Supplementary Material

Chapter 4: The Early National Era—Criminal Justice/Search and Seizure

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Wakely v. Hart, 6 Binney 316 (PA 1814)

John Hart, a local constable, arrested Wakely, whom he believed had stolen a watch. Wakely sued Hart for trespass, assault and battery, and false imprisonment. Under the Pennsylvania Constitution, he claimed, all arrests without warrants were unconstitutional. The trial judge instructed the jury that they should find for Hart only if they believed Wakely had committed a crime. After the jury ruled in favor of Hart, Wakely appealed to the Supreme Court of Pennsylvania.

Chief Justice Tilghman ruled in favor of Hart. He claimed that all persons were constitutionally free to make arrests without warrants, but they did so at their peril. If the person arrested was innocent, the person making the arrest could be sued for false imprisonment. If the person making the arrest had a valid warrant, then the person arrested could not later file a lawsuit even if innocent. Wakely v. Hart *states the common law understanding of the warrant requirement. Is this requirement workable? What are the advantages and disadvantages of permitting persons to sue police officers or private persons who make erroneous arrests without warrants? Should these costs and benefits influence your understanding of the Fourth Amendment?*

CHIEF JUSTICE TILGHMAN

The defendants contend, that having reason to think the plaintiff guilty of larceny, they arrested him as they had a right to do, *at their peril,* so that it was incumbent on them to prove him guilty of larceny, in order to make good their defence. . . . But the plaintiff insists, that by the constitution of this state, *no arrest is lawful without a warrant, issued on probable cause, supported by oath.* Whether this be the true construction of the constitution is the main point in the cause. It is declared in the *ninth article, sect.* 7., "that the people shall be secure in their persons, houses, papers, and possessions from unreasonable arrests; and that no warrant to search any place or seize any person or thing, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation." The provisions of this section, so far as concern warrants, only guard against their abuse by issuing them without good cause, or in so general and vague a form, as may put it in the power of the officers who execute them, to harass innocent persons under pretence of suspicion; for if general warrants are allowed, it must be left to the discretion of the officer, on what persons or things they are to be executed. But it is no where said, that there shall be no arrest without warrant. To have said so would have endangered the safety of society. The felon who is seen to commit murder or robbery, must be arrested on the spot or suffered to escape. So although not seen, yet if known to have committed a felony, and *pursued* with or without warrant, he may be arrested by any person. And even when there is only probable cause of suspicion, a *private person may* without warrant *at his peril* make an arrest. I say at his peril, for nothing short of proving the felony will justify the arrest. These are principles of the common law, essential to the welfare of society, and not intended to be altered or impaired by the constitution. The whole section indeed was nothing more than an affirmance of the common law, for general warrants have been decided to be illegal; but as the practice of issuing them had been ancient, the abuses great, and the decisions *against them* only of modern date, the agitation occasioned by the discussion of this important question had scarcely subsided, and it was thought prudent to enter a *solemn veto* against this powerful engine of despotism. I am therefore of opinion, that the defendants were justified in making the arrest, if they could

prove the plaintiff guilty of larceny; consequently the record tending to prove the larceny was legal evidence.