45 S.Ct. 280, 39 A.L.R. 790, 69 L.Ed. 543

Supreme Court of the United States.

CARROLL et al.
v.
UNITED STATES.

No. 15.
Decided March 2, 1925.

Error to the District Court of the United States for the Western District of Michigan.

George Carroll and John Kiro were convicted of transporting intoxicating liquor, and they bring error. Affirmed.

This is a writ of error to the District Court under section 238 of the Judicial Code (Comp. St. § 1215). The plaintiffs in error, hereafter to be called the defendants, George Carroll and John Kiro, were indicted and convicted for transporting in an automobile intoxicating spirituous liquor, to wit, 68 quarts of so called bonded whisky and gin, in violation of the National Prohibition Act. The ground on which they assail the conviction is that the trial court admitted in evidence two of the 68 bottles, one of whisky and one of gin, found by searching the automobile. It is contended that the search and seizure were in violation of the Fourth Amendment, and therefore that use of the liquor as evidence was not proper. Before the trial a motion was made by the defendants that all the liquor seized be returned to the defendant Carroll, who owned the automobile. This motion was denied.

The search and seizure were made by Cronenwett, Scully, and Thayer, federal prohibition agents, and one Peterson, a state officer, in December, 1921, as the car was going westward on the highway between Detroit and Grand Rapids at a point 16 miles outside of Grand Rapids. The facts leading to the search and seizure were as follows: On September 29th, Cronenwett and Scully were in an apartment in Grand Rapids. Three men came to that apartment, a man named Kurska, and the two defendants, Carroll and Kiro. Cronenwett was introduced to them as one Stafford working in the Michigan Chair Company in Grand Rapids, who wished to buy three cases of whisky. The price was fixed at $130 a case. The three men said they had to go to the east end of Grand Rapids to get the liquor and that they would be back in half or three-quarters of an hour. They went away, and in a short time Kruska came back and said they could not get it that night, that the man who had it was not in, but that they would deliver it the next day. They had come to the apartment in an automobile known as an Oldsmobile roadster, the number of which Cronenwett then identified, as did Scully. The proposed vendors did not return the next day, and the evidence disclosed no explanation of their failure to do so. One may surmise that it was suspicion of the real character of the proposed purchaser, whom Carroll subsequently called by his first name when arrested in December following. Cronenwett and his subordinates were engaged in patrolling the road leading from Detroit to Grand Rapids, looking for violations of the Prohibition Act. This seems to have been their regular tour of duty. On the 6th of October, Carroll and Kiro going eastward from Grand Rapids in the same Oldsmobile roadster, passed Cronenwett and Scully some distance out from Grand Rapids. Cronenwett called to Scully, who was taking lunch, that the Carroll boys had passed them going toward Detroit, and sought with Scully to catch up with them to see where they were going. The officers followed as far as East Lansing, half way to Detroit, but there lost trace of them. On the 15th of December, some two months later, Scully and Cronenwett, on their regular tour of duty

with Peterson, the state officer, were going from Grand Rapids to Ionia, on the road to Detroit, when Kiro and Carroll met and passed them in the same automobile, coming from the direction of Detroit to Grand Rapids. The government agents turned their car and followed the defendants to a point some 16 miles east of Grand Rapids, where they stopped them and searched the car. They found behind the upholstering of the seats, the filling of which had been removed, 68 bottles. These had labels on them, part purporting to be certificates of English chemists that the contents were blended Scotch whiskies, and the rest that the contents were Gordon gin made in London. When an expert witness was called to prove the contents, defendants admitted the nature of them to be whisky and gin. When the defendants were arrested, Carroll said to Cronenwett, 'Take the liquor and give us one more chance, and I will make it right with you,' and he pulled out a roll of bills, of which one was for $10. Peterson and another took the two defendants and the liquor and the car to Grand Rapids, while Cronenwett, Thayer, and Scully remained on the road looking for other cars, of whose coming they had information. The officers were not anticipating that the defendants would be coming through on the highway at that particular time, but when they met them there they believed they were carrying liquor, and hence the search, seizure, and arrest.

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Opinion

Mr. Chief Justice TAFT, after stating the case as above, delivered the opinion of the Court.

The constitutional and statutory provisions involved in this case include the Fourth Amendment and the National Prohibition Act.

The Fourth Amendment is in part as follows:

> 'The right of the people to be secure in their persons, houses, papers and effects ****282** against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'

Section 25, title 2, of the National Prohibition Act, c. 85, 41 Stat. 305, 315, passed to enforce the Eighteenth Amendment, makes it unlawful to have or possess any liquor intended for use in violating the act, or which has been so used, and provides that no property rights shall exist in such liquor. A search warrant may issue and such liquor, with the containers thereof, may be seized under the warrant and be ultimately destroyed. The section further provides:

> 'No search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, or boaring house. The term 'private dwelling' shall be construed to include the room or rooms used and occupied not transiently but solely as ***144** a residence in an apartment house, hotel, or boarding house.'

Section 26, title 2, under which the seizure herein was made, provides in part as follows:

> 'When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof.'

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The intent of Congress to make a distinction between the necessity for a search warrant in the searching of private dwellings and in that of automobiles and other road vehicles in the enforcement of the Prohibition Act is thus clearly established . . . . Is such a distinction consistent with the Fourth Amendment? We think that it is. The Fourth Amendment does not denounce all searches or seizures, but only such as are unreasonable.

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In none of the [previous] cases . . . is there any ruling as to the validity under the Fourth Amendment of a seizure without a warrant of contraband goods in the course of transportation and subject to forfeiture or destruction.

On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that ****284** is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens.

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[T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant, we come now to consider under what circumstances such search may be made. It would be intolerable and unreasonable ***154** if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify

himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise.

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The measure of legality of such a seizure is, ***156** therefore, that the seizing officer shall have reasonable or probable cause for believing that the automobile which he stops and seizes has contraband liquor therein which is being illegally transported.

We here find the line of distrinction between legal and illegal seizures of liquor in transport in vehicles. It is certainly a reasonable distinction. It gives the owner of an automobile or other vehicle seized under section 26, in absence of probable cause, a right to have restored to him the automobile, it protects him . . . from use of the liquor as evidence against him, and it subjects the officer making the seizures to damages. On the other hand, in a case showing probable cause, the government and its officials are given the opportunity which they should have, to make the investigation necessary to trace reasonably suspected contraband goods and to seize them.

Such a rule fulfills the guaranty of the Fourth Amendment. In cases where the securing of a warrant is reasonably practicable, it must be used and when properly supported by affidavit and issued after judicial approval protects the seizing officer against a suit for damages. In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause. *United States v. Kaplan,* 286 Fed. 963, 972.

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Finally, was there probable cause? In *The Apollon,* 9 Wheat. 362, 6 L. Ed. 111, the question was whether the seizure of a French vessel at a particular place was upon probable cause that she was there for the purpose of smuggling. In this discussion Mr. Justice Story, who delivered the judgment of the court, said (page 374):

> 'It has been very justly observed at the bar that the court is bound to take notice of public facts and geographical ***160** positions, and that this remote part of the country has been infested, at different periods, by smugglers, is matter of general notoriety, and may be gathered from the public documents of the government.'

We know in this way that Grand Rapids is about 152 miles from Detroit, and that Detroit and its neighborhood along the Detroit river, which is the international boundary, is one of the most active centers for introducing illegally into this country spirituous liquors for distribution into the interior. It is obvious from the evidence that the prohibition agents were engaged in a regular patrol along the important highways from Detroit to Grand Rapids to stop and seize liquor carried in automobiles. They knew or had convincing evidence to make them believe that the Carroll boys, as they called them, were so-called 'bootleggers' in Grand Rapids; i. e., that they were engaged in plying the unlawful trade of selling such liquor in that city. The officers had soon after noted their going from

Grand Rapids half way to Detroit, and attempted to follow them to that city to see where they went, but they escaped observation. Two months later these officers suddenly met the same ****288** men on their way westward presumably from Detroit. The partners in the original combination to sell liquor in Grand Rapids were together in the same automobile they had been in the night when they tried to furnish the whisky to the officers, which was thus identified as part of the firm equipment. They were coming from the direction of the great source of supply for their stock to Grand Rapids, where they plied their trade. That the officers, when they saw the defendants, believed that they were carrying liquor, we can have no doubt, and we think it is equally clear that they had reasonable cause for thinking so. Emphasis is put by defendants' counsel on the statement made by one of the officers that they were not looking for defendants at the particular time when they appeared. We do not perceive that it has any weight. As soon as they did appear, ***161** the officers were entitled to use their reasoning faculties upon all the facts of which they had previous knowledge in respect to the defendants.

The necessity for probable cause in justifying seizures on land or sea, in making arrests without warrant for past felonies, and in malicious prosecution and false imprisonment cases has led to frequent definition of the phrase. In *Stacey v. Emery*, 97 U. S. 642, 645 (24 L. Ed. 1035), a suit for damages for seizure by a collector, this court defined probable cause as follows:

> 'If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offense has been committed, it is sufficient.'

See Locke v. United States, 7 Cranch, 339, 3 L. Ed. 364; *The George*, 1 Mason, 24, Fed. Cas. No. 5328; *The Thompson*, 3 Wall. 155, 18 L. Ed. 55.

It was laid down by Chief Justice Shaw, in *Commonwealth v. Carey*, 12 Cush. 246, 251, that:
'If a constable or other peace officer arrest a person without a warrant, he is not bound to show in his justification a felony actually committed, to render the arrest lawful; but if he suspects one on his own knowledge of facts, or on facts communicated to him by others, and thereupon he has reasonable ground to believe that the accused has been guilty of felony, the arrest is not unlawful.' *Commonwealth v. Phelps*, 209 Mass. 396, 95 N. E. 868, Ann. Cas. 1912B, 566; *Rohan v. Sawin*, 5 Cush. 281, 285.

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In the light of these authorities, and what is shown by this record, it is clear the officers here had justification for the search and seizure. This is to say that the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched.

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The judgment is affirmed.