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Reasonable Search under the Fourth Amendment

Lloyd Cowdin

by the courts. An ordinance like any other law will be effective only if it retains its full integrity and applies equally to all.

FOSTER WENDT.

REASONABLE SEARCH UNDER THE FOURTH AMENDMENT

The appellee was convicted in the District of Columbia for hindering and obstructing a health officer in the performance of his duties by refusing him admittance to her home on the ground that he had no search warrant. The health officer was answering a complaint that the building's halls were strewn with trash and uncovered garbage, and that the occupants of the building had failed to avail themselves of the building's toilet facilities. The regulation empowering the health officer to make the inspection contained no provision requiring or allowing the officer the use of a search warrant. On her appeal to the Municipal Court of Appeals, the conviction was reversed, and the District of Columbia appealed. *Held,* Congress has never enacted a statute providing for the enforcement of criminal law, demonstrating conclusively that Congress intends that the right of privacy shall not be invaded except in criminal cases. The Constitution prohibits unreasonable searches, and by implication permits reasonable searches. The intended search of the officer was not in the eyes of the court a reasonable search despite the character of his mission, for the reasonableness of a search without a warrant is to be judged by the extremity of the circumstances of the moment and not by the general characteristics of the officer or his mission. Affirmed. District of Columbia v. Little, 178 F. (2d) 13 (App. D.C. 1949).[1]

Holtzoff, District Judge, dissenting, urged that, "The Fourth Amendment relates only to searches and seizures in connection with criminal prosecutions or enforcement of penalties, and does not affect inspections conducted in the course of administration of statutes and regulations intended to promote public health or public safety."[2]

On certiorari to the U.S. Supreme Court, the majority opinion sidestepped the constitutional question. The opinion of Justice Burton, and Justice Reed, dissenting, will be hereinafter discussed.

The court in the decision at hand seems to have taken a restricted and not altogether warranted view of the existing law, thus circumscribing the modern view of the Fourth Amendment. It is submitted that the regulation[3] was enacted under, and exhibited a valid exercise of the reserved police power.

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1. Certiorari granted November 7, 1949, 338 U.S. 866.
2. District of Columbia v. Little, 178 F. (2d) 13 (App. D.C., 1949).
3. This regulation, in pertinent part, is: "2. It shall be the duty of every person occupying premises, or any part of any premises in the District of Columbia, . . . to keep such premises or part, . . . clean and wholesome. If upon inspection by the Health Officer or an inspector of the Health Department it be determined that any such part thereof, or any building yard, . . . is not in such condition as herein required, the owner thereof, as hereinbefore specified shall be notified and required to place same in a clean and wholesome condition."

Is a routine inspection by a health officer to be construed as an unreasonable search, and prohibited under the authority and by reason of the protection of the Fourth Amendment, when it has become a matter of common knowledge that such inspections are a part of the uniform practice of agencies of local government charged with responsibility for proper sanitation and plumbing in and about buildings?

Other than the principal case, no cases dealing with this specific problem have been found. By analogy, the case of *United States v. Smith*,[4] decided some three years prior to the decision in the principal case, reaches a completely opposite result. Through the *Smith* case the history of the unreasonable search concept may be traced. In that case an officer while patrolling his beat happened upon the defendant, as he stood on a street corner chatting with two acquaintances. Beside the defendant, resting on the sidewalk, was a closed but unlocked suitcase. The officer without permission opened the suitcase, and discovered therein a quantity of linen bearing the mark of the Pullman Company. When the defendant was charged with theft, he attempted to suppress the evidence so obtained on the ground that the search and seizure were unlawful. The court, citing *Boyd v. United States*[5] as authority for its decision, held such a search to be lawful, saying, "The history of the Fourth Amendment and this branch of the law generally shows that the particular abuse and the specific evil to which the Fourth Amendment was very largely directed consisted of exploratory domiciliary searches which had been conducted by the British and Colonial Governments prior to the revolution. * * * It is readily realized that all searches should not be banned and consequently the Fourth Amendment was directed only at those that were unreasonable. Where then, between these two extremes of 'reasonableness' should a model holding be placed? For, it is only the unreasonable search that is condemned by the Fourth Amendment."[6]

The court, in *Boyd v. United States*,[7] recognized that the decision written by Lord Camden in the English case of *Entick v. Carrington*[8] served as the precursor to the Fourth Amendment. Briefly stated, in that decision it was held that the Secretary of State, Lord Halifax, had no power to issue a general search warrant, which would allow his agents access to all papers, books, and manuscripts of any nature found within a suspect's house, by reason of the fact that no such warrant was authorized by law.

Justice Bradley, writing the opinion in the *Boyd* case, characterized the decision of the *Entick* case as follows: "As every American statesman, during our revolutionary and formative period as a nation, was undoubtedly familiar with this monument of English freedom, and considered it as the true and ultimate expression of constitutional law, it may be confidently asserted that its propositions were in the minds of those who framed the Fourth Amendment to the

4. 68 F. Supp. 737 (D.C. 1946).
5. 116 U.S. 616, 6 Sup. Ct. 524, 29 L. Ed. 746 (1886).
6. cf. Carroll v. United States, 267 U.S. 132, Sup. Ct. 280, 283, 69 L. Ed. 543, 39 A.L.R. 790, 797; United States v. O'Brien et al., 174 F. (2d) 341, 346, (C.C.A. 7th 1949).
7. Supra note 5.
8. 19 How. St. Tri. 1030, 2 Wils. K.B. 275, 95 Eng. Rep. 807 (1765).

constitution, and were considered as sufficiently explanatory of what was meant by unreasonable searches and seizures."[9]

Is it likely that Lord Camden, or the framers of the Constitution, contemplated that a situation such as that presented in the primary case was to be subjected to the application of the Fourth Amendment? Judge Holtzoff in his dissent is absolute in his opinion that it was not, for he says, "There is no doubt that the sanctity of the home is one of the fundamental private rights protected by the Constitution and must be safeguarded by the courts. The personal rights accorded to the individual by the First Ten Amendments are not, however, absolute or unqualified. And the right of inspection in the interest of public safety and public health is one of these qualifications."[10] He cited *Hubbell v. Higgins*,[11] as authority for his position; a case which dealt with the validity of a statute requiring the inspection of hotels. The court in that case held that the legislature has power to adopt legislation in the interest of public health and public safety, provided such legislation is reasonably adapted to the end sought, and that the statute authorized as incidental to the right of inspection, the right to invade private property so far as was necessary to carry out the required regulation and inspection.

Again, in the case of *Safee v. The City of Buffalo*,[12] the court held that although the Fourth Amendment was designed primarily to protect the individual in the sanctity of his home and the privacy of his books, paper and property, it has no application to reasonable rules and regulations adopted to protect public safety, public health, morals and welfare.

Further, in the case of *Geurin v. The City of Little Rock*,[13] it was held, as a broad general statement of the police power that, "The police power is as old as the civilized governments which exercise it. The states existed before the Constitution of the United States, and they possessed the police power before adopting that oraginc document. Moreover, it has been held many times that the Constitution supposes the pre-existence of the police power, and must be construed with reference to the fact."

On review before the Supreme Court of the United States with Justice Black writing the decision, the constitutional issues were bluntly sidestepped and the court disposed of the case on non-constitutional grounds. However, Justice Burton with Justice Reed dissented, and met the issue head on saying, "In my opinion, also, the duties which the inspector was seeking to perform, under the authority of the District, were of such a reasonable, general, routine, accepted and important character, in the protection of the public health and safety, that they were being performed lawfully without such a search warrant as is required by the Fourth Amendment to protect the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures."[14]

9. 116 U.S., —, 6 Sup. Ct. 524, 530, 29 L. Ed. 746, 749 (1886).
10. Supra note 2 at 24.
11. 148 Iowa 36, 126 N.W. 914 (1919).
12. 204 App. Div. 561, 198 N.Y.S. 646 (1923).
13. 203 Ark. 103, 155 S.W. (2d) 719 (1941).
14. District of Columbia v. Little, — U.S. —, 70 S. Ct. 468, 471, — L. Ed —, (1950).

The Court of Appeals in the primary case sets forth in the majority opinion the premise that the fundamental theory prompting the acceptance of the Fourth Amendment to the Constitution was the common law right of a man to the privacy of his home.*15* If this be so, then can it be said that the prohibition against invasion is to be so closely construed and so staunchly defended that a property owner shall be allowed to use it to repudiate and defeat a reasonable regulation which has been enacted for the benefit of the general public? It is submitted that the Fourth Amendment does not invest in a housekeeper such a deeply endowed right of privacy as to enable him to maintain a constant, potential health hazard to his neighbor. The premise should rather be, that a property owner does retain the right of privacy, but only so long as the right is not abused by the keeping of his home in such a state that it becomes a danger and a threat to his neighbors, and a menace to the community in which he lives.

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15. Supra note 2 at 16.