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Reliable Informers And Corroboration

stantially to his death, it amounts to a superseding cause in a suit against B. There is no superseding cause in the first instance as an innocent party is the deceased, but in the second case the person killed was a wilful participant who chose to enter the race.

In summary, it is conceded that the defendant's participation in the game of "roulette" amounted to wanton, reckless conduct and that such is often the basis for a conviction of involuntary manslaughter. If one of the defendants had fired the gun and somehow missed himself and hit Britch, then a conviction would be warranted.[36] Further, the state does have an interest in the protection of the lives of its citizens.[37] But to warrant a conviction for involuntary manslaughter, the state, without benefit of any statute making this specific conduct unlawful, is necessarily bound by the limits of causation. And where an intervening force establishes itself as the superseding cause of death, a defendant should be relieved of liability. Such a superseding cause is established where a deceased without any compulsion and by his own act, points a gun to his head and pulls the trigger, thereby causing his own death.

JAMES A. GORRY, III

CONVICT'S RIGHT TO SPEEDY TRIAL ON A PENDING INDICTMENT

A prosecutor has the duty of seeing that an accused is not deprived of constitutional rights or privileges.[1] The fulfillment of this duty, insofar as it relates to the guarantee of a speedy trial,[2] presents some difficulties when the accused is already incarcerated for another offense.

The recent Ohio case of *Partsch v. Haskins*[3] involved an accused who was seeking release on the grounds that he had been denied his

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[36]In such a situation, defendant's behavior would cause the death of another person, and the causation required between defendant's act and the resulting death for a conviction of involuntary manslaughter would be satisfied.

[37]People v. Freudenberg, 121 Cal. App. 2d 564, 263 P.2d 875, 887 (Dist. Ct. App. 1953); Indiana v. Plaspohl, 239 Ind. 324, 157 N.E.2d 579 (1959); Commonwealth v. Atencio, 189 N.E.2d 223, 224 (Mass. 1963).

[1]United States ex rel. Darcy v. Handy, 203 F.2d 407 (3d Cir. 1953); De Gesualdo v. People, 147 Colo. 426, 364 P.2d 374 (1961); State v. Jackson, 227 La. 642, 80 So. 2d 105 (1955); Smith v. Commonwealth, 331 Mass. 585, 121 N.E.2d 707 (1954); State v. King, 222 S.C. 108, 71 S.E.2d 793 (1952); Watson v. State, 195 Wis. 166, 217 N.W. 653 (1928).

[2]U.S. Const. amend. VI. The right to a speedy trial is also generally guaranteed by state constitutional or statutory provisions. 22A C.J.S. Criminal Law § 467(2) (1961).

[3]175 Ohio St. 139, 191 N.E.2d 922 (1963).

right to a speedy trial[4] on a pending indictment while he was imprisoned in Florida and Ohio for other offenses. In September, 1951 petitioner was indicted in Medina County, Ohio for forgery, but having left the state he could not be arraigned and tried. In 1952 he was convicted of forgery in Florida and sentenced for a term of two years. Escaping to Ohio in 1953, he was arrested for commiting forgery in Wayne County and sentenced to the Ohio Penitentiary, where detainers were put on him.[5] After his release in Ohio on parole, he was returned to Florida. Upon completing his sentence in Florida, he returned to Akron, Ohio, and in February 1958, he was given his final release from the Wayne County sentence. In October 1961 he was arrested in Medina County, and when brought before the court, he entered a plea of guilty to the charges in the 1951 indictment and was sentenced to the Ohio Penitentiary. In 1963 the prisoner sought his release by an original petition for habeas corpus in the Supreme Court of Ohio. The court held that the petitioner had waived his right to a speedy trial by not demanding a trial.[6] However, a dissenting judge thought that the prosecuting authorities in Medina County had a duty to seek return of the petitioner from Florida or removal from the Ohio Penitentiary in order to give him a speedy trial on the 1951 indictment and would have issued the writ.[7]

The accused's right to a speedy trial arises in two situations: (1) while incarcerated in a jurisdiction other than the one where the indictment is pending; and (2) while incarcerated in an institution located in the same jurisdiction. The rule in most jurisdictions is that an accused waives a right to a speedy trial, unless he demands the trial.[8] In a few jurisdictions an accused does not have to demand a

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[4]Ohio Const. art. 1, § 10; Ohio Rev. Code tit. 29, §§ 2945.71-2945.73 (1958).

[5]Detainers were placed against petitioner by the State of Florida, the Sheriff of Medina County, and the Police Department of the city of Cleveland, Ohio; the first was filed on December 3, 1953 and the latter two on December 11, 1953.

[6]The court also held that "even assuming petitioner had made a demand for a speedy trial, when he entered his plea of guilty in 1961, it amounted to a withdrawal of such demand and waived his right to insist on the constitutional provisions relating to a speedy trial." 191 N.E.2d at 923.

[7]Id. at 924 (dissenting opinion). See Ohio Rev. Code tit. 29, §§ 2941.40-2941.43 (removal of convict from Ohio Penitentiary), 2963.05 (extradition by executive agreement of person imprisoned in another state) (1958).

[8]E.g., Shepherd v. United States, 163 F.2d 974 (8th Cir. 1947); Pines v. District Court, 233 Iowa 1284, 10 N.W.2d 574 (1943); Harris v. State, 194 Md. 288, 71 A.2d 36 (1950); see Annot. 57 A.L.R.2d 302, 326 (1958). This doctrine is usually applied to an accused even though he may be in the penitentiary serving a sentence for another crime. E.g., Hottle v. District Court, 233 Iowa 904, 11 N.W.2d 30 (1943); State v. McTague, 173 Minn. 153, 216 N.W. 787 (1927). The court in the principal

trial in order to procure his constitutional or statutory right to a speedy trial.[9]

Under the majority rule, followed in both the State and the Federal courts, a failure to bring an accused to trial under an indictment pending in one jurisdiction while he is in the lawful custody of another jurisdiction does not deprive him of his right to a speedy trial.[10] Under the minority rule, the accused does have a right to a speedy trial, and there is an obligation to make application for extradition although it will be good cause for delay if the other sovereignty refuses to extradite.[11]

There are two reasons for the majority rule: (1) By voluntarily leaving the jurisdiction and by committing a crime in another jurisdiction, an accused becomes himself responsible for the situation and so cannot complain;[12] and (2) the jurisdiction in which the indictment is pending is not in full control of the situation.[13] In regard to the latter reason, it was said in *Ex Parte Schechtel*[14] that the only way the

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case gave the usual reason for its use by saying that the constitutional provisions were "not intended as a shield to the guilty, the protection of which might be invoked by sitting silently back and allowing the prosecution to believe that the accused is acquiescing in the delay." 191 N.E.2d at 923; Hernandez v. State, 40 Ariz. 200, 11 P.2d 356, 357 (1932).

[9]E.g., People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1955); State v. Dodson, 226 Ore. 458, 360 P.2d 782 (1961); See Annot., 57 A.L.R.2d 302, 334 (1958). Although Federal courts generally use the demand doctrine, a few have refused to use it. United States v. Dillon, 183 F. Supp. 541 (S.D.N.Y. 1960); United States v. Chase, 135 F. Supp. 230 (N.D. Ill. 1955). As pointed out by the court in People v. Prosser, supra, the burden of obtaining a prompt trial should be placed on the prosecuting authorities for unlike the accused, they have the actual power to bring the indictment on for trial. In the Prosser case the court said: "The actual result of the present decision, therefore, is merely to impose upon the officers, charged with enforcing the law and who secured the indictment, the quite reasonable, far from burdensome, duty of noticing it for trial." 130 N.E.2d at 896. A fortiori, the rule should be applied to a prisoner. E.g., Fulton v. State, 178 Ark. 841, 12 S.W.2d 777 (1929); Ex parte Chalfant, 81 W. Va. 93, 93 S.E. 1032 (1917). Indeed, some of the courts that recognize the demand doctrine in other situations, make an exception in this instance, realizing that such an accused has no opportunity to properly demand a trial. E.g., United States v. Chase, supra; Ex parte State, 255 Ala. 443, 52 So. 2d 158 (1951).

[10]E.g., United States v. Jackson, 134 F. Supp. 872 (E.D. Ky. 1955); Ex parte Schechtel, 103 Colo. 77, 82 P.2d 762 (1938); State v. Larkin, 256 Minn. 314, 98 N.W.2d 70 (1959); People v. Peters, 198 Misc. 956, 101 N.Y.S.2d 755 (Columbia County Ct. 1951); Raine v. State, 143 Tenn. 158, 226 S.W. 189 (1920).

[11]Taylor v. United States, 238 F.2d 259 (D.C. Cir. 1956); Pellegrini v. Wolfe, 225 Ark. 459, 283 S.W.2d 162 (1955).

[12]Shepherd v. United States, 163 F.2d 974 (8th Cir. 1947); Accardo v. State, 39 Ala. App. 453, 102 So. 2d 913 (1958).

[13]Ex parte Schechtel, 103 Colo. 77, 82 P.2d 762 (1938); Raine v. State, 143 Tenn. 168, 226 S.W. 189 (1920).

[14]103 Colo. 77, 82 P.2d 762, 764 (1938).

right to a speedy trial could apply to such an accused is if the demanding state has an unqualified and absolute right to require the United States to release the accused for trial before the demanding state's court. But the general rule for both the Federal and the State systems of courts is that "the court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy... before the other court shall attempt to take it for its purpose."[15] The demanding jurisdiction, therefore, does not have full control, and so it is not required to make application for extradition,[16] notwithstanding that extradition may be granted if it were sought.[17]

Under the minority rule, an accused has the right to a speedy trial in this situation; but he will waive his right if he does not demand a trial.[18] The courts using this rule recognize that the demanding jurisdiction lacks full control of the situation, but do not give it controlling weight because: (1) It is desirable to hold the trial while witnesses can be procured and memories are fresh;[19] (2) extradition involves fewer difficulties than formerly;[20] and (3) the harmonious and effective operation of both the Federal and the State systems of courts requires a spirit of reciprocal comity and mutual assistance.[21]

An accused's right to a speedy trial on a pending indictment when he is imprisoned in the same jurisdiction for another offense is treated differently. A few decisions have held that such an accused does not have the right to a speedy trial on a pending indictment, usually on

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[15]Ponzi v. Fessenden, 258 U.S. 254, 260 (1922).

[16]Commonwealth v. Watson, 16 Pa. D. & C.2d 190 (1958); see note 10 supra.

[17]Ponzi v. Fessenden, 258 U.S. 254 (1922) (the United States Attorney General may consent to the transfer of a federal prisoner to a state court for trial); Uniform Criminal Extradition Act § 5 makes it a matter of discretion with the state governor to have a prisoner removed. 9 U.L.A. 295-96 (1957). Forty-three states have adopted the act. 9 U.L.A. 116 (Supp. 1962).

[18]Pellegrini v. Wolfe, 225 Ark. 459, 283 S.W.2d 162 (1955); see note 8 supra. In addition, a state which is a party to the Interstate Agreement on Detainers is required to bring a prisoner from another party state to trial on a pending indictment within 180 days, only after the accused has taken certain designated steps. E.g., N. J. Stat. Ann. § 2A:159A-3 (Supp. 1962). Connecticut, New Hampshire, New Jersey, New York and Pennsylvania are parties to the Interstate Agreement on Detainers. See generally, People v. Esposito, 37 Misc. 2d 386, 238 N.Y.S.2d 460 (Queens County Ct. 1960).

[19]Taylor v. United States, 238 F.2d 259, 262 (D.C. Cir. 1956); see People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891, 893-94 (1955).

[20]Uniform Criminal Extradition Act § 5 removes previous legal doubt concerning return to the asylum state of a prisoner extradited to another state to stand trial. 9 U.L.A. 295 (1957). In addition, transportation and communication are less difficult than formerly.

[21]Ponzi v. Fessenden, 258 U.S. 254 (1922).

the grounds that the statute guaranteeing the right applies only to one in jail or out on recognizance, not to one in the penitentiary.[22]

Under the majority rule, followed in both the State and the Federal courts, a sovereignty may not deny an accused person a speedy trial, even though he is incarcerated for another offense in one of that sovereignty's penal institutions.[23] But if the accused fails to demand a trial, he waives his right.[24] It is important that such an accused have a trial "while witnesses are available and memories fresh."[25] The courts that follow this rule also recognize that even if statutes do not apply to this situation, the provision of the Constitution guaranteeing a speedy trial does apply.[26] Finally, the sovereignty is in full control of the situation, and there is no reason why it could not dispose of the pending charges.[27]

Therefore, a prosecutor does not have the duty to seek extradition of an accused incarcerated in another jurisdiction for another offense. But he has a duty to have an accused incarcerated in the same jurisdiction for another offense removed for trial on a pending indictment, if the accused demands a trial. It is submitted that an accused should not have to demand a trial in order to procure his right to a speedy trial.[28] In addition, an accused should have the right to a speedy trial on a pending indictment while imprisoned in another jurisdiction, and the prosecutor should have an obligation to protect the right by at least making application for extradition.[29]

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[22]E.g., Gillespie v. People, 176 Ill. 238, 52 N.E. 250 (1898); see Annot., 118 A.L.R. 1037, 1044 (1939).

[23]E.g., Rader v. People, 139 Colo. 397, 334 P.2d 437 (1959); Ex parte Schechtel, 103 Colo. 77, 82 P.2d 762 (1938); State v. Keefe, 17 Wyo. 227, 98 Pac. 122 (1908); see Annot., 118 A.L.R. 1037 (1939).

[24]See note 8 supra.

[25]People v. Prosser, 39 N.Y. 533, 130 N.E.2d 891, 894 (1955).

[26]"[S]uch a person is still entitled to a speedy trial and the standard accepted by the legislature for the one situation may be considered by the court where a person is confined in the penitentiary." State v. Milner, 78 Ohio L. Abs. 285, 149 N.E.2d 189, 192 (Ct. C.P. 1958).

[27]Ex parte Schechtel, 103 Colo. 77, 82 P.2d 762, 764 (1938); Commonwealth v. Watson, 16 Pa. D. & C.2d 190, 193 (1958).

[28]The argument for the demand doctrine, in note 8 supra, is not a realistic one, for the state has the power to bring the indictment on for trial and, therefore, can prevent procastination by the accused. See note 9 supra; Orfield, Criminal Procedure From Arrest to Appeal 383-384 (1947) (preparation of trial calendars is exercised by the prosecuting attorney).

[29]See text at notes 18-21 supra. Of course an accused can waive his constitutional or statutory right to a speedy trial, if he so desires. Levine v. United States, 182 F.2d 556 (8th Cir. 1950); see Annot., 57 A.L.R.2d 302, 307 (1958). But, "the fact that a defendant in an indictment is in prison serving a sentence for another crime gives him no immunity from the second prosecution." Ponzi v. Fessenden, 258 U.S. 254, 264 (1922).

RELIABLE INFORMERS AND CORROBORATION

"Probable cause,"[1] one of the most illusive concepts in the field of criminal law, is the essential requisite for a valid search or arrest.

A search generally must be made in conjunction with a search warrant, but all searches made without a warrant are not illegal.[2] The fourth amendment of the Federal Constitution proscribes unreasonable searches[3] conducted without a warrant,[4] but those which are reasonable are not forbidden.[5] A search without a warrant may be reasonable where it is incidental to a lawful arrest;[6] and the search is not in-

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[1]Probable cause may be defined as follows: "[A]reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged." 47 Am. Jr. Searches and Seizures § 22 at 516 (1943).

[2]Cannon v. United States, 158 F.2d 952 (5th Cir. 1946); United States v. Pierce, 124 F. Supp. 264 (N.D. Ohio 1954); United States v. Willis, 85 F. Supp. 745 (S.D. Cal. 1949); Joyner v. State, 157 Fla. 874, 27 So. 2d 349 (1946); Hubin v. State, 180 Md. 279, 23 A.2d 706 (1942); Edwards v. State, 83 Okla. Crim. 340, 177 P.2d 143 (1947).

[3]United States v. Rabinowitz, 339 U.S. 56 (1950); Carroll v. United States, 267 U.S. 132 (1925); Roberson v. United States, 165 F.2d 752 (6th Cir. 1948); United States v. Kaplan, 286 Fed. 963 (S.D. Ga. 1923).

In Weeks v. United States, 232 U.S. 383 (1914), the Supreme Court stated, "The . . . Fourth Amendment . . . put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints [and] . . . forever secure[d] the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the guise of law. This protection reaches all alike . . . and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws." Id. at 391, 392.

Although Weeks did not extend the fourth amendment to the states, the foundation was laid for Mapp v. Ohio, 367 U.S. 643 (1961), which held that the fourth amendment's provisions against unreasonable searchs and seizures are enforceable against the states.

[4]Best v. United States, 184 F.2d 131 (1st Cir. 1950), cert. denied, 340 U.S. 939 (1951); Joyner v. State, supra note 2.

[5]District of Columbia v. Little, 178 F.2d 13 (D.C. Cir. 1949); Church v. State, 151 Fla. 24, 9 So. 2d 164 (1942);Boles v. Commonwealth, 304 Ky. 216, 200 S.W.2d 467 (1947).

A search which is not unreasonable may be made without a warrant. Matthews v. State, 67 Okla. Crim. 203, 93 P.2d 549 (1939).

The reasonableness of a search is to be resolved according to the facts of each case, and not by any fixed formula. United States v. Rabinowitz, supra note 3; Martin v. United States, 183 F.2d 436 (4th Cir. 1950); Willoughby v. Commonwealth, 313 Ky. 291, 231 S.W.2d 79 (1950).

[6]Draper v. United States, 358 U.S. 307 (1959); United States v. Rabinowitz, supra note 3; Harris v. United States, 331 U.S. 145 (1947); Agnello v. United States, 269 U.S. 20 (1925); United States v. Pisano, 193 F.2d 361 (7th Cir. 1961); United States v. Hirsch, 57 F.2d 555 (W.D.N.Y. 1932) (dictum); Trowbridge v. Superior Court, 141 Cal. App. 2d 13, 300 P.2d 222 (Dist. Ct. App. 1956); People v. Coleman, 134

validated merely because it precedes rather than follows the arrest.[7] If a search is illegal at its inception, it cannot be validated by the fruits of the search;[8] and even a discovery of contraband during an illegal search is not sufficient to validate a search without probable cause.[9] Moreover, if an unlawful search is commenced, the procurement of a warrant thereafter will not legalize what has been invalid from its inception.[10]

An arrest, on the other hand, may be made with or without a warrant where the facts are sufficient to establish probable cause; but if the information at the officer's disposal is insufficient to justify the issuance of a warrant for arrest, an arrest with no warrant, or with an invalid warrant, is illegal.[11]

The burden on the state to prove that probable cause existed for an arrest or search is often difficult to sustain due to the obscurity of

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Cal. App. 2d 594, 286 P.2d 582 (Dist. Ct. App. 1955); Mixon v. State, 54 So. 2d 190 (Fla. 1951); People v. Edge, 406 Ill. 490, 94 N.E.2d 359 (1950).

A search made without a warrant is illegal where it is made after the arrest has been completed so that it is no longer an incident of the arrest. United States v. Coffman, 50 F. Supp. 823 (S.D. Cal. 1943); Page v. State, 208 Miss. 347, 44 So. 2d 459 (1950).

An attempt to arrest may be sufficient to validate a search, if the person whose arrest was sought escapes. United States v. Elliott Hall Farm, 42 F. Supp. 235 (D.N.J. 1941).

[7]Husty v. United States, 282 U.S. 694 (1931); Carroll v. United States, supra note 3; People v. Torres, 56 Cal. 2d 864, 366 P.2d 823 (1961); People v. Ingle, 53 Cal. 2d 407, 348 P.2d 577 (1960); People v. Hammond, 54 Cal. 2d 846, 357 P.2d 289 (1960); Joyner v. State, supra note 2.

[8]"The proposition that the evidence which is found justifies the arrest or the seizure is a specious argument and has no support except in one or two ill-considered district court cases. To use a homely phrase, it is an attempt to pull one's self up by his own bootstraps," Carroll v. United States, supra note 3 at 140, 141.

United States v. Roberts, 90 F. Supp. 718 (E.D. Tenn 1950); People v. Gale, 46 Cal. 2d 253, 294 P.2d 13 (1956); People v. Silvestri, 150 Cal. App. 2d 114, 309 P.2d 871 (Dist. Ct. App. 1957); People v. Mills, 148 Cal. App. 2d 392, 306 P.2d 1005 (Dist. Ct. App. 1957); People v. Goodo, 147 Cal. App. 2d 7, 304 P.2d 776 (Dist. Ct. App. 1956); People v. Harris, 146 Cal. App. 2d 142, 304 P.2d 178 (Dist Ct. App. 1956); People v. Moore, 140 Cal. App. 2d 870, 295 P.2d 969 (Dist. Ct. App. 1956); Collins v. State, 65 So. 2d 61 (Fla. 1953); People v. Parren, 24 Ill. 2d 572, 182 N.E.2d 662 (1962); People v. Mayo, 19 Ill. 2d 136, 166 N.E.2d 440 (1960); People v. Martin, 382 Ill. 192, 46 N.E.2d 997 (1942); Adams v. State, 202 Miss. 68, 30 So. 2d 593 (1947).

[9]Henry v. United States, 361 U.S. 98 (1959); United States v. Peisner, 311 F.2d 94 (4th Cir. 1962); Carr v. United States, 59 F.2d 991 (2d Cir. 1932); People v. Dalpe, 371 Ill. 607, 21 N.E.2d 756 (1939).

[10]People v. Scaramuzzo, 352 Ill. 248, 185 N.E. 578 (1933).

[11]Worthington v. United States, 166 F.2d 557 (6th Cir. 1948).

the line between mere suspicion and probable cause.[12] Perhaps in no other field of crime does this line present such a formidable barrier as in narcotics violations. Due to the diminutive size of the contraband, the suspect can destroy it with relative ease. The investigating officer, therefore, must often act expeditiously because it is essential to seize the contraband in order to support a conviction. Consequently, many arrests for narcotics offenses are made without warrants.[13] Irrespective of the exigencies of the situation, however, there must be probable cause to justify the officer's action, or the conduct, though commendable, will be illegal. Since detection of narcotics offenses is difficult, law enforcement agencies often depend on information furnished by informers.[14] Absent a warrant, probable cause is determined at the time of arrest; and therefore, such arrests must be justified by facts[15] known or observed[16] by the arresting officer, or by

[12]"That [troublesome] line [between mere suspicion and probable cause] necessarily must be drawn by an act of judgment formed in the light of the particular situation and with account taken of all the circumstances." Brinegar v. United States, 338 U.S. 160, 176 (1949).

[13]The statute authorizing agents to make arrests without warrants for violation of narcotic drug laws is Int. Rev. Code of 1954, § 7607(2), as amended, 70 Stat. 570 (1956).

[14]In a dissenting opinion, Mr. Justice Clark stated that illegal traffic in narcotic drugs is an exceedingly serious problem and, "Moreover, it is a most difficult crime to detect and prove. Because drugs come in small pills or powder and are readily packaged in capsules or glassine containers, they may be easily concealed. They can be carried on the person or even in the body crevasses where detection is almost impossible. Enforcement is, therefore, most difficult without the use of 'stool pigeons' or informants." Roviaro v. United States, 353 U.S. 53, 66 (1957).

[15]"The facts necessary to uphold an arrest without a warrant must be sufficiently strong to support the issuance of a warrant for arrest." Worthington v. United States, supra note 11 at 565; Wakkuri v. United States, 67 F.2d 844, 845 (6th Cir. 1933); United States v. Castle, 138 F. Supp. 436, 439 (D.D.C. 1955).

[16]Cases in which observations by police led to subsequent arrests are: United States v. Kansco, 252 F.2d 220 (2d Cir. 1958) (after observing the defendant, an agent approached the defendant and noticed that he was startled and agitated); Green v. United States, 259 F.2d 180 (D.C. Cir. 1958) (officers observed the appellant walking with a known narcotics addict; and when they called to the two men, the appellant ran); Rent v. United States, 209 F.2d 893 (5th Cir. 1954) (a federal officer observed appellant smoking a marijuana cigarette); Cavness v. United States, 187 F.2d 719 (9th Cir. 1951) (defendant forcibly resisted the officer's approach and attempted to destroy an inhaler tube); United States v. Li Fat Tong, 152 F.2d 650 (2d Cir. 1945) (defendant dropped a bottle as officers questioned him); Brady v. United States, 148 F.2d 394 (9th Cir. 1945) (after observing appellant, officers saw his wife drop a package); Yip Wah v. United States, 8 F.2d 478 (9th Cir. 1925) (officers observed tins of opium fall from a broken trunk accompanied by the appellant); United States v. One 1951 Cadillac Coupe, 139 F. Supp. 475 (E.D. Pa. 1956) (defendant operated a car suspiciously and drove away when officers attempted to stop him); United States v. Horton, 86 F. Supp. 92 (W.D. Mich. 1949) (defendant attempted to hide something under an automobile seat when officers approached).

reliance upon the information supplied by informers with or without corroborative evidence.

The problem of establishing probable cause based on information from an informer not known to be reliable was considered in the recent California case of *People v. Cedeno*.[17] Louise Friend voluntarily supplied the police with information concerning the defendant whom she believed to be a dealer in narcotics. Prior to this time, Miss Friend was unknown to the arresting officers, and even though information had previously been received from her, no arrests had been made in reliance thereon. Under police guidance, Miss Friend entered the defendant's hotel for the sole purpose of purchasing narcotics. She returned with one marijuana cigarette which she turned over to the police and said that the contraband was obtained from the defendant. Two days later, Miss Friend again attempted to make a purchase from the defendant, but he was not in when she called. Upon returning to the police car, she saw and identified the driver of a passing car as being the defendant. She stated that she had been in his apartment that day and that marijuana was everywhere. Sixteen hours later, the police went to the defendant's room. When the defendant attempted to resist the officers' intrusion, they forcibly entered the apartment without a search warrant or warrant of arrest, and finding marijuana therein, placed the defendant under arrest.

The People contended that the information obtained from the informer plus the existence of corroborative facts[18] established probable cause. The defendant's principal contention was that Miss Friend was not a reliable informer and that there was not sufficient corroboration of the information received from her to support a finding of probable cause to validate the arrest.

On appeal from a Superior Court conviction, the First District Court of Appeals for the state of California reversed, saying that Miss Friend was not a reliable informer, so that a conviction could be based on her uncorroborated information.[19] The court reasoned that for an informer to be considered reliable, the officer must not only know the informer, but the officer must have a strong belief, based

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[17]32 Cal. Rptr. 246 (Dist. Ct. App. 1963).

[18]The corroborative facts relied upon by the prosecution were: (1) the informer's purchase of the marijuana cigarette and her statement that it had been obtained from the defendant; (2) the identification by the informer of the defendant in a passing car; and (3) the informer's statement concerning the presence of marijuana in the defendant's room. Id. at 252.

[19]"A reliable informer apparently means a person whose information has in the past led the police to valid suspects." People v. Dawson, 150 Cal. App. 2d 119, 310 P.2d 162, 168 (Dist. Ct. App. 1957).

on past experience with the informer, that the information is trustworthy. While past experience is not the only guide to the reliability question, the information obtained from the informer must be verified in some manner from other sources to establish the informer's reliability.[20]

Relying upon *People v. Lawton*,[21] the People argued that even though the informant may not be known to be reliable, the information in combination with the defendant's furtive and suspicious conduct—refusing to admit the officers—established the grounds for probable cause. The *Lawton*[22] case is distinguishable, however, for there the officers had probable cause for the defendant's arrest and the search of his apartment due to the discovery of substantial corroborative facts[23] prior to having forcibly entered the apartment. In the present case, the officers failed to discover any substantial corroborative facts prior to their entry.

People v. Gonzales[24] shows the type of evidence that will sufficiently corroborate information obtained from an informer not known to be reliable. In that case, the informant was subjected to a thorough search immediately before acquiring the narcotics. The police did not observe the actual transaction, but the sources from which the narcotics possessed by the informer could have been obtained were limited. Here the narcotics were obtained in a private dwelling, while in the principal case, the contraband was acquired in a hotel.

A recent federal decision involving an unreliable informer and insufficient corroboration of the information is the Fifth Circuit case of *Carter v. United States*.[25] This case concerns a search of a moving automobile, which is an exception[26] to the general rule that unless incident to valid arrest, a search is unlawful if performed without a warrant. Treasury Agent Williams had received information concerning Carter on three previous occasions, but searches of Carter's car in reliance on the information proved it false in each instance. Williams, while driving to investigate another assignment, encountered

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[20]Supra note 17, at 251.

[21]186 Cal. App. 2d 834, 9 Cal. Rptr. 122 (Dist. Ct. App. 1960).

[22]Ibid.

[23]The corroborative facts discovered by the police were: (1) the defendant's ownership of a described automobile bearing a certain license number; (2) defendant's having driven his automobile in the area in question; (3) defendant's contact with two known narcotic users; and (4) the narcotics record of the defendant.

[24]186 Cal. App. 2d 79, 8 Cal. Rptr. 704 (Dist. Ct. App. 1960).

[25]314 F.2d 386 (5th Cir. 1963).

[26]This exception has not received the support of all courts. See State v. Simpson, 91 Okla. Crim. 418, 219 P.2d 639 (1950).

Carter and, relying on the source of information which had been the basis for two of the three previous searches, chased Carter for thirteen miles and forced him to stop. Upon a search of the car, which was performed without a warrant, twenty-three gallons of nontax-paid whiskey were discovered. Carter was arrested and subsequently convicted in the United States District Court.

On appeal, the Court of Appeals, in reversing the conviction and rejecting the prosecution's contention that the "totality of the circumstances" supported a finding of probable cause, cited *Wong Sun v. United States*[27] for the proposition that since there was no observable indication, prior to the chase, that there was contraband in the automobile,[28] "a vague suspicion could not be transformed into probable cause for arrest by reason of ambiguous conduct [flight] which the arresting officers themselves had provoked."[29]

The *Cedeno*[30] and *Carter*[31] cases indicate, therefore, that even though the informer was not known to be reliable or was in fact unreliable, a conviction may be affirmed if there is substantial corroborating evidence discovered prior to the search and arrest.

While corroboration is always necessary if the informer is unreliable or not known to be reliable, there is a division in the cases as to the necessity of corroboration when the information is received from a reliable informer. There is authority holding that if the informer is reliable, the information itself, completely divorced from supporting facts, will constitute a foundation for probable cause.[32] This rule is followed by California.

An extreme application of this principle is found in *People v. Prewitt*,[33] in which information from an informant who had been reliable in the past, but whose identity was not known, was held sufficient to sustain a finding of reasonable cause to validate an arrest without a warrant. This case, by permitting the "past experience"

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[27]371 U.S. 471 (1963).

[28]In Koenann v. United States, 230 F.2d 662 (5th Cir. 1956), in which a search of a vehicle without a warrant was justified, officers observed that the automobile appeared to be heavily loaded and was equipped with heavy duty springs and oversized tires. There were no such indications in the Carter case.

[29]Supra note 25 at 338.

[30]Supra note 17.

[31]Supra note 25.

[32]People v. Prewitt, 52 Cal. 2d 330, 341 P.2d 1 (1959); People v. Boyles, 45 Cal. 2d 652, 290 P.2d 535 (1955); People v. Boyd, 162 Cal. App. 2d 332, 327 P.2d 913 (Dist. Ct. App. 1958); People v. Moore, 154 Cal. App. 2d 43, 315 P.2d 357 (Dist. Ct. App. 1957); People v. Montes, 146 Cal. App. 2d 530, 303 P.2d 1064 (Dist. Ct. App. 1956); Davis v. State, 377 P.2d 266 (Okla. Crim. 1962).

[33]Supra note 32.

test to be extended from the field of the identified informer to the area of an unidentified or anonymous informer, magnifies the extreme liberality of this line of authority.

There was early federal authority that adhered to the principle that even reliable information had to be supported by verification or by facts personally discovered by the officer. Such was the holding in *Gilliam v. United States*[34] where police observed illegal whisky in the appellant's possession after being told by a reliable informer that appellant was bootlegging. This line of authority followed the proposition that although officers may use hearsay statements in evaluating probable cause,[35] such information, unless supplemented by additional facts, is insufficient to sustain a finding of probable cause.

In 1960, however, the United States Supreme Court in *Jones v. United States*,[36] held that a search warrant may be issued upon hearsay statements received from a reliable informer. The Court, following *Draper v. United States*,[37] stated, "If an officer may act upon probable cause without a warrant when the only incriminating evidence in his possession is hearsay, it would be incongruous to hold that such evidence presented in an affidavit is insufficient basis for a warrant."[38]

The courts have varied as to what is proper corroboration and as to the cogency of the evidence sufficient to support a finding of probable cause when reliance is placed upon information received from an informer. The character and strength of the corroboration required, however, generally is dependent upon the reliability of the informer. If the informer is unreliable, the strength of the corroboration re-

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[34]189 F.2d 321 (6th Cir. 1951). See also Worthington v. United States, 166 F.2d 557 (6th Cir. 1948) (dictum); United States v. Hill, 114 F. Supp. 441 (D.D.C. 1953).

In United States v. Clark, 29 F. Supp. 138 (W.D. Mo. 1939), the issue was whether the tip from a reliable informer was sufficient to constitute probable cause. The court answered in the negative saying, "It seems to us that the Fourth Amendment to the Constitution . . . is whittled away to nothingness if it is held that a citizen may be arrested and searched without a warrant of arrest or a search warrant if only it is shown that some reliable informer has said the citizen has committed or is committing a felony, without any showing whatever... that the informer's information was itself more than mere guess-work and speculation." Id. at 140.

[35]United States v. Bianco, 189 F.2d 716 (3d Cir. 1951); United States v. Brougher, 19 F.R.D. 79 (W.D. Pa. 1956).

[36]362 U.S. 257 (1960).

[37]358 U.S. 307 (1959).

[38]Supra note 36 at 270. Since this article was completed, the Ninth Circuit Court of Appeals, in Costello v. United States, 324 F.2d 260 (9th Cir. 1963), expressly stated that information from a reliable informer is sufficient in itself, without corroboration, to support a finding of probable cause for an arrest without a warrant.