HIGH COURT BACKS ARRESTS IN PUBLIC WITH NO WARRANT

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6-2 Ruling Upholds Action if There Is 'Probable Cause' to Suspect a Felony

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By LESLEY OELSNER

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WASHINGTON, Jan. 26—Over the harsh dissent of its two most liberal Justices, the Supreme Court ruled today that the Constitution does not require law enforcement officials to get warrants before they make arrests in public places, even when there is adequate opportunity to obtain a warrant.

All the Constitution requires, the Court said by a vote of 6 to 2, is that the official have "probable cause," or good reason, to believe that the person being arrested committed a felony.

In the same decision—handed down in the case of a man convicted of possessing stolen mail—the Court also appeared to ease, in favor of law enforcement, the standards that courts should apply in determining whether a purported "consent" by a defendant to a search of his possessions or property was "voluntary" or, instead, "coerced."

2 Standards Eased

Specifically, the Court said that in deciding whether a consent was voluntary, the fact that a defendant was in custody after an arrest when he allegedly "consented" was only one of the circumstances to consider.

So too, the Court said, the fact that there is no proof that the defendant knew he was entitled to withhold consent is also only one, rather than a controlling, circumstance.

In a 1973 case, the Supreme Court enunciated certain standards for judging the effectiveness of a supposed consent to a search, saying that the "totality of circumstances" should be viewed to see if the defendant's "will" had been "overborne." In that case, the Court said that a consent was not necessarily invalid just because the persons involved had not been warned ahead of time of their right to withhold consent.

Dissenters Cite Difference

In that case, however, as the dissenters pointed out today, the persons involved had not been in custody at the time.

Justice Byron R. White wrote the majority opinion in today's case. The four Justices appointed by President Nixon, Chief Justice Warren E Burger and Justices Harry A. Blackmun, Lewis F. Powell Jr. and William H. Rehnquist, joined in the opinion. Justice Potter Stewart issued a separate statement saying he concurred in the result.

Justice Thurgood Marshall wrote the dissent, with William J. Brennan Jr. joining. John Paul Stevens, sworn in after oral arguments in the case, did not participate.

The decision turned on inter-

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pretation of the Fourth Amendment's ban on unreasonable searches and seizures and its warrant requirement.

While the Burger Court has not retreated from the Warren Court in most areas, it has taken a decidedly less pro-defendant view in Fourth Amendment cases than did the Warren Court. Today's ruling, and voting breakdown, appears to fit that pattern.

The dissenters contended, among other things, that "by granting police broad powers to make warrantless arrests, the Court today sharply reversed he course of modern decisions construing the warrant clause of the Fourth Amendment."

Both the majority and the dissenters devoted most of their opinions to the question of whether warrants are necessary. The majority opinion based its ruling on the traditional acceptance of warrantless arrests, of at least some types, both in English common law and in various state and Federal statutes.

It noted that statute specifically permits postal inspecors to arrest without warrants provided there is probably cause to believe a felony has been committed. It referred as well to some of its own earlier rulings, in which warrantless arrests had been mentioned.

The dissenters, however, referred to the development of rules regarding search warrants —generally, that to comply with the Fourth Amendment, a warrant had to be obtained before search unless there were "exigent," or emergency, circumstances making it necessary to proceed immediately.

Today's case involved stolen credit cards, an informant named Awad Khoury and a defendant named Henry Ogle Watson. What happened, basically, was this:

Mr. Khoury told a Federal postal inspector with whom he had previously dealt that Mr. Watson had a stolen credit card and had asked Mr. Khoury to cooperate in using the card to their advantage. Mr. Khouri later delivered the card to the inspector. The inspector, after learning that Mr. Watson had agreed to furnish additional cards, asked Mr. Khoury to meet Mr. Watson.

It was arranged that postal inspectors would watch and Mr. Khoury would give a signal if Mr. Watson had more cards. The meeting took place, and Mr. Khoury gave the signal. The inspectors arrested Mr. Watson and found no cards. An inspector asked if he could inspect Mr. Watson's car. Mr. Watson said yes. The inspector told him anything that was found could be used against him, and Mr. Watson said, "Go ahead."

Cards were found: Mr. Watson, eventually, was tried and convicted.

On appeal, the United States Court of Appeals for the Ninth circuit, reversed the verdict on the ground that the cards should not have been introduced into evidence.