

Mapp vs Ohio (1961)

U.S. Supreme Court

Mapp v. Ohio, 367 U.S. 643 (1961)

Mapp v. Ohio

No. 236

Argued March 29, 1961

Decided June 19, 1961

367 U.S. 643

APPEAL FROM THE SUPREME COURT OF OHIO

MR. JUSTICE CLARK delivered the opinion of the Court.

Appellant stands convicted of knowingly having had in her possession and under her control certain lewd and lascivious books, pictures, and photographs in violation of § 2905.34 of Ohio's Revised Code. [

Footnote 1

] As officially stated in the syllabus to its opinion, the Supreme Court of Ohio found that her conviction was valid though "based primarily upon the introduction in evidence of lewd and lascivious books and pictures unlawfully seized during an unlawful search of defendant's home" 170 Ohio St. 427-428, 166 N.E.2d 387, 388.

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On May 23, 1957, three Cleveland police officers arrived at appellant's residence in that city pursuant to information that "a person [was] hiding out in the home, who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home." Miss Mapp and her daughter by a former marriage lived on the top floor of the two-family dwelling. Upon their arrival at that house, the officers knocked on the door and demanded entrance, but appellant, after telephoning her attorney, refused to

admit them without a search warrant. They advised their headquarters of the situation and undertook a surveillance of the house.

The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors to the house was forcibly opened [

Footnote 2

] and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. It appears that Miss Mapp was halfway down the stairs from the upper floor to the front door when the officers, in this highhanded manner, broke into the hall. She demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which they handcuffed appellant because she had been "belligerent"

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in resisting their official rescue of the "warrant" from her person. Running roughshod over appellant, a policeman "grabbed" her, "twisted [her] hand," and she "yelled [and] pleaded with him" because "it was hurting." Appellant, in handcuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. They also looked into a photo album and through personal papers belonging to the appellant. The search spread to the rest of the second floor including the child's bedroom, the living room, the kitchen and a dinette. The basement of the building and a trunk found therein were also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread search.

At the trial, no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. At best, "There is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's home." 170 Ohio St. at 430, 166 N.E.2d at 389. The Ohio Supreme

Court believed a "reasonable argument" could be made that the conviction should be reversed "because the methods' employed to obtain the [evidence] . . . were such as to 'offend "a sense of justice,"" but the court found determinative the fact that the evidence had not been taken "from defendant's person by the use of brutal or offensive physical force against defendant." 170 Ohio St. at 431, 166 N.E.2d at 389-390.

The State says that, even if the search were made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally seized evidence at trial, citing

Wolf v. Colorado

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338 U. S. 25

(1949), in which this Court did indeed hold "that, in a prosecution in a State court for a State crime, the Fourteenth Amend-

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ment does not forbid the admission of evidence obtained by an unreasonable search and seizure." At p. 33. On this appeal, of which we have noted probable jurisdiction, 364 U.S. 868, it is urged once again that we review that holding. [

Footnote 3

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I

Seventy-five years ago, in

Boyd v. United States

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116 U. S. 616

, 630 (1886), considering the Fourth [

Footnote 4

] and Fifth Amendments as running "almost into each other" [

Footnote 5

] on the facts before it, this Court held that the doctrines of those Amendments

"apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers,

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that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property. . . . Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation . . . [of those Amendments]."

The Court noted that

"constitutional provisions for the security of person and property should be liberally construed. . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." At p. 635.

In this jealous regard for maintaining the integrity of individual rights, the Court gave life to Madison's prediction that "independent tribunals of justice . . . will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights." I Annals of Cong. 439 (1789).

Concluding, the Court specifically referred to the use of the evidence there seized as "unconstitutional." At p. 638. Less than 30 years after

Boyd

, this Court, in

Weeks v. United States

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232 U. S. 383

(1914), stated that

"the Fourth Amendment . . . put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints [and] . . . forever secure[d] the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the guise of law . . . , and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws." At pp. 391-392.

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Specifically dealing with the use of the evidence unconstitutionally seized, the Court concluded

"If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as

they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land." At p. 393.

Finally, the Court in that case clearly stated that use of the seized evidence involved "a denial of the constitutional rights of the accused." At pp. 398. Thus, in the year 1914, in the

Weeks

case, this Court "for the first time" held that, "in a federal prosecution, the Fourth Amendment barred the use of evidence secured through an illegal search and seizure."

Wolf v. Colorado, supra

, at 28. This Court has ever since required of federal law officers a strict adherence to that command which this Court has held to be a clear, specific, and constitutionally required--even if judicially implied--deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to "a form of words." Holmes, J.,

Silverthorne Lumber Co. v. United States

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251 U. S. 385

, 392 (1920). It meant, quite simply, that "conviction by means of unlawful seizures and enforced confessions . . . should find no sanction in the judgments of the courts . . . ,"

Weeks v. United States, supra

, at 392, and that such evidence "shall not be used at all."

Silverthorne Lumber Co. v. United States, supra

, at 392.

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There are in the cases of this Court some passing references to the

Weeks

rule as being one of evidence. But the plain and unequivocal language of

Weeks

- -and its later paraphrase in

Wolf

- -to the effect that the

Weeks

rule is of constitutional origin, remains entirely undisturbed. In

Byars v. United States

,

273 U. S. 28

(1927), a unanimous Court declared that "the doctrine [cannot] . . . be tolerated

under our constitutional system

, that evidences of crime discovered by a federal officer in making a search without lawful warrant may be used against the victim of the unlawful search where a timely challenge has been interposed." At pp. 29-30 (emphasis added).

The Court, in

Olmstead v. United States

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277 U. S. 438

(1928), in unmistakable language restated the

Weeks

rule:

"The striking outcome of the

Weeks

In

McNabb v. United States

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318 U. S. 332

(1943), we note this statement:

"[A] conviction in the federal courts, the foundation of which is evidence obtained in disregard of liberties deemed fundamental by the Constitution, cannot stand.

Boyd v. United States . . . Weeks v. United States.

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nified' . . . or 'who have been unlawfully held incommunicado without advice of friends or counsel.' . . ." At pp. 339-340.

Significantly, in

McNabb

, the Court did then pass on to formulate a rule of evidence, saying, "[i]n the view we take of the case, however, it becomes unnecessary to reach the Constitutional issue, [for] . . . [t]he principles governing the admissibility of evidence in federal criminal trials have not been restricted . . . to those derived solely from the Constitution." At pp. 340-341.

II

In 1949, 35 years after

Weeks

was announced, this Court, in

Wolf v. Colorado, supra

, again for the first time, [

Footnote 6

] discussed the effect of the Fourth Amendment upon the States through the operation of the Due Process Clause of the Fourteenth Amendment. It said:

"[W]e have no hesitation in saying that, were a State affirmatively to sanction such police incursion into privacy, it would run counter to the guaranty of the Fourteenth Amendment." At pp. 28.

Nevertheless, after declaring that the "security of one's privacy against arbitrary intrusion by the police" is "implicit in the concept of ordered liberty" and, as such, enforceable against the States through the Due Process Clause,"

cf. Palko v. Connecticut

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302 U. S. 319

(1937), and announcing that it "stoutly adhere[d]" to the

Weeks

decision, the Court decided that the

Weeks

exclusionary rule would not then be imposed upon the States as "an essential ingredient of the right." 338 U.S. at 27-29. The Court's reasons for not considering essential to the

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right to privacy, as a curb imposed upon the States by the Due Process Clause, that which decades before had been posited as part and parcel of the Fourth Amendment's limitation upon federal encroachment of individual privacy, were bottomed on factual considerations.

While they are not basically relevant to a decision that the exclusionary rule is an essential ingredient of the Fourth Amendment as the right it embodies is

vouchsafed against the States by the Due Process Clause, we will consider the current validity of the factual grounds upon which

Wolf

was based.

The Court in

Wolf

first stated that "[t]he contrariety of views of the States" on the adoption of the exclusionary rule of

Weeks

was "particularly impressive" (At pp. 29); and, in this connection, that it could not "brush aside the experience of States which deem the incidence of such conduct by the police too slight to call for a deterrent remedy . . . by overriding the [States'] relevant rules of evidence." At pp. 31-32. While, in 1949, prior to the

Wolf

case, almost two-thirds of the States were opposed to the use of the exclusionary rule, now, despite the

Wolf

case, more than half of those since passing upon it, by their own legislative or judicial decision, have wholly or partly adopted or adhered to the

Weeks

rule.

See Elkins v. United States

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364 U. S. 206

, Appendix, pp. 224-232 (1960). Significantly, among those now following the rule is California, which, according to its highest court, was "compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions. . . ."

People v. Cahan

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44 Cal. 2d 434

, 445, 282 P.2d 905, 911 (1955). In connection with this California case, we note that the second basis elaborated in

Wolf

in support of its failure to enforce the exclusionary doctrine against the States was that "other means of protection" have been afforded "the

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right to privacy." [

Footnote 7

] 338 U.S. at 30. The experience of California that such other remedies have been worthless and futile is buttressed by the experience of other States. The obvious futility of relegating the Fourth Amendment to the protection of other remedies has, moreover, been

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recognized by this Court since

Wolf

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See Irvine v. California

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347 U. S. 128

, 137 (1954).

Likewise, time has set its face against what

Wolf

called the "weighty testimony" of

People v. Defore

, 242 N.Y. 13, 150 N.E. 585 (1926). There, Justice (then Judge) Cardozo, rejecting adoption of the

Weeks

exclusionary rule in New York, had said that "[t]he Federal rule as it stands is either too strict or too lax." 242 N.Y. at 22, 150 N.E. at 588. However, the force of that reasoning has been largely vitiated by later decisions of this Court. These include the recent discarding of the "silver platter" doctrine which allowed federal judicial use of evidence seized in violation of the Constitution by state agents,

Elkins v. United States, supra;

the relaxation of the formerly strict requirements as to standing to challenge the use of evidence thus seized, so that now the procedure of exclusion, "ultimately referable to constitutional safeguards," is available to anyone even "legitimately on [the] premises" unlawfully searched,

Jones v. United States

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362 U. S. 257

, 266-267 (1960); and, finally, the formulation of a method to prevent state use of evidence unconstitutionally seized by federal agents,

Rea v. United States

,

350 U. S. 214

(1956). Because there can be no fixed formula, we are admittedly met with "recurring questions of the reasonableness of searches," but less is not to be expected when dealing with a Constitution, and, at any rate, "[r]easonableness is in the first instance for the [trial court] . . . to determine."

United States v. Rabinowitz

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339 U. S. 56

, 63 (1950).

It therefore plainly appears that the factual considerations supporting the failure of the

Wolf

Court to include the

Weeks

exclusionary rule when it recognized the enforceability of the right to privacy against the States in 1949, while not basically relevant to the constitutional consideration, could not, in any analysis, now be deemed controlling.

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III

Some five years after

Wolf

, in answer to a plea made here Term after Term that we overturn its doctrine on applicability of the

Weeks

exclusionary rule, this Court indicated that such should not be done until the States had "adequate opportunity to adopt or reject the [

Weeks

] rule."

Irvine v. California, supra

, at 134. There again, it was said:

"Never until June of 1949 did this Court hold the basic search and seizure prohibition in any way applicable to the states under the Fourteenth Amendment."

Ibid.

And only last Term, after again carefully reexamining the

Wolf

doctrine in

Elkins v. United States, supra

, the Court pointed out that "the controlling principles" as to search and seizure and the problem of admissibility "seemed clear" (At pp. 212) until the announcement in

Wolf

"that the Due Process Clause of the Fourteenth Amendment does not itself require state courts to adopt the exclusionary rule" of the

Weeks

case. At pp. 213. At the same time, the Court pointed out, "the underlying constitutional doctrine which

Wolf

established . . . that the Federal Constitution . . . prohibits unreasonable searches and seizures by state officers" had undermined the "foundation upon which the admissibility of state-seized evidence in a federal trial originally rested. . . ."

Ibid.

The Court concluded that it was therefore obliged to hold, although it chose the narrower ground on which to do so, that all evidence obtained by an unconstitutional search and seizure was inadmissible in a federal court regardless of its source. Today we once again examine

Wolf's

constitutional documentation of the right to privacy free from unreasonable state intrusion, and, after its dozen years on our books, are led by it to close the only

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courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. We hold that all evidence obtained by

searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.

IV

Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Were it otherwise, then, just as without the

Weeks

rule the assurance against unreasonable federal searches and seizures would be "a form of words," valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule, the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom "implicit in the concept of ordered liberty." At the time that the Court held in

Wolf

that the Amendment was applicable to the States through the Due Process Clause, the cases of this Court, as we have seen, had steadfastly held that as to federal officers the Fourth Amendment included the exclusion of the evidence seized in violation of its provisions. Even

Wolf

"stoutly adhered" to that proposition. The right to privacy, when conceded operatively enforceable against the States, was not susceptible of destruction by avulsion of the sanction upon which its protection and enjoyment had always been deemed dependent under the

Boyd, Weeks

and

Silverthorne

cases. Therefore, in extending the substantive protections of due process to all constitutionally unreasonable searches--state or federal--it was

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logically and constitutionally necessary that the exclusion doctrine--an essential part of the right to privacy--be also insisted upon as an essential ingredient of the right newly recognized by the

Wolf

case. In short, the admission of the new constitutional right by

Wolf

could not consistently tolerate denial of its most important constitutional privilege, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure. To hold otherwise is to grant the right but, in reality, to withhold its privilege and enjoyment. Only last year, the Court itself recognized that the purpose of the exclusionary rule "is to deter--to compel respect for the constitutional guaranty in the only effectively available way--by removing the incentive to disregard it."

Elkins v. United States, supra

, at 217.

Indeed, we are aware of no restraint, similar to that rejected today, conditioning the enforcement of any other basic constitutional right. The right to privacy, no less important than any other right carefully and particularly reserved to the people, would stand in marked contrast to all other rights declared as "basic to a free society."

Wolf v. Colorado, supra

, at 27. This Court has not hesitated to enforce as strictly against the States as it does against the Federal Government the rights of free speech and of a free press, the rights to notice and to a fair, public trial, including, as it does, the right not to be convicted by use of a coerced confession, however logically relevant it be, and without regard to its reliability.

Rogers v. Richmond

,

365 U. S. 534

(1961). And nothing could be more certain than that, when a coerced confession is involved, "the relevant rules of evidence" are overridden without regard to "the incidence of such conduct by the police," slight or frequent. Why should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc.? We find that,
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as to the Federal Government, the Fourth and Fifth Amendments and, as to the States, the freedom from unconscionable invasions of privacy and the freedom from convictions based upon coerced confessions do enjoy an "intimate relation"
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Footnote 8

] in their perpetuation of "principles of humanity and civil liberty [secured] . . . only after years of struggle,"

Bram v. United States

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168 U. S. 532

, 543-544 (1897). They express "supplementing phases of the same constitutional purpose to maintain inviolate large areas of personal privacy."

Feldman v. United States

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322 U. S. 487

, 489-490 (1944). The philosophy of each Amendment and of each freedom is complementary to, although not dependent upon, that of the other in its sphere of influence--the very least that together they assure in either sphere is that no man is to be convicted on unconstitutional evidence.

Cf. Rochin v. California

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342 U. S. 165

, 173 (1952).

V

Moreover, our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus, the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold. Moreover, as was said in

Elkins

, "[t]he very essence of a healthy federalism depends upon the avoidance of needless conflict between

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state and federal courts." 364 U.S. at 221. Such a conflict, hereafter needless, arose this very Term in

Wilson v. Schnettler

,

365 U. S. 381

(1961), in which, and in spite of the promise made by

Rea

, we gave full recognition to our practice in this regard by refusing to restrain a federal officer from testifying in a state court as to evidence unconstitutionally seized by him in the performance of his duties. Yet the double standard recognized until today hardly put such a thesis into practice. In nonexclusionary States, federal officers, being human, were by it invited to, and did, as our cases indicate, step across the street to the State's attorney with their unconstitutionally seized evidence. Prosecution on the basis of that evidence was then had in a state court in utter disregard of the enforceable Fourth Amendment. If the fruits of an unconstitutional search had been inadmissible in both state and federal courts,

this inducement to evasion would have been sooner eliminated. There would be no need to reconcile such cases as

Rea

and

Schnettler

, each pointing up the hazardous uncertainties of our heretofore ambivalent approach.

Federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their now mutual obligation to respect the same fundamental criteria in their approaches. "However much in a particular case insistence upon such rules may appear as a technicality that inures to the benefit of a guilty person, the history of the criminal law proves that tolerance of shortcut methods in law enforcement impairs its enduring effectiveness."

Miller v. United States

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357 U. S. 301

, 313 (1958). Denying shortcuts to only one of two cooperating law enforcement agencies tends naturally to breed legitimate suspicion of "working arrangements" whose results are equally tainted.

Byars v. United States

,

273 U. S. 28

(1927);

Lustig v. United States

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338 U. S. 74

(1949).