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Recent Decision Note

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to expand itself to the limit of its logic in an attempt to align the law with what is believed to be the public sentiment. To the other extreme, however, it reflects the anomaly of judges who, as triers of fact and law, render a verdict flatly in the face of both, apparently not realizing that "the public policy as expressed by legislative acts is not a matter for the courts. Their duty is to apply the law as they find it."⁴⁰

Demands for legalizing euthanasia coupled with results similar to *People v. Werner* justify a closer scrutiny of the present law as it applies to "mercy-killers." Recent efforts in both England and the United States to re-classify those acts which should be punishable amply demonstrate that the trend of modern criminal law is to utilize punishment discriminately.⁴¹ The manner in which both judges and juries are now disposing of euthanasia cases further exemplifies this trend. Yet their disposition of the cases is inadequate by present legal standards since euthanasia falls under the classification of "premeditated homicide." This dichotomy necessitates a reform of the law. Legislators could conceivably take mercy-killing entirely outside the scope of criminal law, and thereby fulfill the aims of those advocating the legalization of euthanasia. But in doing so, they are tacitly giving ethical approval to the act. A far better approach would be to leave "involuntary" euthanasia under the full condemnation of the criminal law, while at the same time recognizing the element of motive by providing "voluntary" euthanasia with its own special niche in the law. Since a lesser punishment would still attach, ethical approval would be withheld, the crime merely being classified as less reprehensible than other forms of premeditated homicide. This should eliminate the widespread and concerted refusal to enforce the penalties against mercy-killers, and thereby bring the actual status of the mercy-killer back into juxtaposition with his conceptual status.

John C. Hirschfeld

SEARCH AND SEIZURE — PROBABLE CAUSE — TIP OF INFORMER HELD PROBABLE CAUSE FOR ARREST WITHOUT WARRANT. — Petitioner was arrested without a warrant by a federal narcotics agent. Sole justification for the arrest, pursuant to the Narcotics Control Act of 1956,¹ was information from a paid informer of the Narcotics Bureau who had proved reliable during six months of association with arresting officers. The informer's description of the petitioner, including dress, baggage, and manner of walking, and his prediction of the petitioner's time of arrival at the point of arrest, were detailed and accurate. The arresting officers searched petitioner immediately after the arrest and seized narcotics and implements used in narcotics addiction. At trial petitioner moved to suppress this evidence on the ground that the search was incident to an illegal arrest. Motion was denied by the trial court and petitioner's subsequent conviction was affirmed by the court of appeals. On petition for writ of certiorari, *held*: affirmed. Information from a reliable informer may be probable cause for arrest without a warrant. *Draper v. United States*, 358 U.S. 307 (1959).

An arrest without a warrant can only be made upon probable cause, and evidence seized incident to an invalid arrest is not admissible in the federal courts.² With some dicta to the contrary,³ probable cause for arrest or for search without a warrant does not require evidence sufficient for conviction.⁴ Probable cause has been interpreted to

³⁹ See *People ex rel. Milburn v. Nierstheimer*, 401 Ill. 465, 82 N.E.2d 438 (1948); *People v. Lueckfield*, 396 Ill. 520, 72 N.E.2d 198 (1947).

⁴⁰ *Holmstedt v. Holmstedt*, 383 Ill. 290, 49 N.E.2d 25, 28 (1943).

⁴¹ See *Silving*, *supra* note 2, at 350.

¹ 70 Stat. 570 (1956), 26 U.S.C. § 7607 (Supp. V, 1958).

² *United States v. Lefkowitz*, 285 U.S. 452 (1932); *Weeks v. United States*, 232 U.S. 383 (1914).

³ See, e.g., *Grau v. United States*, 287 U.S. 124 (1932).

⁴ *Brinegar v. United States*, 338 U.S. 160 (1949); *Locke v. United States*, 11 U.S. (7 Cranch) 212 (1813).

mean reasonable grounds under the circumstances.⁵ The existence of probable cause has been found where the officer's information was drawn from his personal knowledge⁶ or observation,⁷ or where guilt has been reasonably inferred from the suspect's flight.⁸ Statutes defining the arrest power of narcotics agents⁹ and agents of the FBI¹⁰ do not enlarge the construction of probable cause in the fourth amendment.¹¹ However, a recent Fifth Circuit decision has construed the Narcotics Control Act as eliminating the necessity for a judicial determination of probable cause and has upheld an arrest made without a warrant two weeks after the arresting officer had sufficient information to justify issuance of a warrant.¹²

The courts have tended to test probable cause for arrest without a warrant by deciding *a posteriori* whether a warrant could have been issued on the basis of the information possessed by the officer before the arrest.¹³ If that test is applied, mere "belief" by the officers¹⁴ or information from undisclosed informers¹⁵ does not constitute probable cause.

Approval of arrests made on the uncorroborated "tips" of informers has been resisted by federal courts regardless of how accurate the information proved to be in the subsequent search and seizure.¹⁶ An exception has been made in one case where information later proved to be "reliable and positive."¹⁷ In those cases which approve arrests made without a warrant, the probable cause on which the arrest was based usually involved corroboration by officers of the data given them by informers. In *Wisniewski v. United States*,¹⁸ for instance, officers observed the suspect's criminal activity before arrest. In *Ard v. United States*,¹⁹ *Husty v. United States*,²⁰ and *Carroll v. United States*,²¹ officers had prior personal knowledge of the suspects' criminal activity; and in *United States v. Li Fat Tong*,²² the suspect had a record of several previous arrests and admitted his guilt before he was arrested. These cases frequently included dicta that information from informers would not, standing alone, justify arrest.²³ In several instances personal observation by officers has not validated an arrest made after an investigation when the investigation was initiated as a result of a "tip" which the courts considered unreliable.²⁴

The instant decision adds prestige to the informer's role by recognizing his word as a basis of probable cause, subject to confirmation by the arresting officer. It appears

⁵ *Stacey v. Emery*, 97 U.S. 642 (1878).

⁶ *Carroll v. United States*, 267 U.S. 132 (1925).

⁷ *United States v. Kansco*, 252 F.2d 220 (2d Cir. 1958).

⁸ *United States v. Heitner*, 149 F.2d 105 (2d Cir. 1945), *cert. denied sub nom. Cyrne v. United States*, 326 U.S. 727 (1945).

⁹ 70 Stat. 570 (1956), 26 U.S.C. § 7607 (Supp. V, 1958) ("reasonable grounds").

¹⁰ 18 U.S.C. § 3052 (1952).

¹¹ *United States v. Volkell*, 251 F.2d 333 (2d Cir. 1958), *cert. denied*, 356 U.S. 962 (1958); *United States v. Walker*, 246 F.2d 519 (7th Cir. 1957); *United States v. Keown*, 19 F. Supp. 639 (W.D. Ky. 1931); *cf. Stacey v. Emery*, 97 U.S. 642 (1878).

¹² *Dailey v. United States*, 261 F.2d 870 (5th Cir. 1958); *cf. United States v. Rabinowitz*, 339 U.S. 56 (1950).

¹³ *Worthington v. United States*, 166 F.2d 557 (6th Cir. 1948); *United States v. Horton*, 86 F. Supp. 92 (W.D. Mich. 1949).

¹⁴ *Giordenello v. United States*, 357 U.S. 480 (1958).

¹⁵ *Schencks v. United States*, 2 F.2d 185 (D.C. Cir. 1924).

¹⁶ *Contee v. United States*, 215 F.2d 324 (D.C. Cir. 1954); *United States v. Castle*, 138 F. Supp. 436 (D.D.C. 1955). *But see Wrightson v. United States*, 236 F.2d 672 (D.C. Cir. 1956); *United States v. Jackson*, 159 F. Supp. 845 (D.D.C. 1958).

¹⁷ *King v. United States*, 1 F.2d 931 (9th Cir. 1924).

¹⁸ 47 F.2d 825 (6th Cir. 1931).

¹⁹ 54 F.2d 358 (5th Cir. 1931), *cert. denied*, 285 U.S. 550 (1932).

²⁰ 282 U.S. 694 (1931).

²¹ 267 U.S. 132 (1925).

²² 152 F.2d 650 (2d Cir. 1945).

²³ *See, e.g., United States v. Hill*, 114 F. Supp. 441 (D.D.C. 1953).

²⁴ *Johnson v. United States*, 333 U.S. 10 (1948); *United States v. Lee*, 83 F.2d 195 (2d Cir. 1936); *Wakkuri v. United States*, 67 F.2d 844 (6th Cir. 1933).

that the officer must both first believe that the informer is reliable, and then confirm by personal observation at least part of what the informer tells him. However, this personal observation need not be of criminal activity. The officer is apparently permitted to infer that the informer's prediction that a crime will be committed is accurate if other detailed descriptive information proves to be accurate.

The instant decision leaves indefinite the precise legal status of informers in federal law enforcement. However, the right to report criminal activity, and to be free from intimidation²⁵ or civil prosecution²⁶ as a result, is firmly established. The government has been required to disclose the names of informers when such information is necessary for an adequate defense,²⁷ when the informer's words have been repeated in testimony,²⁸ or when the informer has been used to trap the defendant.²⁹ In the absence of one of these circumstances, "public policy forbids disclosure of an informer's identity."³⁰

Conceding the necessity for prompt action in many narcotics cases, there is no necessity for pre-empting judicial determination of probable cause where, as in this case, there is time and opportunity to obtain a warrant. The statute defining the arrest power of FBI agents³¹ has been construed more narrowly than the provisions of the Narcotics Control Act³² although the language is almost identical.³³ This may indicate that the judiciary considers narcotics violations more critical than other federal crimes. There is, however, the danger that law enforcement officials will ignore constitutional safeguards when the courts give them the opportunity.³⁴ An officer employed to invade privacy is not the most reliable judge of when to respect it.

Thomas L. Shaffer

UNEMPLOYMENT INSURANCE — DISQUALIFICATION — RESIGNATION PURSUANT TO SENIORITY PROVISION OF COLLECTIVE BARGAINING AGREEMENT PRECLUDES EMPLOYEE FROM COMPENSATION. — Claimant, though a member of the international, was a non-member of a local union, working as a moving picture projectionist under a permit issued by the local union. He resigned his position in obedience to an order of the local union's business agent issued pursuant to a seniority regulation which provided that non-members had no seniority status in the local union and were subject to being displaced by any local union member unemployed through no fault of his own. The regulation was part of a collective bargaining agreement between the employer and the local union; the employer was required to comply strictly with the regulation in making all changes of employees. Claimant subsequently applied for work at the state employment office and filed a claim for benefits, which was granted by the Commissioner of Employment Security. On certiorari, *held*, reversed. Employment discontinued in accordance with seniority provisions of a collective bargaining agreement

²⁵ *In re Quarles*, 158 U.S. 532 (1895).

²⁶ *Vogel v. Grauz*, 110 U.S. 311 (1884).

²⁷ *Roviaro v. United States*, 353 U.S. 53 (1957).

²⁸ *United States v. Keown*, 19 F. Supp. 639 (W.D. Ky. 1937).

²⁹ *Portomene v. United States*, 221 F.2d 582 (5th Cir. 1955).

³⁰ *Scher v. United States*, 303 U.S. 251 (1938); *cf. Cannon v. United States*, 158 F.2d 952 (5th Cir. 1947), *cert. denied*, 330 U.S. 839 (1947); *Nichols v. United States*, 176 F.2d 431 (8th Cir. 1949).

³¹ 18 U.S.C. § 3052 (1952).

³² 70 Stat. 570 (1956), 26 U.S.C. § 7607 (Supp. V, 1958).

³³ *United States v. Bianco*, 189 F.2d 716 (3d Cir. 1951); *United States v. Coplon*, 185 F.2d 629 (2d Cir. 1950).

³⁴ *Cf. the detailed statistical survey of arrest practices in seven eastern states in Tresolini, Taylor & Barnett, Arrest Without Warrant: Extent and Social Implications*, 46 J. CRIM. L., C. & P. S. 187 (1955).