

Court Curbs Police Power To Search Petty Offenders

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The entire U.S. Court of Appeals here ruled yesterday that police may not subject a person arrested for a petty offense to a "stationhouse search" unless he has first been given the right to post collateral and leave.

In the first federal appellate ruling of its kind, the court voted, 6 to 4, to reverse the 1968 narcotics conviction of Harold E. Mills, who was originally arrested on a minor traffic charge. Although Mills had more than enough money to post the \$50 collateral, he was later searched in a police station and found to possess capsules of heroin and cocaine.

In its opinion, the six-member liberal majority noted that "a huge proportion of the public is guilty of some sort of petty infraction almost every day—jaywalking, exceeding the 25-m.p.h. limit, using high beams, parking in a loading zone, among many others," and thus put in the position of potential stationhouse searchers.

The court's dissenting four-member conservative bloc criticized the majority for retrying Mills' case "on a new theory that germinated in ap-

pellate cloisters" years after Mills' conviction.

It was not clear last night what impact the decision will have on local law enforcement. The government had contended that eligible persons already are generally given the

right to post collateral before being searched in a stationhouse. The government asserted that Mills himself had been given such an opportunity and declined to post the collateral.

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But the court's majority refused to believe the police and prosecution, holding that a transcript of the proceedings led them to the "clear conviction" that Mills was in fact searched without being offered the chance to post collateral.

The Mills case was one of the few that the judges of the U.S. Court of Appeals considered important enough to be heard en banc—by all the judges of the court. In all but approximately 10 to 12 cases each year, the appeals are de-

cided by a three-member panel of the court.

The opinion yesterday reversed a decision by U.S. District Court Judge Leonard P. Walsh to allow the results of the search of Mills to be used against him. Walsh was originally upheld in a 2-to-1 decision by a three-member panel of the appellate court.

The appeals process took so long that Mills has already served all the time in prison required of his conviction. He was sentenced to five years. With time off for good behavior he would have been released last September.

However, Mills was also con-

victed of another narcotics violation in 1968 and is still serving time at Lorton Reformatory on that conviction. Yesterday's decision, therefore, affects only his court record.

Mills was stopped while driving a car at 6th and H Streets NE at 4:30 a.m. on Dec. 29, 1967. When he could produce only a learner's permit, he was told that it was illegal to drive with a learner's permit except when accompanied by a licensed operator. He was first patted down for weapons and then brought to the precinct station.

Police said that at the pre-

dict Mills was brought to the booking desk, told he could post collateral and then asked to empty his pockets. Police said he first took \$170 from his pants pockets and then, after delaying, was helped by police in removing 33 capsules of cocaine and 22 capsules of heroin.

Mills contended that he was not told he could use the \$170 to post collateral for the traffic violation. He said he was taken into a small back room, stripped of his clothing and searched thoroughly. It was in that room, he said, that the narcotics were found.

The court majority held there is reason for a search of an arrested person "when circumstances justify stationhouse detention," but it said there was no legal basis for the search in the case of persons arrested for petty offenses.

The majority opinion was written by Judge Harold Leventhal with Judges David L. Bazelon, Charles Fahy, J. Skelly Wright, Carl McGowan and Spottswood W. Robinson III concurring. The dissenters were Roger Robb, Edward A. Tamm, George E. MacKinnon and Malcolm R. Wilkey.