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Constitutional Law - Search and Seizure - Wife's Consent to Search and Seizure of Husband's Property Held Not Sufficient to Waive Constitutional Rights Protecting Husband. *State v. Hall*, 142 S.E.2d 177 (1965).

R. H. Kraftson

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Constitutional Law—SEARCH AND SEIZURE—WIFE'S CONSENT TO SEARCH AND SEIZURE OF HUSBAND'S PROPERTY HELD NOT SUFFICIENT TO WAIVE CONSTITUTIONAL RIGHTS PROTECTING HUSBAND. Appellant was convicted in a North Carolina court of store breaking and larceny. While appellant was being held in jail on a previous charge, two law enforcement officers searched appellant's home with the consent of his wife. Stolen articles were found which came from the scene of the crime. When confronted with these items, the defendant voluntarily confessed and directed the officers to a place where a stolen truck was hidden. The North Carolina Supreme Court reversed the conviction, holding that the husband's constitutional right to be secure against unlawful search and seizure could not be waived by his wife. The court further held that the stolen items were improperly admitted into evidence since they were unlawfully obtained.¹

In passing for the first time on the right of a wife to consent to a search of the husband's dwelling, this court reversed the trial court's decision on the following two main points.

The first, and most important, argument is that the wife's consent, even though uncoerced, is not sufficient to waive the absent husband's constitutional right to be secure in his home.² This doctrine is not new in the federal courts. They have held that the burden of proving the agency of the wife was on the government, and furthermore "that she has no implied authority, in the absence of her husband, to license a search of the premises."³ A few other states are in accord.⁴

An additional argument used by the court in reinforcing its main point was that of *implied coercion*. *Amos v. United States*⁵ is cited as one of the earliest federal cases holding that the mere presence of armed law enforcement officers may be deemed coercion when permission to search is requested. Other federal decisions have also relied upon this

1. *State v. Hall*, 142 S.E.2d 177, at 179 (N.C. 1965), "The wife's consent to the search was not sufficient to waive the husband's right to be 'Secure . . . against unlawful search and seizures.'"

2. *Ibid.*

3. *United States v. Rykowski*, 267 Fed. 866 at 871 (S.D. Ohio 1920), a similar case. In *Cofer v. United States*, 37 F.2d 677, 679 (5th Cir. 1930), "The wife was without authority to bind her absent husband by waiving a legal warrant, or consenting to an unauthorized search."

4. *Humes v. Taber*, 1 R.I. 464 (1850), seems to be the first American decision on this point; *Sheftall v. Zipperer*, 133 Ga. 488, 66 S.E. 253 (1909); *State v. Evans*, 45 Hawaii 622, 372 P.2d 365 (1965); *Dalton v. State*, 230 Ind. 626, 105 N.E.2d 509 (1952); *Veal v. Commonwealth*, 199 Ky. 634, 251 S.W. 648 (1923); *Henry v. State*, 154 So.2d 289, (Miss. 1963); *Simmons v. State*, 94 Okla. Crim. 18, 229 P.2d 615 (1951) concur.

5. 255 U.S. 313, 41 S. Ct. 266 (1920).

rationale when invalidating searches and seizures.⁶ Some state courts which have not used the wife's inability to waive the husband's rights to keep out illegally seized evidence, do reach the same result by relying on the doctrine of implied coercion.⁷

This case follows the general federal law in all particulars. It is good that in its first decision on this point this court set a precedent which more than likely will be easy to follow in the future.⁸ Apparently the court felt that it should rely on the federal precedents now, rather than having to rely on them at a later date.⁹

Matters relative to search and seizure used to be merely evidentiary matters to be determined by the respective state courts. The decision above seems to show that they are now being thought of as constitutional issues and within the domain of federal jurisdiction.

R. H. Kraftson

Constitutional Law—Criminal Law—RIGHT TO COUNSEL. In *Biddle v. Commonwealth*¹ Mrs. Biddle appealed her conviction for the

6. See *Fitter v. United States*, 258 Fed. 567 (1919).

Another case decided on the basis of coercion involved an agent, not the wife of defendant, *in re Tri-State Coal & Coke Co.*, 253 F. 605 (1918).

7. See *People v. Lind*, 370 Ill. 131, 18 N.E.2d 189 (1938); *Meredith v. Commonwealth*, 215 Ky. 705, 286 S.W. 1043 (1926); *State v. Lindway*, 131 Ohio St. 166, 2 N.E.2d 490 (1936); *Byrd v. State*, 161 Tenn. 306, 30 S.W.2d 273 (1930); *State v. Bonolo*, 39 Wyo. 299, 270 Pac. 1065 (1928).

8. It appears that the federal courts are fast taking on the responsibility of deciding what is proper procedure in state criminal trials. *Weeks v. United States*, 232 U.S. 383 (1913), established the rule that any evidence seized in violation of the Fourth Amendment right to be free from unreasonable searches and seizures is inadmissible in a federal criminal trial. *Wolf v. Colorado*, 338 U.S. 25 (1949) held that state law enforcement agencies must not violate this right, but left them free to introduce illegally seized articles into evidence. *Mapp v. Ohio*, 367 U.S. 643 (1961), applied the federal exclusionary rule to the states in all cases of searches and seizures which violated the Fourth Amendment.

9. The standard of determining what constitutes an unreasonable search and seizure has been left to the states. Yet, here again we have indications that federal courts are gradually extending their powers over state criminal law. *Ker v. California*, 374 U.S. 23 at 33-34 (1963), points the way by saying that the trial court's findings of reasonableness will be "respected only insofar as consistent with federal constitutional guarantees. As we have stated above and in other cases involving federal constitutional rights, findings of state courts are by no means insulated against examination here. . . . The States are not thereby precluded from developing workable rules governing arrests, searches and seizures to meet 'the practical demands of effective criminal investigation and law enforcement' in the States, provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures. . . ." Thus future questions of "reasonableness" before the Supreme Court will probably be determined on the basis of federal law.

1. *Biddle v. Commonwealth*, 206 Va. 14, 141 S.E.2d 710 (1965).