University of Baltimore Law Forum

Volume 18
Number 1 *Fall, 1987*

Article 12

1987

Recent Developments: Maryland v. Garrison: Good-Faith Mistake in Valid but Overbroad Search Warrant Does Not Invalidate Search

Amy Kushner

vide him with an opportunity to refuse to speak with his wife, or tell him in advance that police officer would be present and the conversation recorded. The majority found no evidence to suggest that the police had acted to allow the meeting "for the purpose of eliciting incriminating statements," *Id.* at 1936, and upheld the trial judge's decision to admit the taped conversation. Indeed, the Court found the officers acted to discourage the meeting entirely, and only stipulated to having an officer present to ensure the safety of Mrs. Mauro. *Id.*

The opinion espoused by the Court in *Mauro* narrows the interpretation of *Innis* with respect to action by the police in lieu of direct interrogation of suspects. The Court now permits the police to obtain by proxy that which they can not obtain directly, voluntary self-incriminating statements made in the course of a pre-detention meeting between an accused and a spouse. Such statements may now be used against a defendant at trial, despite police orchestration of and participation in any such meeting, and notwithstanding the defendant's prior assertion of his *Miranda* rights under the fifth amendment.

— Mark Brugh

Maryland v. Garrison: GOOD-FAITH MISTAKE IN VALID BUT OVERBROAD SEARCH WARRANT DOES NOT INVALIDATE SEARCH

As a result of the Supreme Court's recent decision in *Maryland v. Garrison,* U.S. 107 S. Ct. 1013 (1987), the Rehnquist Court has carved, yet, another good-faith exception to the warrant requirement. In *Garrison,* the Court held that a factual mistake made in good-faith by police officers did not invalidate a broader than appropriate search warrant or its accompanying search. The search, the Court explained, was only limited by the police officers' discovery of their factual mistake.

In *Garrison,* "Baltimore police officers obtained and executed a warrant to search the person of Lawrence McWebb and the premises known as 2036 Park Avenue third floor apartment." *Id.* at 1014. The search was for controlled substances and related paraphernalia.

At the time the police obtained the warrant and began their search they were of the belief that only one apartment existed on the third floor of 2036 Park Avenue. Information was obtained from an informant that McWebb was selling marijuana from this third floor apartment. A telephone call to the Baltimore Gas and Electric Company confirmed that there was one apartment situated on the third floor, thereby corroborating the police officers' belief. Although the police inspected the outside of the seven unit building, the building was not approached until the warrant was executed. The third floor, which had a common doorway and vestibule, was divided into two separate units – one belonging to McWebb and the other to respondent, Garrison. Before the police officers became aware of their mistake, they searched Garrison's apartment and seized contraband in violation of Maryland's Controlled Substances Act. Md. Ann. Code art. 27 §276 (1957).

A Maryland trial court denied Garrison's motion to suppress the evidence seized from his apartment. The Court of Special Appeals of Maryland affirmed. *Id.* 58 Md. App. 417, 473, A.2d 514 (1984). The Court of Appeals of Maryland reversed. 303 Md. 385, 494 A.2d 193 (1985).

In a 6-3 decision, the United States Supreme Court reversed. Justice Stevens, writing for the majority, divided the case into two constitutional issues. The first considered the validity of the warrant and the second, the reasonableness of the way the police officers executed the warrant.

As to the validity of the warrant, "[t]he Warrant Clause of the Fourth Amendment categorically prohibits the issuance of any warrant except one particularly describing the place to be search and the person's or things to be seized." *Id.* at 1017. Because Garrison made no claim that the warrant did not adequately describe "the persons or things to be seized" or that there was no probable cause to believe that they might be in "the place to be searched" as specified in the warrant, the Court held that this Fourth Amendment particularity-of-description requirement was met. The issue, Stevens said, becomes "whether that factual mistake (i.e., believing only McWebb's apartment existed on the third floor) invalidated a warrant that undoubtedly would have been valid if it had reflected a completely accurate understanding of the building's floor plan." *Id.*

This issue, Stevens continued, turns on the constitutionality of the police officers' "conduct in light of the information available to them at the time they acted." *Id.* The majority found that the police officers reasonable believed, based on the information they had gathered, that only McWebb's apartment occupied the third floor. Thus, the Court concluded, "the warrant, insofar as it authorized a search that turned out ambiguous in scope, was valid when it issued." *Id.* at 1018.

Next, the Court addressed the reasonableness of the way in which the police officers executed the warrant. The majority stated that the police had gained access to the third floor common area legally; "they carried a search warrant and they were accompanied by McWebb who provided the key to the third floor." *Id.* at 1018. Thus, the Court only considered the police officers' conduct in executing the warrant once they entered the third floor common area.

The majority stated that the police officers were required to discontinue the search of Garrison's apartment once they discovered or should have discovered that the third floor contained two apartments instead of the assumed one. However, "the Court has also recognized the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests and executing search warrants." *Id.* at 1018. Citing *Hill v. California,* 401 U.s. 797 (1971), for the proposition that honest mistakes in arrests obviate Fourth Amendment concerns, the majority held that "the officers' conduct was consistent with a reasonable effort to ascertain and identify the place intended to be searched within the meaning of the Fourth Amendment." *Id.* at 1019. Before their discovery of the factual mistake, the majority stated the officers understandably and reasonably believed that "McWebb's apartment and the third-floor premises as one and the same." *Id.* The execution of the warrant, the majority held, reasonably included the entire third floor and consequently, the contraband found on that floor was properly admissible.

Justice Blackmun, along the Justices Brennan and Marshall dissented. A person, Blackmun opined, has the highest expectation of privacy in his home, whether it be a mobile home, a unit in a multiple-occupancy dwelling, or the most majestic mansion. Indeed, "the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Id.* at 1020. (Blackmum, J. dissenting) Therefore, absent one of the warrant requirement exceptions as stated in *Coolidge v. New Hampshire,* 403 U.S. 443, 478 (1971), a warrantless search of a home is presumptively unreasonable.

In concluding, that the search of Garrison's apartment was warrantless and therefore improper, the dissent did not believe the particularity-of-description requirement of the search warrant was met. This particularity requirement applies with equal force to multi-unit buildings as to individual private homes, requiring that the targeted unit be described with enough specificity to prevent a search of all units. *Garrison* at 107 S.Ct. 1021. When applying

this long standing law to this case, the dissent found that the warrant specified that only McWebb's apartment could be searched. Therefore, the search of Garrison's apartment was warrantless and because the state did not advance any exceptions to the warrant requirement, all evidence seized from the search should have been suppressed.

In addition, the dissent found the majority's analysis concerning the reasonableness of the way in which the warrant was executed to be unpersuasive. Because multiple-occupancy buildings are now common, the conduct of the officers could hardly be deemed reasonable. The dissent found any reasonable basis for the search to be lacking because the police failed to thoroughly investigate the premises before obtaining the warrant; failed to question Garrison prior to beginning the search as to the location of his residence, and failed to take into account the obvious lay-out of the third floor which revealed two separate apartments. As viewed by the dissent, these facts, would have enabled a reasonable officer to realize the factual mistake before any contraband was seized.

Garrison, provides another example of the Supreme Court's willingness to broaden the good-faith exception to the warrant requirement. Although case-by-case analysis can only determine if the good-faith exception to the warrant requirement has been fulfilled, if *Garrison* is the benchmark by which good-faith is measured then it seems clear that in most cases good-faith will be found.

— Amy Kushner

First English Evangelical Church of Glendale v. County of Los Angeles: THE EVOLUTION OF THE JUST COMPENSATION CLAUSE— COURT REQUIRES MONETARY COMPENSATION FOR TEMPORARY REGULATORY TAKING OF PROPERTY

Marred by a history of incomplete clarification, the issue of whether a landowner is entitled to compensation for a temporary regulatory taking of property pursuant to the Just Compensation Clause of the fifth amendment of the United States Constituion has finally been settled in *First English Evangelical Church of Glendale v. County of Los Angeles,* 107 S.Ct. 2378 (1987), *(First English).* Historically, the remedy for a taking of property by inverse condemnation was invalidation of the unconstitutional regulation, but the United States Supreme Court in *First English* has authoritatively held in a 6-3 decision that monetary relief is an acceptable remedy.

The First English Evangelical Church of Glendale owned and operated a camp (Lutherglen) for handicapped children in Angles Natural Forest. In February of 1978 a storm flooded the watershed. The massive infusion of water forced the Mill Creek, which ran through Lutherglen, to overflow its banks. Consequently, the property was inundated, the buildings were destroyed and the camp was rendered useless unless rebuilt.

Subsequently, in response to an everpresent hazardous flood condition posed by an earlier topographic change in the Mill Creek Canyon, Los Angeles County adopted an ordinance, which read in part, "[a] person shall not construct, *reconstruct,* place or enlarge any building or structure, any portion of which is, or will be, located within the outer boundry lines of the interim flood protection area located in Mill Creek Canyon." *Id.* at 2381-2382, citing Los Angeles, Ca., Interim Ordinance No. 11,855 (Jan. 1979) (emphasis added). The law adversely affected the Church's interest in Lutherglen, prohibiting its reconstruction.

In response to the regulation the Church filed suit in the Superior Court of California alleging that the law denied the church of *all* use of the property. Following *Agins v. Tiburon,* 24 Cal. 3d 266 (1979), the court denied relief by inverse condemnation. *Agins* stands for the proposition that maintenance of a suit for damages in inverse condemnation cases is the equivalent of coercing the state to exercise its eminent domain powers. Thus the only relief, in California, when a regulation was found a denial of a substantial amount of property rights would have been declaratory relief or mandamus. *See, Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393 (1922).

On appeal, the California Court of Appeals affirmed the lower court decision on similar grounds and, "because the United States Supreme Court has not yet ruled on the question of whether a state may constitutionally limit the remedy for a taking to nonmonetary relief." 107 S.Ct. 2383. The Church appealed to the United States Supreme Court. 478 U.S. __, 106 S.Ct. 3292 (1986). In prior cases seeking to address the issue,the Court had refused to settle the matter because in those appeals the Court had deemed each case as "not ripe" or "lacking finality." *See, MacDonald, Sommers and Frates v. Yolo County* 106 S.Ct. 2561 (1986) (A lack of a final determination by a county planning board as to how to apply a regulation prevents a decision of whether a taking has occurred.), *Williamson County Regional Planning Comm'n v. Hamilton Bank,* 473 U.S. 172 (1985) (Petitioners failure to exhaust all state remedies to resolve a situation, [i.e. application for a zoning variance, following state administrative procedures to collect compensation before filing suit,] renders the case as pending therefore precluding a decision by the Court for a lack of finality at the state level.), *San Diego Gas and Elec. v. San Diego,* 450 U.S. 621 (1981) (When a state court decision is not final, the Court cannot review the case pursuant to 28 U.S.C. § 1257.), *Agins v. Tiburon,* 477 U.S. 255 (1980).

Despite the fact that the ordinance had yet to be deemed unconstitutional as a taking of property without providing just compensation, the Court did address the compensation issue. *See generally,* 107 S.Ct. at 2389-2390 (Where the dissenting opinion refuses to agree with the majority opinion because of the "lack of finality" issue).

In its opinion, the Court noted that the Just Compensation clause of the fifth amendment to the United States Constitution applies to the states throught the fourteenth amendment. Therefore, a state is required to financially compensate a property owner for an actual physical taking. Furthermore, under *Mahon,* a regulation may be so excessive that it works a taking under inverse condemnation theory, denying the property owner of the use of the land without taking the property itself. *Id.* at 2386. The Court perceived no difference in the circumstances when a state physically deprives a landowner of its rights by eminent domain and when the depravation is perpetrated by regulatory encroachment. Thus, because there are not distinguishing differences between eminent domain and inverse condemnation takings, the Court held that the just compensation clause warrants monetary compensation in the regulatory taking situation.

Under the facts in *First English,* the petitioner-Church alleged a taking for the period commencing from the time when the ordinance because effective accruing up until when the regulation would be struck down. Typically, "[o]nce a court determines that a taking has occurred, the government retains the whole range of options already available—amendment of the regulation, withdrawal of the invalidated regulation, or the exercise of eminent domain," *Id.* at 2389, thus leaving the property owner harmed for the period of time in which the law was effective. Until *First English,* landowners had no opportunity to recover damages for the "regulatory wrongs" of local government.

Siding with the Church's argument, the