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Recent Decisions - State and Federal: T.V. or Not T.V. - Proof of Value for Grand Larceny

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of the *Terry* doctrine lies in its abuse in cases where the state may seek to dignify an otherwise invalid investigatory procedure. The narrow holding in *Terry* was originally intended as justification for good faith searches, limited in scope to a patdown for weapons in a situation reasonably perceived by the officer as presenting immediate danger. The gist of *Terry* is good-faith preemption of hostile citizen reaction to a lawful police stop; *Terry* was not envisioned as applying an excuse for bad faith or sloppy police work and the "stop and frisk" perceived by the Supreme Court was clearly not meant to be a habitual law enforcement procedure.

In *Price*, the court noted that the officer had concededly acted solely on the basis of the police broadcast and that he observed nothing in the course of his approaching the defendant which indicated that he might be armed. The court distinguished *Williams v. State*, 19 Md.App. 204, 310 A.2d 593 (1973), where it upheld a "stop and frisk" based on a similar radio alert together with other circumstances which were found sufficient to give rise to the required reasonable suspicion. Specifically, in *Williams*, the fact that the automobile was parked in the same general vicinity only ninety minutes after a shooting incident was a specific and articulable fact which reasonably warranted the self-protective frisk, whereas in *Price* the court was faced with the question whether the police broadcast alone would give rise to this suspicion where the offense which was the subject of the broadcast had occurred three weeks earlier and in another part of the county. The unaccompanied police broadcast was held insufficient.

The rationale underlying *Terry* goes to the legitimate interest of the state in protecting its law enforcement officers from the inherent dangers involved in the conducting of investigations of those suspected of possible criminal activities. The cases following *Terry* have been forced to apply a balancing test between the rights of individuals to be free from unreasonable searches and seizures and society's interest in protecting its police from potential threatened violence when such is the case. The difficult question to

which the court addressed itself in this case is whether the frisk can be upheld at a suppression hearing where the arresting officer has no reason other than the broadcast for conducting the frisk and where the prosecution is unable to identify the source of the information bringing about the alert. Through a delicate balancing of the interests outlined in *Terry*, the court has chosen not to expand its prior holding in *Williams* to encompass a situation such as that in *Price*.

While it might legitimately be suggested that *Price* almost completely deprives police officers of the right to conduct protective frisks solely on the basis of police radio broadcasts alerting officers of armed and dangerous suspects (who are identified with certainty), officers in fear of their safety may conduct such frisks if they can point to any specific and articulable facts supporting the broadcast (such as in *Williams*) which reasonably leads them to conclude that criminal activity is afoot and that the subject of their investigation is armed. Furthermore, such a frisk based on the broadcast alone will be upheld if the facts underlying the radio alert are established by the state at the suppression hearing. *Price*, while declining to extend the former rule, reaffirms the self-protective frisk under appropriate circumstances and at the same time preserves the right of the people to be free from unreasonable searches and seizures. The narrow holding of *Price* requires only that evidence seized as the result of an arrest made following a productive frisk for weapons based solely on the radio broadcast must be suppressed both where the accuracy underlying the broadcast cannot be documented and in the absence of other indicia of present danger.

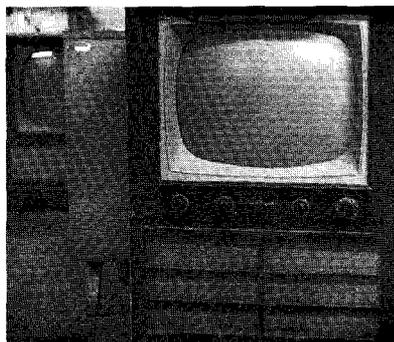


photo by John Clark Mayden

T.V. Or Not T.V.—Proof Of Value For Grand Larceny

by John Jeffrey Ross

To obtain a conviction of a defendant accused of grand larceny in the District of Columbia, the Government must present evidence that the property stolen was worth at least \$100.00. (See 22 D.C. Code Sec. 2201). Such evidence should include proof of the fair market value of the item. This axiom appears to be too simple to require judicial explanation, but the District of Columbia Court of Appeals recently reversed a felony grand larceny conviction because of the Government's failure to establish the threshold value. *Williams v. United States*, 376 A.2d 442 (D.C. App. 1977).

John Williams was convicted of grand larceny after the Government convinced the jury that he had taken a television set (and other effects of negligible value). The evidence showed that Mr. Williams sold the television for \$50.00 and then bought it back for \$100.00 in the hope of returning it to avoid prosecution. There was further testimony by the complaining witness of the property's original purchase value and state of repair.

Williams subsequently appealed this conviction, claiming that the Government's evidence was insufficient to demonstrate a felony theft. In remanding the case for a misdemeanor disposition the Court of Appeals stated that the failure of the Government's case was the reliance on the evidence of only "a) physical presence of the items stolen and b) the owner's statement of original cost." 376 A.2d at 443. The Court indicated that the "fair market value" is defined as that "price at which a willing seller and a will-

ing buyer will trade." *Id.* Without this evidence of value, the jury's verdict would not be based on articulable objective facts. Even though the owner testified she originally had paid \$750.00 for the property and the accused (certainly not a willing buyer) paid \$100.00 to repurchase the television set, neither purchases were indicative of fair market value.

The Court stated that the only departure from the strict rule of proof would be where the "stolen property (1) had been recently purchased at a price well in excess of \$100.00; (2) was in 'mint condition' at the time of the theft; and (3) was not subject to 'prompt depreciation or obsolescence.'" 376 A.2d at 444.

The government's proof was thus sufficient to sustain a conviction only for petit larceny, a misdemeanor. With this charge, all that is necessary is for the government to show that the stolen items had value.

The Court closed with an oblique reference to what may be poor trial preparation on the part of the U.S. Attorney's Office. It noted, at 376 A.2d 444 n. 3, that there has been "a continuing indication of failure in governmental proof sufficient to establish a felony rather than a misdemeanor in larceny cases of this nature."

Merger Doctrine Examined

by John Jeffrey Ross

On July 13, 1974, a young woman was allegedly raped in the District of Columbia. This event provoked a search by her relatives and friends for some neighborhood justice. Mrs. Mary Harris, grandmother of the assault victim, accompanied this crowd of vigilantes to a Washington home wherein the rapist was thought to reside. As two men from the group forced their way through the front door they shot down an innocent third party, Louis Sisler, who tried to prevent their entry.

Sisler died at an emergency room shortly thereafter, but not before he provided, by way of admissible "spontaneous utterances," testimony leading to the murder and burglary convictions of the assailants. See *Harris v. United States*, 373 A.2d 590 (D.C. App. 1977).

The tragic events of that day have led to further prosecutions, and the District of Columbia Court of Appeals has recently adjudicated the appeal of Mrs. Harris from her convictions for conspiracy to commit assault with a dangerous weapon, attempted first degree burglary while armed, and felony murder. Mrs. Harris had been brought to justice for her role in aiding and abetting the forcible entry of the murder victim's home and his shooting. *Harris v. United States*, 377 A.2d 34 (D.C. App. 1977).

On appeal, Mrs. Harris claimed that the trial court erroneously resolved the following issues against her:

¹Sufficiency of the evidence to sustain accomplice guilt for attempted first degree burglary;

²statements by the decedent admitted against her;

³sufficiency of the evidence to show accomplice guilt for the first degree felony murder;

⁴refusal by the trial court to impanel, *sua sponte*, a second jury to hear Mrs. Harris' untimely insanity defense or to conduct a voir dire of the jurors to determine prejudice against such a defense;

⁵prejudicial statements by the prosecutor concerning Mrs. Harris' insanity defense, even though the trial court provided instructions to mitigate their impact.

She further complained that the offenses upon which the felony murder accusation was based should have been merged with the homicide, thus removing support for the first degree murder conviction.

The court affirmed the convictions, indicating by a recital of the group's purposeful actions that the evidence, when viewed in a light most favorable to the government, clearly showed criminal animus for revenge and armed, forcible entry into the victim's home—thus sufficient evidence for attempted first degree burglary while armed. *Id.*, at 36-37. Con-

cerning accomplice guilt, the court saw as dispositive numerous actions by Mrs. Harris indicative of her role as a motivating force in the group's search for revenge which led it to the scene. The court rejected her claim that her leaving the scene prior to the murder was sufficient to avoid criminal liability.

The court reasoned that absent an affirmative move to "disavow or defeat" the criminal purpose, or "definite decisive" steps showing complete abandonment of the illegal undertaking, the departure was ruled insufficient "as a matter of law" to show withdrawal from the criminal enterprise. *Id.*, at 38.

As to Harris' liability in the felony murder, the court stated that the killing was within the scope of the burglary perpetrated by Harris and her principals; a natural and probable consequence of, and not merely "coincident" to, the illegal entry. 377 A.2d at 37-38.

On the failure of the trial court to impanel, *sua sponte*, a second jury to hear her insanity defense or to question veniremen of the present panel to determine prejudice against this defense, the court stated that Harris had abruptly changed her defense tactics at trial by an untimely assertion of the insanity defense; there was no *right* to a second jury, and that absent a timely request by counsel for voir dire on the insanity issue, the trial judge did not abuse her discretion in the manner in which she conducted the trial. Also fatal to the appellant's claim was the absence of objection to the "manner and method" of the court's use of the jury. In addition, the court dismissed claims that the prosecutor made statements of such import as to prejudice the defense. It was held that proper jury instructions remedied their effect, and that a fair trial was preserved. 377 A.2d at 39-40.

The final issue to be considered was Mrs. Harris' claim that the felony murder conviction must be reversed because the offenses on which the felony murder was based should have been merged into that homicide as lesser included offenses. In other words, she contended that 1) the burglary was based upon the intent to commit assault with a dangerous weapon;