Supplementary Material

Chapter 7: The Republican Era—Criminal Justice/Search and Seizure

---

Carroll v. U.S., 267 U.S. 132 (1925)

George Carroll and John Kiro were driving from Detroit to Grand Rapids when their Oldsmobile roadster was stopped by three federal prohibition agents. The agents suspected Carroll was illegally transporting intoxicating liquors in part because Carroll had previously promised to obtain liquor for them. When they searched the car, they discovered sixty-eight bottles of liquor. Carroll and Kiro were immediately arrested and charged with violating the National Prohibition Act. At trial, they made a motion to have the liquor returned to them and another motion to prohibit the use of the bottles as evidence. Both motions were rejected. Carroll and Kiro were convicted. They appealed to the Supreme Court of the United States.

The Supreme Court by a 7-2 vote ruled that the search was constitutional and that the convictions were valid. Chief Justice Taft's majority opinion declared that federal officials did not need a search warrant when they had probable cause to believe people were transporting illegal goods. Why did he reach that conclusion? How did he distinguish Carroll *from such cases as* Boyd v. United States *(1886)? The two dissenters, Justices McReynolds and Sutherland, were the two most conservative justices on the Taft Court. Their dissent was based largely on the claim that federal law did not authorize the search. What might explain why, in 1925, the most conservative justices on the Supreme Court were the most inclined to limit searches and seizures?*

CHIEF JUSTICE TAFT . . . delivered the opinion of the Court.

. . .

The intent of Congress to make a distinction between the necessity for a search warrant in the searching of private dwellings and in that of automobiles and other road vehicles in the enforcement of the Prohibition Act is . . . clearly established by the legislative history of the Stanley Amendment. Is such a distinction consistent with the Fourth Amendment? We think that it is, The Fourth Amendment does not denounce all searches or seizures, but only such as are unreasonable.

. . .

On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens.

In *Boyd v. United States* (1886) . . . [i]t was there said . . . :

> The search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him. The two things differ. . . . In the one case, the government is entitled to the possession of the property; in the other it is not. The seizure of stolen goods is authorized by the common law; and the seizure of

goods forfeited for a breach of the revenue laws, or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by our own revenue acts from the commencement of the government. . . .

. . .

[T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant, we come now to consider under what circumstances such search may be made. It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise. . .

. . .

[I]f an officer seizes an automobile or the liquor in it without a warrant, and the facts as subsequently developed do not justify a judgment of condemnation and forfeiture, the officer may escape costs or a suit for damages by a showing that he had reasonable or probable cause for the seizure. . . . The measure of legality of such a seizure is, therefore, that the seizing officer shall have reasonable or probable cause for believing that the automobile which he stops and seizes has contraband liquor therein which is being illegally transported.

We here find the line of distinction between legal and illegal seizures of liquor in transport in vehicles. It is certainly a reasonable distinction. It gives the owner of an automobile or other vehicle seized . . . , in absence of probable cause, a right to have restored to him the automobile, it protects him under the *Weeks* . . . and [other] Cases from use of the liquor as evidence against him, and it subjects the officer making the seizures to damages. On the other hand, in a case showing probable cause, the government and its officials are given the opportunity which they should have, to make the investigation necessary to trace reasonably suspected contraband goods and to seize them.

Such a rule fulfills the guaranty of the Fourth Amendment. In cases where the securing of a warrant is reasonably practicable, it must be used and when properly supported by affidavit and issued after judicial approval protects the seizing officer against a suit for damages. In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.

But we are pressed with the argument that if the search of the automobile discloses the presence of liquor and leads under the statute to the arrest of the person in charge of the automobile, the right of seizure should be limited by the common-law rule as to the circumstances justifying an arrest without a warrant for a misdemeanor. The usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony, and that he may only arrest without a warrant one guilty of a misdemeanor if committed in his presence. . . .

. . . The argument for defendants is that, as the misdemeanor to justify arrest without warrant must be committed in the presence of the police officer, the offense is not committed in his presence

unless he can by his senses detect that the liquor is being transported, no matter how reliable his previous information by which he can identify the automobile as loaded with it. . . .

. . .

We do not think such a nice distinction is applicable in the present case. When a man is legally arrested for an offense, whatever is found upon his person or in his control which it is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution. . . . The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law. The seizure in such a proceeding comes before the arrest as section 26 indicates. It is true that section 26, title 2, provides for immediate proceedings against the person arrested and that upon conviction the liquor is to be destroyed and the automobile or other vehicle is to be sold, with the saving of the interest of a lienor who does not know of its unlawful use; but it is evident that if the person arrested is ignorant of the contents of the vehicle, or if he escapes, proceedings can be had against the liquor for destruction or other disposition under section 25 of the same title. . . . The character of the offense for which, after the contraband liquor is found and seized, the driver can be prosecuted does not affect the validity of the seizure.

This conclusion is in keeping with the requirements of the Fourth Amendment and the principles of search and seizure of contraband forfeitable property; and it is a wise one because it leaves the rule one which is easily applied and understood and is uniform. . . .

JUSTICE McKENNA concurred in this opinion.

The separate opinion of JUSTICE McREYNOLDS.

The damnable character of the "bootlegger's" business should not close our eyes to the mischief which will surely follow any attempt to destroy it by unwarranted methods. "To press forward to a great principle by breaking through every other great principle that stands in the way of its establishment; . . . in short, to procure an eminent good by means that are unlawful, is as little consonant to private morality as to public justice.". . . .

. . .

[Justice McReynolds in these paragraphs disputed the majority's contention that Congress authorized federal officials to make arrests without warrants in prohibition cases.]

While the Fourth Amendment denounces only unreasonable seizures unreasonableness often depends upon the means adopted. Here the seizure followed an unlawful arrest, and therefore became itself unlawful—as plainly unlawful as the seizure within the home so vigorously denounced in *Weeks v. United States*. . . .

. . . If an officer, upon mere suspicion of a misdemeanor, may stop one on the public highway, take articles away from him and thereafter use them as evidence to convict him of crime, what becomes of the Fourth and Fifth Amendments?

. . .

I am authorized to say that JUSTICE SUTHERLAND concurs in this opinion.