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Notes

NOTES

CRIMINAL LAW—PROBABLE CAUSE OF ARRESTING OFFICER IN MAKING AN ARREST WITHOUT A WARRANT.—The Supreme Court of the United States on January 26, 1959,[1] held that information given to a federal narcotic agent by a reliable informer, upon which the agent acted by placing the defendant under arrest, constituted "probable cause" within the meaning of the Fourth Amendment[2] to the Constitution of the United States.

In the instant case, the agent was given information by a reliable informer that defendant was peddling narcotics to several addicts. The informer then notified the agent that defendant had left the city to secure a supply of narcotics and was expected to return within a few days by train with the shipment. The informant provided the agent with a detailed description of defendant, also adding that defendant habitually walked fast and would be carrying a bag. The agent acting on this information and accompanied by a local policeman, stationed himself at the station awaiting the expected arrival of defendant. When defendant stepped off the train, the agent noted that defendant's physical description, coupled with his walking mannerism, dovetailed with the information furnished by the informant. The agent arrested defendant without a warrant for violation of the Federal Narcotic Act.[3] During the subsequent search a quantity of heroin and a hypodermic syringe was found on defendant's person. This evidence was seized and introduced at his trial. The defendant endeavored to suppress the introduction into evidence of the heroin and syringe contending that same was secured through unlawful search and seizure. The District Court found that the arresting officer had probable cause for making the arrest without a warrant and the subsequent search and seizure were lawful. Defendant was convicted at the trial which followed.[4] Certiorari was sought on grounds that the search and seizure were unlawful and in violation of the Fourth Amendment, and that therefore the introduction into evidence of the heroin and syringe vitiated the conviction. The writ was granted.[5]

The pertinent part of the Narcotic Control Act of 1956 provides "The Commissioner . . . and agents of Bureau of Narcotics . . . may make arrests without warrant for violations of any law of the United States relating to narcotic drugs . . . where the violation is committed in the presence of the person making the arrest, or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation."[6]

Defendant contended that the informer's information upon which the agent acted in making the arrest was hearsay and that since this generally is not legally competent evidence in a criminal trial, the agent should have disregarded it in determining whether he had probable cause to arrest without a warrant. This contention was refuted by the court because it has been held that the factors necessary to constitute probable cause are not necessarily those required to prove guilt at a subsequent trial.[7] However, it

[1] Draper v. United States, 358 U. S. 307, 79 S. Ct. 329, 3 L. Ed. 2d 327 (1959).

[2] "The right of the people to be secure in their persons, homes, papers and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[3] 35 Stat. 614 (1909), as amended 21 U. S. C. 174 (—).

[4] 146 F. Supp. 689 (D. Colo. 1956), aff'd, 248 F. 2d 295 (10th Cir. 1957).

[5] 357 U. S. 935, 78 S. Ct. 1386, 2 L. Ed. 2d 1549 (1958).

[6] 70 Stat. 570, Sec. 104(a) 26 U. S. C. 7607 (Supp. V 1956).

[7] Brinegar v. United States, 338 U. S. 160, 79 S. Ct. 1302, 93 L. Ed. 1879 (1949).

has been said by way of dictum that a search warrant may issue only upon evidence which would be competent in the trial before a jury.[8] A number of lower Federal courts have been persuaded by this dictum,[9] but the great weight of authority is otherwise.[10] The court in the instant case said that there was a large difference between the two things to be proved, guilt and probable cause, as well as between the tribunals which determine them and therefore a like difference in th quanta and modes of proof required to establish them.

Defendant also contended that even assuming that hearsay could lawfully be admitted, the agent's information should have been held insufficient to show probable cause for making the arrest without a warrant. This contention appears to be the controlling issue involved in this case.

When a man is legally arrested for an offense, whatever is found upon his person or in his control which it is unlawful for him to have, and which may be used to prove the offense, may be seized and held as evidence.[11] Therefore, in the instant case, the incriminating evidence found on defendant's person could be used in evidence against him, provided the search and seizure were incident to a lawful arrest.

What facts and circumstances are necessary to constitute probable cause for an arrest without a warrant, has been much debated. It has been held that determination of probable cause for search without warrant requires "a dealing with probabilities which are not technical, but are the factual and practical consideration of everyday life on which reasonable and prudent men, not legal technicians, act and the standard of proof is accordingly correlative to what must be proved."[12] It means more than suspicion, it being essential that there be knowledge and information sufficient in themselves to warrant a man of reasonable caution to believe that an offense has been or is being committed.[13] Arrest without warrant could not be justified on the basis that the "fruits of the search" justified the conclusion that the officer's knowledge at the time of arrest gave him ground therefor.[14] A successful search does not cure an otherwise defective arrest. Probable cause can not be found from submissiveness and presumption of innocence is not lost or impaired by neglect to argue with the arresting officer.[15] The combination of facts necessary to constitute probable cause for making an arrest without a warrant is not a static concept. A continuing criterion is that arrests without a warrant will not be approved where the officer is stimulated by an inkling or suspicion only. When an arrest and a search incident thereto are attacked as illegal, arresting officers must make a factual showing of probable cause.

The Court in the instant case found that the agent had probable cause in making the arrest, in that he verified the informant's information by checking out defendant's clothing, physical characteristics and walking mannerism. This gave the agent reasonable

[8] Grau v. United States, 287 U. S. 124, 53 S. Ct. 38, 77 L. Ed. 212 (1932) (dictum).

[9] Giles v. United States, 284 Fed. 20 (1st Cir. 1922); Simmons v. United States, 18 F. 2d 85 (8th Cir. 1927); Worthington v. United States, 166 F. 2d 557 (6th Cir. 1948); United States v. Novera, 58 F. Supp. 275 (E. D. Mo. 1944); Reeve v. Howe, 33 F. Supp. 619 (E. D. Pa. 1940).

[10] Wrightson v. United States, 236 F. 2d 672 (D. C. 1956); United States v. Heitner, 149 F. 2d 105 (2nd Cir. 1945); United States v. Bianco, 189 F. 2d 716 (3rd Cir. 1951); Wisniewski v. United States, 47 F. 2d 825 (6th Cir. 1931); United States v. Walker, 246 F. 2d 519 (7th Cir. 1957); Mueller v. Powell, 203 F. 2d 797 (8th Cir. 1953).

[11] Weeks v. United States, 232 U. S. 383, 34 S. Ct. 341, 58 L. Ed. 652 (1914).

[12] See note 7, supra.

[13] United States v. DiRe, 332 U. S. 581, 68 S. Ct. 222, 92 L. Ed. 210 (1948).

[14] See supra note 10, United States v. Walker.

[15] See note 13, supra.

grounds to believe that the defendant, under the facts and circumstances, was violating the Narcotic Laws of the United States. The Court said that the agent would have been derelict in his duties if he failed to act otherwise.

There was a strong dissenting view by Justice Douglas wherein he said that an arrest made on the word of an informer violates the spirit of the Fourth Amendment. He reasoned that the arresting officers had not a shred of evidence known to them that would support the issuance of a warrant by a magistrate and he questioned why the Court should grant more powers to officers than to magistrates. He argued that the reliability of an informant's information should not serve to form the basis of probable cause for an arresting officer and said that if this arrest is sustained, the Court would break with tradition.

Two leading cases, *Carroll* v. *United States*[16] and *Brinegar* v. *United States*[17] which relate to the question of what constitutes probable cause of an arresting officer in making an arrest without a warrant, dealt with the illegal transportation of liquor. In the *Carroll* case the arresting officers had previously established the identity of the defendants through personal observation when they had earlier agreed to sell liquor to the agents, during which transaction the agents saw the license number of defendant's automobile. Later when an arrest was made without a warrant, a conviction was obtained on the evidence found by the subsequent search and seizure. It was said in this case that the Fourth Amendment has to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted and in a manner which will conserve public interests and rights of individual citizens. In the *Brinegar* case probable cause was established by the officer's own personal observations coupled further with defendant's voluntary admission that he possessed illegal liquor.

When arresting officers act upon an informant's information, it is proper to compel them to disclose its source, subject to some limitation, since otherwise there is no way to test whether they have had reasonable cause for the arrest.[18] In another case it was said that hearsay evidence derived from an informer is competent evidence on which to show probable cause for an arrest and weight is to be given it, is a matter of sound discretion of the court on a motion to suppress evidence obtained by search and seizure at the time of arrest.[19] But an uncorroborated tip by an informer whose identity and reliability were both unknown did not constitute probable cause to make an arrest.[20] However, the testimony here given by the officers was very flimsy. A defendant will be required to stand trial and a conviction be sustained, even if only hearsay evidence was presented to the grand jury which indicted him.[21]

In another case similar to the one at bar,[22] a narcotic agent acting upon information given him by a reliable informer arrested defendant without a warrant. The court in holding that the officer had reasonable grounds to believe that the person to be arrested had committed, or was committing a violation of any law of the United States relating to drugs, said that the communication emanating from the informer was relevant to show that the agent obtained knowledge about defendant, forming the foundation on which the agent built his cause for acting. The court said that under the facts of the case, evidence classed as hearsay from defendant's viewpoint, but not the agent's, can constitute the basis for reasonable grounds leading to an

[16] 267 U. S. 132, 45 S. Ct. 280, 69 L. Ed. 543 (1925).
[17] See note 7, supra.
[18] See supra note 10, United States v. Heitner.
[19] United States v. Li Fat Tong, 152 F. 2d 650 (2nd Cir. 1945).
[20] Contee v. United States, 215 F. 2d 324 (D. C. C. 1954).
[21] Costello v. United States, 350 U. S. 359, 76 S. Ct. 406, 100 L. Ed. 397 (1956).
[22] See supra note 10, United States v. Walker.

arrest without a warrant. The principle[23] is that it must be reasonable for the agent to be influenced by an informant's statements, and what is reasonable depends on the facts and circumstances.

The cases cited in the dissenting opinion were decided prior to the enactment of the Federal Narcotics Act of 1956.[24] In *Baumboy* v. *United States*[25] the validity of a search warrant was attacked on the ground that the facts recited therein were insufficient to constitute probable cause. The affidavit of the agent to the effect that he saw drug addicts going to or from premises was held insufficient to constitute probable cause. In *Poldo* v. *United States*[26] the search warrant was issued to search the garage of defendant, but agents followed the defendant into his house where the incriminating evidence was found. It was held that the officers had not reasonable cause, the court saying that mere suspicion was not enough, since there must be circumstances represented to the officers through the testimony of their senses sufficient to justify them in a good faith belief that defendant had violated the law. In *Director General of Railroads* v. *Kastenbaum*[27] which was an action for false imprisonment, the court said that probable cause is a mixed question of law and fact and good faith is not enough to constitute probable cause, the faith must be grounded on facts within the knowledge of the person who makes the arrest, which in the judgement of the court would make his faith reasonable. Defendant has the burden of proving probable cause. In *Johnson* v. *United States*[28] the court said that a police officer is not justified in arresting a person without a warrant, although he finds the person to be the sole occupant of the room, and even though the odor of burning opium emanated therefrom. The facts known to police officers which would justify the issuance of a search warrant will not justify the officers in making a search without a warrant, particularly where no reason is offered for not obtaining a warrant.

The strictures placed on the federal statute by Judge Hand in *United States* v. *Coplan*[29] authorizing agents to make arrests without warrant only on condition that escape would be likely, resulted in a broadening of that statute,[30] so that at the present time, agents are authorized to make arrests without warrants when they have reasonable grounds to believe that a crime has been committed, or is being committed. This authorization has been extended to Federal narcotic agents[31] and it is perhaps indicative that Congress in preliminary hearings[32] on the proposed Narcotic Control Act took into consideration the problems associated with narcotic violations, the ease of secreting the illegal drugs, and realized the necessity that enforcement officers should have the power to make prompt arrests instead of awaiting the issuance of a warrant.

Perhaps, in Justice Douglas words, in referring to the *Carroll* case, the need to protect public safety by making prompt arrests may have a decisive bearing on this case. Whether this case will be relied upon as a governing principle or distinguished on its facts remains to be seen, however, the rule applied as the basis upon which an arresting officer has probable cause in making an arrest without a warrant, is extended to a greater degree than any previous holding. B. K.

[23] See supra note 10, United States v. Bianco.
[24] See note 6, supra.
[25] 24 F. 2d 512 (9th Cir. 1928).
[26] 55 F. 2d 866 (9th Cir. 1932).
[27] 263 U. S. 25, 44 S. Ct. 52, 68 L. Ed. 146 (1923).
[28] 333 U. S. 10, 68 S. Ct. 367, 92 L. Ed. 436 (1948).
[29] 185 F. 2d 629 (2nd Cir. 1950).
[30] 64 Stat. 1239 (1951), 18 U. S. C. 3052 (Supp. IV 1952).
[31] See note 6, supra.
[32] 2 U. S. Code Cong. & Ad. News, P. 3302 (1956).

HABEAS CORPUS—THE WRIT AND ITS USE UNDER MODERN PROCEDURE—WRIT AVAILABLE WHEN CONSTITUTIONAL RIGHTS DENIED.—The writ of habeas corpus is an exceptional procedural device used only under special circumstances[1] to test the lawfulness of a man's imprisonment. Literally, it means *to produce the body* at a time and place prescribed, to show a sufficient cause for the prisoner's arrest. It is not to determine the prisoner's guilt or innocence but to release him from unlawful imprisonment on the issue of whether he is being deprived of his liberty without due process.[2]

The habeas corpus proceeding was developed centuries ago in England and is referred to by Blackstone as "the most celebrated writ in the English law."[3] In the seventeenth century the English courts, the Common Pleas and Kings Bench, used the writ to extend their jurisdiction over the lesser courts and later against rival courts such as the Star Chamber, Chancery, and Admiralty Courts. It was used to liberate persons held by one of the courts whose authority was challenged thus acquiring jurisdiction over the prisoner. As a result of the continuing controversies between the King and Parliament the writ of habeas corpus became increasingly important to restrain the King from arrest without probable cause. The Habeas Corpus Act of 1679 provided for ". . . a speedy judicial inquiry into the justice of an imprisonment on a criminal charge and for a speedy trial of prisoners remanded to await trial."[4] The purpose of the act was to provide for the rapid use of habeas corpus and to guarantee the use of all proper legal processes.[5] (The United States Supreme Court used this English act as a guide to federal use of the writ.[6])

The writ of habeas corpus was a recognized heritage[7] to the colonists and they guaranteed themselves this privilege of the use of the writ in Article 1, Section 9, clause 2, of the United States Constitution;[8] "the privilege of the writ of habeas corpus should not be suspended except in time of rebellion or invasion, when the public safety might require it" (which emphasizes its importance to our personal freedom). The Judiciary Act of 1789, Section 14, limited the use of the writ to those in custody by federal authority. In 1833 by an amendment to the Judiciary Act the writ was extended to prisoners confined by any authority, state or federal.

Originally the writ was issued if the court lacked jurisdiction to try the case, therefore rendering the judgment void and the petitioner detained unlawfully. Today the writ of habeas corpus has been given a broader usage as it is available if the petitioner's constitutional rights were denied in the proceedings.[9] The meaning of jurisdiction has been so construed and expanded as to allow the issuance of the writ of habeas corpus under various situations that include alleged community coersion[10]

[1] Price v. Johnston, 334 U. S. 266, 68 S. Ct. 1049, 92 L. Ed. 1356 (1948).

[2] Ex parte Presnell, 58 Okl. Cr. 50, 49 P. 2d 232 (1935) Black's Law Dictionary (4th Ed., St. Paul, 1951).

[3] 3 Blackstone Commentaries 129.

[4] 9 Holdsworth, A History of English Law, 104-125 (1926) 12 N. Y. U. Intra Law Review 263 (1957).

[5] 61 Harv. Law Review 658 (1958).

[6] McNally v. Hill, 293 U. S. 131, 55 S. Ct. 24, 79 L. Ed. 238 (1934).

[7] Ex parte Yerger, 75 U. S. 85, 19 L. Ed. 332 (1868).

[8] U. S. Const. Art. 1, § 9.

[9] Ex parte Siebold, 100 U. S. 371, 25 L. Ed. 717 (1880); Bowen v. Johnston, 306 U. S. 19, 59 S. Ct. 442, 83 L. Ed. 455 (1939); Moore v. Dempsey, 261 U. S. 86, 43 S. Ct. 265, 67 L. Ed. 543 (1938); Johnson v. Zerbst, 304 U. S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1923).

[10] Frank v. Mangum, 237 U. S. 309, 35 S. Ct. 582, 59 L. Ed. 969 (1915).

and mob violence taking place at a trial;[11] an unconstitutional federal[12] or state[13] statute; a felony conviction without benefit of council,[14] coerced confessions as a means of obtaining a verdict of guilty,[15] and for an excessive sentence.[16] Therefore, it is now a means by which a federal court may review decisions of state courts[17] and free a state prisoner whose conviction was obtained by unconstitutional means.[18] The purpose of the proceedings is not to examine the defendant's rights under state laws but to make sure that his federal rights have not been violated.[19]

Pursuant to the issuance of the writ the petitioner must show that he has exhausted all the available remedies provided by the state and that the state has failed to provide adequate corrective judicial process.[20] It therefore follows that one important qualification to the petitioner's use of the writ is that if the issue had previously been afforded a review, such as the review of the question of an excessive sentence, he is not subject to relief by habeas corpus[21] because due process had thereby been accorded. If that issue had not been reviewed then habeas corpus is a proper redress.

The writ may be granted where jurisdiction in a criminal case depends upon a question of law as to whether the judgment and conviction was void or illegal,[22] not as to a dispute of facts. The Supreme Court has stated that habeas corpus cannot be used for an appeal or as a writ of error to review mere errors in the record.[23] Habeas

[11] See supra note 9, Moore v. Dempsey.

[12] See supra note 9, Ex parte Siebold.

[13] Ex parte Royall, 117 U. S. 241, 6 S. Ct. 734, 29 L. Ed. 868 (1886).

[14] See supra note 9, Johnson v. Zerbst.

[15] Lesenba v. People of State of Calif., 314 U. S. 219, 62 S. Ct. 280, 86 L. Ed. 166 (1941); Brown v. State of Miss., 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682 (1936); Chambers v. State of Fla., 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716 (1940).

[16] Ex parte Lange, 18 Wall 163, 21 L. Ed. 872 (1874).

[17] Orfield, Criminal Appeals in America, Little, Brown & Co. (Boston 1939).

[18] A person is free to seek a writ of habeas corpus first through the state courts and if that fails he can seek the issuance of the writ through a federal district court. On March 18, 1958 the House of Representatives passed and sent to the Senate a bill to restrict the Federal courts in issuing writs of habeas corpus for prisoners in state custody. By such a law "it would appear to make a Supreme Court denial of review a final and conclusive decision on any question—although the court itself says such denials are not decisions on the merits." The general effect would be that the Supreme Court would be the only federal forum for state prisoners to bed their Constitutional rights. The bill has been approved by the Judicial Conference of the U. S. and by the Conference of State Chief Justices. It has been passed once before by the House but died in the Senate. New York Times—3/19/58 page 22 col. 3.

The courts have been harassed by a flood of habeas corpus litigation and the majority are found to be without merit. From Letter, from Chief of the Division of Procedural Studies and Statistics of the Administrative Office of U. S. Courts, Jan. 26, 1946, it was found that out of 831 petitions filed in Federal District Court in 1943, 1944, 1945, an average of 24 petitions were released each year, totaling 72 or approximately 8% of the petitions are sustained by the Federal Courts. This is one of the primary reasons for the current legislation attempting to curb the present flood of habeas corpus proceedings.

[19] Moreland, Equal Justice Under Law (New York, 1957).

[20] White v. Ragen, 324 U. S. 760, 65 S. Ct. 978, 89 L. Ed. 1348 (1945); Mooney v. Holohan, 294 U. S. 103, 55 S. Ct. 340, 79 L. Ed. 791 (1935); Ex parte Hawk, 321 U. S. 114, 64 S. Ct. 44, 8, 88 L. Ed. 57, 2 (1944); Darr v. Burford, 339 U. S. 200, 20 S. Ct. 587, 94 L. Ed. 761 (1950).

[21] Ex parte Spencer, 228 U. S. 652, 33 S. Ct. 709, 57 L. Ed. 1010 (1913).

[22] See supra note 9, Bowen v. Johnston (1939).

[23] See note 6, supra.

corpus differs from the appeal and writ of error in the procedure by which it is sought and upon the grounds which it is issued. Technically, the granting of the writ of habeas corpus orders the petitioner before the court which will afford him an opportunity to argue the injustice of his detention. If the court finds for the petitioner he will be discharged from the wrongful detention. If not, the court will remand him to custody and will discharge the writ.[24]

The doctrine of *res judicata* does not absolutely apply to habeas corpus proceedings.[25] *Res judicata* is defined as a matter decided or passed upon by a court of competent jurisdiction which is to be received as evidence of the truth.[26] Today through the courts discretion prior decisions are being given more weight in the determination of the petitioner's writ.[27]

The prisoner petitions the Supreme Court by a writ of certiorari for a hearing or review.[28] Before the Court can consider, on certiorari, any type of state adjudication it must determine that a federal question has been raised and that the decision below cannot rest on state grounds.[29] The denial of the issuance of the writ shall have no effect in any subsequent federal habeas corpus proceeding.[30]

A prisoner has no right to a writ of habeas corpus unless he is entitled to immediate release and the writ will not issue unless he is presently restrained of his liberty without warrant of law.[31] There must be actual confinement or the means of enforcement.[32] For example, one free on bail is not entitled to a habeas corpus proceeding.[33] To institute habeas corpus proceedings the petitioner must have begun to serve his sentence.[34] It will not be if the restraint complained of will be terminated before the proceedings.[35]

The writ is a separate procedural device used when there is some justifiable reason why the petitioner could not previously assert his rights or was unaware of the significance of the relevant facts.[36]

Under the Fifth and Fourteenth Amendments to the Constitution, no citizen of the United States shall be deprived of life, liberty or property without due process of law. The gist of due process is a fair trial under valid statutes in a court having proper jurisdiction.[37] It is a protection against unwarranted interference with a defendant's right to a fair trial under proper and accepted standards.[38] A question of fact is raised as to whether due process is violated. A conviction will be upset where the petitioner's detention violates the due process clause. If the petitioner is so illegally detained he may utilize the writ of habeas corpus to secure a hearing to decide if he was so deprived of due process of law.

[24] See note 5, supra.
[25] Salinger v. Loesil, 265 U. S. 224, 44 S. Ct. 519, 68 L. Ed. 989 (1934).
[26] 2 Kent, Comm. 120, Black's Law Dictionary.
[27] See note 25, supra.
[28] See supra note 24, Darr v. Burford.
[29] See note 5, supra.
[30] 20 U. of Chi. Law Review 509-28 (1953).
[31] 2 Ala. Law Review 113 (1949).
[32] See supra note 4, 12 N. Y. U. Intra L. Review 261 (1957).
[33] Stallings v. Splain 253 U. S. 339, 40 S. Ct. 537, 64 L. Ed. 940 (1920).
[34] See note 6, supra.
[35] Ex parte Baez, 177 U. S. 378, 20 S. Ct. 673, 44 L. Ed. 813 (1900).
[36] Jud. Code 262, 28 U. S. C. A. 377.
[37] Corwin, The Constitution and What it Means Today, pg. 188 (N. J., Prin. U. Press, 1947).
[38] See supra note 18, pg. 24.

The Supreme Court case of *Alcorta* v. *Texas*[39] exemplifies the use of the writ of habeas corpus as a means of protecting a man's constitutional right of due process of law when he is unlawfully imprisoned. This case follows prior cases affirming the Supreme Court's attitude in sustaining such utilization of the writ.

The defendant was indicted for murder, tried, and found guilty and sentenced to death. The Texas Court of Appeals affirmed the trial court in refusing to issue a writ of habeas corpus on the grounds of perjured testimony of a witness for the state. The witness for the state gave testimony inconsistent with the defendant's claim that he came upon his wife kissing the witness in a parked automobile. After the trial the witness admitted that he had sexual intercourse with the defendant's wife on many occasions and the prosecutor admitted that he had knowledge of such intercourse but told the witness not to volunteer any information about it. The defendant claims he was not accorded due process of law in reliance upon a Texas statute[40] in reference to killing under the influence of sudden passion arising from adequate cause, as murder without malice and therefore punishable with a maximum of five years imprisonment. This raises a federal question not before reviewed by the state court. So it is in the category of cases reviewable by the Supreme Court. The Supreme Court granted certiorari and reversed the prior holdings on the grounds that under the circumstances the defendant was not accorded due process of law.

In rendering its decision the Supreme Court cited two other cases[41] in support of their conclusion that if the state deliberately suppressed evidence to impeach the testimony of a state's witness it constitutes a denial of due process of law and this deprives the defendant of liberty without such due process by the failure to provide corrective judicial process by which the conviction may be set aside. Thus the knowing use of perjured testimony by a state prosecutor would make a trial unfair within the purview of the Fourteenth Amendment.[42]

In another Supreme Court case, *Hysler* v. *Fla.*, 315 U. S. 411, 62 S. Ct. 688, 86 L. Ed. 932, the court in coming to the same conclusion makes this comment: "If a state, whether by the active conduct or the connivance of the prosecution, obtains a conviction through use of perjured testimony, it violates civilized standards for the trial of guilt or innocence and thereby deprives an accused of liberty without due process of law."

In *White* v. *Ragen*[43] the Supreme Court stated that due process not only requires that a defendant shall have benefit of counsel or that to force him to trial with such speed as to be deprived of effective aid and assistance of council is a violation of such a due process but also stated "perjured testimony known to be such by the prosecuting attorney is a denial of due process."

The Supreme Court stated in *Price* v. *Johnston*[44] that the most important result of the usage of the writ of *habeas corpus* has been to afford a swift and imperative remedy in all cases of illegal restraint upon personal liberty. The writ is the essential remedy to safeguard a citizen against imprisonment by State or Nation in violation of his constitutional rights,[45] "and there is no higher duty than to maintain it unimpaired."[46] C. E. S.

[39] Alcorta v. State of Texas, 355 U. S. 28, 78 S. Ct. 103, 2 L. Ed. 2d 9 (1957).

[40] Tex. Pen. Code Art. 1257 (a, b, c) (1948).

[41] See supra note 20, Mooney v. Holohan; Pyle v. State of Kansas, 317 U. S. 213, 63 S. Ct. 177, 87 L. Ed. 214 (1942).

[42] See supra note 20, White v. Ragen.

[43] Id.

[44] See note 1, supra.

[45] See supra note 20, Darr v. Burford.

[46] See supra note 9, Bowen v. Johnston.