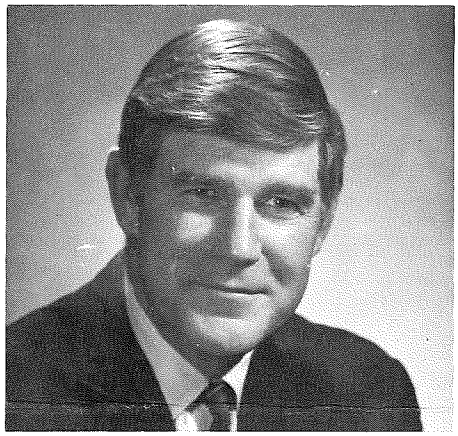
NOVEMBER 1970

ALERT

CRIMINAL DIVISION

FROM THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF MAINE.



MESSAGE FROM THE ATTORNEY GENERAL JAMES S. ERWIN

In this month's issue of ALERT, we are continuing our discussion of the law of search and seizure, with regard to search of motor vehicles without a warrant. It is important that this month's article be read together with the October bulletin since both articles are necessary for a complete understanding of the law.

Also, it is suggested that each concerned police officer keep his monthly issues of ALERT together in a looseleaf notebook or folder. As was mentioned last month, we are planning a comprehensive law enforcement manual to deal with all aspects of law enforcement and in the manual we may want to refer to a particular issue of ALERT for detailed discussion. If all the issues of ALERT are kept together, they will be much easier to refer back to.

We are introducing in this issue of ALERT a brief code system for the summaries of recent court decisions. This code is designated to direct a case to the attention of those who would be particularly interested in it. Thus, the letter "L" would indicate a case of particular interest to a law enforcement officer "P" to a prosecutor, and "J" to a judge. We hope this code will aid everyone in the use of this bulletin.

James S. Erwin

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SEARCH AND SEIZURE OF VEHICLES WITHOUT A WARRANT

Movable vehicles have been treated somewhat differently from fixed premises by our courts in regard to the law of search and seizure. This is largely because of their mobility, their use as transportation to and from scenes of crimes, and their employment in transporting dangerous weapons, stolen goods, contraband, and other implements of crime. The court interpretations of whether certain police actions in this area are reasonable or unreasonable have generally tended to favor the law enforcement officer. This is due, of course, to the emergencies which arise in so many of these cases, where frequently there is immediate danger to the officer or the likelihood of concealment or destruction of evidence if time is taken to obtain a warrant.

Basically, however, the same rules apply to the search of vehicles as to the search of fixed premises. For instance, it is well settled that an automobile is a personal "effect" within the meaning of the fourth amendment and as such is clearly protected against unreasonable searches and seizures. Therefore, it must be emphasized that law enforcement officers should obtain search warrants whenever and wherever it is possible and practicable. Guidelines for obtaining a warrant can be found in the October 1970 issue of ALERT.

Some relaxation of this warrant requirement for the search of movable vehicles has been authorized by court decisions. The guidelines in these decisions must be followed or the search will be held unreasonable and the evidence seized will not be admissible in court. This article will attempt to clarify these guidelines to give the law enforcement officer a better sense of his rights and limitations in this area of the law.

THE CARROLL DOCTRINE

The capacity of a motor vehicle to be moved quickly to an unknown location or beyond the jurisdictional reach of a law enforcement officer often makes resort to a search warrant impossible. In many cases, if the officer takes the time to obtain a search warrant, there is a risk that contraband, fruits of a crime, instrumentalities of a crime, or criminal evidence will be destroyed, removed, or concealed in the meantime. In response to this problem, courts, in certain instances, have permitted a search to be made without a warrant, when the officer has probable cause to believe that the vehicle contains items subject by law to seizure. *Carroll v. U.S.*, 267 U.S. 132 (U.S. Supreme Court 1925). The Carroll doctrine, as this ruling is called, has proved, over the years, to be an important tool of law enforcement. Officers have resorted to this doctrine in situations where 1.) it is impossible to obtain a warrant, 2.) there are no grounds for an arrest and thus no search incident to arrest, and 3.) consent to search cannot be obtained.

Probable Cause Requirement — Carroll Doctrine

It is important to remember that the controlling consideration in the search of a vehicle without a warrant is probable cause to believe that the vehicle contains items which offend against the law and thus are subject to seizure. Probable cause, again, is cause based upon grounds which would satisfy the mind of an ordinary, prudent, and cautious person that the vehicle contains these items. A person would not have to be certain, but would have to have grounds for more than mere suspicion. As in all search and seizure cases, each incident will be judged on its particular circumstances and the police officer must be able to explain the factors which contributed to his arriving at probable

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cause. Courts will be quick to suppress evidence seized which was not the product of probable cause.

Requirement of Emergency Circumstances — Carroll Doctrine

Of equal importance with the probable cause requirement in searches of vehicles without a warrant is the requirement that such a search be allowed only in emergency circumstances, when obtaining a warrant is not possible or practicable. In general, it may be said that the practicability of obtaining a warrant depends on whether or not a vehicle is in a mobile or movable condition. If the vehicle is in running order and there is a possibility that a delay to obtain a warrant will result in removal of the car to an unknown location and concealment or destruction of evidence, then an immediate search, based on probable cause, may be conducted. However, once the possibility of removal of the vehicle no longer exists, the right to proceed without a warrant terminates.

The determination of whether a vehicle loses its movable character depends upon the circumstances of each case. Certain guidelines for this determination have been set out by the courts. It is now well settled that a vehicle which is placed in a police storage lot after the occupants have been jailed and the keys removed from their possession is no longer in a mobile condition. *Welch v. U.S.* 411 F. 2d 66, (10th Circuit Court of Appeals 1969), *Preston v. U.S.*, 376 U.S. 364, (U.S. Supreme Court 1964). On the other hand, a vehicle does not lose its movable character merely because it has been brought to a temporary halt or has been momentarily left unattended. The possibility of removal of the vehicle is present whether the vehicle is in transit on the open road or parked. *Armada v. U.S.*, 319 F. 2d 793 (5th Circuit Court of Appeals 1963).

A recent United States Supreme Court case, *Chambers v. Maroney*, 399 U.S. 42 (1970) has somewhat enlarged the scope of search and seizure of automobiles without a warrant. In that case, the police had information that the robbers, carrying guns and the fruits of the crime, had fled the scene in a light blue compact stationwagon which would be carrying four men, one wearing a green sweater and another wearing a trench coat.

The Court held there was probable cause to arrest the occupants of such a stationwagon that the officers had stopped; just as obviously was there probable cause to search the car for guns and stolen money. The measure of the legality of such a seizure in such a case is that the seizing officer shall have probable cause for believing that the automobile which he spots and searches has stolen property in it.

However, besides probable cause, we must also ask whether the car was in a movable condition in this case. The arrest of the four men had taken place in a dark parking lot, and to facilitate the search, the car was brought to the police station and the search thereby delayed for a short period. Despite this delay and despite the fact that all four occupants of the car were under arrest, the court allowed the search, finding that *someone* could have removed the car, thus fulfilling the mobility requirement. This case is looked upon as somewhat broadening the definition of "mobility" of a vehicle for purposes of search without a warrant. There are conflicting views as to the full meaning of *Chambers v. Maroney* and we will deal with court interpretations of it as they arise in future issues of ALERT.

Examples — Operation of the Carroll Doctrine

The following examples are designed to illustrate different situations under which probable cause and emergency circumstances may or may not arise with respect to the search of vehicles:

1. Suspicious Conduct

Police observed an unlighted automobile parked near the rear of a partially fenced in vacant lot at night and observed two persons jump out of the vehicle and run away when the spotlight on the patrol car was turned on the parked vehicle. The court held that a subsequent warrantless search of the vehicle was valid.

> ". . . where highly suspicious circumstances are created by the obvious acts of a defendant, yet no specific offense is indicated, it is not unfair or unreasonable to say that he has invited full investigation of those circumstances and acts." *Perez v. Superior Court*, 58 Cal. Rptr. 635 (California 1967)

See also *State of Maine v. Richard J. Poulin* under *Maine Court Decisions* in this issue.

However, in a case where the defendant merely behaved nervously after being stopped for having one missing license plate, the court suppressed the evidence seized. The defendant's nervousness alone did not give the police reasonable grounds to believe a crime was being committed and the warrantless search of the car was unjustified. *People v. Reed*, 227 N.E. 2d 69 (Illinois 1967)

2. Prior Information

See *Chambers v. Maroney* (above) where police had prior information that a robbery had been committed and descriptions of the getaway car and the suspects upon which to base their probable cause to search.

But in a case where the defendant was arrested for a minor traffic offense and the police had no knowledge of a robbery having been committed or of any other suspicious circumstances except the observance of a rubberized cord hanging from the closed trunk lid of defendant's car, there was not probable cause to search. The court did not feel that the rubber cord was a particularly suspicious circumstance, certainly not enough to provide probable cause to search, without other information. A search on probable cause is only valid if the officer has specific items of property in mind to search for as a result of the outside information he has received. The officer may *not* conduct a general exploratory search to find evidence of guilt without prior probable cause to believe the vehicle contains items legally subject to seizure. *People v. Erickson*, 201 N.E. 2d 422 (Illinois 1964).

Necessity for Obtaining Warrant Despite Mobility of Car

There are some situations in which even a completely mobile vehicle cannot be searched on probable cause alone. This would be the case when police surveillance indicates that a suspect follows an almost fixed, habitual pattern of time, place, and movement and the use of an automobile is merely incidental to this pattern. In this situation, there is no indication that the delay necessary to obtain a warrant will result in the removal of the vehicle or its contents. *Clay v. U.S.*, 239 F 2d 196 (5th Circuit Court of Appeals 1956).

Thus, the key issue in each instance is — is it practicable to obtain a search warrant? That is to say, do the circumstances allow sufficient opportu-

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nity to secure and execute a warrant without unduly risking the loss of evidence believed to be contained in the car. If it is practicable to obtain a warrant, then a search of the vehicle is not permissible without it and evidence seized will be suppressed in court.

Entry Upon Private Premises

Courts have held that where police officers, acting on adequate probable cause and following closely behind a vehicle, would have been authorized to search the vehicle while on a public street, they may properly follow the vehicle onto private property and conduct the search there.

Example:

An informant's tip and careful surveillance gave police officers probable cause to believe that a certain automobile had contraband in it. The officers followed the auto until the defendant parked it in his garage. The subsequent warrantless search of the car in the garage was held valid by the court. ". . . It seems plain enough that just before he entered the garage, the following officers properly could have stopped petitioner's car and made search. . . . Passage of the car into the open garage closely followed by the observing officer did not destroy this right." *Scher v. U.S.*, 305 U.S. 251 (U.S. Supreme Court 1938).

EXAMINATION OF AN IMPOUNDED VEHICLE

It is common practise among some police departments for the arresting officer to take possession of a vehicle whenever the driver or person in control is taken into custody and to remove the vehicle to the nearest garage or police lot. In some jurisdictions, the officer may even have a duty to impound the vehicle in order to insure its adequate safekeeping during the period of the arrestee's confinement. This is especially true when there is no friend or relative of the car's owner available to remove and call for it. If this is not done, the owner might later make unfounded claims of theft or loss of property.

However, the right or duty to impound does not automatically follow as an incident of the arrest or taking into custody. Absent other circumstances justifying the impounding of the vehicle, there is some question about the legality of impoundment where the arrestee desires to leave the vehicle in the custody of another party who can remove it to safety. In a case where both occupants of the car were intoxicated, and there was no-one to drive or take charge of it, the court favored impoundment over leaving the car unattended on the street. *People v. Havenstein*, 84 Cal. Rptr. 528 (California 1970). Also, the removal of an unoccupied parked vehicle is clearly justified where the vehicle constitutes a traffic hazard or otherwise violates local parking ordinances.

Assuming that the vehicle has been lawfully impounded, the question then arises as to whether or not a valid search for incriminating materials can be made without a warrant. Since the possibility of removal or destruction of the evidence terminates when the vehicle is placed in storage, then, even though probable cause exists, the warrantless search of an impounded vehicle after the occupant's arrest is illegal. *Westover v. U.S.*, 342 F 2d 68 (9th Circuit Court of Appeals 1965). This type of impoundment situation must be clearly distinguished from the situation where the vehicle is forfeited to the state under a statute (See *Cooper v. California*, 386 U.S. 58 (U.S. Supreme Court 1967) or where the car is seized as the fruit or instrumentality of a crime. (See *Abrams v. State*, 154 SE 2d 443 (Georgia 1967). Under these separate procedures, the automobile is seized in its entirety and no further trespass is involved by its later examination. (These situations will be discussed later in the article.) The general police authority to impound, which we are discussing here, however, is much more limited. It does not carry with it the right to assume complete control or dominion over the property and everything contained therein, but is restricted solely to those measures which are reasonably necessary to insure the safe custody of the owner's property.

Examination and Inventory

In order to so protect the arrestee's property, it is considered appropriate that the officer examine the vehicle and take an inventory of the property in the car so that it may be returned to the owner later on and to prevent false charges of theft or loss during the interim. This type of examination is not considered a search under the 4th amendment and is therefore not subject to the standards of reasonableness in that context. It is viewed rather as a simple administrative-custodial procedure. As such, however, this procedure cannot be used as a subterfuge to rummage around for incriminating materials and thus circumvent the warrant requirement. *Harris v. U.S.* 370 F 2d 477 (District of Columbia Circuit Court of Appeals 1966).

Accordingly, the scope of the examination and inventory must be restricted solely to those areas of the vehicle where a person would ordinarily be expected to store his belongings. The examination, therefore, would usually include the glove compartment, the trunk, the sun visors, the front and rear seat areas, and other places where property is ordinarily kept, but not hidden areas. *People v. Andrews*, 85 Cal. Rptr. 908 (California 1970). Moreover, a notation should be made of the vehicle identification number, the motor number, and the make, model and license plate of the car so that it may be readily identified at a later date. *Cotton v. U.S.* 371 F. 2d 385 (9th Circuit Court of Appeals 1967).

Similarly, the intensity of the examination must also be limited according to its purpose. Thus, if the officer dismantles the vehicle, looks behind the upholstery, or in any other manner indicates that his purpose is other than to protect the arrestee's property, the courts will consider the examination to be a subterfuge designed to uncover evidentiary materials. In that event the fruits of the search will be inadmissible. In addition, the normalcy of the practice will also be pertinent in determining the good faith of the officer. If it is not the usual procedure of the department to store and examine vehicles found to be in the possession of the arrested person, any deviation from this routine will be viewed with skepticism by a court. Moreover, where the officers delay making their examination for several days after the arrest and impoundment of the automobile, naturally some doubt is cast on the validity of the examination.

Plain View Doctrine

While it cannot be the officer's purpose to look for evidence of crime, if he unexpectedly discovers contraband or other items subject to seizure during the course of a bona fide inventory, these items may properly be seized and are admissible in evidence. Since he is lawfully conducting an inventory in the vehicle and there has

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been no search in the legal sense, the situation falls within the "plain view" doctrine which permits the nontrespassing officer to seize contraband discovered in open and patent view. *People v. Nebbitt,* 7 Cal. Rptr. 60 (California 1960). It is considered in this situation that a crime is being committed in his presence and the law does not require "that under such circumstances the law enforcement officials must impotently stand aside and refrain from seizing such contraband material." *Harris v. U.S.* 331 U.S. 145 (U.S. Supreme Court 1947).

Example:

Local officers stopped a vehicle which was being operated without license plates. Neither of the occupants claimed to be the owner of the automobile nor did they know to whom it belonged. Furthermore, the driver's statement that he had borrowed the vehicle from a used car dealer was not consistent with information disclosed on the registration sticker. On the basis of this information, the officers arrested the two men on a charge of auto theft. "Thereafter, as a normal procedure before impounding the vehicle, the officers began an inventory of all personal property found therein." One of the officers picked up a jacket on the front seat where defendant had been sitting and noticed in plain sight a burned cigarette. Inasmuch as it appeared to be marijuana, the officer then searched the jacket and found another such cigarette in the left-hand pocket. The defendant then admitted that he had purchased the cigarettes approximately 1 week earlier.

On appeal of the conviction for having illegal possession of marijuana, the court held that the possession of the narcotic was legally obtained by the officer, stating:

> "In the course of making the inventory of the contents of the car, the officer merely removed the jacket from the front seat revealing in plain sight the narcotic. How it got there could not be determined but it is clear that when the officer picked up the jacket the cigarette was there for all to see. Actually the officer's observation of the cigarette was not the result of a search, for it appeared in plain sight in the normal course of the reasonable and valid activity of the officer in making the inventory incidental to impounding the car."

People v. Nebbitt, 7 Cal. Rptr. 60 (California 1960).

Plain View Applied to Other Situations

It is important to note that the "plain view" doctrine is not limited to the caretaking and inventory situation as illustrated by the Nebbitt case above. The general rule is that if the officer is in a position which he has a legal right to be in and he observes items subject to seizure by law, he may seize these objects without the necessity of obtaining a warrant. This situation is not considered a search under the 4th amendment.

Thus, a tire tool observed through an automobile window when defendant was arrested for violation of a minor city ordinance helped provide probable cause for a robbery arrest and also was validly seized as evidence of the robbery. *State v. Hill,* 422 P. 2d 675 (Oregon 1967). Some courts have extended the "plain view" doctrine to allow the admission in court of evidence seized as a result of a police officer shining a flashlight into a car at night and observing the evidence lying in the open in this manner. "When the circumstances of a particular case are such that the police officer's observation would not have constituted a search had it occurred in the daytime, then the fact that the officer used a flashlight to pierce the nighttime darkness does not transform his observation into a search." *Marshall v. U.S.,* 422 F 2d 185 (5th Circuit Court of Appeals 1970). Of course, the police officer must have had a legal right to be in the position he was in and to shine the flashlight into the car.

It has also been held that looking for the serial number of a car for identification purposes and examining the outside surface of a car are not searches under the 4th amendment and thus are not subject to the standards of reasonableness or the warrant requirement. *Commonwealth v. Dolan,* 225 NE 2d 910 (Massachusetts 1967), *U.S. v. Gibson,* 421 F 2d 662 (5th Circuit Court of Appeals 1970).

ABANDONMENT OF VEHICLE

The central concern of the 4th amendment is to protect the privacy and sanctity of one's property against arbitrary intrusion by officers of the state. Should a person intentionally abandon property, however, he gives up any interests in it and cannot later complain of a taking by the police or of its use against him in court. *Bullock v. U.S.,* 368 F. 2d 483 (5th Circuit Court of Appeals 1966). Under these circumstances, there is neither a search nor a seizure, and the police are free, without further grounds, to take the property into custody.

The guidelines for determining whether a vehicle has been abandoned have not been clearly set out by case law. However, several factors have been recognized as bearing on the abandonment issue. Chief among these is the sudden flight of a suspicious motorist from a vehicle on sighting the police, particularly where the occupant deserts the car while under "hot pursuit." *People v. Harper,* 85 NE 2d 865 (Illinois 1962). The suspect's conduct in these cases is interpreted as an intent to discard the property (vehicle) to avoid detection or arrest.

Courts also often find that there has been an abandonment in law by looking to such factors as the condition of the vehicle, its location, and the length of time it has remained in that location. Thus in one case, a stolen vehicle was characterized as abandoned when it was found mired on a little-used side road. *U.S. v. Angel,* 201 F. 2d 531 (7th Circuit Court of Appeals 1953).

INSTRUMENTALITY OF A CRIME

The movable vehicle is peculiar in that, besides its obvious use as a transporter of people and goods related to crime, it can itself be an instrumentality of crime. Some courts have taken the view that for certain types of crimes, the entire automobile may be seized as an instrumentality of the crime, much like the seizure of any other weapon. Then, the argument goes, a vehicle could be examined and tested much like a weapon for hair, bloodstains, soil, fingerprints, and other physical evidence. *Weaver v. Lane,* 382 F. 2d 251 (7th Circuit Court of Appeals 1967). This theory would be particularly useful in cases of rape, robbery, and other violent crimes where the automobile itself is the scene of the crime or an integral part of it. Maine courts have shown an inclination toward this theory. See *Maine Decisions* in this issue of ALERT and *State v. Warner,* 237 A. 2d 150 (Maine 1967). However, this is still a very unsettled area of the law and the police officer would be well advised to proceed on the basis of established principles and obtain a warrant.

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SEARCH INCIDENT TO ARREST

Essentially the same rules apply to movable vehicles as to fixed premises in the area of search incidental to a valid arrest. (See the October 1970 issue of ALERT). However, there are some peculiarities of the law in regard to vehicles that are worthy of attention.

The leading case in this area is the recent Supreme Court decision of *Chimel v. California,* 395 U.S. 752 (1969). That decision had the effect of limiting searches incident to an arrest of a suspect to that area into which he might reach for a weapon to harm the arresting officer or to escape, or for items of evidentiary value which the suspect could conceal or destroy. The "reach area" that *Chimel* leaves searchable as incident to arrest should not be restricted to an arm's length radius encircling a stationary man. For instance, allowance for the distance covered by a sudden lunge should be made by the arresting officers. *Application of Kiser,* 419 F. 2d 1134 (8th Circuit Court of Appeals 1969).

Where an alleged offender is arrested in an automobile and has been removed from it, it is clear that *Chimel* requires the officers to obtain a search warrant if there is no indication that the car or its contents would be removed or destroyed while the warrant was being obtained. *Colosimo v. Perini,* 415 F. 2d 804 (6th Circuit Court of Appeals 1969).

It must be remembered that a search incident to an arrest must be carried out at the same time as the arrest and must relate to legitimate purposes, namely the protection of the police officer and prevention of destruction of evidence. It doesn't matter whether the delay after arrest is 20 minutes or 20 hours, it will still invalidate the search as one incidental to arrest. *Wood v. Crouse,* 417 F. 2d 394, (10th Circuit Court of Appeals 1969).

Chimel would not limit a warrantless search of a vehicle under the situations we have already discussed. Thus, where the car, at the time of the arrest, has been validly seized as an instrumentality of a crime, where valid consent to search has been given, or where there is probable cause and emergency circumstances, *Chimel* would not require the obtaining of a search warrant.

SUMMARY

To briefly summarize, in any situation where the police officer feels that a search of a movable vehicle is required, his first thought should be "Is it possible and practicable to get a search warrant?" If he answers this question in the negative, then and only then should he consider the various grounds for search without a warrant.

IMPORTANT RECENT DECISIONS

Note: Cases that are considered especially important to a particular branch of the law enforcement team will be designated by the following code: J - Judge, P - Prosecutor, L - Law Enforcement Officer.

Sentencing J

Defendant had concealed a gun which had been used in a holdup which resulted in a robbery and a murder. He was given consecutive sentences for being an accessory after the fact to both crimes. The court said that where the aid given was not able to be allocated either in time, place, or manner between the two separate offenses, it was improper to impose consecutive sentences for each offense, since guilt was based in each instance on the same aid to the same felons. *McClain v. State,* (Maryland Court of Special Appeals, August, 1970).

Miranda (Custody) L

Defendant was questioned in his apartment by FBI agents about harboring a fugitive, whom they had an arrest warrant for. Defendant was not given Miranda warnings and was later convicted of harboring a fugitive.

The court ordered a new trial, holding that the defendant was in "custody", and therefore should have been given Miranda warnings. In determining that defendant was "in custody", the court used the objective test of whether a "reasonable man" would believe he was no longer free to go about his business without significant restraint. The court found the following circumstances convincing:

1. The FBI agents were searching defendant's home under a warrant
2. Defendant was originally mistaken for the fugitive and was treated as such.
3. Defendant's apartment was surrounded by police and he knew it.
4. Defendant was requested by the agents to accompany them to different areas of the apartment.
5. One of the agents *insisted* that the bedroom where the fugitive was later found be searched.
6. Defendant was subjected to close and persistent questioning and was warned of the provisions of the criminal statute.
7. At the conclusion of the interrogation, defendant was taken into custody for a minor traffic offense which the agents had learned of from local police.

U.S. v. Bekowies, (9th Circuit Court of Appeals, August, 1970).

Probable Cause L

The court's decision here illustrated the criteria which would satisfy the requirement of probable cause in obtaining a search warrant in an abortion case.

1. An anonymous informer who had supplied reliable information in the past told the police that defendants were performing abortions.
2. Defendants had rented the premises under false names.
3. Defendants had been convicted in Virginia and tried in the District of Columbia on abortion charges.
4. Police surveillance revealed numerous activities more consistent with abortion activities than the maintenance of a normal dwelling house.

Lashley v. State, (Maryland Court of Special Appeals, August, 1970).

Evidence, Search and Seizure

Defendants had disclaimed ownership of a suitcase which was later introduced in evidence against them. The court held that they could not object to the admission of the suitcase in evidence because the right to be protected against unreasonable searches is personal and the defendant who claims no interest in seized property cannot object to its admission. *Lurie v. Oberhauser,* (9th Circuit Court of Appeals, August, 1970).

Evidence J

The court allowed a prior inconsistent statement of a witness to be used as substantive evidence rather than limiting it to impeachment of the witness. Although the accepted rule is contrary to this, the court said the error was not of constitutional dimensions and the accepted rule itself is considered illogical and archaic by most modern authority. *Isaac v.*

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U.S., (9th Circuit Court of Appeals, 1970).

Search and Seizure, Arrest L

Police were carrying out the investigation of a robbery. They knocked on defendant's door and announced themselves and when he opened it, police saw a person resembling a description of one of the suspects and large stacks of coins on the table, probable loot from the robbery. The officers then made a warrantless search of the apartment, discovered other evidence, and arrested the occupants.

The court said that at the moment the door opened and the contents of the apartment were revealed, probable cause for arrest, urgent circumstances, and the prospect of unreasonable delay all came together to justify the warrantless entry and arrest. The urgent circumstances relied on by the court as guidelines in justifying this warrantless entry are as follows:

1. A grave offense involving violence was involved.
2. The suspects were reasonably believed to be armed.
3. There was, besides ordinary probable cause, additional "reasonably trustworthy information" to believe that the suspect committed the crime involved.
4. There was strong reason to believe that the suspect was in the premises being entered.
5. There was a likelihood that the suspect would escape if not swiftly apprehended.
6. The entry was made peaceably.

Harris v. U.S., (District of Columbia Circuit Court of Appeals, August, 1970).

Drunken Drivers — Rights to Counsel

An examination of the U.S. Supreme Court's holdings on right to counsel and what is a "critical stage" of a criminal proceeding convinces the New Hampshire Supreme Court that the taking of a blood test under the state's implied consent law is *not* a "critical stage" at which the assistance of counsel is required. The court believes that, under New Hampshire procedure, the evils against which the right of counsel is designed to protect are not present. Additionally, the decision whether to submit to the test or face a 90-day license suspension is not essentially "a lawyer's decision". *State v. Petkus*, (New Hampshire Supreme Court, September, 1970).

MAINE COURT DECISIONS

Note: Cases that are considered especially important to a particular branch of the law enforcement team will be designated by the following code: J - Judge, P - Prosecutor, L - Law Enforcement Officer.

Search and Seizure, Arrest, Self-Incrimination L

Police took custody of an automobile and its contents and later arrested defendant after a series of observations of suspicious circumstances. The car and its driver, known to the police, were observed driving around late at night. The car was later observed pulling into a driveway and the occupant running away from it. A 2-foot square safe was observed in the opened trunk of the car. Later, defendant was observed running into his home, which was in the same neighborhood as the car.

The police took the car into custody. The court justified this partly on the basis that there was probable cause that the safe was stolen. 1.) The police were acquainted with the car and its owner; 2.) It was parked in a place known not to belong to defendant's family; 3.) The occupant of the car fled after parking it; 4.) A safe of the type used in local businesses was in open view. The court felt that since the safe was too heavy for one person to carry, the car was itself an instrument of the probable crime, and the guilty parties might return and flee in the car, it was reasonable to remove the car to the police garage for protective custody.

The safe and a black glove found lying on the front seat were ruled admissable in evidence on the ground that "observation of 'that which is open and patent' is not a search." *State v. MacKenzie*, 161 Me. 123, 137. "The constitutional guaranty against unreasonable searches and seizures does not prohibit a seizure without warrant where there is no need of a search, and where the contraband subject matter is fully disclosed and open to the eye and hand".

Defendant was taken into custody by police when he was attempting to leave his home by taxi. The court said that the collective facts, stated above, were reasonable grounds for suspicion that defendant was guilty of the felony. Thus, his arrest *without a warrant* was lawful.

The police also later found footprints around the premises of the place from which the safe had been stolen. They took defendant's shoes, which matched the prints, and used them as evidence. The court said that this did not violate defendant's privilege against self-incrimination because the shoes were not of a testimonial or communicative nature.

State of Maine v. Richard J. Poulin, Law Docket No. 44, (August 1970).

Fair Trial, Indictment J - P

An accused does not, as an adjunct to his constitutional right to a fair and speedy trial, have the right to decide which of a number of cases pending against him will be tried first. This is a matter for the prosecution to determine, subject to the supervisory discretion of the trial court.

On a charge of breaking and entering with intent to commit larceny, it is *not* required that the indictment describe specifically the intended larceny in terms of the goods intended to be stolen and the person whose property they are. A general intent to steal goods completes the offense and the averment of such intent in general terms is sufficient.

Lumsden v. State of Maine, Law Docket No. 1491. (July 1970).

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine.

ALERT

The matter contained in this bulletin is information for the criminal law community only. If there is any question as to the subject matter contained herein, the cases cited should be consulted. Nothing contained herein shall be considered as an Official Attorney General's opinion unless otherwise indicated.

Any change in personnel, or change in address of present personnel should be reported to this office immediately.

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