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Criminal Law--Search and Seizure--Search of Automobile Incidental to Lawful Arrest for Traffic Violation is Invalid

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CRIMINAL LAW—SEARCH AND SEIZURE—SEARCH OF AUTOMOBILE INCIDENTAL TO LAWFUL ARREST FOR TRAFFIC VIOLATION IS INVALID.—Appellant Cecil Lane was arrested for improper passing. He was then removed to a police cruiser and questioned; thereafter one of the officers returned to the car and made a search. The officer discovered seven cases of whiskey in the trunk of the automobile. Lane was convicted in Boyd County Court for transporting alcoholic beverages for purpose of sale in dry territory.[1] He was convicted over his motion to suppress all evidence obtained as a result of the search of the automobile he was driving, but which was registered in his wife's name. *Held:* Reversed. The mere fact of the legal arrest for a traffic violation does not give the officer an absolute right to search the vehicle. Secondly, a non-owner is entitled to have suppressed the evidence obtained by reason of the search. *Lane v. Commonwealth,* 386 S.W.2d 743 (Ky. 1964).

The court cities the very early and leading case of *Youman v. Commonwealth,*[2] for the principle that there is a broad constitutional protection against unlawful search. In *Youman,* the court asserted that no search can be made unless a search warrant has been issued, or until the offender is lawfully arrested and the search is incidental to that valid arrest. *Lane* concerns the latter situation. *Youman* further asserts that a search made incidental to a valid arrest is lawful only when made (1) to disarm, (2) to prevent escape, and (3) to prevent the destruction of evidence connected with the offense. The problem before the court in *Lane* was to determine whether the third justification for lawful search incidental to a valid arrest is available at all in the case of an arrest for improper passing. Clearly this third rule was strictly construed by the Court of Appeals to provide the foundation for the *Lane* decision. Significantly, this approach is a departure from court policies in the interim between these two cases.[3] Only eight years after Youman, the Court of Appeals in *Billings v. Commonwealth*[4] upheld a search on a set of facts similar to the case at bar. The court there stated, "it has been held uniformly . . . that a warrant is not necessary in order to render such discovery competent if made as a result of a lawful arrest."

The cases between *Youman* and *Lane* seem to be more concerned

[1] Ky. Rev. Stat 242.230 provides: "No person in dry territory shall . . . transport for sale, barter or loan, directly or indirectly, any alcoholic beverage."

[2] 189 Ky. 152, 224 S.W. 860 (1920).

[3] Commonwealth v. Chaplin, 307 Ky. 630, 211 S.W.2d 841 (1948); Settles v. Commonwealth, 294 Ky. 403, 171 S.W.2d 999 (1943); Marsh v. Commonwealth, 255 Ky. 484, 74 S.W.2d 943 (1934).

[4] 223 Ky. 381, 3 S.W.2d 770 (1928).

with the validity of the arrest than with the relationship of the purpose of the arrest to the "fruits" of the search.

The court also cited the 1962 case of *Commonwealth v. Mitchell* which contains the following statement:

> Our decision may not be regarded as sanctioning the stopping of cars for the ostensible or pretended purpose stated when in reality it is actuated by an ulterior motive . . . or is done as a pretext or as a subterfuge for circumventing the constitutional provisions against searches.[5]

This statement indicates the court's concern with the scope of searches made incidental to a valid arrest. The attitude of the Kentucky court was amanifestation of the widespread judicial focus on this problem. In *Mapp v. Ohio*,[6] decided a few months before *Mitchell*, the Supreme Court had called upon the state courts to give greater protection to the individual against unlawful searches. Obviously, *Mitchell* paved the way for the Court of Appeals' response to *Mapp* in its decision in *Lane*.

Lane is not a cure-all for future unlawful searches. In the present case where bootleg whiskey was the product of the search the court reached the only reasonable conclusion. But if *Lane* is to be meaningful, it will have to stand the test of searches which reveal more legally damaging evidence than illegal liquor. If the police, after making a valid arrest for a traffic violation, search and seize counterfeiting plates, stolen goods, or even a body in the automobile, will the court strictly apply the rule that a search incidental to a valid arrest is lawful only when made to prevent the destruction of evidence connected with that offense?

Still, *Lane* is definitely another step towards protecting the basic rights of every Kentucky citizen to be secure in his person, house, papers and effects from unlawful search and seizure.[7] As the Supreme Court has said:

> We meet in this case as in many, the appeal to necessity. It is said that if such arrest and search cannot be made, law enforcement will be more difficult and uncertain. But the forefathers after consulting the lessons of history, designed our Constitution to place obstacles in the way of a too permeating police surveillance which they seemed to think was a greater danger to a free people than the escape of some criminals from punishment.[8]

The extent of the court's concern with protecting personal rights against unlawful search is further demonstrated by the resolution of

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[5] 355 S.W.2d 686, 687 (Ky. 1962).
[6] 367 U.S. 643 (1961).
[7] U.S. Const. amend. IV; Ky. Const. § 10.
[8] United States v. Di Re, 332 U.S. 581, 595 (1948).

the second issue. In that regard, the court held that standing to object to an unlawful search is not limited to the holder of a proprietary interest.[9]

The court points out that previous cases, under the authority of *Gilliland v. Commonwealth*,[10] have held that only an owner may object to an unlawful search. *Gilliland* involved two sons who controlled the farm in the absence of their father. The sons were held to have the proprietary interest necessary to object to a search for moonshining equipment.

In a number of cases since *Gilliland*, the court had ruled certain classes could not object. One who is not an owner could not object,[11] nor a relative visiting the premises,[12] nor an automobile guest.[13] But in a 1950 case,[14] the court upheld the standing of one accused and convicted of operating a handbook whose ownership was not shown. The court said, "not only did the defendant . . . then claim to be in charge of the premises, but has been in fact convicted of being in charge of the place."[15]

The rationale for the standing requirement emanates from the constitutional provisions of the fourth amendment. In *Gilliland* it was said, "such provisions were adopted for the purpose of securing one's right of unmolested privacy in *his* occupied premises and his freedom from disturbances of *his* possession of articles and things."[16] This interpretation attempted to limit the right of the accused to claim standing. That limitation persisted until the *Lane* decision.

Six months before *Lane*, the court in *Brown v. Commonwealth*[17] said that an automobile guest, even where he is the driver, cannot object to a search. The facts were similar to the present case except that Locke, the one who had borrowed the car was a passenger while Brown, the accused, was the driver. The court said that Locke, the borrower was the only person who could object to the search. *Brown* was cited in *Lane* but apparently without comment. Are the two cases reconcilable? Did the Court of Appeals simply impute to Lane that proprietary interest which Locke was held to possess in *Brown*, or is

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[9] Lane v. Commonwealth, 386 S.W.2d 743, 747 (Ky. 1964).
[10] 224 Ky. 453, 6 S.W.2d 467 (1928).
[11] Powell v. Commonwealth, 282 S.W.2d 340 (Ky. 1955); Lewis v. Commonwealth, 242 Ky. 628, 47 S.W.2d 66 (1932).
[12] Smith v. Commonwealth, 375 S.W.2d 242 (Ky. 1964); Combs v. Commonwealth, 341 S.W.2d 774 (Ky. 1960).
[13] Brown v. Commonwealth, 378 S.W.2d 608 (Ky. 1964); Pruitt v. Commonwealth, 286 S.W.2d 551 (Ky. 1955).
[14] Willoughby v. Commonwealth, 313 Ky. 291, 231 S.W.2d 79 (1950).
[15] 231 S.W.2d at 81.
[16] 6 S.W.2d at 468.
[17] 378 S.W.2d 608 (Ky. 1964).

there an alternative? It is suggested that there is an alternative: Where *Brown* and *Gilliland* sought to limit the right to object, based on a certain proprietary interest, *Lane* has extended that right to anyone legally in the searched automobile. In support of this new rule, the court cites *Jones v. United States* where it was said:

> No just interest of the Government in the effective and rigorous enforcement of the criminal law will be hampered by recognizing that anyone legitimately on the premises where a search occurs may challenge its legality by way of a motion to suppress.[18]

In conclusion, *Lane* stands for two major propositions in Kentucky criminal law:

(1) A general search cannot be made incidental to an arrest for a traffic violation;

(2) Standing may be invoked by anyone lawfully in the automobile.

The real import of *Lane* however may be even greater than these announced rules. In reading the opinion, one feels a new determination on the part of the court to afford greater protection for the constitutional rights of the accused.

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[18] 362 U.S. 257, 267 (1960).