (1964).

6. Jones v. United States, 357 U.S. 493, 497 (1958), *quoting*, Agnello v. United States, 269 U.S. 20, 33 (1925).

7. *See, e.g.*, Giordenello v. United States, 357 U.S. 480 (1958); McDonald v. United States, 335 U.S. 451, 455 (1948); Johnson v. United States, 333 U.S. 10, 14 (1948).

8. In United States v. Rabinowitz, 339 U.S. 56 (1950), the Court upheld, as reasonable, a warrantless search for forged postage stamps on the ground that the search was incident to a lawful arrest. More recently, the scope of the search incident to a lawful arrest has been limited to an area within the person arrested may gain access to a weapon or destroy evidentiary materials. Additional searches must meet the traditional prerequisites of probable cause and a warrant. Chimel v. California, 395 U.S. 752 (1969).

9. *See, e.g.*, Frazier v. Cupp, 394 U.S. 731 (1969). Moreover, in Bumper v. North Carolina, 391 U.S. 543 (1968), the Court said that a warrantless search could be conducted if the person to be searched consented. The Court found that the facts presented did not amount to consent and thus the search was illegal.

10. *See* Warden v. Hayden, 387 U.S. 294 (1967), in which the Court upheld a warrantless search of a house conducted in "hot pursuit" of an armed robber.

11. *E.g.*, in United States v. Winer, 294 F. Supp. 731 (W.D. Tex. 1969), the Court held that border searches for aliens are permissible under the Immigration and Nationality Act § 287 (a) (3), 8 U.S.C. § 1357 (a) (3) (1965). Neither warrants nor probable cause are necessary for the search but when the purpose strays from a search for aliens the officers are required to meet the fourth amendment's requirements. For a broader holding on border searches, *see* Witt v. United States, 287 F.2d 389, 391 (9th Cir. 1961), where the Court said:

> No question of whether there is probable cause for a search exists when the search is incidental to the crossing of an international border, for there is reason and probable cause to search every person entering the United States from a foreign country, by reason of such entry alone.

12. *E.g.*, in Carroll v. United States, 267 U.S. 132 (1925), the Court recognized the need to conduct a warrantless search of a moving automobile because of the speed with which such a vehicle may flee a jurisdiction. However, the Court did not dispense with the need for probable cause to make the stop in the first place.

13. *See* Beck v. Ohio, 379 U.S. 89 (1964).

without a warrant in the event of a felony, whether or not committed in his presence.[14] However, an officer may not make an arrest without a warrant when a misdemeanor is committed, unless committed in his presence,[15] and then only if the arrest is made immediately after the commission of the misdemeanor.[16] It is important to note that these situations cover the majority of arrests made by the police, and, for this reason, it is not surprising that most people consider arrests without warrants to be the norm.[17] The courts have sanctioned the searches and seizures outlined above on the ground that these invasions of an individual's privacy are reasonable under the fourth amendment.

Prior to the 1960's, there was little judicial consensus as to the legality of interferences with a person's freedom which fell short of a full-blown search or seizure. Some courts determined that these invasions do not involve constitutionally protected rights under the fourth amendment;[18] other courts, careful to protect the individual's right to privacy, have rigidly applied the traditional prerequisites of probable cause and a warrant.[19] Recently, the Supreme Court of the United States has clarified this area of the law by expanding the coverage of the fourth amendment to a broader class of situations.

> The Fourth Amendment [proscription against unreasonable searches and seizures] governs all 'seizures' even though they fall short of a 'traditional or technical' arrest so that whenever a police officer accosts an individual and restricts his freedom to walk away, the officer has 'seized' that person within the meaning of the Fourth Amendment.[20]

In conjunction, the Court has had occasion to re-evaluate both the traditional standards of probable cause and the warrant requirement. Thus, in *Camara v. Municipal Court*,[21] the Court held that a housing inspector could obtain

14. For arrests within the officer's presence, *see, e.g.*, Kelley v. United States, 61 F.2d 843, 847 (8th Cir. 1932), in which the court said that, "The law governing arrest without warrant is completely established through the United States. If a crime is being committed in the presence of an officer, he may make an arrest without warrant . . . ." For arrests outside the officer's presence, *see, e.g.*, United States v. Coplon, 185 F.2d 629 (2d Cir. 1950); Wiley v. State, 19 Ariz. 346, 170 P. 869 (1918).

15. *E.g.*, Miles v. State, 30 Okla. Crim. 302, 236 P. 57 (1925); Allen v. State, 183 Wis. 323, 197 N.W. 808 (1924).

16. *E.g.*, in Smith v. State, 228 Miss. 476, 87 So. 2d 917, 919 (1956), the Court stated: The arrest for misdemeanors committed or attempted in the presence of officers must be made as quickly after the commission of the offense as the circumstances will permit . . . . If, however, the officer . . . departs on other business . . . and afterwards returns, he cannot then arrest the offender without a warrant; for then the reasons for allowing the arrest to be made without a warrant have disappeared. (Citations omitted.)

17. *See*, P. CHEVIGNY, POLICE POWER 180-183 (1969).

18. *E.g.*, United States v. Bonanno, 180 F. Supp. 71 (S.D.N.Y. 1960) and United States v. Vita, 294 F.2d 524 (2d Cir. 1961) where in-custody investigatory detentions were not classified as "seizures."

19. *E.g.*, Henry v. United States, 361 U.S. 98 (1959), where the stopping of an automobile on less than probable cause was held unreasonable.

20. United States v. Hostetter, 295 F. Supp. 1312, 1315 (D. Del. 1969), stating their view of the holding of Terry v. Ohio, 392 U.S. 1 (1968).

21. 387 U.S. 523 (1967).

a warrant to search for a possible housing code violation even without probable cause that a specific violation existed within a particular dwelling.[22] In so determining, the Court, in effect, sanctioned a "standard of variable probable cause"[23] for conducting the search. The test for this standard is as follows: " 'probable cause' is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness."[24] Moreover, "there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails."[25] Nevertheless, while the Court was relaxing the traditional probable cause requirement in the area of administrative searches, it took the position that, in such a case, a warrant was necessary for the search to be reasonable.[26] In *Terry v. Ohio*,[27] the Court, in considering the constitutional validity of the police practice of "stop and frisk,"[28] injected a new standard into the law of search and seizure—"reasonable suspicion."[29] Henceforth, when a police officer observes an individual whom he reasonably suspects may be engaged in criminal activity, he may detain that individual even in the absence of probable cause to arrest. Furthermore, if the officer is in fear of his safety, he may "conduct a carefully limited search of the outer clothing . . . to discover weapons which might be used to assault him."[30] Unlike the *Camara* situation, the Court in *Terry* did not require a warrant to initiate the stop because the exigent circumstances involved required immediate attention and time was found to be of the essence. However, the *Terry* Court did emphasize that "the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure."[31] It has been suggested that the *Terry* Court, when it spoke of "reasonable suspicion," was merely applying the variable probable cause standard annunciated in *Camara*. The *Camara* and *Terry* decisions represent efforts by the Supreme Court to balance two competing interests by applying a flexible probable cause and warrant requirement standard. In *Camara*, the interest of the community in the maintenance of housing standards was weighed against the

22. *Id.* at 539. The Court held that there need not be probable cause for specific violation. Rather, if a valid public interest justifies the contemplated intrusion, then that will suffice as probable cause for issuing a warrant to search.

23. "Standard of variable probable cause" is one of many names given to the *Camara* balancing test. *See* LaFave, *Street Encounters and The Constitution*, 67 MICH. L. REV. 39 (1968).

24. Camara v. Municipal Court, 387 U.S. at 534.

25. *Id.* at 536-37.

26. *Id.* at 540.

27. 392 U.S. 1 (1968).

28. "Stop and frisk" is the practice whereby police officers "stop" persons whom they reasonably suspect are engaged in, have engaged in, or may be about to engage in criminal activity and "frisk" these persons for possible weapons. *See, e.g.*, N.Y. CODE CRIM. PROC. § 180 (a) (McKinney Supp. 1968).

29. Despite the absence of probable cause to arrest, the *Terry* Court held that, in the street situation, "reasonable suspicion" would suffice to meet the reasonableness requirement of the fourth amendment.

30. Terry v. Ohio, 392 U.S. at 30.

31. *Id.* at 20.

individual's right to be secure in his home. In *Terry*, the interest of crime prevention and the safety of the individual officer was weighed against the individual's right to be secure in his person. The instant case presents the interesting question of whether investigatory detentions, particularly in-custody detentions, are susceptible to a balancing test similar to that employed in *Camara* and *Terry*.

In the instant case, the Court was required to resolve two main issues—whether fingerprint evidence, because of its trustworthiness, is subject to the "exclusionary rule" laid down in *Mapp v. Ohio*[32] and whether Davis' detentions during which fingerprints were taken were illegal seizures under the fourth amendment. Reaffirming the fact that "*all* evidence obtained by searches and seizures in violation of the Constitution is . . . inadmissible in a state court,"[33] the majority rejected the notion that the exclusionary rule admits of any exception based on the nature or quality of the evidence seized. In this respect, the majority adopted the reasoning of the District of Columbia Court of Appeals in *Bynum v. United States*,[34] where fingerprint evidence was excluded as the product of an illegal detention.[35] The fingerprints introduced at petitioner's trial were obtained while petitioner was still in-custody following his arrest. The State conceded that, "the arrest . . . and the ensuing detention . . . were based on neither a warrant nor probable cause and were therefore constitutionally invalid."[36] The State argued, however, that the invalidity of this arrest and detention should not prevent the affirmation of petitioner's conviction because another set of prints had been taken during a previous, valid detention. The State claimed that "it should make no difference in the practical or legal sense which [fingerprint] card was sent to the F.B.I. for comparison."[37] Although the Court intimated that such reasoning by the State might fail under *Bynum*,[38] it was not required to determine the validity of that issue either. The Court concluded that the first set of prints were not validly obtained[39] by rejecting the State's contention

32. 367 U.S. 643 (1961).

33. Instant case at 724, *citing*, Mapp. v. Ohio, 367 U.S. 643, 655 (1961) (emphasis added).

34. 262 F.2d 465 (D.C. Cir. 1958).

35. Bynum was arrested on less than probable cause and fingerprints which were taken following that arrest were excluded under *Mapp*, over the State's contention that fingerprint's because of their inherent trustworthiness are not evidence in the *Mapp* sense and thus they need not be excluded. The exclusionary rule does not look to the nature and quality of the evidence involved; its operation hinges on whether the evidence was illegally seized. Following this dismissal, Bynum was again arrested, this time on probable cause, and a new set of prints were taken which were admitted at a second trial, at which he was again convicted. This second conviction was affirmed. Bynum v. United States, 274 F.2d 767 (D.C. Cir. 1960).

36. Instant case at 725.

37. *Id.*

38. 262 F.2d at 468-69. The *Bynum* decision stands for the proposition that the conviction of a man, based on illegally seized and admitted evidence, must be reversed, even if similar evidence which was legally obtained could have been admitted. What is relevant is not what could have been admitted, but what was admitted.

39. Instant case at 725.

that the earlier detention was valid because it "occurred during the investigatory rather than the accusatory stage and thus was not a seizure requiring probable cause."[40] Citing *Terry v. Ohio*, the majority reemphasized the fact that every detention or restriction of a person's freedom of movement is a "seizure" for fourth amendment purposes.[41] The Court did not determine whether a "detention for the sole purpose of obtaining fingerprints . . . require[s] probable cause,"[42] since "no attempt was made [by the police] to employ procedures which might comply with the requirements of the fourth amendment."[43] The Court allowed for some leeway in the future by stating, "it is arguable, however, that because of the unique nature of the fingerprinting process, such detentions might, under narrowly defined circumstances, be found to comply with the Fourth Amendment even though there is no probable cause in the traditional sense."[44] The Court suggested that there are several characteristics which make the fingerprinting process unique. For example, fingerprinting requires no probing into one's personal life as does interrogation; the process need only be completed once, since prints can be permanently recorded; fingerprints are far more reliable than other investigatory techniques; and since there is no danger of the prints being destroyed, the detention to obtain them need not come at an inconvenient time.[45] In order to insure the reasonableness of this limited detention, the Court further suggested that the fingerprinting process should admit of no exception to the general requirement that "the authorization of a judicial officer be obtained in advance of detention."[46]

The narrow holding of the instant case is significant in that it reaffirms the position taken by the Court in *Terry* that all restrictions upon a person's freedom of movement are "seizures," subject to the reasonableness requirement of the fourth amendment. However, the dicta of the instant case is even more significant in that it suggests that the Supreme Court is willing to continue to relax the probable cause requirement of the fourth amendment. In the limited area of fingerprint detentions, the Court suggests that in-custody detentions might be reasonable even if such detentions were based upon less than probable cause. This fact notwithstanding, the Court implies that it will not similarly relax the warrant requirement, and it suggests that a warrant must be obtained before the detention is made.[47] Issuing of a warrant on less than probable cause, is no doubt consistent with the rationale

40. *Id.* at 726.
41. Terry v. Ohio, 392 U.S. 1 (1968). *See* note 20 *supra* and accompanying text.
42. Instant case at 726.
43. *Id.* at 728.
44. *Id.* at 727.
45. *Id.*
46. *Id.* at 728.
47. *Cf.* Katz v. United States, 389 U.S. 347 (1967) and Berger v. New York, 388 U.S. 41 (1967), where the Court rejected the contention that "electronic eavesdropping" could be reasonable absent a search warrant even though there is a suggestion that the process might be permissible on less than probable cause.

of *Camara v. Municipal Court* covering housing code violation searches. As a result of the instant case and the recent case of *Chimel v. California*,[48] which severely restricted the right of the police to search incident to a lawful arrest without a warrant, the Supreme Court has demonstrated that it will enforce the warrant requirement, whenever feasible, in an effort to eliminate abuses by the police in the enforcement of the criminal law. Unfortunately, the Court, in its limited discussion of fingerprint detentions[49] has failed to articulate the "narrowly defined circumstances"[50] under which such detentions might be permitted. In addition, the Court has not indicated whether other types of investigatory detentions might be similarly affected. Perhaps other detentions to investigate crime will not be permitted at all in the absence of probable cause, even if a warrant was procured, if, for instance, such detentions can be characterized as a "probing into an individual's private life and thoughts which marks an interrogation or search."[51] On the other hand, it may be that these other types of detentions will be sanctioned on even less stringent requirements than were set forth in the instant case.[52] The instant case follows the trend of determining those searches and seizures which are "reasonable," by considering the totality of the circumstances and balancing the competing interests in each case. No longer is reasonableness being interpreted as strictly interrelated with the probable cause and warrant requirement of the fourth amendment. In *Camara* and *Terry*, by determining that the need to search and seize in certain limited situations outweighed the individual's right to be secure in his home and person, the Court opened the door to a broader interpretation of reasonableness. Similarly, the instant case suggests that the necessity of obtaining fingerprints does not outweigh the individual's right to be secure from an in-custody detention and therefore such detention will be held unreasonable, absent a warrant. The line of cases of which *Davis v. Mississippi* now becomes a member has served to make the fourth amendment a more flexible tool of adjudication.

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48. Chimel v. California, 395 U.S. 752 (1969). *See* note 8 *supra*.

49. This is normal practice, however, since the Court is limited to deciding the facts before it.

50. For the context in which the *Davis* Court used these words, *see* text accompanying note 44 *supra*.

51. Instant case at 727.

52. A case now before the U.S. Supreme Court, *Morales v. New York*, 22 N.Y.2d 55, 238 N.E.2d 307 N.Y.S.2d 898 (1968), *cert. granted*, 394 U.S. 972 (1969) (No. 668), where the New York Court of Appeals upheld, as reasonable, an in-custody detention to interrogate a suspect on less than probable cause and without a warrant, may answer this query.