

APPLYING THE GOOD FAITH EXCEPTION TO THE PARTICULARITY AND EXECUTION OF SEARCH WARRANTS: *Maryland v. Garrison**

I. INTRODUCTION

Few social problems in the last decade have raised the public's conscience like illegal drug use and abuse. Television documentaries, advertising campaigns, and drug literature denouncing drug abuse have become commonplace in today's society. Government officials and scholars constantly stress the connection between illegal drugs and violent crime. In response to these concerns, President Reagan declared a war on drugs. The early results of this war are notable. For instance, the number of convictions for violation of the Drug Abuse Prevention and Control Act between 1980 and 1985 almost doubled.¹ The public became aware of the problem and embraced the President's war on drugs.

Unfortunately, the success of the administration's war on drugs has often come at the expense of individual constitutional liberties and freedoms. One area heavily attacked since Reagan's declared war is fourth amendment protections. The courts repeatedly have been asked to resolve a conflict between an individual's fourth amendment rights and law enforcement officers' duty to search for and seize contraband.

*Maryland v. Garrison*² is such a case. In *Garrison*, the Supreme Court further narrowed the scope of the fourth amendment by creating a new "Reasonable Factual Mistake" exception to the warrant requirement. This decision follows the recent trend of Supreme Court decisions since the President's declared war on drugs, leading to the possibility of a "Drug Exception" to the fourth amendment.³ This Note will analyze the Supreme Court decision in *Garrison* and consider whether the benefits of curtailing the spread of illegal drugs outweigh the detriments to personal liberty.

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¹ In 1980, there were 2,541 convictions compared to 4,727 in 1985. *Statistical Abstract of the United States* 1987 (107 ed. No. 297 1987).

² 107 S. Ct. 1013 (1987).

³ See Wisotsky, *Crackdown: The Emerging "Drug Exception" to the Bill of Rights*, 38 HASTINGS L.J. 889 (1987). This note expands on the ideas advanced in Wisotsky's article. Apparently, Wisotsky deserves the credit for coining the phrase "Drug Exception."

II. SEARCH WARRANTS AND THE FOURTH AMENDMENT

The fourth amendment protects citizens "against unreasonable searches and seizures" and provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."⁴ The Supreme Court has ruled that the fourth amendment protects any interest in which an individual has a reasonable expectation of privacy.⁵ The fourth amendment protects people not places.⁶

A search warrant satisfies the fourth amendment when it meets the following four requirements: (1) the warrant is supported by probable cause; (2) the warrant is issued by a neutral and detached magistrate; (3) the warrant describes with particularity the places to be searched and the things to be seized; and (4) the warrant is executed properly.⁷ The *Garrison* decision addresses the third and fourth requirements.

The purpose of requiring particularity is to protect the individual's privacy interest from a general search or "general, exploratory rumaging in a person's belongings."⁸ A place to be searched is sufficiently described if the executing officers can ascertain and identify the place with reasonable effort.⁹ Before *Garrison*, only the particular place described in the search warrant could be lawfully searched pursuant to the warrant.¹⁰

Although these same principles apply regardless of the type of dwelling or structure to be searched, the federal courts have created specific law regarding valid searches of multiple dwelling units like the type searched in *Garrison*. First, the police, absent a recognized exception, must have probable cause specifically related to each unit to be searched.¹¹ Second, a search warrant for an apartment building or complex must describe the particular subunit to be searched with sufficient clarity to preclude indiscriminate searching of other subunits.¹²

⁴ U.S. CONST. amend. IV.

⁵ *Katz v. United States*, 389 U.S. 347, 351-53 (1967) (emphasis added). The expectation of privacy must be both subjective and reasonable as recognized by society. *Id.* at 361 (Harlan, J., concurring).

⁶ *Id.* at 351.

⁷ U.S. CONST. amend. IV. See also *infra* notes 8-10 and accompanying text.

⁸ *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). See also *Marron v. United States*, 275 U.S. 192, 196 (1927).

⁹ *Steele v. United States*, 267 U.S. 498, 503 (1925).

¹⁰ See generally *Garrison*, 107 S. Ct. at 1018-20.

¹¹ *United States v. Hinton*, 219 F.2d 324, 325-26 (7th Cir. 1955).

¹² See *United States v. Higgins*, 428 F.2d 232 (7th Cir. 1970).

III. *Maryland v. Garrison*

A. *Facts and Case History*

Acting upon information supplied by a reliable confidential informant, a detective from the Baltimore City Police Department applied for a search warrant to search the residence of Lawrence McWebb. The informant told the detective that McWebb was known as "Red Cross" and that he had personally bought marijuana from "Red Cross" at a third floor apartment located at 2036 Park Avenue within the previous twenty-four hours. Before applying for the warrant, the detective investigated the 2036 Park Avenue premises in order to verify the information. His investigation included an exterior examination of the building and an inquiry to the Baltimore Gas & Electric Company to confirm that McWebb resided in the third floor apartment at 2036 Park Avenue. The investigation determined that the informant was correct in describing McWebb's residence.¹³

The Baltimore City Police Department then obtained a warrant to search the person of Lawrence McWebb and "the premises known as 2036 Park Avenue third floor apartment" for marijuana and other illegal items.¹⁴ Six officers executed the warrant on the same day. They fortuitously came upon McWebb in front of his building at 2036 Park Avenue and used his key to unlock the first floor door and gain entrance. McWebb immediately led the officers up the stairs to the third floor without permitting them to investigate the layout of the first or second floors. McWebb unlocked the third floor door at the top of the staircase and the officers entered a foyer where they encountered Harold Garrison who was unknown to them at that time. Garrison was standing in the foyer in his bedclothes in front of two open doorways. To their left, the officers could see through a doorway into a living room area later determined to be McWebb's apartment. To their right, the officers could see through a doorway into a bedroom area where they could see a small quantity of marijuana on a dresser. They later determined the bedroom area to be part of Garrison's apartment.¹⁵

Some of the officers entered Garrison's doorway to seize the marijuana and conduct a further search of the premises. Other officers entered and searched McWebb's apartment. While conducting the search of Garrison's apartment, one of the officers answered the telephone and the caller asked for "Red Cross", the name the informant had given for McWebb. During the search, neither McWebb nor Garrison indicated that they lived in two separate apartments. Before the officers realized that there were two sepa-

¹³ *Garrison*, 107 S. Ct. at 1015.

¹⁴ *Id.* at 1015, n. 1.

¹⁵ *Id.* at 1015.

rate apartments, they had discovered and seized heroin, drug paraphernalia, and approximately \$4,000 in cash from Garrison's apartment. As soon as the officers realized that they were in two separate apartments, they discontinued the search.¹⁶

The trial court denied Garrison's motion to suppress the evidence seized from his apartment. The Maryland Special Court of Appeals affirmed the trial court's decision, concluding that the police could not reasonably have discovered that the third floor contained two separate apartments. The court did not find that the police had made a reasonable mistake, but rather ruled that there was free access between the two apartments. Thus, in effect, only one apartment existed and it was covered by the warrant. The Maryland Court of Appeals reversed the Special Court of Appeals, finding that the State was attempting to create a good faith exception to the warrant requirement and refused to create such an exception. The court found that the warrant precisely and unambiguously described the premises to be searched and that the police improperly expanded the search to Garrison's apartment which was not described in the warrant. The United States Supreme Court, in an opinion written by Justice Stevens, reversed the Maryland Court of Appeals.¹⁷

B. United States Supreme Court

The United States Supreme Court separated the case into two independent constitutional issues. First, the Court addressed whether the warrant itself was valid. Second, the Court addressed whether the execution of the warrant was reasonable.¹⁸

In determining the validity of the warrant, the Court addressed the particularity requirement and considered whether a factual mistake invalidates a warrant.¹⁹ The Court ruled that it must judge the constitutionality of the officers' conduct in light of the information available to them at the time they applied for the warrant. The Court stated that "items of evidence that emerge after the warrant is issued have no bearing on whether or not a warrant was validly issued."²⁰ Thus, discovery of facts after a warrant has been issued does not retroactively invalidate the warrant.²¹ Therefore, the Court concluded that the warrant was validly issued.²²

Regarding the execution of the search warrant, the Court 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."²³ The Court heavily relied

¹⁶ *Id.*

¹⁷ *Id.* at 1015-17.

¹⁸ *Id.* at 1017.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 1018.

²² *Id.*

²³ *Id.*

on its decision in *Hill v. California*²⁴ in determining the reasonableness of the officers' factual mistake in executing the warrant. *Hill* involved an arrest without a warrant on the mistaken belief that the person observed was a man whom the police had probable cause to arrest. The Court ruled that the officer's reasonable mistake did not invalidate the search incident to arrest.²⁵ The *Garrison* Court extended the *Hill* rationale, stating that "[u]nder the reasoning in *Hill*, the validity of the search of respondent's apartment . . . depends on whether the officers' failure to realize the overbreadth of the warrant was objectively understandable and reasonable."²⁶ The Court concluded that the officers in the present case satisfied this objective test and did not violate the fourth amendment.²⁷

IV. ANALYSIS

A. *The "Drug Exception" to the Fourth Amendment*

Since 1982, at least thirteen major Supreme Court decisions have been handed down narrowing the scope of fourth amendment protections in drug cases. The trend of the Court clearly has been to liberalize search rules in favor of law enforcement.

This trend, including *Garrison*, unfortunately is required to rid our society of the prevalence of drugs and drug abuse. Drug dealers traditionally have gone to great lengths to confuse police searching for evidence so that they can establish a legal defense should a search be successful. Past successful tactics include using the same number for several apartments in the same building and using apartments with no numbers at all. Even if the police determine the correct apartment to search, the drug traffickers know that they have a better chance of attacking a warrant under the particularity requirement if these tactics are used. *McWebb* and *Garrison* may have employed such a tactic. They created an appearance of one apartment and did not inform the executing officers that two apartments existed. The law should not confer special protections on those who fail to number their door or deceive police with confusing appearances. Thus, the decision in *Garrison* protects societal interests in undermining drug trafficking.

B. *Particularity of the Warrant*

The Supreme Court properly held that the search warrant satisfied the particularity requirement. Facts discovered during its exe-

²⁴ 401 U.S. 797 (1971).

²⁵ *Id.* at 803-04.

²⁶ *Garrison*, 107 S. Ct. at 1019.

²⁷ *Id.*

cution did not retroactively invalidate it.²⁸ The Court's ruling is consistent with the rationale of the particularity requirement. If a factual mistake is objectively reasonable, then the resulting search is not a general search. In the mind of a reasonable officer, the search is within the parameters of the warrant. In *Garrison*, the officers' extensive investigation lead them to the conclusion that only one apartment existed.

C. Execution of the Warrant

The Supreme Court properly held that the execution of the warrant was reasonable under the fourth amendment. One of the purposes of a search warrant is to prevent hindsight from determining the reasonableness of a search or seizure.²⁹ Courts must determine the reasonableness of warrant execution in light of the facts actually known to the police at the time of the search.³⁰ In *Garrison*, the police reasonably did not know at the time of the search that two apartments existed on the third floor. Their extensive pre-search investigation and the circumstances of the search reasonably lead them to the conclusion that only one apartment existed.

The Court properly extended the holding in *Hill v. California*³¹ to this case. In *Hill*, the court stated that "sufficient probability, not certainty, is the touchstone of the reasonableness under the fourth amendment"³² Similarly, in *Garrison*, there was a "sufficient probability" that the apartment the officers were searching was McWebb's.

The fourth amendment protects persons against unreasonable searches, not imperfect ones.³³ In *Garrison*, the Court properly recognized this distinction. *Garrison* takes into account the realities of police situations and yet requires sufficient particularity to protect individual liberties.³⁴

V. CONCLUSION

The Supreme Court in *Garrison* has identified constitutional parameters and given law enforcement officers some guidelines on per-

²⁸ *Id.* at 1018.

²⁹ See *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976).

³⁰ *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968).

³¹ 401 U.S. 797 (1971).

³² *Id.* at 802.

³³ *Brinegar v. United States*, 338 U.S. 160, 176 (1949).

³⁴ One noted commentator on the subject of search and seizure law makes a distinction between constitutional and unconstitutional good faith. If a mistake is one of fact that if true would render the search unquestionably constitutional, then the actual resulting search is constitutional. W. LAFAYE, 1 SEARCH AND SEIZURE 1.2 (1978, 1986 Supp. at 8-9). However, if a mistake leads to an improper legal conclusion such as the existence of probable cause, then the actual resulting search is unconstitutional. *Id.* Using this analysis, the *Garrison* search would not be prohibited by the fourth amendment.

missible behavior. The decision allows officers to conduct their business in executing a search warrant without constantly looking back to determine the factual correctness of the warrant. Clearly, law enforcement benefits from this. With this decision, a reasonable mistake in fact in applying for and executing a search warrant does not necessarily destroy the admissibility of its fruits.

It appears that the Court has created a new exception to the warrant requirement, permitting officers to conduct warrantless searches when they have a reasonable, but mistaken, belief that they are complying with a search warrant. The Court probably intended to create such an exception. The Court could have expanded current legal doctrine in support of its holding. Specifically, the Court could have invoked the good faith exception to the exclusionary rule or expanded the plain view exception to search warrants. The failure to use either of these alternatives and its use of the *Hill v. California* case shows that the Court chose to create a new exception to the warrant requirement. Although this exception continues the recent trend by narrowing the scope of fourth amendment protection, the social gain in preventing the rapid spread of drugs in our country outweighs the infringement on our personal liberties.