Duquesne Law Review

Volume 4 | Number 1 Article 15

1965

Constitutional Law - Illegal Search and Seizure

Samuel J. Pasquarelli

RECENT DECISIONS

CONSTITUTIONAL LAW—Illegal Search and Seizure—The rule announced in *Mapp v. Ohio* will not be used to overturn any conviction finally adjudicated before *Mapp v. Ohio* was decided.

Linkletter v. Walker, 85 Sup. Ct. 1731 (1965).

This past June the United States Supreme Court decided that the landmark case of *Mapp v. Ohio*[1] would not be applied retrospectively to state convictions which had become final before the decision in *Mapp* was rendered. By so deciding, the Court disposed of ". . . a most troublesome question in the administration of justice ."[2]

Petitioner Linkletter, suspected of burglary, was arrested in New Orleans on August 16, 1958, where he was taken to jail and searched. Keys were taken from his person and used to gain access (without a search warrant) to his personal effects, certain of which were then admitted into evidence at his trial as part of a lawful search and seizure under Louisiana law. He was convicted of burglary, the conviction was affirmed on appeal, and on March 21, 1960, the Supreme Court of Louisiana denied his petition for a rehearing.[3] On June 19, 1961, *Mapp* was decided, and petitioner then filed for a writ of habeas corpus—he was refused, and the Fifth Circuit Court of Appeals would not give him the benefit of a retrospective overruling,[4] thus forcing the Supreme Court to decide whether it would apply *Mapp* to state convictions which had become final before June 19, 1961.

In a very able opinion by Mr. Justice Clark the Court decided the question in the negative. By way of introduction, "final decision" was defined as a decision in which ". . . the judgment of conviction [has been] rendered, the availability of appeal exhausted, and the time for petition for certiorari . . . elapsed before our decision in *Mapp v. Ohio*."[5] The Supreme Court then proceeded to show that courts have long had the power to overrule cases retrospectively,[6] and that the Supreme Court itself has often given effect both to changes in the law[7] and to new judicial decisions that overrule earlier controlling ones[8] while a case is under direct

1. 367 U.S. 643 (1961).

2. Linkletter v. Walker, 85 Sup. Ct. 1731 (1965).

3. — La. —. The seizure in the Mapp case occurred on May 23, 1957; the Supreme Court of Ohio made its final adjudication on March 23, 1960.

4. 323 F.2d 11 (5th Cir. 1963); but the court did say that the search and seizure were illegal.

5. Linkletter v. Walker, *supra* note 2, at 1734, n.5.

6. Kuhn v. Fairmont Coal Co., 215 U.S. 349, 372 (1910) (dissenting opinion of Holmes, J.).

7. United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103 (1801).

8. Vandenbark v. Owens-Illinois Glass Co., 311 U.S. 538 (1941).

review. However, it was also shown that no court, including the Supreme Court, is bound to overrule cases retrospectively since courts enjoy a somewhat limitless freedom of choice in the matter and may do as they see fit so as to avoid any injustice or hardship that they feel may possibly result.[9] As far as any rule in this area may be stated, the Court arrived at the conclusion that retrospective decision-making really depends upon factors unique to each particular case and upon the varying demands of public policy.[10] Having considered the essential factors that relate to retrospective decision-making, and having logically shown that the Court "has the right" to decide this case either way, the Court then considered the "factors unique to the particular case and the varying demands of public policy." It is here that the two bases for the present decision appear. First, the line of development of the exclusionary rule is discussed, with the Court emphasizing the confused state of affairs that existed prior to *Mapp*, focussing great attention on *Wolf v. Colorado*,[11] where it was decided that the fourth amendment guarantees applied to the states, but that the exclusionary rule was not essential to these guarantees. *Wolf* was the law for twelve years, and the Court realized that thousands of cases had been decided upon it; to give *Mapp* retrospective effect would thus require a great many hearings and trials which would tax the state and federal courts unbearably. Secondly, the Court determined that the main function of *Mapp* was to deter police lawlessness; to free those convicted before *Mapp* was decided would not further this end, nor would it result in any benefit to those affected, who were given all the benefits of due process then available to them, because ". . . [r]eparation comes too late. . . . [to] be served by the wholesale release of . . . guilty victims."[12] Finally, by stressing that the date of decision is the only significant date to consider, the Court summarily dismissed Linkletter's last contention that *Mapp* applied since the search and seizure there antedated the one in his case.

Although this decision was virtually unanimous,[13] it will no doubt generate a fair amount of controversy. The Court in the past had not balked at applying constitutional rules to "finalized" cases[14] and had gone so far as to order new trials for defendants who had been convicted twenty to twenty-five years earlier by means of coerced confessions,[15] which shows that what the Court was concerned with here did not always concern it in the past. Furthermore, it hardly seems just that the treat-

9. Great No. Ry. v. Sunburst Oil & Ref. Co., 287 U.S. 358, 364 (1932).

10. Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940).

11. 338 U.S. 25 (1949).

12. Linkletter v. Walker, *supra* note 2, at 1742.

13. Mr. Justice Douglas concurred in Mr. Justice Black's dissent.

14. See Gideon v. Wainwright, 372 U.S. 335 (1963), where the conviction was collaterally attacked by post-conviction remedies; Eskridge v. Washington, 357 U.S. 214 (1958).

15. Fay v. Noia, 372 U.S. 391 (1963); Reck v. Pate, 367 U.S. 433 (1961).

ment of two people (Miss Mapp and Mr. Linkletter) in identical situations should be merely a function of the efficiency of a state's judicial system, as Mr. Justice Black's dissent points out.[16] As well-founded as all of these arguments are, however, it must be borne in mind that the problem confronting the Court was a serious one, and the pragmatic considerations concerning the administrative side of the judicial system alone go far toward meeting the critics' arguments. Also, although one may say that this decision breaks precedent, it must be remembered that in this area of the law there is ample historical background stretching over hundreds of years for doing so.[17] Finally, a decision in a case like this is composed of a large amount of value judgment, which makes it amenable to the barbs of criticism. This particular decision, though, is favored with a thorough logical and historical style and composition that, upon reflection, make it much easier for the reader to fully understand the thought-process of Mr. Justice Clark and the full import of what he is trying to convey. Perhaps the greatest flaw in the decision, and thus the starting-point for most of the criticism, is that its pragmatic aspect has the very unpragmatic effect of keeping the jails full while attempting to keep the courts empty. While this is deplorable in many respects, one cannot quarrel with the Court's desire to be of assistance to an already overworked judiciary, nor can one fail to realize that in this area of constitutional development the Supreme Court is experiencing somewhat rapid and far-reaching changes, the material effect of which must also be dealt with. While the decision may appear to fly in the face of "what is right," the nature and importance of the question and the scrupulously correct means used to decide it are such as to blunt the arguments of its opponents upon a fair legal appraisal of all that is involved.

Samuel J. Pasquarelli

CONSTITUTIONAL LAW—Right to Counsel—The United States Supreme Court, in making an accused's right to confront witnesses a fundamental right applicable to the states, unnecessarily extended constitutional law.

Pointer v. Texas, 380 U. S. 400 (1965).

In April of this year, the Supreme Court of the United States in *Pointer v. Texas*[1] rendered a decision which resulted in the application of another constitutional provision to the states. Now, the right of an accused to confront witnesses against him can be enforced in any state court as well as in the federal courts.

16. Linkletter v. Walker, *supra* note 2, at 1744.

17. 1 BLACKSTONE, COMMENTARIES 69 (15th ed. 1809).

1. 380 U.S. 400 (1965).