Journal of Criminal Law and Criminology

Volume 61 | Issue 4 Article 3

1971

# Search and Seizure--Vale v. Louisiana, 399 U.S. 30 (1970); Chambers v. Maroney, 399 U.S. 42 (1970)

Since the offense did not meet either of the two criteria, the Court held that the failure to register for the draft was not a continuing offense; and thus prosecution of petitioner Toussie was barred by the statute of limitations.

Justice White, in dissent, was troubled by conceived inconsistencies in Justice Black's opinion. White argued that the Presidential order[39] cited by the government provided sound foundation for treating a failure to register for the draft as a "continuing offense." He insisted that the majority had erroneously concluded that "the regulation was not authorized by the Universal Military Training and Service Act,"[40] even though section 10 of that Act granted the President such authority.[41]

Justice Black emphasized, however, that the Court did

> not hold, as the dissent seems to imply, ... that the continuing-duty regulation is unauthorized by the Act. All we hold is that neither the regulation or the Act itself requires that failure to register be treated as the type of offense which effectively extends the statute of limitations.[42]

The crux of this dilemma is that Justice White missed the logic of Justice Black's categories, one of which stated that a continuing offense occurs when the language of the statute, not the regulation, compels that conclusion. The justification for this category is that the statute of limitations is a creature of the legislature. If the limitation is to be extended with regard to a particular offense, there must be explicit legislative direction. Justice Black asserted that the regulation, though valid for other administrative purposes,[43] did not speak for the legislature and therefore could not serve to extend the statute of limitations.

board advised of one's address should still be held continuous.

[39] 32 C.F.R. § 1611.7(c) (1970).

[40] 50 U.S.C. § 460(b) (1964) states that "the President is authorized—(1) to prescribe the necessary rules and regulations to carry out the provisions of this title."

[41] 397 U.S. at 127 n. 1.

[42] *Id.* at 121 n. 17. In another footnote, *Id.* at 127 n. 2, Justice White, perplexed, responded:

> [t]he majority seems concerned to distinguish the 'limitations question' ... from the question of whether the duty in this case is continuing.... But the Court cannot have it both ways. If the duty continues, as the regulation prescribes, the limitations question has been settled.

[43] *See* Gara v. United States, 178 F.2d 38 (6th Cir. 1949), where the Court upheld the authority of the President to proclaim 32 C.F.R. § 1611.6(d). This case concerned the prosecution of one who abetted another to avoid the draft in violation of 50 U.S.C. § 462(a) (1964). Although the defendant argued that the one who had failed to register had already completed his crime before the alleged illegal counseling, the court ruled that the duty to register was continuing.

## SEARCH AND SEIZURE

### Vale v. Louisiana, 399 U.S. 30 (1970); Chambers v. Maroney, 399 U.S. 42 (1970)

In *Vale v. Louisiana*[1] and *Chambers v. Maroney*[2] the Court broadened the conceptual gap between the law relating to the warrantless search of a residence and the law relating to the warrantless search of an automobile.[3] *Vale* held that a warrantless search of a suspect's house incident to his arrest on the front porch was violative of the fourth amendment. *Chambers* held that the search of an automobile incident to an arrest based on probable cause was reasonable even though it was conducted several hours later and at a different location. Probable cause to conduct the search at the time of the arrest was held sufficient to justify dispensing with a warrant for the subsequent search even though there was ample time to obtain a warrant in the interim.

When viewed from an absolute doctrinal position which recognizes the vital mandates of fourth amendment protection,[4] the decisions appear inconsistent; but when seen from the pragmatic

[1] 399 U.S. 30 (1970).

[2] 399 U.S. 42 (1970).

[3] In the United States v. Kancso, 252 F.2d 220, 224 (2nd Cir. 1958), the court noted the distinction between the search of a residence and an automobile:

> "There is a vast difference between entering and searching homes ... which are fixed and more or less permanent locations and stopping a person or car on a highway for the same purpose."

*See also* United States v. Buckner, 296 F.Supp 121 (D. Tenn. 1968); Johnson v. State, 8 Md. App. 28, 257 A.2d 756 (1969).

[4] *See, e.g.*, Kaufman v. United States, 394 U.S. 217 (1969); Mapp v. Ohio, 367 U.S. 643 (1961); Nardone v. United States, 308 U.S. 338 (1939); Weeks v. United States, 232 U.S. 383 (1914).

viewpoint of reasonability under the fourth amendment,[5] the cases evidence a growing dichotomy between the permissible grounds for conducting a warrantless search of a residence and those justifying a warrantless search of an automobile.[6]

In *Vale*, the defendant was arrested on the front stairs of his home immediately after the arresting officers observed what appeared to be a sale of narcotics to a known drug addict. The search of defendant's home incident to the arrest revealed a quantity of narcotics. Vale was convicted for possessing heroin and sentenced as a multiple offender to fifteen years imprisonment. The Supreme Court of Louisiana affirmed the conviction holding the search reasonable because it was conducted "in the immediate vicinity of the arrest" and was "substantially contemporaneous therewith."[7]

The Supreme Court granted *certiorari*[8] and reversed the conviction.[9] Mr. Justice Stewart, speaking for the majority, succinctly stated:

> "If a search of a house is to be upheld as incident to an arrest, that arrest must take place *inside* the house."[10]

Given the enormous breadth of judicial decision holding the search of a residence incident to an arrest in a location remote from the residence as violative of the fourth amendment, it is inconceivable that the Court could have reached a contrary decision.[11] These decisions appear to be grounded on the unqualified right of an individual to be secure from a warrantless police search while in his own home.[12] Although indisposed to prescribe spatial dimensions between an arrest and a residence which may justify a warrantless search of the suspect's home,[13] the courts have predicated the validity of such searches on the need to seize weapons and the need to prevent the destruction of the evidence of the crime.[14] Seizing upon this justification the Louisiana Supreme Court, in affirming Vale's conviction, noted that the arresting officers could not be sure that the evidence would not be destroyed had they gone to obtain a warrant.[15]

Justice Stewart circumvented the foregoing justification on the ground that the prosecution failed to establish the existence of exceptional circumstances to sustain the warrantless search.[16] Ex-

[5] The fourth amendment prohibits only *unreasonable* searches. *See* Ker v. California, 374 U.S. 23 (1963); Henry v. United States, 361 U.S. 98 (1959). *Cf.* United States v. Walker, 246 F.2d 519 (7th Cir. 1957).

[6] *See* note 3 *supra*.

[7] State v. Vale, 252 La. 1056, 1070, 215 So. 2d 811, 816 (1968).

[8] 396 U.S. 813 (1969).

[9] Vale v. Louisiana, 399 U.S. 30 (1970). The conviction was reversed 6–2. Mr. Justice Black, joined by Chief Justice Burger, submitted a dissenting opinion. Mr. Justice Blackmun did not take part.

[10] 399 U.S. at 33–34 (emphasis in text). *See* Agnello v. United States, 269 U.S. 20, 33 (1925):

> "Belief, however well founded, that an article sought is concealed in a dwelling house furnishes no justification for a search of that place without a warrant."

[11] *See e.g.*, Shipley v. California, 395 U.S. 818 (1969) (arrest occurred fifteen to twenty feet from residence); James v. Louisiana, 382 U.S. 36 (1965) (two blocks); Stoner v. California, 376 U.S. 483 (1964) (hotel room in another state two days after arrest); Agnello v. United States, 269 U.S. 20 (1925) (several blocks); Lucero v. Donovan, 354 F.2d 16 (9th Cir. 1965) (several blocks); United States *ex rel.* Clark v. Maroney, 339 F.2d 710 (3rd Cir. 1964) (nearby town); United States *ex rel.* Mancini v. Runole, 337 F.2d 268 (3rd Cir. 1964); United States *ex rel.* Linkletter v. Walker 323 F.2d 11 (5th Cir. 1963), *aff'd*, 381 U.S. 618 (1965) (six or seven blocks); Papani v. United States, 84 F.2d 160 (9th Cir. 1936) (several miles); United States v. Shripshire, 271 F.Supp. 521 (D.La. 1967) three blocks); Mc Ilvanie v. Middlebrooks, 265 F.Supp. 1004 (D. La. 1964) (half block); Pennsylvania *ex rel.* Whiting v. Cavell, 244 F.Supp 560 (M.D. Pa. 1965), *aff'd*, 358 F.2d 132 (3rd Cir. 1966), *cert. denied*, 384 U.S. 1004 (1966) (ten miles); United States *ex rel.* Holloway v. Reincke, 229 F.Supp. 132 (D. Conn. 1964) (within two to three minute walk); United States v. Wai Lau, 215 F.Supp. 684 (S.D. N.Y. 1963), *aff'd*, 329 F.2d 310 (2nd Cir. 1964), *cert, denied*, 379 U.S. 856 (1965) (several blocks); United States v. Scott, 149 F.Supp. 837 (D. D.C. 1957) (down the street); People v. Delaney, 239 Cal. App. 2d 122, 48 Cal. Rptr. 408 (1965) (in front of apartment); People v. Currier, 232 Cal. App. 2d 103, 42 Cal. Rptr. 562 (1965) (250 feet); Warwick v. State, 104 Fla. 393, 140 So. 219 (1932) (several blocks); People v. Poncher, 358 Ill. 73, 192 N.E. 732 (1934) (on a public street); People v. Garrett, 232 Mich. 366, 205 N.W. 95 (1925) (several blocks); May v. State, 199 So. 2d 635 (Miss. 1967) (while defendant was in jail); State v. King, 84 N.J. Super, 297, 201 A.2d 758 (1964), *rev'd on other grounds*, 44 N.J. 346, 209 A.2d 110 (1965) (in rear of premises); Commonwealth v. Pearson, 427 Pa. 45, 233 A.2d 552 (1967) (different city); State v. Mc Collum, 17 Wash. 2d 85, 136 P.2d 165 (1943) (in a hospital).

[12] *But see*, United States v. Fowler, 17 F.R.D. 499 (S.D. Cal. 1955), where the court held that because the officers took the defendant two blocks from the location of the arrest in order to search the garage adjacent to his apartment there was an absence of the element of reasonableness which is required to make the search valid as an incident to the arrest.

[13] *See* United States v. Scott, 149 F.Supp. 837 (D. D.C. 1957).

[14] Chimel v. California, 395 U.S. 775 (1969); United States *ex rel.* Holloway, 229 F.Supp. 132 (D. Conn. 1964).

[15] State v. Vale, 252 La. at 1070, 215 So. 2d at 816.

[16] The burden of demonstrating exceptional circumstances to justify the search of a dwelling rests with the prosecution. *See e.g.*, Chimel v. California, 395 U.S. 775, 762 (1969); United States v. Jeffers, 342 U.S. 48, 51 (1951); Mc Donald v. United States, 335 U.S. 451, 456 (1948).

ceptional circumstances have been held to validate the warrantless search of a residence where the police are responding to an emergency[17] or are in hot pursuit of the suspect,[18] where the residence is the scene of the suspect's criminal operations,[19] and where the suspect is observed removing contraband from the residence.[20] However, absent a showing of extreme necessity, *Vale* appears to impair the vitality of decisions which have held the warrantless search of a residence valid because the residence was "substantially connected" with the arrest.[21]

While the *Vale* majority adhered to the absolute sanctity of the home notion, the dissenters subscribed to the reasonability of the search analysis. Mr. Justice Black, joined by Chief Justice Burger, noted:

> "In my view, whether a search incident to a lawful arrest is reasonable should still be determined by the facts and circumstances of each case." [22]

Demanding that the risk of destruction of the evidence was sufficient to invoke the "exceptional circumstances" doctrine,[23] Justice Black noted a distinction between "exceptional circumstances" and a reasonable search incident to an arrest.[24] This distinction appears tenuous when contrasted with the majority's approach to *Vale*. Although certain circumstances may justify a warrantless search incident to an arrest without regard to exceptional circumstances, *Vale* indicates that the sanctity of the residence is entitled to absolute fourth amendment protection and that, absent exceptional circumstances, the warrantless search *of a home* cannot be justified.

The dichotomy in philosophical approach between the majority and minority in *Vale* is evidenced by their independent views concerning the applicability of the Court's previous decision in *Chimel v. California*.[25] *Chimel* held that a search may be upheld as incident to an arrest where there is a threat that the evidence may be destroyed and where the search is confined to "the area from within which [the suspect] might gain possession of . . . destructable evidence." [26] The majority felt that *Vale* could be decided without reaching the question of *Chimel's* retroactivity. This position was ostensibly predicated on the basis that exceptional circumstances were absent because the suspect could not gain possession of evidence in his home when he was arrested on the front porch. Thus, because the arresting officers had no reason to believe that someone else was present in the home to destroy the evidence, the sanctity of the home required a warrant before the home could be searched. Contrarily, the dissenters felt that the search in *Vale* was so patently reasonable that it could be upheld without regard to the applicability of *Chimel*.[27]

In the absence of exceptional circumstances, *Vale*'s absolute sanctity of the home approach appears to erode the authoritative value of a significant line of search and seizure cases.[28]

[17] *See, e.g.*, United States v. Jeffers, 342 U.S. 48 (1951); McDonald v. United States, 335 U.S. 451 (1948); Kelley v. United States, 61 F.2d 843 (8th Cir. 1932) (*dictum*).

[18] *See, e.g.*, Warden v. Hayden, 387 U.S. 294 (1967); Chapman v. United States, 365 U.S. 610 (1960); Johnson v. United States, 333 U.S. 10 (1947).

[19] *See, e.g.*, People v. Kendall, 212 Cal. App. 2d 472, 28 Cal. Rptr. 53 (1963); People v. Bach, 184 Cal. App. 2d 693, 7 Cal. Rptr. 864 (1960).

[20] *See, e.g.*, Clifton v. United States, 224 F.2d 329 (4th Cir. 1955), *cert. denied*, 350 U.S. 894 (1955); Martin v. United States, 155 F.2d 503 (5th Cir. 1946).

[21] In United States v. Jackson, 149 F.Supp 937 (D. D.C. 1957), *rev'd on other grounds*, 250 F.2d 772 (D.C. Cir. 1957), the court held the search of a residence incident to an arrest in an auto valid because it occurred as soon after the defendant left the residence as the officers could stop the auto. People v. Rodriguez, 238 Cal. App. 2d 682, 48 Cal. Rptr. 177 (1965), *cert. denied*, 385 U.S. 951 (1966) upheld a search where the apartment itself was the scene of the alleged crime. Holding that the commission of the crime for which the arrest was made was connected with the dwelling, Riddle v. State, 73 Okla. Crim. 419, 121 P.2d 1014 (1943), held the search constitutionally valid. *See also* Patton v. State, 43 Okla. Crim. 436, 279 P. 694 (1929); State v. Beaupre, 149 Wash 675, 272 P. 26 (1928).

[22] Vale v. Louisiana, 399 U.S. 30 (1970), (dissenting opinion). *See also*, Ker v. California, 374 U.S. 23, 34–36 (1963); United States v. Rabinowitz, 339 U.S. 56, 63–64 (1950).

[23] To support the proposition that a risk of destruction of the evidence could generate the "exceptional circumstances" doctrine, Justice Black cited Preston v. United States, 376 U.S. 364 (1964); McDonald v. United States, 335 U.S. 451 (1948) and Carroll v. United States, 267 U.S. 132 (1925). *Preston* and *Carroll* involved the search of an auto and *McDonald* held the warrantless search of a residence invalid.

[24] *See* 399 U.S. at 38.

[25] 395 U.S. 752 (1965).

[26] *Id.* at 763.

[27] Theoretically, the majority's position is reinforced by the fact that a search warrant could reasonably be obtained before the suspect could be released on bail and destroy the evidence. The dissenting opinion noted that Vale's mother and brother did, in fact, come home while the officers were conducting their search. However, there was neither reason to believe that the mother and brother knew of Vale's narcotic dealings nor that they were aware of the presence of narcotics in the home.

[28] *Vale* appears to emasculate the authoritative value of cases which upheld the validity of a warrantless search despite an arrest made remote from the locus of the arrest. *See, e.g.*, Hass v. United States, 344 F.2d 56 (8th Cir. 1965) (Defendant rented bedroom of

An antithetical approach to the absolute position invoked in *Vale* was taken in *Chambers v. Maroney*[29] where the Court held the warrantless search of an automobile to be reasonable despite the fact that it was conducted after the auto had been removed to the police station and the immobility of the auto permitted the police to obtain a warrant. Mr. Justice White's majority opinion noted the difference in approach to cases involving residences and those involving automobiles: "for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars." [30]

In *Chambers* several people noticed an auto speeding away from a service station which had been robbed. Upon notification from the observers, the police pursued the auto and arrested its occupants. The auto was driven to the police station and searched without a warrant. Defendant was convicted in state court and did not appeal. A subsequent request for federal habeas corpus relief was denied,[31] the denial was affirmed,[32] and the Supreme Court granted *certiorari*.[33]

The Court found that the identification of the auto and its occupants by the citizen observers was sufficient to generate probable cause.[34] Although probable cause to arrest is not always equivalent to probable cause to search,[35] the police, on the facts of *Chambers*, had reason to believe that the suspected robbers possessed weapons and the fruits of their crime. Noting that automobiles may be subject to a warrantless search in circumstances which would not justify the warrantless search of a residence,[36] the Court held:

> "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." [37]

Thus, the Court found that the fourth amendment's protection against unreasonable searches does not preclude the warrantless search of an auto after it has been removed from the location of the arrest where the police had probable cause to conduct the search at the time of the arrest. While several courts have reached the same result by determining that the search was part of a continuous sequence of events,[38] a conflict remains as to whether a search of an auto made subsequent to the arrest of a suspect in a location remote from the auto can be considered sufficiently incident to justify dispensing with a warrant.[39] However, contemporaneity is no longer an element of the incidence of the search.[40] Thus, exigent circum-

apartment and search of bedroom was upheld as "contiguous" to arrest in living room); Williams v. United States, 260 F.2d 125 (8th Cir. 1958), *cert. denied*, 359 U.S. 918 (1958) (search of stairway leading from defendant's bedroom to a bathroom which he used was upheld as incident to arrest in hallway outside of his room); United States v. Charles, 8 F.2d 302 (N.D. Cal. 1925) (search of living quarters held incident to arrest in lobby); United States v. Biegel, 254 F.Supp. 923 (S.D.N.Y. 1966) *aff'd*, 370 F.2d 751 (2nd Cir. 1967), *cert. denied*, 387 U.S. 930 (1966) (search of apartment incident to defendant's arrest with key in door about to enter); People v. Dominguez, 191 Cal. App. 2d 704, 12 Cal. Rptr. 910 (1961) (search of apartment incident to arrest on porch); People v. Boozer, 12 Ill. 2d 184, 145 N.E. 2d 619 (1957) (search of dwelling incident to arrest on porch); People v. Newbern, 49 Misc. 2d 1007, 268 N.Y.S. 2d 758 (1966) (search of home incident to arrest in yard).

[29] 399 U.S. 42 (1970).

[30] *Id.* at 52.

[31] United States *ex rel.* Chambers v. Maroney, 281 F.Supp. 96 (W.D. Pa. 1968).

[32] 408 F.2d 1186 (3rd Cir. 1969).

[33] 396 U.S. 900 (1969).

[34] Thus the Court sanctioned the view that specific notification from an observer of a crime is sufficiently reliable for probable cause purposes. This appears to be in accord with the prevailing view. *See, e.g.*, Pendleton v. Nelson, 404 F.2d 1074 (9th Cir. 1968); Brown v. United States, 365 F.2d 976 (D.C. Cir. 1966).

[35] For situations involving probable cause to arrest but not to search, see, Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968); Preston v. United States, 376 U.S. 364 (1964). Whether there is a distinction between the requirements for issuance of an arrest warrant and a search warrant remains a matter of speculation. *But see* Comment, *Search and Seizure in the Supreme Court: Shadows of the Fourth Amendment*, 28 U. CHI L. REV. 664, 687 (1961).

[36] A long line of Supreme Court cases has tested the circumstances under which an auto can be search. *See* Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968); Cooper v. California, 386 U.S. 58 (1967); Preston v. United States, 376 U.S. 364 (1964); Beinegar v. United States, 338 U.S. 160 (1949); Husty v. United States, 282 U.S. 694 (1931); Carroll v. United States, 267 U.S. 132 (1925).

[37] Chambers v. Maroney, 399 U.S. 42, 52 (1970).

[38] *See, e.g.*, Rhodes v. United States, 224 F.2d 348 (5th Cir. 1955); United States v. Erskine, 248 F.Supp. 137 (D. Oregon 1965); People v. Webb, 66 Cal. 2d 107, 56 Cal. Rptr. 902, 424 P.2d 342 (1967); People v. Lewis, 34 Ill 2d 211, 215 N.E. 2d 283 (1966).

[39] *Compare* Drummond v. United States, 350 F.2d 983 (8th Cir. 1965) *cert. denied*, 384 U.S. 944 (1965); United States v. Berhart, 326 F.2d 412 (4th Cir. 1964) *with* Staples v. United States, 320 F.2d 817 (5th Cir. 1963); Conti v. Morgenthau, 232 F. Supp. 1004 (S.D.N.Y. 1964); Pettit v. State, 207 Ind. 478, 188 N.E. 784 (1934); People v. Harper, 365 Mich. 494, 113 N.W. 2d 808 (1962), *cert. denied*, 371 U.S. 930 (1962).

[40] *But see* Glisson v. United States, 406 F.2d 423 (10th Cir. 1969); Barnett v. United States, 384 F.2d 848 (5th Cir. 1967); United States v. Stoffey, 279 F.2d