

High Court Gives Police Discretion in Searches

Washington

A divided Supreme Court, in a decision giving policemen broad new powers to search traffic offenders, ruled yesterday that judges should no longer second-guess an arresting officer's decision to conduct such a search.

In twin 6-to-3 rulings involving Florida and District of Columbia traffic violators, the court said that as long as an arrest itself is lawful, an officer can thoroughly search the suspect's body and clothing, and the suspect can be convicted of another offense if evidence is discovered.

The high court, which had never decided this precise point before, thus broke with state and federal courts that permit full searches only when an officer believes that the defendant possesses a weapon or evidence of the crime for which he is being detained.

Justice William H. Rehnquist, writing for the majority, said that "a search incident to the arrest requires no additional justification" if the officer had "probable cause" to make the arrest in the first place.

Noting that a third of the murders of police officers last year occurred during traffic stops, Rehnquist rejected any court limitation on the scope of an arresting officer's search.

While conceding that a

quick "pat-down" of the suspect would, in most cases, probably reveal whether he was armed, Rehnquist said a concealed weapon could still go unnoticed during this "relatively fleeting" search. It is wiser, he said, to give the officers complete discretion.

Generally regarded as the high court's most conservative member, Rehnquist appeared to warn lower court judges to halt their inquiries into the circumstances of searches made incident to arrests.

Rehnquist's warning, in particular, evoked sharp dissents from Justices Thurgood Marshall, William J.

Brennan Jr. and William O. Douglas.

In an opinion written by Marshall, the three complained that "The majority's approach represents a clear and marked departure from our long tradition of case-by-case adjudication of the reasonableness of searches and seizures under the Fourth Amendment."

Referring to the general rule that a search warrant is required except in certain circumstances, the dissenters said, "It is the role of the judiciary, not of police officers, to delimit the scope of the exceptions to the war-

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warrant requirement.

The dissenters would have limited the search of an arrested traffic violator to a quick pat-down for weapons.

The District of Columbia case stemmed from a 1968 police stop of Willie Robinson Jr., who was arrested on an outstanding traffic warrant. While searching Robinson, the officers found a crumpled cigarette package in the breast pocket of his overcoat, and inside the package, several capsules containing heroin.

Robinson's conviction for heroin possession was overturned by the U.S. Court of Appeals here, which ruled that the search went beyond what was reasonable and necessary under the circumstances.

The Florida Supreme Court had upheld the marijuana possession conviction of college student James Gustafson.

Gustafson had lost his

driver's license in his dormitory room, the night he was stopped by Eau Gallie, Fla. police. The officers discovered marijuana cigarettes inside a pack in Gustafson's coat pocket.

The dissenting justices, warning that many innocent persons may now be subjected to police searches, hinted that the majority may have been unduly influenced by the facts in the two cases before them.

"One wonders if the result would have been the same (the defendant) a businessman whose wallet was taken from him by the police," Marshall wrote.

"Or suppose a lawyer lawfully arrested for a traffic offense is found to have a sealed envelope on his person. Would it be permissible for the arresting officer to tear open the envelope to make sure that it did not contain a clandestine weapon?"

S.F. Reaction To Court Ruling

The Supreme Court's decision yesterday on expanded police search powers was greeted with restrained exuberance by local law enforcement officers.

While most said the decision sounded as though it might be helpful to policemen, everyone was careful to make no commitment until the text can be studied in detail.

"California courts have long held that if you arrest a person on traffic violations and you intend to book him, then you can search him," said a prosecutor who asked his name be withheld.

"On the surface, the new ruling may not make much of a difference in California, although it does apparently reinforce the officer's position."

Lieutenant Richard Trueb, a legal officer for the San

Francisco Police, said more thorough searches are a safety factor for policemen.

Under the California rules, officers can only "pat-down search" a person on the street — that is, pat his clothing for possible weapons. If the person is then taken to jail and is prepared immediately to post bail, no further search can be made. If the person is actually put in a cell, then a thorough search is made.

"If this new ruling is truly a safety factor for officers on the street, then it is most welcome," said Trueb. "I am sure the department will not abuse the ruling."

Several officers said they were eager to learn what area of search is covered by the new U.S. Supreme Court ruling — the prisoner's car, his house, or simply his person.