

Chapter 11 and 12



Chapter 11 & 12 Q When Congress passed the Bail Reform Act of 1984 they allowed judges to deny bail if they believed a defendant was a threat to others, even if he was not a flight risk. Advocates for the law want the public kept safe, while critics believe that defendants should not be subject to such detention unless they are proven guilty. Do you support the passage of this law? Does the law violate the defendant's constitutional rights? As always, explain and support your position.

I do support the passage of the Bail Reform Act, 1984, which gave judges the discretion to deny bail on the basis and belief that a defendant poses a threat to the society. In my opinion, allowing the judges the discretion of setting bail, helps them in dealing with the conflicting reality associated with reason for setting bail; whether bail is used to ensure that a defendant appears in court for trial or for the purpose of protecting the society (Neubauer and Fradella 261). This is a dilemma that faces judges in their day-to-day administration of bail. This law may be seen to violate a defendant's constitutional right to bail; however, it should be noted that, it considers the rights of the society at large. It would be politically infeasible to free all violent crime offenders on bail knowing very well that they may commit violent crimes again; similarly, jailing all those accused of violent offenses might not be feasible since jails are not enough to accommodate them. This law, therefore, not only protects the society, ensures that defendants' rights to bail is not infringed, identifies the dilemma judges face and thus equips them with the power to balance these competing demands- protecting the society, and protecting defendants constitutional rights. It should be noted that, constitutional rights such as the right to bail, are only meaningful when they do not infringe on the rights of others. Additionally,

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according to the Eighth Amendment Right, there is no absolute provision for the right of bail to all citizens irrespective of crime and logistical nightmares, as such to protect the citizens' right to bail, despite the judge's discretion; it grants that bail must not be excessive.

Q#2 FIU police receive an anonymous tip that a white male, wearing an orange Miami Hurricanes jersey and blue jeans is standing in the breezeway of the Green Library. The anonymous 911 caller states the subject is concealing a handgun in his waistband. The subject is observed acting in a casual manner and nothing about his appearance or actions indicate he is armed. Based solely on the anonymous tip the man is patted down and a concealed handgun is found on his person. The subject does not have a concealed weapons permit and is a convicted felon. He is placed under arrest by the responding officer. The defense attorney in the case files a motion to have the gun evidence suppressed. Based on your reading of (Chapter 12), how do you think a judge would rule? What would the logic for his ruling be? Do you support or oppose the ruling of the judge? Explain your position and how you would rule if you were the judge.

The judge will rule for the defense and grant the motion to have the gun evidence suppressed. The judge will base his ruling on the tenets of the Fourth Amendment Act that provides that the right of people to be secure in person, their papers, houses, and the effects of unreasonable and unwarranted searches and seizures shall not be violated. Unreasonable searches and seizure in this case implies, illegally searching and obtaining incriminating evidence from a person by the police. The judge would also base his arguments on precedence, Florida v. J. L. 2000, where the court ruled that, the police are prohibited from stopping and searching someone

on the basis of an anonymous tip they receive; this constitutes an unreasonable search and seizure, therefore, a violation of the defendants Fourth Amendment Rights (Neubauer and Fradella 295).

I support the ruling to suppress the gun evidence made by the judge, because, the police, at least according to Florida v. J. L. 2000, are prohibited from stopping and searching someone on the basis of an anonymous tip they receive; this constitutes an unreasonable search and seizure, therefore, a violation of the defendants Fourth Amendment Rights. If I were a judge, I would also rule the same way, not just because the police search was based on an anonymous tip, but because, the suspect did not run at the sight of a police officer, as was in the cases of Illinois v. Wardlow 2010, as well, as such, there was no probable cause to warrant the search and seizure by the police.

Work Cited

Neubauer, David W., and Henry F. Fradella. America's Courts and the Criminal Justice System. 10th ed. Belmont, CA: Cengage Learning, 2010. Print.