NYTimes LEGIS DEC 12 1973

# Supreme Court Widens Power of Police To Search Individual Without Warrant

By WARREN WEAVER Jr.
Special to The New York Times

WASHINGTON, Dec. 11—The Supreme Court broadened today the power of law enforcement officers to search persons without a warrant.

On a vote of 6 to 3, the court held that persons taken into custody on minor charges may then be searched for evidence of more serious but unrelated crimes.

Thus, under the ruling, personal searches need not be confined to cases in which a policeman is frisking a suspect for dangerous weapons or looking for evidence of the crime for which the suspect has been arrested.

As long as the officer has made a valid custodial arrest—one to be followed by taking the suspect to the station—he needs "no additional justification" to search him thoroughly for any other sort of incriminating evidence, the majority ruled.

Specifically, the high court upheld the separate convictions of two men who had been arrested for motor vehicles infractions—driving without a license and with a revoked license—and then charged, after a search, with possession of narcotics. Both had contended that the search violated their constitutional rights.

**'Departure From Tradition'**

The three-Justice minority maintained that the decision represented "a clear and marked departure from our long tradition" of weighing each contested search to determine whether it violated the Fourth Amendment's guarantee against "unreasonable searches and seizures."

The dissenters were Justices William O. Douglas, William J. Brennan Jr. and Thurgood Marshall. Justice William H. Rehnquist wrote the majority opinion, joined by Chief Justice Warren E. Burger and Justices Potter Stewart, Byron R. White Harry A. Blackmun and Lewis F. Powell Jr.

The decision appeared to constitute another move by the Burger Court toward strengthening the hand of law enforcement officials at the expense of protecting the rights of accused criminals.

The effect of the ruling was to create another exception, of potential breadth, to the "exclusionary rule," the controversial principle first voiced by the Court in 1914 that illegally obtained evidence can be excluded in court at the request of the accused.

On its face, the decision appeared to empower any policeman to search any suspect he has taken into custody for any kind of completely unconnected incriminating evidence, even if the original offense was so insignificant that he could have given the accused a ticket instead.

Justice Marshall said in the dissent that the ruling raised "the possibility that a police

Continued on Page 12, Column 4

Continued From Page 1, Col. 4

officer, lacking probable cause to obtain a search warrant, will use a traffic arrest as a pretext to conduct a search."

Justice Rehnquist wrote: "The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect.

"A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.

"It is the fact of the lawful arrest which established the authority to search, and we hold that in the case of lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the fourth Amendment but is also a 'reasonable' search under that amendment."

**Application of Old Rule**

The old rule, limiting a warrantless search to frisking for weapons or finding further evidence of the immediate crime still applies to cases in which there is no probable cause for making the arrest, the majority said, but not to custodial arrests based on reasonable information.

During the last year, the Burger court has assisted the cause of law enforcement by rulings that a defendant who was lured into crime by the Government can be convicted if he was "predisposed" to the action, that a car abandoned by a drunken driver can be searched without a warrant and that the Government need not prove that a defendant who consented to a warrantless search knew he could have refused permission.

The principal case decided by the Court today involved a District of Columbia man, Willie Robinson Jr., who was arrested in 1968 for driving while his license was revoked. In searching him, a policeman found a crumpled cigarette package in his overcoat pocket and 14 capsules containing heroin inside the package.

Mr. Robinson was convicted in Federal District Court, over protests that the evidence had been illegally obtained and thus should not be admitted. The Court of Appeals for the District of Columbia reversed on the grounds that the warrantless search had been unconstitutional.

In the Robinson case, local police regulations authorized both taking the suspect into custody rather than giving him a ticket and a full body search following arrest.

In a second decision today, by the same 6-to-3 vote, the high court upheld a similar search by a policeman in Eau Gallie, Fla., in 1969, despite the fact that regulations there did not require a custodial arrest or set any standards for the use of a body search.

In that case, James Gustafson was arrested for driving without his license with him and was found, during an ensuing search, to be carrying marijuana cigarettes. Upon trial, he was convicted of unlawful possession of marijuana. The Florida District Court of Appeals reversed, but the State Supreme Court reversed in turn, reinstating his conviction.

In both cases, Justice Marshall wrote for the minority that there was no justification for the searches on the grounds of discovering evidence of the crime charged, since no further evidence of driving without a license was necessary.