South Carolina Law Review

Volume 31
Issue 1 *ANNUAL SURVEY OF SOUTH CAROLINA LAW*

Article 6

1979

Criminal Law

Harry D. Brown

CRIMINAL LAW

I. THE DEATH PENALTY

In *State v. Rodgers*[1] the South Carolina Supreme Court held that the South Carolina death penalty statute,[2] which requires a bifurcated trial[3] before the death sentence may be imposed, could

---

1. 270 S.C. 285, 242 S.E.2d 215 (1978). *Rodgers* was one of six cases consolidated for purposes of appeal. In addition to *Rodgers* were State v. Cason, State v. MacPhee, State v. Allen, State v. Wakefield, and State v. Gaskins.

2. S.C. CODE ANN. §§ 16-3-20 to -28 (Cum. Supp. 1978).

3. The bifurcated trial requirement mandates a separate proceeding for sentencing following the defendant's conviction in a capital case. The purpose of this survey section is not to analyze the entire death penalty statute, but only to examine its retrospective application; however, a brief discussion of the statute and the bifurcation provisions is undertaken below.

The sentencing procedure is found at S.C. CODE ANN. § 16-3-20 (Cum. Supp. 1978), which provides as follows:

> (A) A person who is convicted of or pleads guilty to murder shall be punished by death or by imprisonment for life and shall not be eligible for parole until the service of twenty years, notwithstanding any other provisions of law. *Provided*, however, that notwithstanding the provisions of this section, under no circumstances shall a female who is pregnant with child be executed so long as she is in that condition.
>
> (B) Upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. If the trial jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before the court. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation or aggravation of the punishment. Only such evidence in aggravation as the State has made known to the defendant in writing prior to the trial shall be admissible. This section shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of South Carolina or the applicable laws of either. The State, the defendant and his counsel shall be permitted to present arguments for or against the sentence of death. The defendant and his counsel shall have the closing argument regarding the sentence imposed.
>
> (C) The judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances otherwise authorized or allowed by law and any of the following statutory aggravating and mitigating circumstances which may be supported by the evidence:
>
> (a) Aggravating circumstances:
>
> (1) Murder was committed while in the commission of the following crimes or acts: (a) rape, (b) assault with intent to ravish, (c) kidnapping, (d) burglary, (e) robbery while armed with a deadly weapon, (f) larceny with use of a deadly weapon, (g) housebreaking, and (h) killing by poison and (i) physical torture;

(2) Murder was committed by a person with a prior record of conviction for murder;

(3) The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person;

(4) The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value;

(5) The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty;

(6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person;

(7) The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.

(b) Mitigating, [*sic*] circumstances:

(1) The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

(2) The murder was committed while the defendant was under the influence of mental or emotional disturbance;

(3) The victim was a participant in the defendant's conduct or consented to the act;

(4) The defendant was an accomplice in the murder committed by another person and his participation was relatively minor;

(5) The defendant acted under duress or under the domination of another person;

(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired;

(7) The age or mentality of the defendant at the time of the crime;

(8) The defendant was provoked by the victim into committing the murder;

(9) The defendant was below the age of eighteen at the time of the crime.

The statutory instructions as to aggravating and mitigating circumstances shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, shall designate in writing, and signed by all members of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases the judge shall make such designation. Unless at least one of the statutory aggravating circumstances enumerated in this section is so found, the death penalty shall not be imposed. Where a statutory aggravating circumstance is found and a recommendation of death is made, the court shall sentence the defendant to death. The trial judge, prior to imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. Where a sentence of death is not recommended by the jury, the court shall sentence the defendant to life imprisonment. In the event that all members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment. The jury shall not recommend the death penalty if the vote for such penalty is not unanimous.

(D) Notwithstanding the provisions of § 14-7-1020, in cases involving capital punishment any person called as a juror shall be examined by the attorney for the defense.

not be applied retrospectively. The court held, therefore, that the death penalty could not be imposed upon defendants who had been convicted before June 8, 1977, the effective date of the statute.

Rodgers should be considered in light of recent judicial interpretations and statutory changes in South Carolina's capital punishment law.[4] Prior to 1974, the South Carolina Code provided that one convicted of murder be sentenced to death unless the jury, by special verdict, recommended mercy, in which case the punishment would be reduced to life imprisonment.[5] In a 1972 case, *Furman v. Georgia,*[6] the United States Supreme Court held that capital punishment statutes such as the South Carolina statute, which allowed the judge and jury broad discretion in imposing or withholding the death penalty, violated the eighth and fourteenth amendments. The South Carolina Supreme Court took cognizance of *Furman* in *State v. Gibson,*[7] remanding Gibson to the trial court for resentencing to life imprisonment.

In an effort to restore the death penalty, the General Assembly amended the death penalty statute in 1974.[8] The new statute made the death penalty mandatory under certain well-defined circumstances, thereby eliminating jury discretion and jury consideration of mitigating circumstances. The South Carolina Supreme Court held that the statute, as amended, complied with *Furman.*[9] A subsequent decision of the United States Supreme

---

(E) In every criminal action in which a defendant is charged with a crime which may be punishable by death, a person may not be disqualified, excused or excluded from service as a juror therein by reason of his beliefs or attitudes against capital punishment unless such beliefs or attitudes would render him unable to return a verdict of guilty according to law.

Id.

The murder defendant also is provided various safeguards prior to trial. *Id.* § 16-3-26. Additionally, the defendant has the right to make the last argument at trial and at sentencing. *Id.* § 16-3-28.

Whenever the death penalty is imposed, the sentence will be reviewed by the South Carolina Supreme Court. The Code provides strict standards for appellate review of the sentence, which are in addition to any direct appeal available to the defendant. *Id.* § 16-3-25.

4. For a more detailed analysis of events leading to the passage of the present statutes, see *Criminal Law, Annual Survey of South Carolina Law,* 29 S.C.L. REV. 80, 86-90 (1977).

5. S.C. CODE ANN. § 16-52 (1962).

6. 408 U.S. 238 (1972).

7. 259 S.C. 459, 192 S.E.2d 720 (1972).

8. S.C. CODE ANN. § 16-3-20 (1976) [hereinafter cited as 1974 Act].

9. State v. Allen, 266 S.C. 175, 185, 222 S.E.2d 287, 291 (1976).

Court, *Woodson v. North Carolina,*[10] held that statutes that mandate the death penalty in certain specific circumstances, but do not allow either the judge or jury the discretion to impose a lesser sentence, also violated the eighth amendment. The South Carolina death penalty statute was similar to the statute invalidated in *Woodson.* In *State v. Rumsey,*[11] a 1976 decision, the South Carolina Supreme Court recognized this similarity[12] and held the death penalty provision unconstitutional. South Carolina was again without a valid death penalty provision.

In a further effort to reinstate the death penalty, the General Assembly again amended the death penalty statute in 1977.[13] The 1977 Act was closely patterned after other states' statutes that had been declared constitutional by the United States Supreme Court.[14] By providing a bifurcated trial with a number of procedural safeguards for the defendant,[15] the current statute strikes a balance between the broad discretion condemned in *Furman* and the absolute lack of discretion rejected in *Woodson.* In establishing "objective standards to guide, regularize, and make rationally reviewable the process for imposing a sentence of death,"[16] the legislature created a death penalty provision capable of withstanding constitutional attack.

All of the defendants in *Rodgers* were tried, convicted and sentenced to death under the 1974 Act, but prior to the Supreme Court ruling in *Woodson* and prior to the passage of the 1977 Act. Each of the death sentences was invalid under *Rumsey.* Two of the defendants had been resentenced to life imprisonment in accordance with *Rumsey* after passage of the 1977 Act. The other four defendants were awaiting resentencing.

In *Rodgers,* the South Carolina attorney general argued that when all defendants were or would be resentenced, the only valid statute for sentencing persons convicted of murder was the 1977 Act. The state further argued that two defendants were not resentenced in compliance with the statute then in effect and that all six defendants should be resentenced in accordance with the

10. 428 U.S. 280 (1976), *accord,* Roberts v. Louisiana, 428 U.S. 325 (1976).

11. 267 S.C. 236, 226 S.E.2d 894 (1976).

12. *Id.* at 238, 226 S.E.2d at 895.

13. S.C. CODE ANN. §§ 16-3-20 to -28 (Cum. Supp. 1978) [hereinafter cited as 1977 Act].

14. *E.g.,* Proffit v. Florida, 428 U.S. 242 (1976); Gregg v. Georgia, 428 U.S. 153 (1976).

15. See note 26 and accompanying text *infra.*

16. 428 U.S. at 303.

1977 Act.[17] The crux of the state's position was that resentencing under the 1977 Act could yield the death penalty, but resentencing under the 1974 Act could yield only life imprisonment in light of *Rumsey*.

The state in *Rodgers* placed principal reliance on *Dobbert v. Florida*.[18] In *Dobbert*, defendant was charged with the murders of two of his children. At the time of the murders, Florida law provided that a person convicted of a capital felony was to be punished by death[19] unless mercy was recommended by the jury[20]—a law similar to the statutory provisions existing in South Carolina prior to 1974. Before Dobbert was brought to trial, the existing Florida death penalty provision was invalidated[21] in light of *Furman* and a new death penalty provision,[22] the constitutionality of which was subsequently upheld,[23] was enacted. The Florida statute as enacted is essentially the same as the current South Carolina statute. Dobbert was eventually tried, convicted and sentenced to death under the valid death penalty provision. The United States Supreme Court affirmed, holding "that the changes in the law are procedural, and on the whole ameliorative, and that there is no *ex post facto* violation."[24] The state in *Rodgers* adopted this position and argued that because the changes between the former and present South Carolina death penalty statutes are "procedural and remedial in effect, the [1977 Act] may operate retrospectively."[25]

Defendants in *Rodgers* relied on two basic arguments. First, the South Carolina legislature did not intend the death penalty statute to operate retroactively, but rather intended it only to apply to defendants *tried* and sentenced after June 8, 1977, the effective date of the statute. Second, the application of the sentencing provisions to the defendants, without benefit of each procedural safeguard now afforded a defendant before and during trial, would deny the defendants due process of law guaranteed by the fourteenth amendment and by the South Carolina Consti-

17. 270 S.C. at 290-91, 242 S.E.2d at 217.
18. 432 U.S. 282 (1977).
19. FLA. STAT. ANN. § 775.082 (1971).
20. *Id.* § 921.141 (Cum. Supp. 1972).
21. Donaldson v. Sack, 265 So. 2d 499 (Fla. 1972).
22. FLA. STAT. ANN. § 921.141 (1974 and Cum. Supp. 1978).
23. Proffitt v. Florida, 428 U.S. 242 (1976).
24. 432 U.S. at 292.
25. 270 S.C. at 292, 242 S.E.2d at 218.

tution.[26] Both arguments distinguished *Rodgers* from *Dobbert* and the South Carolina Supreme Court found those arguments persuasive.

The court found nothing in the statute to suggest that the legislature intended retroactive application. The legislature was fully aware of the invalidity of the 1974 Act when the 1977 Act was passed. The legislature also had the general power to back date the effective date of the statute[27] to apply to persons similarly situated to defendants, although such back dating would have raised serious constitutional questions. Instead, the bill was to become effective when signed by the Governor, June 8, 1977. The supreme court, relying on this clear legislative intent, held that the death penalty could not be applied to defendants who were tried before June 8, 1977.[28] This holding is consistent with the decision of the United States Supreme Court in *Dobbert* that a murder defendant may be tried and sentenced to death under a statute that was not in effect at the time of the commission of the crime, provided that the new law "neither made criminal a theretofor innocent act, nor aggravated a crime previously committed, nor provided greater punishment, nor changed the proof necessary to convict."[29]

The South Carolina Supreme Court was equally persuaded by the due process claims asserted by defendants. The court held that a number of procedural safeguards guaranteed under the 1977 Act[30] would be irrevocably lost to the defendants if they were

---

26. S.C. CONST. art. I, § 3.
27. S.C. CODE ANN. § 2-7-10 (1976).
28. 270 S.C. at 293, 242 S.E.2d at 218.
29. 432 U.S. at 293 (discussing Hopt v. Utah, 110 U.S. 574, 589 (1884)).
30. These safeguards were summarized by the court:
(1) The State must give 30 days notification prior to the trial of the case of its intention to seek the death penalty; defense counsel is also excused from all trial duties ten days prior to the term of court in which the trial is to be held. (§ 16-3-26(A)).
(2) The court shall appoint two attorneys to represent the defendant if he is unable to afford counsel, and the county in which the indictment was returned shall pay attorneys' fees up to $1,500.00 (§ 16-3-26(B)).
(3) The court shall authorize up to $2,000.00 for investigative, expert or other services, if found to be necessary. (§ 16-3-26(C)).
(4) The attorney for the defense shall be allowed to examine any person called as a juror. (§ 16-3-26(D)).
(5) Specific procedures are provided for excusing a juror for cause based on his attitude toward capital punishment. (§ 16-3-20(E)).
(6) The defendant or his counsel shall have the last argument during both the guilt and sentencing phases of the trial. (§§ 16-3-20(B) & 16-3-28).

resentenced under the new statute. This, said the court, factually distinguished *Rodgers* from *Dobbert* because in the latter case, Dobbert was both tried and sentenced under a single statute, which gave him the benefit of all statutory safeguards that attached during the trial stages.[31]

Twenty-six men were sentenced to death under the 1974 Act; fifteen of those were resentenced to life imprisonment under that Act after *Rumsey* but before the effective date of the 1977 Act.[32] The court in *Rodgers,* in ruling that others similarly situated should also be resentenced under the 1974 Act, reached the only rational decision on the matter.

II. JURY CHARGE OF PRESUMPTION FOR FAILURE TO CALL A MATERIAL WITNESS

In *State v. Hammond*[33] the South Carolina Supreme Court held that it will no longer reverse a case, civil or criminal, for failure of the trial judge to charge the jury that "a presumption might be drawn that a witness present in court, who did not testify and who had information relative to the case, if called, would have testified contrary" to what the party failing to call the witness might have desired.[34] With this holding, the court buried a ruling of long-standing confusion and little utility.

Defendant Hammond was charged with possession of cocaine with intent to distribute and possession of gambling paraphernalia. At trial, after the state rested, Hammond announced that he would present no evidence. Additionally, he requested that the judge charge the jury that a presumption may be drawn that a police officer, present in court but not called, might have testified adversely to the state. The judge indicated that the requested

---

(7) The sentencing proceeding is to be conducted by the trial judge before the trial jury, and is to follow the conviction closely in time. (§ 16-3-20(B)).

(8) The State may only introduce such evidence in aggravation as has been made known to the defendant in writing prior to the trial. (§ 16-3-20(B)).

(9) The jury must designate the aggravating circumstances which it found beyond a reasonable doubt, and the trial judge, prior to imposing sentence, must find as an affirmative fact that the death penalty was warranted under the evidence and that it was not a result of prejudice, passion, or any other arbitrary factor. (§ 16-3-20(C)).

270 S.C. at 291-92, 242 S.E.2d at 218.

31. *Id.* at 291, 242 S.E.2d at 217-18.

32. Brief of Appellant Allen at 20.

33. 270 S.C. 347, 242 S.E.2d 411 (1978).

34. *Id.* at 355, 242 S.E.2d at 415.

charge was proper, but instead of so charging the jury, allowed the state, over defendant's objection, to reopen its case and call the officer to testify. The supreme court ruled that there was no error in allowing the state to reopen its case.

In so doing, the court seized the opportunity to comment upon the propriety of the requested charge. Such jury charges have been deemed appropriate by the court in only the most restrictive circumstances in both criminal[35] and civil[36] cases. The court, five years earlier, had questioned its own position in this matter:

> Upon review of our own decisions, as well as authorities from other jurisdictions, we entertain grave doubt as to the propriety, in a criminal case, of the rule of an adverse inference from the failure to produce a material witness. Certainly, a charge of the proposition to the jury on behalf of either the state or the defense is not warranted except under most unusual circumstances . . . .[37]

Having previously alerted the trial bar and bench to a possible change in the law,[38] the court in *Hammond* eliminated the requirement that the charge be given.

The action of the court in no way impairs the right of counsel, in closing argument, to comment upon the failure of the opposing party to call a witness;[39] therefore, any potential detriment suffered by a party because the presumption was not charged can be minimized or eliminated. The protection of the parties' rights and the elimination of a jury charge that "brings about more problems than solutions"[40] make the supreme court's action in *Hammond* commendable.

III. Search and Seizure

"It is well settled that searches conducted without a warrant are *per se* unreasonable unless an exception to the warrant re-

35. *E.g.*, State v. Batson, 261 S.C. 128, 198 S.E.2d 517 (1973).

36. *E.g.*, Baker v. Port City Steel Erectors, Inc., 261 S.C. 469, 200 S.E.2d 681 (1973); Davis v. Sparks, 235 S.C. 326, 111 S.E.2d 545 (1959).

37. State v. Batson, 261 S.C. at 138, 198 S.E.2d at 522 (1973).

38. *Id. See also,* Baker v. Port City Steel Erectors, Inc., 261 S.C. 469, 200 S.E.2d 681 (1973).

39. 270 S.C. at 356, 242 S.E.2d at 416. *See also* State v. Peden, 157 S.C. 459, 154 S.E. 658 (1930).

40. 270 S.C. at 357, 242 S.E.2d at 416.

quirement is presented . . . ."[41] The recognized exceptions to this rule include: "(1) search incident to a lawful arrest, (2) 'hot pursuit', (3) 'stop and frisk', (4) 'automobile exception', (5) the 'plain view' doctrine, and (6) consent."[42]

Six months before summarizing the law pertaining to warrantless searches as quoted above, the South Carolina Supreme Court in *State v. Shelton*[43] regrettably created another exception to the warrant requirement. The court in *Shelton* outlined the authority and responsibility of the trial judge to preserve security and to secure orderly proceedings in the courtroom. The court then held that in the exercise of this authority the judge "is not inhibited by the guarantees of the Fourth Amendment. Therefore, the Fourth Amendment protection against unreasonable searches and seizures is inapplicable to a courtroom . . . ."[44]

In *Shelton,* defendant and his wife were involved in a foreclosure proceeding. Several days before Shelton's scheduled appearance, the trial judge received reliable information, conceded by the state to be probable cause,[45] that defendant carried a gun and had threatened several persons, including a local attorney. On the date set for the hearing, Shelton arrived at the courthouse. At the judge's direction, he was escorted from the hallway into the courtroom and was searched without a warrant in the presence of the court. The search yielded a loaded pistol. This evidence was used, over defendant's objection, in his subsequent conviction for carrying a firearm in a public building.[46]

---

41. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978).
42. *Id.* n.1.
43. 270 S.C. 577, 243 S.E.2d 455 (1978).
44. *Id.* at 580, 243 S.E.2d at 457.
45. Brief of Respondent at 1.
46. S.C. CODE ANN. § 16-23-420 (1976). The statute provides:

> Any person who carries into any private or public school, college or university building or any publicly owned building, or has in his possession in the area immediately adjacent to such buildings, a firearm of any kind, without the express permission of the authorities in charge of the buildings, or who, upon entering such buildings, or the areas immediately adjacent thereto, displays, brandishes or threatens others with a firearm shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than five thousand dollars or be in prison not more than five years, or both, in the discretion of the court.
>
> The provisions of this section shall not apply to any guard, law enforcement officer or member of the armed forces, or to any student of military science, or to any married student residing in apartments provided by such private or public school whose presence with a weapon in or around a particular building is authorized by persons legally responsible for the security of such buildings.

Id.

The search of Shelton did not fall under any specific or well-delineated exception to the warrant requirement. These exceptions fall into three basic categories: "consent searches, a very limited class of routine searches, and certain searches conducted under circumstances of haste, that render the obtaining of a warrant impracticable."[47] Counsel for both sides argued the applicability of various recognized exceptions such as consent search,[48] search incident to arrest,[49] and "stop and frisk" search.[50] The court either chose not to rely on these arguments or found them unpersuasive. In holding that the gun was properly admitted in evidence, the supreme court relied solely on the "inherent power [of the judge] to preserve order in his court and to see that justice is not obstructed by any person or persons."[51] The soundness of this policy cannot be questioned, but the method of effectuating the policy in this particular case is extremely questionable.

The court relied on *State v. Smith*[52] and *State v. Gore*[53] to support the proposition that in matters of courtroom security, the appellate court reviewing the judge's action will only consider the "reasonable necessity for the security taken."[54] This reliance was misplaced.

First, *Smith* and *Gore* are totally inapposite. The central issue in both *Smith* and *Gore* was whether a defendant's right to a fair trial was unduly prejudiced by excessive security precautions taken during the trial.[55] Moreover, the precautions taken in *Smith* and *Gore* were of general application—either searching all persons who entered the courtroom or providing officers for general courtroom security.[56] The concern of the judge in *Shelton* was not for general courtroom security nor was the concern of such ill-

47. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 358 (1974).

48. Brief of Appellant at 3; Brief of Respondent at 1-2.

49. Brief of Appellant at 2.

50. *Id.* at 3-4; Brief of Respondent at 2-3.

51. 270 S.C. at 580, 243 S.E.2d at 457.

52. 259 S.C. 309, 191 S.E.2d 638 (1972).

53. 257 S.C. 330, 185 S.E.2d 826 (1971).

54. 270 S.C. at 581, 243 S.E.2d at 457.

55. 259 S.C. at 311-12, 191 S.E.2d at 638-39; 257 S.C. at 333, 185 S.E.2d at 828.

56. 259 S.C. at 312, 191 S.E.2d at 639; 257 S.C. at 333, 185 S.E.2d at 828. *See also* United States v. Miller, 468 F.2d 1041 (4th Cir. 1972), *cert. denied*, 410 U.S. 935 (1973); Downing v. Kunzig, 454 F.2d 1230 (6th Cir. 1972); Jessmore, *The Courthouse Search*, 21 U.C.L.A.L. REV. 797 (1974).

defined scope and magnitude to render a search warrant impracticable. On the contrary, the judge's security concern involved only defendant Shelton and the judge had ample time and sufficient probable cause to secure a warrant.

Second, contrary to the wording of the court's opinion in *Shelton,*[57] reasonableness of a search is not the correct test to be applied in resolving fourth amendment challenges. Absent one or more of the limited exceptions to the warrant requirement, the appropriate test is whether it was reasonable to secure a warrant not whether the search was reasonable.[58] In *Shelton,* it was reasonable to secure a warrant, one was not obtained, and the evidence should have been excluded from the subsequent prosecution.

That the person directing the search was a judicial officer can in no way substitute for the warrant requirement. The fact that probable cause to obtain a warrant unquestionably existed or that any magistrate would have issued a search warrant is insufficient to comply with the procedural safeguards developed to preserve fourth amendment protections. Regardless of the objectivity of the judge ordering the search, the requisite "neutral and detached" magistrate requirement per se has not been met.[59]

The unfortunate effect of the *Shelton* decision is that the courtroom, long the place to which individuals have successfully turned to have their constitutional rights vindicated, has become an enclave in which one of the important protections guaranteed by the fourth amendment does not apply. It is hoped that the reasoning of the court in *State v. Shelton* is an aberration soon to be rectified.

Harry D. Brown

57. See text accompanying note 54 *supra.*
58. *See* United States v. Chadwick, 433 U.S. 1, 6-7 (1977).
59. Coolidge v. New Hampshire, 403 U.S. 443, 450 (1971).