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Unreasonable Searches and Seizures and the Admissibility of Evidence in Maryland - Mapp v. Ohio

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Comments and Casenotes

Unreasonable Searches And Seizures And The Admissibility Of Evidence In Maryland

Mapp v. Ohio[1]

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The decision of the Supreme Court of the United States in the case of *Mapp v. Ohio* promises to have a far-reaching, if as yet not completely ascertainable, effect on the administration of criminal justice in the states. Cleveland police came to the defendant's home after receiving information that a man wanted for questioning in connection with a bombing was hiding there and that there was a large amount of policy paraphernalia ("numbers" game materials) hidden in the house. The defendant refused to admit the officers until they had a search warrant. Several hours later, claiming possession of a search warrent, which, however, was never produced nor accounted for at the defendant's later trial, the officers forcibly opened a door and entered the house, which was then completely searched. Although the police found neither the fugitive nor any evidence of policy activities, they did find obscene matter[2] left by a recent boarder. Based at least in part on this evidence, the defendant was tried for and convicted of knowing possession of obscene matter. Following affirmation of the conviction by the Ohio Supreme Court,[3] on the ground that evidence obtained by an unlawful search and seizure is admissible in a state criminal proceeding, the defendant appealed to the Supreme Court. The Supreme Court reversed the conviction, holding that evidence secured by unreasonable searches and seizures is inadmissible in state courts. Since evidence secured by unreasonable searches and seizures is also inadmissible in the federal courts,[4] determination of what constitutes an unreasonable search and seizure now becomes crucial. This is particularly true for the bench and bar in those states where unreasonably seized evidence has until now been admissible in the state courts.

[1] 367 U.S. 643 (1961).
[2] Four pamphlets, two photographs, and a pencil doodle.
[3] State v. Mapp, 170 Ohio St. 427, 166 N.E. 2d 387 (1960).
[4] Weeks v. United States, 232 U.S. 383 (1914).

The full impact of the present doctrine can best be seen when the doctrine is viewed in its historical setting. The common law position on the issue was set forth in the case of *Entick v. Carrington*.[5] In that case the court held that evidence obtained by illegal searches was admissible, but also allowed Entick to recover damages for the unlawful search. Thus at common law an illegal search and seizure was a collateral matter that did not affect the admissibility of evidence in court. The basis for this policy was a strong conviction that the interests of society required that there be brought to bear in a trial all material that would be helpful in determining the point at issue. The party adversely affected by an illegal seizure of evidence was not without a means of redress, for he could institute actions to secure return of the seized material provided his possession of it would be lawful, and he could sue for such damages as were recoverable on the basis of the tort perpetrated in the illegal seizure.

In the United States the common law rule was at first followed on both the federal and state levels. The adoption of the United States Constitution and of the Bill of Rights, including the Fourth Amendment prohibition against unreasonable searches and seizures,[6] did not bring any immediate change, since the Fourth Amendment was not regarded as changing the old rule that admissibility of evidence was not affected by its obtention through an illegal search and seizure.[7]

In 1886 in the case of *Boyd v. United States*[8] the Supreme Court rejected the common law doctrine with regard to searches and seizures in violation of the Fourth Amendment. Boyd, charged civilly with a violation of the custom laws, was compulsorily required to produce his private books and papers which were then used in evidence against him. The Court held that the Fourth and Fifth Amendments were so related historically that they had to be considered in conjunction with each other. As a consequence, evidence seized in a search and seizure unconstitutional under the Fourth Amendment was excludable under the Fifth Amendment protection against self-incrimination in criminal cases.[9] The Court regarded

[5] 19 Howell State Trials 1029 (1765).

[6] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. CONST., amend. IV.

[7] See 8 WIGMORE, EVIDENCE (McNaughton rev. 1961) 31, § 2184a.

[8] 116 U.S. 616 (1886).

[9] "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." U. S. CONST., amend. V.

the civil forfeiture involved in the *Boyd* cases as the equivalent of a criminal penalty. This breach in the common law doctrine was thus based in part on the Fifth Amendment restriction against self-incrimination.[10]

Since the Fourth and Fifth Amendment restrictions are addressed solely to the federal government, the *Boyd* case left the states free to follow the common law doctrine without change. Many of the states, including Maryland, had provisions similar to those of the Fourth and Fifth Amendments in their own constitutions,[11] so that these states could have followed the *Boyd* doctrine had they so desired. The doctrine, however, was extensively questioned in the state courts[12] and was rejected by Maryland.[13]

The questioning by state courts achieved its greatest impact in 1903 in the case of *People v. Adams*[14] involving a search by warrant for policy slips, which were found and seized pursuant to the warrant, as were some private papers not described in the warrant. In the subsequent trial Adams objected to the introduction of these latter papers into evidence on the basis of their conceded illegal seizure. The New York Court of Appeals took the common law position that the legality of the seizure was collateral to the issue on trial and refused to exclude the evidence. Adams' subsequent conviction was affirmed by the Supreme Court.[15] The affirmation was made by distinguishing *Boyd*. In the *Boyd* case, the Court said, the defendant had had to produce private papers under process and was virtually compelled to furnish testimony against himself. In the *Adams* case, by contrast, there was a search for evidence of a particular crime under a valid search warrant, so that the illegal seizure of additional evidence incidental to the valid search did not constitute compulsory self-incrimination. Consequently, the illegally seized evidence was held admissible. Although the Court stated

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[10] *Cf.*, Justice Black's concurring opinion in the instant case, 367 U.S. 643, 661 (1961).

[11] "[N]o man ought to be compelled to give evidence against himself in a criminal case." MD. CONST., DEC. OF RIGHTS, art. 22.

"[A]ll warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted." MD. CONST., DEC. OF RIGHTS, art. 26.

[12] See 8 WIGMORE, EVIDENCE (McNaughten rev. 1961) 6, § 2183.

[13] Lawrence v. State, 103 Md. 17, 63 A. 96 (1906).

[14] 176 N.Y. 351, 68 N.E. 636 (1903).

[15] Adams v. New York, 192 U.S. 585 (1904).

that *Boyd* had been "frequently cited by this court and we have no wish to detract from its authority,"[16] the decision was a virtual repudiation of *Boyd* and readoption of the common law rule.

Ten years later, in 1914, the Supreme Court in *Weeks v. United States*[17] returned in major essentials to the doctrine of *Boyd*. In *Weeks*, federal and state officers entered a home without a warrant and seized private letters concerning Weeks' connection with a lottery. The seizure of the letters being in violation of the Fourth Amendment, the Court ruled the evidence inadmissible in a federal court with the express purpose of reducing the temptation to ignore the constitutional restraints on searches and seizures.[18]

Although *Weeks* influenced a number of states,[19] this was not the case in Maryland, where the Court of Appeals on reconsideration of the issue refused to adopt the *Weeks* rule and reaffirmed Maryland's adherence to the common law position.[20]

Compulsory application of the exclusionary doctrine of the *Weeks* case was limited to the federal courts by the case of *Wolf v. Colorado*.[21] There, a state officer illegally searched a doctor's office and seized his appointment books. Evidence discovered from leads in the books and the books themselves were introduced in evidence. Although the Supreme Court held that the Due Process Clause of the Fourteenth Amendment[22] prohibited unreasonable searches and seizures on the part of the states, it further held that the unconstitutionality in the obtention of the evidence did not require its exclusion in a state criminal trial. The states were left free to enforce the constitutional guarantee in the manner they thought best, whether by exclusion, by criminal prosecution of persons violating constitutional guarantees, or by other means.

With *Wolf* establishing that unreasonable state searches and seizures violate the Fourteenth Amendment, and with

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[16] *Id.*, 597.

[17] 232 U.S. 383 (1914).

[18] In order to prevent diversion of a trial court's attention during trial to the collateral issue of the legality of proffered evidence. Weeks imposed the procedural requirement that the illegality of a search and seizure must be directly raised by a pre-trial motion and litigated before commencement of the main trial.

[19] See the appendix to the opinion in Wolf v. Colorado, 338 U.S. 25, 33-39 (1949).

[20] Meisinger v. State, 155 Md. 195, 199, 141 A. 536 (1928).

[21] 338 U.S. 25 (1949).

[22] "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. CONST., amend. XIV, § 1.

Weeks excluding in federal trials evidence unconstitutionally seized by federal officers, the way was clear for the Court to reconsider the silver platter doctrine. Under that doctrine evidence illegally seized by state officers was not excluded in a federal trial unless a federal officer was involved in the perpetration of the wrong. In *Elkins v. United States*[23] evidence of private wire taps was unlawfully seized by state officers. The evidence was suppressed by the state court because of the unlawful seizure. Following abandonment of the state prosecution, the evidence was obtained by federal officers and made the basis for federal prosecution. After reviewing the doctrine and its history, the Supreme Court repudiated it and excluded the evidence, relying primarily on its power over the administration of justice by lower federal courts.

With the adoption of the *Elkins* rule, the permissible use of illegally seized evidence was mainly restricted to state trials where the evidence had been seized by state officers, such use being protected by *Wolf*. The last important remaining area of application of the common law rule of admissibility of illegal evidence was then overturned by the instant case, *Mapp v. Ohio*.

The reversal of *Wolf* promises to eliminate a very troublesome "gray" area of constitutional adjudication where subjective elements were so intertwined as to almost eliminate any predictability in adjudication. The *Wolf* approach had led to the drawing of a distinction between admissible and inadmissible evidence predicated upon whether the seizure of the evidence was under such shocking circumstances that its admission would violate due process of law. Thus, in *Rochin v. California*,[24] forcible pumping of an emetic into the defendant's stomach so that the desired evidence, swallowed narcotics, was vomited, was held to so "shock the conscience" as to make the evidence inadmissible. By contrast, evidence from repeated illegal entries into a home and the concealment of a microphone so that every word said in defendant's household for over a month was recorded, was admitted in *Irvine v. California*,[25] which distinguished *Rochin* on its facts due to the absence of physical assault upon the person of the defendant. A measure of physical force was necessarily involved in *Breithaup v. Abram*,[26]

[23] 364 U.S. 206 (1960).
[24] 342 U.S. 165 (1952).
[25] 347 U.S. 128 (1954).
[26] 352 U.S. 432 (1957). See Burgee, *A Study of Chemical Tests for Alcoholic Intoxication*, 17 Md. L. Rev. 193 (1957).

where a blood sample was taken from the unconscious defendant, but this was held not to shock the conscience and was therefore admissible. The troublesome determination of what so "shocks the conscience" as to violate due process if the evidence is used has been replaced by the current test of the unreasonableness of the search or seizure leading to the obtention of the evidence.[27]

Although *Mapp v. Ohio* eliminates this cause of unpredictability as to the use of evidence obtained in a search or seizure by state officers, it leaves room for a possible distinction between illegally seized evidence and unconstitutionally seized evidence. *Pugach v. Dollinger*,[28] decided by the Court earlier in the same term as the *Mapp* case, indicates a probability that the Court may not apply the *Mapp* rule to evidence illegally seized in a constitutionally proper search. In the *Pugach* case the Court affirmed per curiam a lower court decision that a federal court should not enjoin state officers from divulging wiretap evidence in state criminal trials, even though introduction of such evidence would constitute a violation of federal criminal statutes pertaining to wire tapping.[29] *Pugach* relied on *Schwartz v. Texas*,[30] and *Stefanelli v. Minard*.[31] *Schwartz* held that the Communications Act[32] prohibition against wire tapping does not exclude in state court proceedings evidence obtained by wire tapping. *Stefanelli* held that federal courts should refuse to intervene in state criminal proceedings to suppress use of evidence claimed to have been secured by unlawful search and seizure.

Uncertainty remains, because of the blending of *Stefanelli* and *Schwartz* as support for the per curiam opinion in *Pugach*, as to what the federal courts would now do if faced again, as in *Schwartz*, with the question of whether evidence obtained constitutionally but in violation of federal law can be used in state court proceedings. Under *Stefanelli*, upon which Mr. Justice Brennan would have relied solely in *Pugach*, federal courts should be reluctant to interfere with state court proceedings, allow-

[27] The new Mapp test of unreasonableness should exclude in all cases in which Rochin's "shock the conscience" test excluded, since the Rochin test required an unreasonable search and seizure plus an act that "shocked the conscience," *e.g.*, brutality, while the Mapp test excludes for an unreasonable search and seizure alone.

[28] 365 U.S. 458 (1961).

[29] Pugach v. Dollinger, 277 F. 2d 739 (2d Cir. 1960).

[30] 344 U.S. 199 (1952).

[31] 342 U.S. 117 (1951).

[32] 48 Stat. 1103 (1934), 47 U.S.C.A. § 605 (1958).

ing the Supreme Court to correct the admission of illegally seized evidence insofar as federal issues are involved when reviewing the case on appeal from the state courts.[33]

There is a possible incidental result of the *Mapp* case that should not be overlooked. One effect in some states that had adopted the *Weeks*[34] exclusionary rule prior to *Mapp* was an apparent relaxation by the courts of constitutional standards. Rather than exclude evidence formerly admissible even though unconstitutionally obtained, some courts had responded by holding the evidence to have been obtained constitutionally, and so to be admissible.[35] The significance of such possible relaxation of state standards disappears after the *Mapp* case, which makes all evidence obtained in violation of the federal constitution constitutionally inadmissible in the state courts, and thus more closely subjects all of the states to check by the federal courts.

With the *Mapp* case imposing Fourth Amendment standards through the Fourteenth Amendment[36] it becomes important to note briefly the federal standards on searches and seizures, the trend of their development, and their similarity with Maryland law. A basic rule of law for searches and seizures is that a search of a house is invalid in absence of a valid search warrant or a preceding valid arrest.[37] Both Maryland and the federal government require probable cause for the issuance of a search warrant. A Maryland statute requires that before a search warrant shall issue there must be a written application

[33] This procedure in such circumstances was approved by the Supreme Court in Wilson v. Schnettler, 365 U.S. 381 (1961). The situation involved in Schnettler should be distinguished from the situation involved in Rea v. United States, 350 U.S. 214 (1956). In Rea the petitioner, under federal indictment, moved to have the evidence suppressed because of its illegal seizure. Following the suppression of the evidence by the federal court and the enjoinment of its use in "any hearing or trial", the federal agent who had seized the evidence sought to transfer the illegally seized evidence to state authorities for use in a state prosecution based thereon and to give testimony with respect to the evidence. The Supreme Court held that the power of the federal courts in policing the enforcement of federal rules permitted enjoining use of evidence in state courts where such use was in violation of a prior federal injunction based on an express federal rule. As to the effect of Pugach, see Williams v. Ball, 294 F. 2d 94 (2d Cir. 1961) and its suggestion that it is unfortunate that Congress has not acted on the many proposals to clarify the wire-tap situation.

[34] Weeks v. United States, 232 U.S. 383 (1914).

[35] See 8 WIGMORE, EVIDENCE (McNaughton rev. 1961) 52, § 2184a, n. 44.

[36] The Mapp dissent recognized this and expressly objected to the majority holding imposing the "federal substantive standards of 'search and seizure.'" 367 U.S. 643, 680 (1961).

[37] Silverman v. United States, 365 U.S. 505 (1961); Miller v. United States, 357 U.S. 301 (1958); Agnello v. United States, 269 U.S. 20 (1925); Hill v. State, 190 Md. 698, 59 A. 2d 630 (1948).

sworn to by the applicant and indicating probable cause to believe a crime is being committed.[38] Before 1958 it was sufficient if the stated facts were verified by the applicant's oath based on information and belief, if the facts and sources of information on which the belief was based were stated.[39] Since 1958 the applicant has had to swear the facts stated are within his personal knowledge.[40] No cases have been reported yet under the amended requirement. In the federal courts, by contrast, hearsay may constitute probable cause for issuance of a search warrant so long as a substantial basis for crediting the hearsay is present.[41] In this area the Maryland statutory requirements for search warrants are stricter than federal constitutional standards, so the distinction between illegally obtained evidence and unconstitutionally seized evidence may be important in Maryland.

In other areas federal and Maryland standards are identical. Persons may be searched pursuant to a lawful arrest,[42] and the search may extend to articles within the arrested person's use and immediate control and possession.[43] The Supreme Court upheld a search extending to an immediate one-room office, including desk, safe, and file cabinets, under control of the person arrested but in a room open to the public,[44] and a search, pursuant to an arrest, extending to a complete four room apartment.[45] This compares to a Maryland case where an officer was held to have properly searched a house as an incident to an arrest therein, the officer having seen a crime being committed in the house and having lawfully entered to make

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[38] 3 MD. CODE (1957) Art. 27, § 551.

[39] Burrell v. State, 207 Md. 278, 113 A. 2d 884 (1955).

[40] MD. LAWS 1958, ch. 74; 3 MD. CODE (1961 Cum. Supp.) Art. 27, § 551.

[41] Jones v. United States, 362 U.S. 257 (1960). In this case an affidavit reciting the following items was held to give sufficient evidence of probable cause: (1) affiant had received information from an unnamed informer that defendant was engaged in illicit traffic in narcotics and that the informer had purchased narcotics from the defendant, (2) that previous information from this informer had been correct, (3) that the same information had been received from other unnamed sources, (4) that the defendant was known to be a drug addict, and (5) that affiant believed defendant was hiding drugs.

[42] Draper v. United States, 358 U.S. 307 (1959); Weeks v. United States, 232 U.S. 383 (1914); Davids v. State, 208 Md. 377, 118 A. 2d 636 (1955).

[43] Marron v. United States, 257 U.S. 192 (1927); Agnello v. United States, 269 U.S. 20, 30-31 (1925), right to search incident to arrest does not allow search of a man's dwelling several blocks from place of arrest; Davids v. State, *supra*, n. 42, right to search extends to automobile; Brown v. State, 207 Md. 282, 113 A. 2d 916 (1955); Callahan v. State, 163 Md. 298, 162 A. 856 (1932).

[44] United States v. Rabinowitz, 339 U.S. 56 (1950).

[45] Harris v. United States, 331 U.S. 145 (1947).

a valid arrest.[46] On the other hand, the valid arrest of persons immediately outside a house was held by the Supreme Court not to validate arrest of persons in the house nor, by itself or in conjunction with the latter arrest, did it validate search of the entire house and seizure of the entire contents.[47] Insofar as searches pursuant to an arrest are concerned, there appears to be no conflict between Maryland and the federal standards under the Fourth Amendment.

An area of difficulty, and one where the federal position appears to be vacillating, is that of determining when there must be a warrant for a search to be justified. In 1948, *Johnson v. United States*[48] and *Trupiano v. United States*[49] held that a search of premises following an arrest thereon was not justified if it would have been practicable to obtain a search warrant before the arrest. Then in 1950 *United States v. Rabinowitz*[50] overruled *Trupiano* and severely impaired *Johnson* by implication. According to *Rabinowitz,* the necessity for a search warrant was not to be determined by the practicability of obtaining a warrant, but by the reasonableness of the search that followed the arrest. Although *Rabinowitz* was not reversed, its standing was impliedly called into question in 1961 by *Chapman v. United States.*[51] In *Chapman* state officers acting without a warrant entered defendant's rented house through an unlocked window with the permission of the owner who had summoned them after detecting the odor of whiskey mash. When defendant returned, he was arrested by the state officers and then turned over to federal officers who arrived shortly afterwards. Defendant's conviction in federal court for violating the federal liquor laws followed. Finding that the owner had no authority under the circumstances to authorize the entry and search, and that there was no reason for not obtaining a search warrant except the inconvenience to the officers and some slight delay, the Supreme Court held the search and seizure of evidence unreasonable. The rationale used was that of *Trupiano,* but *Trupiano* was never mentioned. Neither was there any attempt to distinguish *Rabinowitz.*

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[46] Griffin v. State, 200 Md. 569, 92 A. 2d 743 (1952).
[47] Kremen v. United States, 353 U.S. 346 (1957).
[48] 333 U.S. 10 (1948).
[49] 334 U.S. 699 (1948).
[50] *Supra,* n. 44.
[51] 365 U.S. 610 (1961). "[T]he decision in this case runs counter to [United States v. Rabinowitz, 339 U.S. 56 (1950)]." Frankfurter, concurring, *id.,* 618.

Under these circumstances it is difficult to assess what the case portends, but it should be noted that in *Chapman* the search was not pursuant to an arrest while in *Rabinowitz* it was.

Another case, *Silverman v. United States*,[52] may throw some light on *Chapman*. In *Silverman*, District of Columbia police officers pushed the point of an electronic listening device through the party wall of a house until the tip touched a heating duct a fraction of an inch inside defendant's adjoining house. The duct acted as a sounding board and enabled the officers, who did not have a search warrant, to obtain incriminating evidence. The Supreme Court ordered the evidence suppressed on the ground that the physical invasion without a warrant of the constitutionally protected area of the home violated the Fourth Amendment.[53] *Chapman* may be just another strict application, as was *Silverman*, of the rule of law mentioned earlier that the entry and search of a house without consent is unconstitutional in the absence of a valid search warrant, unless it is incidental to a lawful arrest.

The major impact of the *Mapp* case for Maryland will come not from the federal substantive standards it imposes as to what constitutes unreasonable searches and seizures, but from imposition of the federal exclusionary rule with regard to evidence obtained from such searches. At common law, as discussed earlier, evidence obtained by an illegal search is admissible. The Maryland Court of Appeals adhered to the common law rule in *Lawrence v. State*[54] in 1906. In 1928, following the Supreme Court adoption of the exclusionary *Weeks* rule,[55] the Court of Appeals reaffirmed Maryland's adherence to the common law rule and refused to follow *Weeks*.[56] The Court of Appeals having refused to adopt the exclusionary rule of *Weeks*, the Maryland legislature in 1929 passed the Bouse Act[57] prohibiting in the trial of misdemeanors use of evidence procured either illegally or in contravention of the Maryland Declaration of Rights. Since that time a number of exceptions have been made to the exclusionary rule of

[52] 365 U.S. 505 (1961).

[53] The opinion in Chapman expressly pointed out that the decision was based on constitutional standards and not on possible illegality of the intrusion as a trespass under local property law. This, however, again indicates a possibility the Court in the future will draw a distinction between illegal and unconstitutional searches.

[54] 103 Md. 17, 63 A. 96 (1906).

[55] Weeks v. United States, 232 U.S. 383 (1914).

[56] Meisinger v. State, 155 Md. 195, 141 A. 536 (1928).

[57] MD. LAWS 1929, Ch. 194; now 4 MD. CODE (1957) Art. 35, § 5(a).

the Act, and there have been repeated expansions of the geographical exceptions.[58] Since the Bouse Act applies only to misdemeanors, its exclusionary rule is, of course, inapplicable to felonies.[59] The effect of the *Mapp* case is to establish a constitutional exclusionary rule for unconstitutionally seized evidence, so that the exception of the Bouse Act of felonies is at most applicable only to evidence constitutionally but illegally seized. Inasmuch as the consistent judgment of the Maryland legislature over more than a quarter of a century since the enactment of the Bouse Act has been that its exclusionary rule should be restricted rather than expanded, the *Mapp* case marks a rather sharp break with Maryland policy.

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[58] The result is the following situation:

1. Prosecutions for unlawfully carrying concealed weapons are excepted in all the counties and in Baltimore City. Mason v. Wrightson, 205 Md. 481, 109 A. 2d 128 (1954); 4 MD. CODE (1957) Art. 35, § 5(b).

2. Prosecutions for violations of gambling laws in Sections 237 to 263, inclusive, of Article 27 of the Maryland Code are excepted in Anne Arundel County, Howard County, Prince George's County, Cecil County, Wicomico County, Worcester County, Kent County, and Talbot County. In Montgomery County prosecutions for violations of the gaming law in Section 240 of Article 27 are excepted. 4 MD. CODE (1957) Art. 35, § 5(c).

3. Prosecutions for violation of the lottery laws in Sections 356 to 371, inclusive, of Article 27 of the Maryland Code are excepted in Montgomery County, Prince George's County, Howard County, Wicomico County, Worcester County, Kent County, and Talbot County. 4 MD. CODE (1957) Art. 35, § 5(d).

4. Prosecutions for violation of the alcoholic beverage laws in Article 2B of the Maryland Code are excepted in Wicomico County, Kent County, and Talbot County. 4 MD. CODE (1957) Art. 35, § 6.

5. Prosecutions for violation of the Uniform Narcotic Drug Act [3 MD. CODE (1957) Art. 27, § 284] are excepted in all of the counties and in Baltimore City. Price v. Warden, 215 Md. 657, 139 A. 2d 251 (1958); 3 MD. CODE (1957) Art. 27, § 299.

[59] Mulcahy v. State, 221 Md. 413, 158 A. 2d 80 (1960).