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

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provide 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 396, 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 cannot obtain Miranda. The Court now permits the police to obtain by direct interrogation of suspects. The police may now directly, voluntary self-incriminating statements made in the course of a pre­detention meeting between an accused and a spouse. Such statements may now be used against a defendant in lieu of direct interrogation of suspects. The Court now permits the police to obtain 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 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).


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 reasonably 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. (Blackmun, 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 dis-
sent found that the warrant specified that
only McWebb’s apartment could be search-
ed. Therefore, the search of Garrison’s
apartment was warrantless and because the
did not advance any exceptions to the
warrant requirement, all evidence seized
from the search should have been suppress-
ed.

In addition, the dissent found the major-
ty’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 separa-
rate 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 anal-
ysis 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要求 MONETARY
COMPENSATION FOR
TEMPORARY REGULATORY
TAKING OF PROPERTY

Marred by a history of incomplete clari-
fication, the issue of whether a landowner
is entitled to compensation for a tempo-
rary regulatory taking of property purpu-
suant to the Just Compensation Clause of the
fifth amendment of the United States Constitu-
tion 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 accep-
able remedy.

The First English Evangelical Church of
Glendale owned and operated a camp
(Conservancy) 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 everpre-
sent 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, reconstruc-
t, place or enlarge any building or structure,
any portion of which is, or will be, located
within the outer boundary 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) (empha-
sis added). The law adversely affected the
Church’s interest in Lutherglen, prohibit-
ing its reconstruction.

In response to the regulation the Church
filed suit in the Superior Court of Califor-
nia alleging that the law denied the church
of all use of the property. Following Agins
t v. Tiburon, 24 Cal. 3d 266 (1979), the court
denied relief by inverse condemnation. Agins
stands for the proposition that main-
tenance 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.

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, Mac-
Donald, Sommers and Frates v. Yolo Coun-
ty 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 occur-
ed.), Williamson County Regional Plan
ning 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 pre-
cluding a decision by the Court for a lack
of finality at the state level.), San Diego Gas
(When a state court decision is not final,
the Court cannot review the case pursuant
to 28 U.S.C. § 1257.), Agins v. Tiburon,

Despite the fact that the ordinance had
yet to be deemed unconstitutional as a tak-
ing of property without providing just
compensation, the Court did address the
compensation issue. See generally, 107 S.Ct.
at 2389-2390 (Where the dissenting opin-
ion 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 Constitu-
tion applies to the states through the four-
teenth amendment. Therefore, a state is
required to financially compensate a prop-
erty owner for an actual physical taking.
Furthermore, under Mabon, a regulation
may be so excessive that it works a taking
under inverse condemnation theory, deny-
ing 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 physi-

cally deprives a landowner of its rights by
eminent domain and when the deprava-
tion is perpetrated by regulatory encroach-
ment. Thus, because there are not
distinguishing differences between emi-
nent domain and inverse condemnation
ings, the Court held that the just compen-
sation clause warrants monetary compen-
sation 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 became 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 invalid-
ated regulation, or the exercise of emi-
nent 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 oppor-
tunity to recover damages for the “regula-
tory wrongs” of local government.

Siding with the Church’s argument, the

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