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U.S. v. Robinson: What Is Reasonable

Robert C. Williams

IV. CONCLUSION

The *Adams* opinion, viewed in practical terms seeks to accommodate the positive values of free choice on the higher educational level, with the problems attendant on the affirmative duty to desegregate. While primary and secondary school districts have compulsory zoning laws and busing as a means of eliminating a dual system, the appellants are allowing the non-complying states to devise plans to allow free choice of schools. These plans should approach desegregation on a state-by-state basis, thus allowing great flexibility.[28] Predominantly Black institutions have demonstrated an important role in producing graduates who take meaningful positions in society. *Adams*, and *Hawkins v. Board of Control of Florida*[29] acknowledges this role of Black institutions. It is difficult to envision white institutions, in the near future, assuming similar roles. This pragmatic approach by *Adams* appreciates HEW's obvious difficulties in achieving an equitable solution. The goal of having racially unidentifiable schools in the immediate future is highly unlikely considering the fact that minority college enrollment has decreased since 1973.[30] It has been demonstrated that the only "good education" does not necessarily have to be an "integrated education."[31]

CHARLES H. HOLMES

U.S. v. Robinson : What is Reasonable?

The Fourth Amendment of the Constitution of the United States provides that the people shall be protected against unreasonable searches and seizures, and no warrants whall be issued except upon probable cause.[1] However, a search incident to a lawful arrest is a long-recognized exception to the requirement that searches must rest upon warrants issued upon probable cause.[2] While eliminating the requirement of a warrant in some instances the courts do require that the search be reasonable to meet the safeguards of the Fourth Amendment.[3]

The Supreme Court of the United States, with Mr. Justice Rehnquist writing for the majority, has further defined what it considers to be a reason-

[28] For a cogent discussion of the inverse effects of Brown v. Board of Education, see Howie, the Image of Black People in *Brown v. Board of Education*, 1 BLACK LAW JOURNAL 234 (1971) in which the writer maintains that Brown supports and reincarnates Dred Scott.

[29] Florida ex rel. Hawkins v. Board of Control of Florida et al. 350 U.S. 413 (1956).

[30] N.Y. Times, February 3, 1974, at 54.

[31] See EDMONDS, JUDICIAL ASSUMPTIONS ON THE VALUE OF INTEGRATED EDUCATION FOR BLACKS, PROCEEDINGS, NATIONAL POLICY CONFERENCE ON EDUCATION FOR BLACKS (1972); *The Value of Integrated Education*, in THE SOCIAL SCIENCE RESEARCH CONTROVERSY 562.

[1] U.S. CONST. Amend. IV.

[2] Jones v. U.S., 357 U.S. 493, 497 (1958).

[3] U.S. v. Rabinowitz, 339 U.S. 56 (1950).

able search. In its recent holding in *U.S. v. Robinson*[4] the court stated:

> "The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but also is a 'reasonable' search under that amendment."[5]

In order to fully understand the decision of the court it is important to review the facts leading up to this Supreme Court decision. Willie Robinson was arrested in the District of Columbia for operating a motor vehicle after revocation of his license. A District of Columbia police officer made a complete field search of the defendant at the scene of the arrest and discovered fourteen capsules of heroin in a crumpled cigarette package located in the defendant's coat pocket. The officer did not indicate any subjective fear of the defendant, did not suspect Mr. Robinson was armed, and was not specifically looking for weapons or anything else in the search.[6]

Mr. Robinson was convicted of a narcotics offense in the U.S. District Court for the District of Columbia but on appeal the U.S. Court of Appeals for the District of Columbia removed the case for an evidentiary hearing concerning the scope of the search of the defendant's person at the time of his arrest for a traffic offense.[7]

The legality of the search was upheld by the District Court, but the Court of Appeals reversed, holding that the heroin had been obtained as the result of a search violative of the Fourth Amendment. Even though the defendant had been lawfully placed in custodial arrest, the search could not have produced further evidence of the crime of driving after revocation of one's permit. Thus, the search should have been limited to a search of defendant's outer clothing to discover weapons, similar to a stop and frisk weapon search incident to an investigative stop based on less than probable cause.[8]

In addition to reaching its decision which reversed the holding of the Court of Appeals the Supreme Court went on to explain why the evidence

[4] U.S. v. Robinson, —U.S.— 94 S.Ct. 467 (1973).
[5] *Id.* at 477.
[6] *Id.* at 477.
[7] *Id.* at 467.
[8] U.S. v. Robinson, 471 F.2d 1082 (1972).

was properly admitted. It stated that it was not important that the arresting officer did not indicate any subjective fear of the defendant or that he did not himself suspect that the defendant was armed.[9] The court reasoned that while making a lawful search the officer came upon a package of cigarettes and was entitled to inspect it; and when his inspection revealed heroin capsules he was entitled to seize them as fruits, instrumentalities or contraband probative of criminal conduct.[10]

After making this final statement the Court cites *Harris v. United States*,[11] *Warden v. Hayden*[12] and *Adams v. Williams*,[13] it is conceded that the courts here used such language in ruling the evidence obtained upon the search not related to the original arrest was admissible, but in all of these cases the search was made contemporaneously with, or after an arrest involving a weapon or serious crime. There was a reasonable belief that due to the nature of the offense further weapons might be involved giving the officer the right to search.

In light of this holding the court has determined that a citizen is subject to a full search of his person in any situation that involves a custodial arrest. This avenue of thought seems to be side stepping prior decisions of the Court.[14] It should also be noted that in making its decision the court stated, "Virtually all of the statements of this Court affirming the existence of an unqualified authority to search incident to a lawful arrest are dicta."[15]

After examining the development of early case law on the subject of search incident to arrest there is little doubt that such search is valid insofar as its purpose is to discover "fruits, implements or evidence" of the crime for which the arrest is made. Therefore, it is the connection between the object sought and the nature of the crime which makes the search reasonable rather than the mere fact of a lawful arrest.[16]

The right to search incident to a lawful arrest was discussed in *Preston v. US*.[17] The Court stated that the rule allowing contemporaneous searches incident to lawful arrest is justified by the need to seize weapons and other things which might be used to assault the police officer or effect an escape as well as the need to secure and prevent the destruction of evidence of the crime.

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[9] U.S. v. Robinson, —U.S.— 94 S.Ct. 467, 477 N.7 (1973).

[10] *Id.* at 477.

[11] *Id.*, 331 U.S. 145, 154-155 (1947).

[12] *Id.*, 387 U.S. 294, 299, 307 (1967).

[13] *Id.*, 407 U.S. 143, 149 (1972).

[14] *See, e.g.* Chambers v. Maroney, 399 U.S. 42, 47, n.6 (1970), Chimel v. California, 395 U.S. 752, 762-63 (1969), Terry v. Ohio 392 U.S. 1, 19-20 (1968), Peters v. New York, 392 U.S. at 66, 67 (1968).

In all of the cases cited the Court has laid tenets for the justification for a search incident to arrest. The justification was not based solely on the arrest, but rather the protection of the officer and evidence or in the Chambers case, the circumstances of the arrest.

[15] *Id.* at 474.

[16] 69 COLUM. L. REV. 866, 868.

[17] Preston v. U.S., 376 U.S. 364 (1964).

In *U.S. v. Humphrey*[18] the court took note that a warrantless search based on probable cause was reasonable only when it was not feasible to obtain a search warrant or unless the search was incident to a legal arrest. It continued by saying that the exceptions are not based on anything inherent in the exception itself but result from the inductive case by case application of the constitutional standard of reasonableness. These exceptions have been traditionally justified by the need to protect the arresting officer, prevent escape, collect instrumentalities or fruits of the crime and prevent delay which might otherwise permit the criminal to escape or commit his crime. "From this rationale it is clear that the scope of a search contemporaneous with a legal arrest must have a reasonable relationship to the protection of the officer or the crime for which the accused was arrested."[19]

It is evident from the language that the court has premised its justification of a search incident to arrest on the need to protect the officer and preserve evidence. Reasoning such as this gives adequate basis for allowing a search without a warrant. Police officers should be allowed to protect themselves and obtain evidence of the crime involved. Few will quarrel with any attempt by the courts to safeguard police officers' rights in such cases.

The discussion of the Court of Appeals in *Robinson* exemplified the fact that the officer made no suggestion that he believed what he found in the pocket was a weapon nor did he believe he was in danger. The officer admitted that he did not have any specific purpose in mind when he searched the defendant. Absent these factors the court refused to sanction a search into the pockets of the defendant which produced evidence which led to a conviction of a crime unrelated to the original arrest.[20]

Some courts have gone even further than the Court of Appeals in condemning searches incident to a lawful arrest for a mere motor vehicle regulation. They have held that absent "special circumstances" a police officer has no right to search either the arrestee or the motor vehicle.[21]

The Supreme Court's position that the lawful arrest establishes the right to search disagrees with the Court of Appeals which suggests that there be litigated in each case the issue of whether or not there was present one of the factors supporting the authority for a search of the person incident to a lawful arrest.

The current position taken by the Court also conflicts with its reasoning in *Sibron v. U.S.* where the court said, "The constitutional validity of a warrantless search is preeminently the sort of question which can only

[18] U.S. v. Humphrey, 409 F.2d 1055 (1969).

[19] *Id.* at 1058.

[20] U.S. v. Robinson, 471 F.2d 1082, 1089 (1972).

[21] Stidham v. Wingo, 452 F.2d 837 (1971); U.S. v. Davis, 441 F.2d 28 (1971); Barrentine v. U.S. 434 F.2d 636 (1970).

[22] 392 U.S. 40, 59 (1968).

be decided in the concrete factual context of the individual case."[22]

The dissent written by Mr. Justice Marshall accuses the majority of turning its back on the principles which the Court has followed in the past. By ruling that the fact of the lawful arrest always establishes the authority to conduct a full search of the arrestee's person the Court has abrogated the holding in *Go-Bart Co. v. U.S.*[23] where the Court examined the Fourth Amendment requirement of reasonableness stating, "There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances."

While the Court has ruled that an arrest may not be used as a pretext to search for evidence,[24] this might be the unfortunate offspring of the Court's decision. The far-reaching effects of Robinson will be felt in the near future if not already.[25]

CONCLUSION

The result of the Supreme Court's decision cannot help but create a visceral reaction. It does not take a legal scholar to find fault with a ruling that will allow citizens, who may be guilty of a minor traffic offense, to be subjected to a full search by some over zealous police officer. Where does a person's right to privacy begin? Where is the line of demarcation drawn between the legitimate interests of society and the rights of a citizen to be protected against such intrusions? Would it be permissible for the arresting officer to search a man's wallet or a lady's pocketbook while making an arrest for going through a red light? After reading the Court's interpretation of the right to search this might be possible.

ROBERT C. WILLIAMS

Corporal Punishment in the Schools: Ware v. Estes

A somewhat innovative approach to the limitation, if not the abatement, of corporal punishment in the public schools was initiated by a group of

[23] 282 U.S. 344, 357 (1931).

[24] U.S. v. Lefkowitz, 285 U.S. 452 (1932).

[25] *See also*, Gustafson v. Florida 94 S.Ct. 488 (1973). Defendant was convicted of unlawful possession of marihuana. At his trial the state introduced into evidence marihuana which had been seized from him during a search incident to his arrest on a charge of driving without an operator's license. The arresting officer did not indicate any subjective fear of defendant nor did he suspect that the defendant was armed. The District Court of Appeals of Florida, Fourth District reversed the conviction, holding that the search which led to the discovery of the marihuana was unreasonable under the Fourth and Fourteenth Amendments. Gustafson v. State, 243 So. 2d 615 (4th D.C.A. Fla. 1971). The Supreme Court of Florida reversed, 258 So. 2d 1 (Fla. 1972). The Supreme Court affirmed the Supreme Court of Florida citing U.S. v. Robinson.