South Carolina Law Review

Volume 3 | Issue 2 Article 9

12-1950

Recent Cases

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Recommended Citation

Bernstein, Charles S,; Erwin, Arthur M.; Grayson, R. E.; Rentz, Malcolm E.; and Smith, H. P. (1950) "Recent Cases," *South Carolina Law Review*: Vol. 3 : Iss. 2 , Article 9.
Available at: https://scholarcommons.sc.edu/sclr/vol3/iss2/9

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RECENT CASES

CRIMINAL LAW – SELF INCRIMINATION – Admission of Evidence of Blood Test Taken Without Defendant's Consent. Defendant was convicted of assault and battery with intent to ravish. The prosecutrix had bitten the finger of her assailant during the struggle and the cut had left bloodstains in the automobile where the assault occurred. A sample of defendant's blood was taken without his consent and admitted as evidence. On appeal, HELD, affirmed. A sample of blood taken without defendant's consent and admitted as evidence is not a violation of the constitutional privilege against self-incrimination. *Commonwealth v. Statti,* .... Pa. ...., 73 A. 2d 688 (1950).

In all criminal prosecutions the accused cannot be compelled to give evidence against himself. PA. CONST. ART. I, § 9. The main purpose of the self-incrimination provision was to prohibit the compulsory oral examination of prisoners before trial, or upon trial for the purpose of extorting unwilling confessions or declarations implicating them in crime. *People v. Gardner,* 144 N. Y. 119, 38 N. E. 1003 (1894). The prohibition of compelling a man in a criminal court to be a witness against himself is a prohibition of physical or moral compulsion to extort communications from him, not as an exclusion of his body in evidence when it may be material. *Holt v. U. S.,* 218 U. S. 245, 31 Sup. Ct. 2, 54 L. Ed. 1021 (1910). It is the employment of legal process to extract from a person's own lips an admission of his guilt, which will thus take the place of other evidence. It is not merely any and every compulsion that is the kernal of the privilege, but testimonial compulsion. 8 WIGMORE, EVIDENCE § 2261 (3rd ed. 1940). There is a direct conflict of authority on whether or not the constitutional provisions include immunity from physical or mental examinations obtained without defendant's consent. One line of authority as shown by the preceding has held that the constitutional provisions protect only oral testimony. Another view has been taken that the constitutional immunity from self-incrimination is not limited to testimonial compulsion, and that the demonstration by an act required of a defendant which tends to self-incrimination is as obnoxious to the immunity guaranteed by the constitution as one by works. *Apodaca v. State,* 140 Tex. Crim. Rep. 593, 146 S. W. 2d 381 (1941). South Carolina has apparently chosen to follow the latter view,* while Pennsylvania is in accord

*See cases cited in 1 S. C. L. Q. 199 (1948).

Published by Scholar Commons, 1950

with the former. *State v. Taylor,* 213 S. C. 330, 49 S. E. 2d 289 (1948). Those jurisdictions which follow the liberal view have held to it consistently. It has been held that it is proper to ask a witness to look around the court room and point out the person who committed the offense. *State v. Johnson,* 67 N. C. 64 (1872). There was no violation of immunity from self-incrimination where the accused was forcibly compelled to stand up for identification. *People v. Gardner, supra.* Nor where the prisoner was made to stand and repeat certain words. *Johnson v. Commonwealth,* 115 Pa. St. 369, 9 Atl. 78 (1887). *Contra, State v. Taylor, supra.* Neither was there a violation of immunity from self-incrimination where testimony was admitted as to the fit of a blouse that the defendant had been made to put on. *Holt v. U. S., supra.* Appellant was not unconstitutionally deprived of the right against self-incrimination when he was made to stand with a handkerchief over his face. *Ross v. State,* 204 Ind. 281, 182 N. E. 865 (1932). The examination of scars on defendant would not be a violation of his protection from self-incrimination. *State v. Tettaton,* 159 Mo. 354, 60 S. W. 743 (1900). The taking of defendant's finger prints is not self-incrimination. *People v. Sallow,* 165 N.Y.S. 915 (1917). Removal of material from under defendant's fingernails, over his objections, in order to ascertain whether they contained human blood does not violate a constitutional right of the defendant. *State v. McLaughlin,* 138 La. 958, 70 So. 925 (1916). Admittance of evidence concerning narcotic contents pumped from defendant's stomach did not violate his privilege against self-incrimination. *People v. One Mercury Sedan,* 74 Cal. App. 2d 199, 168 P. 2d 443 (1946). It was held that the fluoroscoping and giving of an enema to a defendant in order to obtain rings which he had swallowed was not a violation of the self-incrimination clause. *Ash v. State,* 139 Tex. Crim. 420, 141 S. W. 2d 341 (1940). But see *Apodaca v. State, supra.* Where defendant was made to submit to a blood test and a urinalysis to determine the amount of alcohol in his system, it did not contravene his constitutional right not to be compelled to give evidence himself. *State v. Gatton,* 60 Ohio App. 192, 20 N. E. 2d 265 (1938).

The Pennsylvania Court having been committed to follow the doctrine that immunity from self-incrimination means only immunity from oral testimony has decided this case in accordance with that doctrine. It is the writer's opinion that this is the better view. The theory, that the self-incrimination clauses of our constitutions exclude only oral testimony, admits in evidence facts which may either substantiate or negate the prosecutor's accusations. The more

facts that are presented for the jury's consideration the better the chance of a true evaluation of defendant's probable guilt or innocence. Evidence of blood tests, admitted under the proper statistical instruction, will lead to the better administration of justice in our criminal courts.

CHARLES S. BERNSTEIN.

FIXTURES — Intention as the Controlling Element. The licensee of the mortgagor, with the verbal consent and approval of the agent of the mortgagee, erected a four-room house on the mortgaged land. After decree of foreclosure and order for sale of the premises, and pending the advertisement of the sale, the building was moved to adjoining property by the licensee. Mortgagee sought order to require defendant licensee to move the house back onto the land from which it came, and was refused. On appeal, HELD, affirmed. A house built upon mortgaged land does not become a part of the realty if it is built with the intention of removal if the mortgage is not paid, all parties assenting to this arrangement; if it is not constructed as incidental to the operation of the premises for agricultural purposes; and if the original security given in the mortgage is not thereby impaired. *Gilbert v. Easterling,* 217 S. C. 267, 60 S. E. 2d 595 (1950).

Quicquid plantatur solo, solo cedit the ancient axiom of law, undoubtedly expressed the rule at common law, that whatever is once annexed to the soil becomes a part of it, and cannot afterwards be removed except by him who is entitled to the inheritance. *King v. Morris,* 74 N. J. L. 810, 68 Atl. 162 (1907). Where improvements, which become a part of the freehold are put upon the mortgaged premises, either by the mortgagor or a purchaser from him, such improvements become subject to the lien of the mortgage and constitute a part of the security for the mortgage debt. *Annely v. DeSaussure,* 12 S. C. 488 (1879); *Heath v. Haile,* 45 S. C. 642, 24 S. E. 300 (1896). However, even the apparently rigid common law rule was not wholly inflexible, as one exception was pointed out in *Poole's Case* in 1703, ". . . during the term the soap boiler might well remove the vats he set up in *relation to trade,* and that he might do it by the Common Law". That apparent inflexibility of the common law rule has been further tempered by numerous decisions of the South Carolina Supreme Court. E. g., *Evans v. McLucas,* 15 S. C. 810 (1881). So various are the considerations which enter into the interpretation of the law of fixtures that an adjudicated case may fail to be any authority, as the particular case must be considered

with reference to the *relation of the parties. Montague v. Dent,* 10 Rich. L. 135 (S. C. 1856). In modern times the question whether the article is to be regarded as a fixture depends generally upon the *intention of the parties. Hurst v. Craig Furniture Co.,* 95 S. C. 221, 78 S. E. 960 (1913). Every case of this type must depend on its own *special and peculiar circumstances. Buckland v. Butterfield,* 9 E. C. L. R.; *Montague v. Dent, supra.* From the leading case of *Teaff v. Hewitt,* 1 Ohio St. 511 (1853), as adopted by the South Carolina Supreme Court in *Planter's Bank v. Lummus Cotton Gin Co.,* 132 S. C. 16, 128 S. E. 876 (1925), ". . . the following elements are necessary to make a chattel a part of the realty: 1. Actual or constructive annexation to the realty or to something appurtenant thereto; 2. Appropriation of the chattel to the use or purpose to that part of the realty with which it is connected; 3. The intention of the party making the annexation to make the chattel a permanent accession to the freehold, this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation, and the purpose for which the annexation has been made". And in the same case, quoting *Saye v. Hill,* 100 S. C. 21, 84 S. E. 307 (1915), "While the manner in which a thing is attached . . . may be of some value . . ., it does not afford an absolute or conclusive test. The intention with which it is attached is usually a more controlling factor. Yet all the circumstances should be considered, especially as they throw light upon the intention. Houses are frequently built and expensive machinery installed therein, with every appearance of permanency; yet it is done under a license from the owner of the soil, or under a lease thereof, and under agreement for and with the intention of removal at the expiration of the license or lease. In such cases they are not fixtures." Earlier the same view was adopted in *Hughes v. Edisto Cypress Shingle Co.,* 51 S. C. 1, 28 S. E. 2 (1897) and *Rawls v. American Central Insurance Co.,* 97 S. C. 189, 81 S. E. 505 (1914). In one of several Alabama cases, substantially in point, and expressing the majority view in the United States, where a lot-owner, holding subject to a purchase-money mortgage, agreed that plaintiff might erect a house on the lot which should not become a fixture, it was held not to impair the mortgage security, nor give the mortgagee any interests in the house subsequently erected. *Roberts v. Caple,* 8 Ala. App. 444, 62 So. 343 (1913). *Contra: Ekstrom v. Hall,* 90 Me. 186, 38 Atl. 106 (1897); *Lynde v. Rowe,* 94 Mass. 100 (1866). A mortgagee has no equitable claim to chattel subsequently annexed to realty,

having parted with nothing on the faith of such chattels. *Beatrice Creamery Co. v. Sylvester,* 65 Colo. 569, 179 Pac. 154 (1919).

While the South Carolina Court is still hampered in a small measure by the common law rules, the later cases clearly show that they are not bound strictly thereby, but merely employ these rules to construe the intention of the parties. Thus, the nature of the article, the mode of annexation, and even the appropriation of the chattel to the use of the realty seem less important as more weight is plainly placed on the intention of the parties. The relationship of the parties is weighty, but even this, only so far as it demonstrates their intentions. Therefore, we must concede that the intention of the parties is the primary consideration, and a just one, since more equitable decisions will be fathered by this test. In the present case, certainly a highly inequitable result would have been born had the court followed blindly the strict rules of the common law.

ARTHUR M. ERWIN.

CRIMINAL LAW — EVIDENCE — Effect of Commenting on Accused's Failure to Testify. After testimony that a heel from the scene of the crime came from the defendant's shoe, the solicitor argued that the evidence "is not disputed". The defense contended this was commenting on the defendant's failure to testify. The trial judge ruled that the inference was in relation to the evidence of the shoe heel and refused a motion for mistrial. On appeal, HELD, affirmed. An indirect reference to an accused's failure to testify can be cured by a charge that such failure to testify is not to be considered by the jury. But, if the solicitor makes a direct reference to an accused's failure to testify, then the trial judge must grant a mistrial. *State v. Wilkens,* 217 S. C. 105, 59 S. E. 2d 853 (1950).

The general rule is that it is improper and prejudicial for the prosecuting attorney, in the course of a trial, to comment on or make any reference to the fact that the accused did not testify as a witness in his own behalf. *State v. Pendarvis,* 88 S. C. 548, 71 S. E. 548 (1911); *State v. King,* 158 S. C. 251, 155 S. E. 409 (1930). This right has been conferred by the provision in a great majority of state constitutions that no person shall be compelled to be a witness against himself in a criminal case, e. g., S. C. CONST. ART. I, § 17; *Twining v. New Jersey,* 211 U. S. 78, 29 Sup. Ct. 14, 53 L. Ed. 97 (1908). These constitutional rights are further supported by statutes in a majority of states, e. g., *State v. Spivey,* 198 N. C. 655, 153

S. E. 254 (1930); *People v. Forte,* 277 N. Y. 440, 14 N. E. 2d 783 (1938). A statute in South Dakota which allowed comment by the prosecution was held to violate the constitutional right not to testify against one's self and was therefore invalid. *State v. Wolfe,* 64 S. D. 178, 266 N. W. 116 (1936). In some states such comment has been made legal by constitutional amendment. *Fross v. Wotton,* 3 Cal. 2d 384, 44 P. 2d 350 (1935); *Leonard v. State,* 100 Ohio 456, 127 N. E. 464 (1919). In South Carolina there is no statute expressly forbidding this type of comment, however, the S. C. Supreme Court has stated: "We lay it down as a rule that however innocently done by a solicitor, or however praiseworthy his motives in so doing, it is an unwarrantable line of argument". *State v. Howard,* 35 S. C. 197, 203, 14 S. E. 481 (1892). There are two views as to the action that should be taken when the prosecution does make the forbidden comment. 3 WHARTON, CRIMINAL EVIDENCE, § 1128 (11th ed. 1935). The majority view is that although it is improper for a solicitor to comment upon the defendant's failure to testify, it is not reversible error if the judge promptly charges the jury that a defendant may testify or not and that no inferences to his prejudice should result therefrom. *State v. Howard, supra.* On the other hand, some courts hold that the remarks by prosecuting officers, as to failure to testify, made in violation of statute are so prejudicial that they cannot be cured by instruction to the jury however forcibly given. *Parnell v. State,* 115 Tex. Crim. Rep. 507, 27 S. W. 2d 192 (1930); *Rowe v. State,* 87 Fla. 17, 98 So. 613 (1924). This minority view was stated by the Supreme Court of Georgia to be: "A new trial will be ordered when counsel for the state called attention of the jury to the failure of the accused to avail himself of the privilege of making a statement to the jury in his own behalf". *Caesar v. State,* 125 Ga. 6, 53 S. E. 815 (1906).

Thus it seems that the law as to the curing effect of the judge's charge, when the improper comment has been made, is tending to move away from the majority view. The new view as evidenced by the dictum in the principal case is one more in keeping with justice. Under the old rule the state counsel, in order to call the jury's attention to the fact that the accused has not testified, had only to refer to that fact without taking the risk of a mistrial. Of course, the jury will be instructed that the failure to testify is not to raise a presumption against the accused, but will a layman be influenced by words that in effect say, "You are to judge this issue, and even though it is logical that an innocent man would want to say he was innocent, and the solicitor has told you he could have spoken, but you are not

to be logical; you are to erase such reasoning from your mind?" I do not think the average juror would be influenced by such a charge.

R. E. GRAYSON.

REAL PROPERTY — ESTOPPEL — Scope of Ownership of the Property Involved. Plaintiff was owner in fee of a parcel of land over which its railroad operated. Defendant purchased the adjoining lot and thinking he also owned the railroad's lot erected a house, fence, and hedge thereon. Seven years later plaintiff discovered it owned the lot in fee and brought action to require defendant to remove the improvements made by him. Defendant pleaded title by estoppel. The jury found for the defendant, not only as to the portion of the lot actually covered by the improvements, but as to the *entire* lot. On appeal, HELD, affirmed. A railroad owning land in fee upon which the adjoining land owner erects a house within plain view of the railroad, is estopped to assert its title against such adjoining landowner as to the entire tract. *Piedmont and Northern Ry. v. Henderson,* 216 S. C. 98, 56 S. E. 2d 740 (1949).

Estoppel is a bar which precludes a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth, either by acts of judicial or legislative officers or implied. *Southern Ry. v. Day,* 140 S. C. 388, 138 S. E. 870 (1926). To render the rule of estoppel operative it is essential that the party against whom the estoppel is claimed should have acted with knowledge of his rights, and that he was aware of the facts in respect of the estoppel claimed; also that the party invoking the estoppel was misled by the acts or conduct of the party against whom the estoppel is claimed, that he justifiably changed his position in reliance thereon, and that he was prejudiced thereby, or the party against whom the estoppel is claimed benefitted. *Cannon v. Baker,* 97 S. C. 116, 81 S. E. 478 (1913). It requires ten years to confer good title by adverse possession, such possession must be open, notorious, exclusive, hostile, continuous, and unbroken for the whole period. *Clary v. Bonnett,* 114 S. C. 452, 103 S. E. 779 (1920). The time it takes for estoppel to arise or the acquiescence thereto is very short. *Champ v. Nicholas County Court,* 72 W. Va. 475, 78 S. E. 361 (1913). The purpose of estoppel is to prevent inconsistency and fraud resulting in injustice. *Ward v. Cohen,* 3 S. C. 338 (1871). Estoppel may arise where one party has been induced by the conduct of the other to do or forbear doing something which he would not or would have done but for such con-

duct of the other party. *Bull v. Rowe,* 13 S. C. 355 (1879). Estoppel to assert one's right to property is provable usually by circumstances and may arise from silence. For silence to be estoppel the one who is silent when conscience requires him to speak shall be debarred from speaking when conscience requires him to be silent. *Nicholas v. Austin,* 82 Va. 817, 1 S. E. 132 (1887). A railroad right of way, having been acquired for public purposes, can not be lost by prescriptive use or adverse possession, unless by erection of a permanent structure, accompanied by notice of adverse claim. *Atlantic Coast Line Ry. v. Searson,* 137 S. C. 468, 135 S. E. 567 (1926). The owner of the fee in a railroad right of way has the right to use so much of it as is not in the actual use and occupancy of the railroad company, if not inconsistent with the claim of the right of way for railroad purposes. *Atlantic & Charlotte Air Line Ry. v. Limestone Globe Land Co.,* 109 S. C. 444, 96 S. E. 188 (1917). It is a rule almost of universal application that one who stands by and sees another purchase land or enter upon it under claim of right, and permits such other to make expenditures or improvements under circumstances which would call for notice or protest, can not afterwards assert his own title against such person. *Alabama Great Southern Ry. v. South & North Alabama Ry.,* 84 Ala. 570, 3 So. 286 (1887). Where a railroad company has in its possession a deed to land, it is deemed to have known its own rights and will be estopped to say that it did not have knowledge of its rights to possession. *Atlantic & Charlotte Air Line Ry. v. Victor Mfg. Co.,* 93 S. C. 397, 76 S. E. 1091 (1913). For structures to be such that they will estop one from claiming the contrary they must be of a permanent nature. A fence is not of itself permanent enough to create estoppel. *Harman v. Southern Ry.,* 72 S. C. 228, 51 S. E. 689 (1905). A railroad company, knowing that another is erecting permanent improvements on its right of way, and does not object, is estopped from afterwards asserting its rights to so much of its easement as is occupied by such improvements. *Columbia, Newberry & Laurens Ry. v. Laurens Cotton Mills,* 82 S. C. 24, 61 S. E. 1089 (1908).

Perhaps no other technical legal term is more loosely used than the term "estoppel". It is used sometimes merely to indicate the existence of an ordinary prior paramount right in the opposite party or a general rule of law, but more specifically it is a creature of the law without which injustice would often triumph. That would truly have been the result here if estoppel had not come into play. To say, in this case, that even though the plaintiff was estopped it was

to the extent only as to so much of its easement as was occupied by such improvements would be saying that the defendant erected the residence upon the belief that they only owned such of the land as it covered. As the Court said, "There is little, if any, apparent logic in that and no precedent has been found for it". It seems that the principle set out in this case has always been with us; however, it has not been applied until now because the circumstances have not demanded it. Since without adjacent land for ingress, egress, and repair, property would be of little or no value, the decision reached by the Court in the present case is equitable and ideal.

MALCOLM E. RENTZ.

CRIMINAL LAW — SEARCHES AND SEIZURES — Search Incident to Arrest. Upon reliable information that the defendant possessed large quantities of forged stamps and had sold some to a postal employee, Federal officials, armed with a valid warrant for defendant's arrest, arrested him in his place of business, a small one room office open to the public. They then searched, without a search warrant, his desk, safe, and filing cabinets in which they found a number of stamps. This evidence was admitted over defendant's objection in the trial of the case which resulted in his conviction. The court of appeals reversed the conviction on the ground that the search was illegal since the officers had ample time to obtain a search warrant. On appeal, HELD, three justices dissenting, reversed. *Trupiano v. U. S.*, 334 U. S. 699, 68 Sup. Ct. 1129, 92 L. Ed. 1663 (1948) overruled. The search was lawful as an incident to a legal arrest and the arrest was lawful because the officers had probable cause to believe that a felony was being committed in their presence. *U. S. v. Rabinowitz,* 339 U. S. 56, 70 Sup. Ct. 430, 94 L. Ed. 407 (1950).

"The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable searches and seizures,* shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U. S. CONST. AMEND. IV. The troublesome problem is what constitutes "unreasonable searches and seizures". The complexity of the problem and the uncertainty are clearly shown by the 5-4 decision in *Trupiano v. U. S., supra,* and the 5-3 decision in the present case. The test of reasonableness cannot be stated in rigid and absolute terms, *Harris v. U. S.*, 331 U. S. 145, 67 Sup. Ct. 1098, 91 L. Ed.

1399 (1947), but must find resolution in the facts and circumstances of each case. *Go-Bart Importing Co. v. U. S.*, 282 U. S. 344, 51 Sup. Ct. 153, 75 L. Ed. 374 (1931). The arrest must be lawful with a warrant or with a probable cause to believe that a felony has been committed. *U. S. v. Lindenfeld,* 142 F. 2d 829 (C.C.A. 9th 1944); *Shew v. U. S.*, 155 F. 2d 628 (C.C.A. 4th 1946). The search must be contemporaneous with the arrest. *Agnello v. U. S.*, 269 U. S. 20, 46 Sup. Ct. 4, 70 L. Ed. 145 (1925). The right to search the person of a prisoner following a lawful arrest, and to seize from him articles connected with the crime is well settled. *Garske v. U. S.*, 1 F. 2d 620 (C.C.A. 8th 1924); *U. S. v. Lefkowitz,* 285 U. S. 452, 52 Sup. Ct. 420, 76 L. Ed. 877 (1932). From this point there seems to be a transition towards enlarging the right to search incident to lawful arrest. It has been held that the warrant of arrest carries with it authority to seize all that is on the person, or in such immediate physical relation to the one arrested as to be in a fair sense a projection of his person. *Go-Bart Importing Co. v. U. S., supra; U. S. v. Lefkowitz, supra.* It seems well settled also that there is a right to seize visible evidence of crime and to search the person arrested and even objects he physically controls. *Carroll v. U. S.*, 267 U. S. 132, 45 Sup. Ct. 280, 69 L. Ed. 543 (1925); *Weeks v. U. S.*, 232 U. S. 383, 34 Sup. Ct. 341, 58 L. Ed. 652 (1914). This right was expanded in *Agnello v. U. S., supra,* which held that in addition to the right to search persons lawfully arrested, there was a right to search the premises under the control of the person where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody. The authority of officers to search and seize the things used to carry on *the* criminal enterprise extended to all parts of the premises *used for* the lawful purpose. *Harris v. U. S., supra; Marron v. U. S.*, 275 U. S. 192, 48 Sup. Ct. 74, 72 L. Ed. 231 (1927). Some Federal courts hold that only the fruits and evidences of the particular crime may be seized. *Marron v. U. S., supra; Takahashi v. U. S.*, 143 F. 2d 118 (C.C.A. 9th 1944); *Kelly v. U. S.*, 61 F. 2d 843 (C.C.A. 8th 1932). Others, who seem in the minority, hold that fruits and instrumentalities *of any crime* may be seized. *Gouled v. U. S.*, 255 U. S. 298, 41 Sup. Ct. 261, 65 L. Ed. 647 (1921); *U. S. v. Strickland,* 62 F. Supp. 468 (W. D. S. C. 1945). The search of vehicles and vessels without a warrant was approved in *Carroll v. U. S., supra,* on the grounds that the vehicles or vessels are of such a mobile nature that they could be moved out of the jurisdiction before the warrant

could be obtained. In accord, *Husty v. U. S.*, 282 U. S. 694, 51 Sup. Ct. 89, 75 L. Ed. 740 (1931); *Scher v. U. S.* 305 U. S. 251, 59 Sup. Ct. 174, 83 L. Ed. 151 (1938).

From a reading of the cases cited above, the court seems to be faced with two problems in deciding the cases. The first is whether to follow the policy of protecting the individual's civil rights guaranteed by the Constitution. The second is whether to follow the policy of providing for an efficient law enforcement system. Perhaps the weight that the particular judge places on one of these policies accounts for the seemingly inconsistent results reached and for the dissents, usually by the same judges. Of course, both should be adhered to in so far as possible, but the point where they diverge is the point where the problems arise. It seems that the rule in *Trupiano v. U. S., supra,* which provides that a search without a warrant violates the Fourth Amendment where the arresting officers had time to secure a search warrant, and the need for a search was apparent prior to the arrest, is the better rule. It seems clear in the instant case that the obtaining of a search warrant would not have been detrimental to effective law enforcement. The officers had knowledge of the defendant's unlawful dealings for sixteen days before the arrest and they had knowledge of the nature of the instrumentalities involved. Surely this was an adequate time in which to obtain a search warrant. It seems equally clear that no legal yardstick may be laid down and that each case must be decided on its own facts and circumstances in determining whether the search was reasonable or unreasonable.

H. P. SMITH.