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Evidence—Search of Motor Vehicles for Intoxicating Liquors Without Search Warrant

The 1951 amendment to G. S. 15-27¹ provides that “. . . no facts discovered or evidence obtained without a legal search warrant in the course of any search, made under conditions requiring the issuance of a search warrant, shall be competent as evidence in the trial of any action.” As a result of this enactment, some confusion has arisen at the law enforcement level as to the right of officers to search a motor vehicle without a warrant, and at the trial court level as to the admissibility of evidence so obtained. The language of the amendment indicates that its purpose is to change the law of *evidence* in North Carolina,² and not the *substantive law* as to what constitutes legal or illegal search. Therefore a search that was legal without a warrant before the amendment became effective is still legal, and evidence so obtained still competent.

Under the common law, lawful search without a warrant may be made as an incident to arrest,³ or when the person in charge of the premises consents thereto.⁴ In addition, by statute in North Carolina⁵ an officer may search a motor vehicle without a warrant if he has *absolute personal knowledge* that the vehicle contains intoxicating liquor.⁶ A search of a motor vehicle made under other conditions requires a valid search warrant to be legal.⁷ But heretofore evidence secured by an illegal search without a warrant when a warrant was required has nevertheless been admissible.⁸ It is this evidence which the 1951 amendment renders incompetent.

A requirement that officers obtain a search warrant before lawfully stopping and searching moving vehicles would make adequate enforcement of the liquor laws impossible. For this reason moving vehicles have been held to occupy an exceptional place under the law of search and seizure in many states and in the federal courts. In dealing with this question, the United States Supreme Court, rather than relaxing the rule excluding illegally obtained evidence, chose in-

¹ N. C. SESS. LAWS (1951) c. 644.

² See *A Survey of Statutory Changes in North Carolina in 1951*, 29 N. C. L. REV. 396 (1951).

³ *State v. Fowler*, 172 N. C. 905, 90 S. E. 408 (1916); *State v. Graham*, 74 N. C. 646 (1876).

⁴ *State v. Fowler*, 172 N. C. 905, 90 S. E. 408 (1916).

⁵ N. C. GEN. STAT. §18-6 (1943).

⁶ In *State v. Godette*, 188 N. C. 497, 503, 125 S. E. 24, 28 (1924), the court stated that absolute personal knowledge could be acquired through the sense of seeing, hearing, smelling, tasting or touching.

⁷ Another possible exception to the rule requiring a search warrant is the examination of an abandoned vehicle. But no cases have been found which touch on this point.

⁸ *State v. Vanhoy*, 230 N. C. 162, 52 S. E. 2d 278 (1949); *State v. McGee*, 214 N. C. 184, 198 S. E. 616 (1938); *State v. Graham*, 74 N. C. 646 (1876).

stead to change the definition of an "illegal search." *Carroll v. United States*⁹ held that if a search and seizure without warrant are made by federal officers upon a belief, reasonably arising out of circumstances known to the seizing officer, that a vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid.¹⁰ Thus such officers may stop and search an automobile if they have *probable cause* to believe that it is being used to transport intoxicating liquor.¹¹

The North Carolina and federal laws are now virtually the same in holding evidence incompetent if obtained by a search made illegal because no warrant was used. But as to what *constitutes* a legal search

⁹ 267 U. S. 132 (1925).

¹⁰ The idea did not originate in the *Carroll* case. The First Congress, which incidentally proposed the Fourth Amendment to the Constitution prohibiting unreasonable searches and seizures, in an act regulating duties in 1789 allowed "collectors, naval officers and surveyors" to stop and search any ship or vessel in which they shall have "reason to suspect" is carrying concealed goods subject to a duty. L. STAT. 29, 43 (1789).

¹¹ A corollary question is, when may an officer stop a moving vehicle in enforcement of the general law. Since the earliest common law days, constables in England have been permitted to stop and investigate suspicious persons. 2 HAWKINS, PLEAS OF THE CROWN c. 13, §§5-6 (6th ed. 1787). The few state cases found which have directly commented on the question have unanimously held that officers may stop and make reasonable inquiry of persons suspected of criminal conduct. No distinction has been made between misdemeanors and felonies, or between persons riding or walking. See, e.g., *People v. Henneman*, 367 Ill. 151, 10 S. E. 2d 649 (1937); *State v. Broas*, 240 Mich. 490, 215 N. W. 420 (1927) (defendant suspected of transporting liquor gave not only consent but an invitation to search by handing officer keys to car); *Hargus v. State*, 58 Okla. Cr. 301, 54 P. 2d 211 (1935); *Johnson v. State*, 118 Tex. Cr. 293, 42 S. W. 2d 421 (1931); *Pena v. State*, 111 Tex. Cr. 218 S. W. 2d 1015 (1928); *State v. Zupan*, 155 Wash. 80, 283 P. 671 (1929). The federal courts have indicated their position in holding that if probable cause is acquired *after* stopping and questioning, but *before* the actual search begins, the search is legal. *Brinegar v. United States*, 338 U. S. 160 (1949); *Morgan v. United States*, 159 F. 2d 85 (10th Cir. 1947).

Nearly all states have statutes similar to N. C. GEN. STAT. §20-183 (1943) allowing officers to stop motor vehicles for the purpose of examining the driver's license without suspicion or reason to believe the driver is violating the driver's license law. Therefore, it is believed that these statutes *supplement* the common law right of officers to stop and question where he does have reason to suspect that some other crime is, has been, or is about to be committed. There is an interesting line of Tennessee cases, however, which in effect hold that the driver's license inspection law has abrogated the common law right of officers to stop on suspicion of other crime. Consequently, if an officer stops an automobile on suspicion of its hauling liquor, examines the driver's license, and sees liquor in the car without actually searching, the evidence is incompetent under the exclusionary rule on the ground that the officer had no right to stop the car except to examine the driver's license. *Robertson et al. v. State*, 184 Tenn. 277, 198 S. W. 2d 633 (1947); *Smith v. State*, 182 Tenn. 158, 184 S. W. 2d 390 (1945); *Cox v. State*, 181 Tenn. 344, 181 S. W. 2d 338 (1944). In a later case, however, the Tennessee court seems to recognize the common law right of officers to stop an automobile and investigate on suspicion of criminal conduct other than motor vehicle violations. *High v. State*, 188 Tenn. 166, 217 S. W. 2d 774 (1949).

The courts seem to take for granted that officers have the right as a necessary police measure to stop and make reasonable inquiry of persons suspected of criminal conduct. This probably explains the small number of cases in which the courts have directly commented on the question.

of a vehicle without a warrant, the laws differ greatly in the two jurisdictions,¹² one having the "absolute personal knowledge" requirement, while in the other only "probable cause" is required.

Of course, the purpose of the rule excluding illegally obtained evidence which North Carolina has adopted¹³ is to protect persons from unreasonable searches and seizures.¹⁴ But there is an equal public interest in the enforcement of the criminal law. The statutory requirement of "absolute personal knowledge," together with the "exclusionary rule" embodied in the amendment to G. S. 15-27, seems to make adequate enforcement of the liquor laws impossible. Should the "exclusionary rule" be continued, a substitution of the "probable cause" federal test of legal search for the present requirement of "absolute personal knowledge" might better serve all interests concerned.¹⁵

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Federal Jurisdiction—Three-Judge Court—Meaning of "State Statute"

Congress has made provisions in certain types of situations where an overriding public importance is involved for a special three-judge district court to supplant the ordinary single-judge court.¹ Such situations include equity actions by the United States under the Sherman Anti-Trust Act and the Interstate Commerce Act, actions to restrain the enforcement of any order of the Interstate Commerce Commission and actions to restrain the enforcement of an act of Congress on the grounds of its repugnance to the Constitution. An additional situation is where an interlocutory or permanent injunction is sought in Federal district

¹² Except search incident to arrest, or with consent.

¹³ N. C. GEN. STAT. §15-27 (1943) made incompetent any evidence obtained by a search that was illegal because the warrant was defective under the statute. It was held in *State v. McGee*, 214 N. C. 184, 196 S. E. 616 (1938) that it did not exclude evidence obtained by an illegal search where no warrant at all was used. The 1951 amendment to the statute corrects this anomalous situation.

¹⁴ The rule was first suggested by the United States Supreme Court in *Boyd v. United States*, 116 U. S. 616 (1885). But it remained for *Weeks v. United States*, 232 U. S. 383 (1914) to clearly establish the rule and its reason. Wigmore severely criticizes the rule. 8 WIGMORE, EVIDENCE §§2183-2184 (3d ed. 1940). See Harno, *Evidence Obtained by Illegal Search and Seizure*, 19 ILL. L. REV. 303 (1925); Waite, *Evidence—Police Regulations by Rule of Evidence*, 42 MICH. L. REV. 697 (1944). But see Fraenkel, *Concerning Searches and Seizures*, 34 HARV. L. REV. 361 (1921); Fraenkel, *Recent Developments in the Law of Search and Seizure*, 13 MINN. L. REV. 1 (1928). The rule is not in effect in thirty-one states, England, Canada, Scotland, and Australia. *Wolf v. Colorado*, 338 U. S. 25, 38, 39 (1949).

¹⁵ No cases have been found which indicate what standard North Carolina requires for making a lawful search without a warrant for contraband other than intoxicating liquor. It is believed that the standard of absolute personal knowledge would be applied. See MACHEN, THE LAW OF SEARCH AND SEIZURE 61 (1950).

¹ MOORE, COMMENTARY ON THE U. S. JUDICIAL CODE 125 (1949).