AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 9: Liberalism Divided – Federalism

People v. Zelinski, 24 Cal. 3d 357 (1979)

The California state constitution provided that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches may not be violated." The provision is nearly identical to the search-and-seizure clause of the Fourth Amendment to the U.S. Constitution, but the California state supreme court chose not to interpret the state constitutional provision in the same way that the U.S. Supreme Court has interpreted the federal constitutional provision. As the U.S. Supreme Court became more conservative in its interpretation of constitutional rules affecting the rights of criminal defendants, the California supreme court carved out more liberal rules that would apply within the state. The case of the scope of the exclusionary rule in California reflects the possibility of different interpretations of similarly worded provisions in state and federal constitutions.

In 1976, store detectives in Zody's Department Store in Los Angeles stopped Virginia Zelinski after observing her shoplifting various items of clothing in the store. The detectives searched Zelinski for weapons and the stolen goods. When doing so, they discovered a pill bottle and suspected that it contained heroin (whether the bottle was discovered in her purse or in her bra was under dispute). They set the bottle aside and called the police, who took Zelinski into custody. She was convicted of unlawful possession of heroin and appealed to the state supreme court to have the evidence against her excluded from trial on the grounds that the store detectives did not have legal authority to search her for the drugs. The supreme court agreed in a 6–1 decision, applying the exclusionary rule to illegal searches conducted by private security officers under the state constitution, even such application was not mandated by Supreme Court decisions interpreting the Fourth Amendment to the Constitution of the United States. This extension of the exclusionary rule was subsequently superseded by the passage of the Victims' Bill of Rights as a state constitutional amendment in 1982.

What is the justification for having different constitutional rules at the state and federal levels? Why might a similarly worded state constitutional provision be interpreted differently than a federal constitutional provision? May a state constitutional provision be interpreted so as to provide fewer protections than a federal constitutional provision? Why would evidence collected by private security guards be excluded from trials?

MANUEL, J.

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Store detectives and security guards are retained primarily to protect their employer's interest in property. They have no more powers to enforce the law than other private persons. . . . Like all private persons, security employees can arrest or detain an offender and search for weapons before taking the offender to a magistrate or delivering him to a peace officer. Store personnel . . . were acting under this statutory authority when they arrested defendant and took her into custody for leaving the store with stolen merchandise.

Merchants have traditionally had the right to restrain and detain shoplifters. At the time of the incident . . . merchants were protected from civil liability for false arrest or false imprisonment in their reasonable efforts to detain shoplifters by a common law privilege that permitted detention for a reasonable time for investigation in a reasonable manner of any person whom the merchant had probable cause to believe had unlawfully taken or attempted to take merchandise from the premises. . . .

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In the present case, instead of holding defendant and her handbag until the arrival of a peace officer who may have been authorized to search, the employees instituted a search to recover goods that were not in plain view. Such intrusion into defendant's person and effects was not authorized as incident to a citizen's arrest. . . . It was unnecessary to achieve the employees' reasonable concerns of assuring that defendant carried no weapons and of preventing loss of store property. As a matter of law, therefore, the fruits of that search were illegally obtained.

The People contend that the evidence is nevertheless admissible because the search and seizure were made by private persons. They urge that *Burdeau v. McDowell* (1921), holding that Fourth Amendment proscriptions against unreasonable searches and seizures do not apply to private conduct, is still good law and controlling. . . .

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Article I, section 13 of the California Constitution provides in part that: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches may not be violated . . . ." Although the constitutional provision contains no language indicating that the "security" protected by the provision is limited to security from governmental searches or seizures, California cases have generally interpreted this provision as primarily intended as a protection of the people against such governmentally initiated or governmentally directed intrusions. The exclusionary rule, fashioned to implement the rights secured by the constitutional provision, has therefore been applied to exclude evidence illegally obtained by private citizens only where it served the purpose of the exclusionary rule in restraining abuses by the police of their statutory powers. . . .

We have recognized that private security personnel, like police, have the authority to detain suspects, conduct investigations, and make arrests. They are not police, however, and we have refused to accord them the special privileges and protections enjoyed by official police officers. . . . We are mindful, however, of the increasing reliance placed upon private security personnel by local law enforcement authorities for the prevention of crime and enforcement of the criminal law and the increasing threat to privacy rights posed thereby. . . .

Realistically, therefore, we recognize that in our state today illegal conduct of privately employed security personnel poses a threat to privacy rights of Californians that is comparable to that which may be posed by the unlawful conduct of police officers. . . .

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In the instant case, the store employees arrested defendant pursuant to the authorization contained in [the penal code], and the search which yielded the narcotics was conducted incident to that arrest. Their acts, engaged in pursuant to the statute, were not those of a private citizen acting in a purely private capacity. Although the search exceeded lawful authority, it was nevertheless an integral part of the exercise of sovereignty allowed by the state to private citizens. In arresting the offender, the store employees were utilizing the coercive power of the state to further a state interest. Had the security guards sought only the vindication of the merchant's private interests they would have simply exercised self-help and demanded the return of the stolen merchandise. Upon satisfaction of the merchant's interests, the offender would have been released. By holding defendant for criminal process and searching her, they went beyond their employer's private interests.

Persons so acting should be subject to the constitutional proscriptions that secure an individual's right to privacy. . . . Accordingly, we hold that in any case where private security personnel assert the power of the state to make an arrest or to detain another person for transfer to custody of the state, the state involvement is sufficient for the court to enforce the proper exercise of that power . . . by excluding the fruits of illegal abuse thereof. We hold that exclusion of the illegally seized evidence is required by article I, section 13 of the California Constitution.

The judgment . . . is *reversed*.

CLARK, J., dissenting.[1]

I dissent. While the exclusionary rule should probably not be abandoned until the Legislature provides an effective alternative, it certainly should not be extended.

The majority extends the rule to public housing security guards on the assumption they will be as responsive to its intended deterrent effect as are policemen. However, "there is no empirical evidence to support the claim that the rule actually deters illegal conduct of law enforcement officials." . . .

The rule penalizes the prosecutor without giving him authority to control the police practices leading to exclusion of evidence. Inadequate as it is, the informal institutional pressure a prosecutor can exert on local police far exceeds his influence on security guards funded by a federal housing agency.

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Moreover, even assuming the exclusionary rule has a significant deterrent effect when prosecution is the ultimate goal of investigation, it has no effect at all when police are uninterested in prosecution or are willing to risk that goal to achieve others. . . . If law enforcement officials are commonly motivated by goals other than successful prosecution, other government employees are even more likely to be motivated by such goals. Thus, even if the evidence is ultimately suppressed, it is expedient for a security guard to arrest suspects and to seize weapons, stolen property, and contraband because a criminal arrested and perhaps incarcerated pending a suppression hearing will be inclined to avoid the security guard's domain in the future, even though remaining a law enforcement problem for the community at large.

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[1] Justice Clark appended his dissent from another case involving public housing security guards to this case.