University of Baltimore Law Forum

Volume 17
Number 3 *Spring, 1987*

Article 10

1987

Recent Developments: California Federal Savings & Loan Ass'n. v. Guerra, Director, Department of Fair Employment and Housing: State Mandated Benefits for Pregnant Employees Held Not Discrimination under Title Vll

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Fourth Amendment does not prohibit a state from proving criminal charges with evidence discovered during an inventory search. In reaching its decision, the Court found the facts of the case to be controlled by principles governing inventory searches of automobiles and of an arrestee's personal effects as set forth in *South Dakota v. Opperman*, 428 U.S. 364 (1976) and *Illinois v. Lafayette*, 462 U.S. 640 (1983), rather than searches of closed trunks and suitcases conducted solely for the purpose of investigating criminal conduct. *Chadwick, Sanders.*

Inventory searches are not subject to the warrant requirement because they are conducted by the government as part of a community caretaking function, totally divorced from the detection, investigation or acquisition of evidence relating to the violation of a criminal statute. *Cady v. Dombrowski*, 413 U.S. 433 (1973). Moreover, neither the policies behind the warrant requirement nor the concept of probable cause are implicated in an inventory search because they relate to the detection, investigation and acquisition of evidence in a criminal procedure. Since no claim was made in *Bertine* that procedures instituted were a subterfuge for a criminal investigation, the Court's analysis centered upon the reasonableness of the routine caretaking functions.

In order to justify an intrusion on a constitutionally protected right, governmental and societal interests must outweigh the protected right. Automobile inventory searches have been recognized as a means of: (1) the protection of the owner's property while it remains in police custody; (2) the protection of the police against claims or disputes over lost or stolen property and (3) the protection of police from potential danger. 475 U.S. at ____, 107 S.Ct. at 741.

In *Bertine*, Chief Justice Rehnquist found that strong governmental interests are served by protecting an owner's property while the property is in police custody and insuring against lost or stolen property. Further, the police who were acting in accordance with standard caretaking procedures did not act in bad faith. 475 U.S. at ____, 107 S.Ct. at 742. In his dissent, Justice Marshall contended that the search *was* unconstitutional because department regulations gave police discretion to choose between impounding the van or parking and locking it in a public place. But according to the majority, the exercise of discretion was exercised according to standardized criteria on the basis of something other than suspicion of criminal conduct.

The dissent, as well as the Supreme Court of Colorado, expressed the view that the police, before investigating a container, should weigh the strength of an individual's privacy interest against the possibility that the container might serve as a repository for valuable items. In addition, the dissent maintained that Bertine's expectation of privacy in his backpack and its contents outweighed the governmental interests since the intrusive search had gone into an intimate area of personal affairs. The Court rejected these contentions, stating that a single function standard is essential to guide police officers who have only limited time and expertise to reflect on and balance the societal and individual interests evidenced in the specific circumstances they confront. See *New York v. Belton*, 453 U.S. 454 (1981).

This case distinguishes constitutional inventory searches from unconstitutional ones. *Bertine* also indicates that inventory searches will be valid so long as they are conducted according to standardized procedures and on the basis of something other than the suspicion of criminal activity. *Bertine* follows a trend of other Supreme Court decisions which hold that the legitimate governmental interests outweigh individual Fourth Amendment interests.

– William J. Morrison

California Federal Savings & Loan Ass'n. v. Guerra, Director, Department of Fair Employment and Housing: STATE MANDATED BENEFITS FOR PREGNANT EMPLOYEES HELD NOT DISCRIMINATION UNDER TITLE VII

The United States Supreme Court has upheld a California state statute which requires employers to provide female employees unpaid pregnancy leave of up to four months. The employer's original action in the United States District Court for the Central District of California challenged the validity of the statute with respect to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* The court granted the employer's motion for summary judgment, stating that the California statute was pre-empted by Title VII and was therefore "inoperative under the Supremacy Clause of the United States Constitution." 33 EPD ¶34,227, 34 FEP Cases 562 (1984). The United States Court of Appeals for the Ninth Circuit reversed, based on a finding that the California statute was neither inconsistent with nor unlawful under Title VII. Rather, the court found the statute furthered the goal of equal employment opportunity for women. *California Federal Savings & Loan Ass'n. v. Guerra*, 758 F.2d 390 (1985). The Supreme Court granted certiorari, and in a 6-to-3 decision affirmed the decision of the court of appeals.

Lillian Garland, a receptionist at a Los Angeles based savings and loan, lost her job after taking three months' pregnancy leave. Garland filed a complaint with the Department of Fair Employment and Housing, which charged the bank with violating § 12945(b)(2) of the Fair Employment and Housing Act, CAL. GOV'T CODE ANN. § 12900 *et seq.* Section 12945 (b)(2) requires an employer to grant an employee leave for a reasonable period of time on account of pregnancy. The Fair Employment and Housing Commission had construed this section as providing pregnant workers a qualified right to be reinstated to the position they held prior to their absence. Before the scheduled hearing took place, however, the bank, joined by the California Chamber of Commerce and a local trade union (both represented numerous employers throughout the State of California), filed this action in district court seeking a declaration that § 12945(b)(2) is inconsistent with and preempted by Title VII, and an injunction against its enforcement. Title VII prohibits employment discrimination on the basis of sex. The district court granted summary judgment for petitioners, but the court of appeals reversed. Justice White delivered the opinion of the Court.

In concurring with the decision on appeal, Justice Marshall first discussed whether the California statute was preempted by Title VII. There are three ways in which federal law may supersede state law: in express terms; by inference where there is no room for supplementary state regulation; and when state law conflicts with federal law. The Court dismissed the first and second alternatives as inapplicable to the situation at hand, but concluded that the third basis for preemption was at issue in the case herein. Sections 708 and 1104 are the two sections of the 1964 Civil Rights Act which the majority analyzed with respect to preemption. Because both sections provide a liberal construction concerning state regulation of employment discrimination, the Court concluded that Congress recognized the importance attached to state antidiscrimination laws and in no way intended to displace them. Therefore, it was held that § 12945(b)(2) is not pre-empted by Title VII.

The Court next discussed the Pregnancy Discrimination Act of 1978 ("PDA"), 42 U.S.C. § 2000e(k), which amended Title VII with respect to the definition of sex discrimination. The Act specifies that sex discrimination includes discrimination on the basis of pregnancy. The petitioners argued that the California statute provides "special treatment" for pregnant employees, and is therefore rejected by the language

of the PDA. With support from business groups and the Reagan administration, petitioners claimed that the PDA requires pregnant workers to be treated the same as, but not better than, workers with other disabilities. Based on the legislative history behind the enactment of the PDA, the Court agreed with the court of appeals' conclusion that its purpose is to provide "a floor beneath which pregnancy disability benefits may not drop – not a ceiling above which they may not rise." *Guerra*, 758 F.2d at 396. The 1978 amendment was passed specifically to overturn a 1976 Supreme Court decision in *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976) which had held that discrimination on the basis of pregnancy was not sex discrimination under Title VII. The Court further explicated that Congress intended the Act "to provide relief for working women and to end discrimination against pregnant workers," and that had Congress intended to *prohibit* preferential treatment, it could have expressly done so within the PDA itself. In support of this latter conclusion, the Court noted similar state statutes in force at the time the PDA was enacted, and the House and Senate reports which suggested that these laws would continue in effect under the Act. Finally, the Court found that § 12945(b)(2) of the California statute is not inconsistent with the PDA because both "achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group . . . of employees over other employees." 474 U.S. ____ (1986), citing Griggs v. Duke Power Co., 401 U.S. 424, 429-430 (1971).

The last part of petitioners' claim stated that § 12945(b)(2) requires employers to violate Title VII because they cannot comply with both the federal and state law. The Court was quick to invalidate this argument, stating that the California statute merely establishes benefits that employers must provide to pregnant workers, and that it does not prevent employers from giving comparable benefits to other disabled employees. In sum, the Court denied petitioners' facial challenge to § 12945 (b)(2), ruling that the special benefits provided by the statute as construed by the Fair Employment and Housing Commission do not violate federal civil rights laws. "By taking pregnancy into account," Justice Marshall said, "California's pregnancy disability leave statute allows women, as well as men, to have families without losing their jobs." 474 U.S. ____ (1986).

In his dissenting opinion, Justice White felt that the California statute was "in square conflict" with the federal law because it requires "every employer to have a disability leave policy for pregnancy even if it has none for any other disability." Therefore, the state statute is pre-empted by the federal law. In pointing to the plain language of the PDA, Justice White wrote that it clearly mandates equal treatment for employees, including pregnant workers, and that it does not intend pregnancy to be in a class by itself within Title VII. Further, the minority felt that the Court's interpretation of the PDA with respect to the state statute places an unfair burden on California employers by requiring them to implement new minimum disability leave programs to satisfy both the state and federal laws.

The effect of this decision on other state statutes is clear. While not mandating the type of preferential treatment afforded in California, the holding in *Guerra* evidences the Court's willingness to uphold similar statutes in the future as non-violative of discrimination laws. Those states which decide to enact preferential treatment statutes may find that they discourage employers from hiring women.

Maryland has included pregnancy in its fair employment practices laws, but not to the same extent as California. Article 49B, § 17 of the Annotated Code of Maryland could not be construed as requiring the "special treatment" involved in *Guerra*. The statute merely calls for equal treatment with respect to pregnancy, stating that any insurance or sick leave plan "shall be applied to disability due to pregnancy or childbirth on the *same* terms and conditions as they are applied to other temporary disabilities subject to the provisions of this section." (Emphasis added).

– Barbara E. Wixon

Chase v. State: LEON "GOOD FAITH" EXCEPTION TO THE EXCLUSIONARY RULE EXTENDED TO PROBATION REVOCATION PROCEEDINGS.

In a case of first impression, the Court of Special Appeals of Maryland in *Chase v. State*, 68 Md. App. 413, 511 A.2d 1128 (1986) ruled that generally, the exclusionary rule may not be applied to probation revocation proceedings. In so holding, the court of special appeals has followed the trend of a majority of other jurisdictions.

Appellant Jerome Edwin Chase was convicted of robbery by the Circuit Court for Prince George's County. His sentence was suspended in favor of five years probation. Two years later, after he had already been cited and resentenced for probation violations, Chase was arrested and charged with intent to distribute marijuana and simple possession. While the criminal case was pending, the State filed a petition to revoke Chase's probation; alleging a failure to "obey all laws." At the trial for the criminal charges, the trial court found the Appellant's arrest to be without probable cause and suppressed the evidence recovered from him at the arrest. Two months later, the State dismissed the criminal charges. However, the petition to revoke Chase's probation was not dismissed.

At his probation revocation hearing, Appellant moved (based on the exclusionary rule) to have the evidence seized at the time of his arrest suppressed, or have the proceeding dismissed. The court, in denying Chase's motion applied a balancing test and determined that "the probation process and community safety interests far outweigh any deterrent effect of the exclusionary rule." In light of their finding, the lower court therein ruled that the exclusionary rule did not apply to probation revocation proceedings.

In dealing with this case of first impression, the court of special appeals traced the chronological history of the exclusionary rule at the Supreme Court level from *Wolf v. Colorado*, 338 U.S. 25 (1949) to the present. Judge Wilner, writing for the majority, noted that even before *Mapp v. Ohio*, 364 U.S. 643 (1961), [which overturned *Wolf v. Colorado*, when it held that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court;" *Mapp*, 367 U.S. at 643], "the [Supreme] Court has viewed the exclusionary rule as a deterrent rather than a redressive measure", *Chase*, 68 Md. App. at 419, 511 A.2d 1128. At the end of their historical analysis, the court herein recognized the fact that the balancing test [established in *U.S. v. Leon*, 468 U.S. 894 (1984)] "remains an integral part of the decisional law in this area." *Chase* at 420, 511 A.2d 1128. In *Leon*, the Supreme Court actually retracted the exclusionary rule by withdrawing its application to evidence obtained in reasonable reliance on a search warrant issued by a neutral magistrate which was later found to be unsupported by probable cause. The deterrent effect of the exclusionary rule on the police would be insignificant and is greatly outweighed by its detrimental effect on criminal prosecutions.

In their analysis of Maryland case law on the application of the exclusionary rule, the court of special appeals looked to *Logan v. State*, 289 Md. 460, 425 A.2d 632 (1981), where the Court of Appeals of Maryland adopted the ruling of *U.S. v. Lee*, 540 F.2d 1205 (4th Cir.) *cert. denied* 429 U.S. 894 (1976) and declined to extend the exclusionary rule to sentencing