



STEPHEN G. NELSON  
CHIEF INSPECTOR  
CHARLES H. UHING  
SECRETARY

**POLICE DEPARTMENT**

BALTIMORE, MARYLAND

OFFICE OF THE CHIEF INSPECTOR



THOMAS J. MOONEY  
JOHN H. MINTIENS  
HAMILTON R. ATKINSON  
INSPECTORS

October 12, 1938.

Frederick M. Supplee, Esq.,  
Foreman, Grand Jury,  
Baltimore, Md.

Dear Sir:

Please consider the following charge against  
LOUIS SILVERSTEIN, 535 Dolphin Street, viz:

" With having lottery slips in his possession,  
at premises 535 Dolphin Street, on October 10, 1938,  
in Baltimore City, State of Maryland."

Witnesses:

Sergt. Ralph Amrein,	Headquarters,
Off. Owen Smallwood,	do
Off. Ellis Gilmore,	do
Off. Frank Scott,	do

Very respectfully,

*Stephen G. Nelson*

Stephen G. Nelson,

Chief Inspector.

u

Tasle Blue No 1000<sup>00</sup>

*gd*

3720

STATE OF MARYLAND

VS.

LOUIS SILVERSTEIN

(535 DOLPHIN STREET.)

390

LOUIS SILVERSTEIN, 535 Dolphin Street, Ala:

Please consider the following charge against

Baltimore, Md.  
Foreman, Grand Jury,  
Frederick M. Snodgrass, Adm.

October 15, 1938.

POLICE DEPARTMENT  
BALTIMORE, MARYLAND

OFFICE OF THE CHIEF INSPECTOR

CHARLES H. THIRING  
CHIEF INSPECTOR  
STEPHEN G. NELSON

HAMILTON B. YATKES  
JOHN B. MINTZBERG  
THOMAS J. MOONEY



LOTTERY, ETC.

Very respectfully,

*[Signature]*

PRESENTED

OCT 14

# City of Baltimore, to wit:

BE IT REMEMBERED, That on the 10th day of October in the year of our Lord, one thousand nine hundred and 38, before the Subscriber, a Police Justice of the State of Maryland, in and for the City of Baltimore, personally appeared Esther Hoffman Residence #1738 N.Appleton St. and Nathaniel Adams (c) Residence 1208 Penna Ave and acknowledge themselves each and severally, to owe and stand justly indebted to the State of Maryland, in the sum of One Hundred (\$100.00) dollars current money of the United States, the said sum of money to be paid and levied of their bodies, goods and chattels, lands and tenements, respectively, to and for the use of the State of Maryland.

THE CONDITION of the above RECOGNIZANCE is such, that if the above bound Nathaniel Adams (c)

do and shall well and truly make h is personal appearance before the Criminal Court of Baltimore, held at the Court House in the City of Baltimore, When notified then and there to answer unto all such things as shall be alleged against h is, and particularly for Held as a State's witness in the cases of Louis Silverstein and Lester Stewart (c) charged with operating a gambling device to wit LOTTERY

on or about the 10th day of October, 1938, in Baltimore City, State of Maryland, and attend the said Court from day to day, and not depart thence without leave thereof; and in the meantime keep the peace, and be of good behavior; then the above Recognizance to be void, or otherwise to remain in full force and virtue in law.

In Testimony Whereof, I hereunto subscribe my name on the day and year aforesaid

August F. Mueller (Seal)  
 Police Justice for the Northwestern District.

State of Maryland,  
City of Baltimore, to wit:

I, Esther Hoffman

hereby apply to become recognizer for

Nathaniel Adams (c)

I own and offer as security the following property: No. 2842 Parkwood Ave

It is in fee—leasehold, being subject to the annual ground rent of \_\_\_\_\_ dollars.

My interest therein is absolute and undivided, or is \_\_\_\_\_ the value of which is \$ 3350 and is subject to the following mortgages, incumbrances and other recognizances:  
None

The taxes are paid up to and including those for the year 1938.

Esther Hoffman  
Address #1738 N. Appleton St.

Sworn to this 10th day of October 1938 before me.

August F Mueller J. P. [SEAL]  
Police Justice for the NWD District.

No 628 No 3720  
349

STATE  
vs.

Nathaniel Adams (c)

Charge State Witness

WITNESS

- Serget Ralph Amrine H Q
- Off Ellis Gilmore H Q
- Off Owen Smallwood H Q
- Off Harry Scott H Q

OCT 11 1938

Filed

19

# City of Baltimore, to wit:

BE IT REMEMBERED, That on the 10th day of October in the year of our Lord, one thousand nine hundred and 38, before the Subscriber, a Police Justice of the State of Maryland, in and for the City of Baltimore, personally appeared Esther Hoffman-

Residence #1738 N. Appleton St.  
and \_\_\_\_\_ Residence \_\_\_\_\_

and Lester Stewart (c) Residence 1136 Etting St.

and acknowledge themselves each and severally, to owe and stand justly indebted to the State of Maryland, in the sum of Five Hundred (\$500) dollars current money of the United States, the said sum of money to be paid and levied of their bodies, goods and chattels, lands and tenements, respectively, to and for the use of the State of Maryland.

THE CONDITION of the above RECOGNIZANCE is such, that if the above bound Lester Stewart (c)

do and shall well and truly make his personal appearance before the Criminal Court of Baltimore, held at the Court House in the City of Baltimore,

then and there to answer unto all such things as shall be alleged against him, and particularly for Operating or maintaining a gambling device to wit lottery numbers on tickets for profit or gain or having such tickets or numbers in his possession on premises 535 Dalphin St. (store)

on or about the 10th day of October, 1938, in Baltimore City, State of Maryland, and attend the said Court from day to day, and not depart thence without leave thereof; and in the meantime keep the peace, and be of good behavior; then the above Recognizance to be void, or otherwise to remain in full force and virtue in law.

In Testimony Whereof, I hereunto subscribe my name on the day and year aforesaid.

August F. Mueller (Seal)  
Police Justice for the Northwestern District.

TAKE BAIL IN \$ 1000

State of Maryland,  
City of Baltimore, to wit:

No 628 No 3720

STATE  
vs.

Lester Stewart (c)

Charge Lottery

I, Esther Hoffman.

hereby apply to become recognizer for

WITNESS

Lester Stewart (c)

Sergt Ralph Amrine H Q

I own and offer as security the following prop-  
erty: No. 2842 Parkwood Ave.

Off Ellis Gilmore H Q

Off Owen Smallwood H Q

It is in fee leasehold, being subject to the an-  
nual ground rent of \_\_\_\_\_ dollars.

Off Harry Scott H Q

My interest therein is absolute and undivided,  
or is Absolute

the value of which is \$ 3350 and is subject  
to the following mortgages, incumbrances and  
other recognizances:  
None

PRESENTED

*[Signature]*  
Foreman

The taxes are paid up to and including those  
for the year 19 38

Esther Hoffman  
Address 1738 N. Appeton St.

Sworn to this 10th day of  
October 19 38, before me.

August F. Mueller [SEAL]  
Police Justice for the NWD District.

Filed OCT 11 1938 19

# CRIMINAL COURT OF BALTIMORE

SEPTEMBER TERM, 1938.

THE STATE OF MARYLAND

To the Sheriff of Baltimore City, Greeting:

We command you that you take the body of

*Lester Stewart*

and

*him*

immediately have before the Court here to answer a presentment for

*Lottery*

WITNESS the Hon. Samuel K. Dennis, Chief Judge of the Supreme Bench of Baltimore City, the 12th day of Sept., 1938.

Issued the

*13* day of *Oct*

1938.

EDWARD GROSS,

Clerk Criminal Court of Baltimore.

3720

STATE OF MARYLAND.

163

vs.

~~38~~  
~~116~~  
~~167~~  
Lester Stewart  
1136 Etting St

CAPIAS.

TAKE BAIL IN \$ 4000-

J.F. G.W. JUDGE.

~~Esther Hoffman  
1738 1/2 Appleton~~

~~Louis J Hoffman  
1735 Appleton~~

~~2842 Parkwood  
\$3330-  
Fee  
10/14/30 \$1000-~~

CEPI. On Bail

Jesse C. Dees SHERIFF

OCT 14 1938

FILED

14



# CRIMINAL COURT OF BALTIMORE

SEPTEMBER TERM, 1938.

THE STATE OF MARYLAND

To the Sheriff of Baltimore City, Greeting:

We command you that you take the body of

*Louis Silvestern*

and

*h*

immediately have before the Court here to answer a presentment for

*Lottery et.*

WITNESS the Hon. Samuel K. Dennis, Chief Judge of the Supreme Bench of Baltimore City, the 12th day of Sept., 1938.

Issued the

*14* day of *Oct*

1938.

EDWARD GROSS,

Clerk Criminal Court of Baltimore.

3720

STATE OF MARYLAND.

~~28  
30  
11/16/38~~

vs.

Louis Silvestre

535 Dolphin St CAPIAS.

TAKE BAIL IN \$ 1000

gas

JUDGE.

~~Harry Bernard  
10 N. Hill St~~

~~Forfeiture  
\$ 1920 -  
SP 2185  
1 of 1538 of 1000~~

CEPI. On Bail

James C. Deegan SHERIFF

OCT 15 1938

FILED

10

**State of Maryland,**

**City of Baltimore, to wit:**

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present that LESTER STEWART and LOUIS SILVERSTEIN,

late of said City \_\_\_\_\_

on the tenth day of October, in the year of our Lord nineteen hundred and thirty-eight, at the City aforesaid, <sup>each</sup> ~~unlawfully~~ did sell a lottery ticket to a certain person to the Jurors aforesaid, unknown,

contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

**SECOND COUNT.**

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said LESTER STEWART and LOUIS SILVERSTEIN, on the said day in the said year, at the City aforesaid, each unlawfully did sell a lottery ticket to Nathaniel Adams, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

**THIRD ~~SECOND~~ COUNT.**

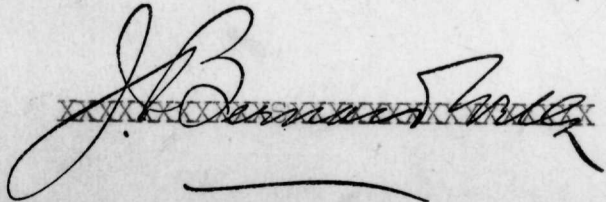
And the Jurors aforesaid, upon their oath aforesaid, do further present that the said LESTER STEWART and LOUIS SILVERSTEIN,

on the said tenth day of October, in the year aforesaid, at the City aforesaid, <sup>each</sup> ~~unlawfully~~ did keep a certain place, to wit: a room for the purpose of selling lottery tickets, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

**FOURTH ~~THIRD~~ COUNT.**

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said LESTER STEWART and LOUIS SILVERSTEIN,

on the said tenth day of October, in the year aforesaid, at the City aforesaid, <sup>each</sup> ~~unlawfully~~ and knowingly did permit a certain room there situate, of which he was then and there the owner, then and there to be used as a place for selling lottery tickets, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.



*The State's Attorney for the City of Baltimore*

State of Maryland,

FIFTH  
~~XXXXXX~~ COUNT.

~~City of Baltimore, to wit~~

The Jurors of the State of Maryland, for the body of the City of Baltimore do on their oath present that..... LESTER STEWART and LOUIS SILVERSTEIN,

late of said City, on the tenth day of October, in the year of our Lord nineteen hundred and thirty-eight,

each unlawfully did have in his possession a book of lottery tickets, each, the said LESTER STEWART and LOUIS SILVERSTEIN,

at the time each so had the said book of lottery tickets in his possession, not having the same then and there in his possession for the purpose of procuring and furnishing evidence of the violation of any of the provisions of the law relating to lotteries, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

SIXTH  
~~XXXXXX~~ COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said.....

LESTER STEWART and LOUIS SILVERSTEIN,

on the tenth day of October, in the year of our Lord nineteen hundred and thirty-eight,

each unlawfully did have in his possession divers books, lists, slips and records of numbers drawn in a lottery; divers books, lists, slips and records of lottery tickets; divers books, lists, slips and records of money which had been received, and which was to have been received from the sale of lottery tickets, and things in the nature thereof; and divers things by which it was promised and guaranteed that particular numbers, characters, tickets and certificates would, in a certain event, and upon the happening of a certain contingency in the nature of a lottery,

entitle the purchaser or holder to receive money, property and evidence of debt; each, the said

LESTER STEWART and LOUIS SILVERSTEIN,

at the time he so there had in his possession the said books, lists, slips and records of numbers drawn in a lottery; books, lists, slips and records of lottery tickets; books, lists, slips and records of money which had been received, and which was to have been received from the sale of lottery tickets, and things in the nature thereof, and things by which it was promised and guaranteed that particular numbers, characters, tickets and certificates would, in a certain event, and upon the happening of a certain contingency, in the nature of a lottery, entitle the purchaser or holder to receive money, property

and evidence of debt, not having the same in his possession for the purpose of procuring and furnishing evidence of the violation of any of the provisions of the law relating to lotteries; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the state.

~~The State of Maryland, for the City of Baltimore~~

State of Maryland, SEVENTH COUNT.

City of Baltimore, to wit:

The Jurors of the State of Maryland for the body of the City of Baltimore do on their oath present that LESTER STEWART and LOUIS SILVERSTEIN, late of the said City on the tenth day of October, in the year of our Lord nineteen hundred and thirty-eight, at the City aforesaid, each did keep a certain gaming table for gambling then and there, other than a billiard table at which said gaming table a certain game of chance was then and there played for money, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

EIGHTH

SEVENTH SECOND COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said LESTER STEWART and LOUIS SILVERSTEIN, on the said day, in the said year, at the City aforesaid, each did manage a certain other gaming table for gambling then and there, other than a billiard table at which said last mentioned gaming table a certain game of chance was then and there played for money, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

NINTH

EIGHTH THIRD COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said LESTER STEWART and LOUIS SILVERSTEIN, on the said day, in the said year, at the City aforesaid, each had an interest in, and in the profits of, a certain other gaming table for gambling then and there, other than a billiard table at which said last mentioned gaming table a certain game of chance was then and there played for money, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

TENTH

NINTH FOURTH COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said LESTER STEWART and LOUIS SILVERSTEIN, on the said day, in the said year, at the City aforesaid, each did keep a certain place, to wit: a room, for gambling then and there, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

ELEVENTH

TENTH FIFTH COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said LESTER STEWART and LOUIS SILVERSTEIN, on the said day, in the said year, at the City aforesaid, each did manage a certain other place, to wit: a room for gambling then and there, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

TWELFTH

ELEVENTH SIXTH COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said LESTER STEWART and LOUIS SILVERSTEIN, on the said day, in the said year, at the City aforesaid, each being then and there the owner and occupant of a certain place, to wit: a room there, did knowingly permit a gaming table other than a billiard table to be then and there kept therein for gambling thereat, then and there, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

J. Bernard [Signature]
The State's Attorney for the City of Baltimore.

3720

STATE OF MARYLAND

vs.

LESTER STEWART (C)  
and  
LOUIS SILVERSTEIN

500  
750  
2000  
5500  
B ✓

Indictment

(TRUE BILL)

*[Signature]*

Foreman.

OCT 14 1938

Filed

*M Signed for Stewart  
Non est heard*

11/16/38 - Take Bail  
in sum of \$1000.00  
pending Motion for New  
Trial as to Louis  
Silverstein

*JM*

*Stewart*

~~11/2/38 P G  
V S 30 days in jail~~

WITNESSES:

- Sgt. Amrein
- Off. Gilmore
- Off. Smallwood
- Off. Scott

*Jacob Katzman  
822 N Broadway  
132 E 2nd St  
\$2000  
\$20  
10/6/38 of 1000*

*Silverstein*

~~11/2/38 P NC  
11/16/38 C S  
12/7/38 - 30 - days in jail  
LOTTERY, ETC.~~

*Appears to let appear*

*Bail inside*

*24 6/22/38 30 days - Jail from  
as to Payments 4 to 5  
July 12, 1938  
Wm...*

12/7/38 - Bailed bail in sum of \$1000.  
pending appeal to court of appeals  
of Maryland

38  
198  
703

~~Jacob Klatzman  
822 N Broadway  
132 E 5th St  
\$2050-  
GR 25-  
12/7/38 \$1000-~~

6/22/39 Take Bail -

Sum of \$1000  
as to Louis Selverstein  
pending serving of  
sentence July 17, 1939.

Joseph N. Weman

39  
565  
114

James H. [unclear]  
522 N. Broadway

132 N. [unclear]  
& 2000-  
BL 25-

6/22/39 \$1000-

Admitted



No. 3720 Docket 1938



STATE OF MARYLAND  
vs.

# Criminal Court of Baltimore

Lester Stewart

Sept Term, 1938

**INDICTED for**

Lottery

MR. CLERK:

Enter my appearance for Defendant and summon for defense the

Witness whose names are endorsed hereon.

FILED OCT 14 1938

Maume T Siegel  
Attorney.

3720

PART 2

Criminal Court of Baltimore

PART 2

Bail

14  
10  
Louis G. & Esther Hoffman *ad ad*  
Dexter Stewart *ad ad* 1738 N. Appleton St  
1136 Etting St


Returnable

Nov Oct 24 2

to testify for

*State vs Dexter Stewart et al.*

TO THE SHERIFF OF BALTIMORE CITY.

EDWARD GROSS, Clerk

Criminal Court of Baltimore

3720

Bail

*Handwritten notes and signatures, including "James P. ..."*

*Oct 19*

Returnable  
to testify for  
TO THE SHERIFF OF BALTIMORE CITY




1938  
OCT  
27



1938  
OCT  
19

EDWARD GROSS, Clerk

3720 PART

Criminal Court of Baltimore

PART

Bail

8	Harry Berman	HP	HP	HP		10 W. Hill st
10	Louis Silverstein	HP	HP	HP		535 Dolphin st
13	Sgt Ralph Amrein	HP	HP	X		Hd qts
14	W. Ellis Gilmore	HP	HP	X		do
15	W. Owen Smallwood	HP	HP	X		do
16	Harry Scott	HP	HP	X		do
17	Nathaniel Adams	HP	HP	X		120A Penna Ave

Returnable

Nov. Oct 24 2 16

to testify for

TO THE SHERIFF OF BALTIMORE CITY.

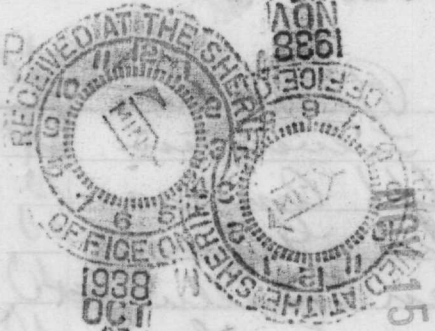
State vs Lester Stewart et al

EDWARD GROSS, Clerk

Criminal Court of Baltimore

NOV 15 1938

Bail



0519



1938 OCT 27

OCT 20 1938

EDWARD GROSS, Clerk

Returnable to testify for

TO THE SHERIFF OF BALTIMORE CITY.

No. 3720 Docket 1938

2  
24

STATE OF MARYLAND  
vs.

**Criminal Court of Baltimore**



Sous Silvester

Sept Term, 1938

INDICTED for

Lottery

MR. CLERK:

Enter my appearance for Defendant and summon for defense the

Witness whose names are endorsed hereon.

FILED.....  
**OCT 20 1938**

Maurice T Seegal  
Attorney.

STATE OF MARYLAND                                 : :                                 IN THE  
                               VS.                                 : :                                 CRIMINAL COURT OF  
 LOUIS SILVERSTEIN                                 : :                                 BALTIMORE CITY

.....  
 .....

MEMORANDUM FOR JUDGE ULMAN

The question raised by counsel for the Defendant in regard to illegal arrest, search and seizure, is partly based upon the following facts and law herewith submitted.

Very important questions were asked Officer Scott, and the questions are as follows:-

Q. And you could not tell whether or not Stewart, while writing in the book, was recording an order or was figuring up numbers as to how much Adams might have owed him in the course of a transaction with regard to groceries, or was writing lottery numbers?

A. No.

Q. And you had no way of telling at that particular time?

A. No.

The Defendant submits to the Court that in order for an arrest or search to be made at a particular time without a warrant, it becomes essential and necessary that the officer must see a violation committed in his presence or must hear of an offense being committed.

I, therefore, believe that the shouting of the words "Watch out", by the Defendant, Silverstein, is not sufficient to justify an arrest or search, and what Officer Scott saw was certainly not sufficient to justify an arrest or search, because he cannot say that a violation was being committed in his presence and he cannot say that he heard of any violation being committed in his presence.

5 Corpus Juris, p. 416, pg. 45

What Constitutes Presence or View

An offense is committed in the presence or view of an officer, within the meaning of the rule authorizing an arrest without a warrant, when the officer sees the acts constituting it, although at a distance, view of such acts as constitute reasonable grounds for arrest being sufficient. An offense is likewise deemed committed in the presence of the officer when he hears the disturbance created thereby and proceeds at once to the scene, or where the offense is continuing, or has not been fully consummated, at the time the arrest is made. He must, however, have direct personal knowledge, through sense of sight or hearing, that the offense is the act of the accused. Merely being near enough to see, but not seeing, is not sufficient, unless the failure to see is due to darkness and the lack of seeing is made up for by hearing.

5 Corpus Juris, p. 416, paragraph 46

What Constitutes Reasonable and Probable Grounds of Suspicion - (1) Arrest by Officer

While an officer may arrest without a warrant under certain circumstances, as already seen, he may not act arbitrarily, but must exercise his discretion in a legal manner, using all reasonable means to avoid mistakes. The reasonable and probable grounds that will justify an officer in arresting without a warrant one whom he suspects of felony must be such as would actuate a reasonable man acting in good faith. The rule is substantially the same as that in regard to probable cause in actions for malicious prosecution, and there is no difference in its application between arrests for felonies and arrests for misdemeanors. The necessary elements of the ground of suspicion are that the officer acts upon a belief in the person's guilt, based either upon facts or circumstances within the officer's own knowledge, or upon information imparted to him by reliable and credible third persons, provided there are no circumstances known to the officer sufficient to materially impeach the information received. It is not every idle and unreasonable charge which will justify an arrest. An arrest without a warrant is illegal when it is made upon mere suspicion or belief, unsupported by facts, circumstances or credible information calculated to produce such suspicion or belief.

24 Ruling Case Law, page 717

It is said, "An unreasonable (illegal) search is an examination or an inspection without authority of law of one's premises or person, with a view to the discovery of stolen, contraband or illicit property, or for some evidence of guilt, to be used in the prosecution of a criminal action. The right of individuals to be exempt from such searches is guaranteed by the Fourth Amendment to the Constitution of the United States, and such amendment is incorporated generally in the Constitutions of the several States. These provisions apply to all invasions on the part of the government and its employees of the sanctity of a man's home and his privacies of life. It is not the breaking of his doors and the rummaging of his drawers that constitute the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty, and private property, where that right has never been forfeited by his conviction of some public offense." For further reference, see *Week vs. United States*, 232 U.S., 383. *Boyd vs. U. S.*, 116 U.S., 616.



A search such as was made in this case implies some exploratory investigation. It is not a search to observe that which is open and patent.

I, therefore, believe that until a search was made at which time a lottery book was picked up from the floor behind the counter, that Officer Scott was not certain in his mind as to the writing of lottery numbers, and he could therefore only be certain after Sgt. Amrein picked up the book.

Cornelius on Search and Seizure  
Second Edition, Page 95

Right to arrest exists in four general cases (1) The arrest upon a valid warrant, a right so thoroughly established that no citation of authorities is required (2) When a peace officer sees either a misdemeanor or a felony being committed in his presence (3) For a threatened breach of the peace (4) When the officer has probable cause to believe that the person he seeks to arrest has committed a felony, and in some states the rule is applied to either a felony or misdemeanor (not in Maryland).

Officers should be very loath to interfere with the rights of citizens and should not arrest on mere suspicion, and wherever an arrest and consequent search of a property or vehicle is made without warrant, the Government must be prepared to show, if it expects the evidence to be admissible, that the arrest and search was not a mere exploratory enterprise for the purpose of discovery, but was based upon a sincere belief with reasonable grounds therefor that an offense had been committed by the person or vehicle arrested.

U. S. vs. Rembert  
284 Fed. 996

Agnello vs. U. S.  
269 U. S., 20

Byars vs. U. S.  
273 U. S., 28

Page 96, Paragraph 38

It is held that a crime is not committed in the presence of an officer when or that the officer detects or observes the odor of alcohol emanating from a barn and he does not know without an illegal search that the law is being violated within that structure.

U. S. Vs. DiCorvo  
37 Fed. Sec. Edition, 124

Page 98, Paragraph 40

What Constitutes Probable Cause Justifying an Arrest

The question as to what constitutes a reasonable ground for suspicion which will justify an arrest is one of no little perplexity to the legal profession and upon which there is considerable conflict.

Broadly speaking, it must be solved by the circumstances of each particular case. A mere suspicion by the officer without any bases and facts does not establish probable cause authorizing an arrest.

And the mere manner or alleged guilty looks of a party when accused of crime is not probable cause authorizing an arrest.

Sneider vs. U. S.  
235 Fed., Page 1.

The facts in this case are that the defendant about 2:00 o'clock in the afternoon of November 5, 1921, while standing in the public streets of Wheeling, West Virginia, approached by Federal prohibition officers, who observing the inside pocket of his overcoat bulging with and the neck of a bottle protruding therefrom, walked up to him, placed one hand on his shoulder and said that "he had beat him to it", lifted the bottle half-way out of pocket with the other hand, and finding it to contain a liquid of the appearance of whiskey, placed him under arrest and took him, in spite of his protest and demand for warrant to a nearby store, searched him, finding three similar bottles, containing whiskey, found guilty.

This Court said that the search and seizure was illegal and not constituting probable cause. If, therefore, the arresting officer in this case had no other justification for the arrest than the mere suspicion that a bottle containing intoxicating liquor then it would seem to follow without much question that the arrest and search without having first obtained a warrant was illegal.

If the bottle had been empty or had contained any one of a dozen innocuous liquids, the act of the officer would admittedly have been an unlawful investigation of the personal liberty of the defendant. That it happened in this instance to contain whiskey, we think, neither justifies the assault nor condemns the principal which makes such an arrest unlawful.

The Defendant cites this case to the Court, because it points out definitely that the Court said that if the bottle had been empty or had contained any one of a dozen innocuous liquids, then the act of the officer would admittedly be unlawful.

In the case at bar, the same analogy can be drawn to show that if, when the book was picked up from behind the counter, it had contained numerals, which the clerk was adding for a purchase of groceries that may have been made, then I am certain that the State would admit that the search would have been illegal. Further, if the book had contained an order, then I am certain the State's contention would be the same.

Miller vs. State,  
198 Atl., 710

- MD - April 3, 1938

The Court said that immunity against unlawful search and seizure is personal and may not be waived except by the person whose rights are affected; and that it protects not only such person's dwelling, but also any premises lawfully in his possession.

In the above case, a search was made relying upon a statute which gave the police officer the right of search, due to the fact that the premises were occupied as a tavern, and in addition to the search of the tavern, the third floor apartment of the Defendant was searched; and the Court said as above quoted, "That immunity against unlawful search and seizure is personal and may not be waived except by the person whose rights are affected". In the case at bar, Stewart, an employee in the grocery store of Silverstein, could not in any way, shape or form, waive any rights that Silverstein had, especially waive any immunity against the unlawful search and seizure that was a personal right to Silverstein.

Therefore, I sincerely believe in view of the above authorities and the facts as presented in this case, that the search was illegal because, (1) A violation was not committed in the presence of the officers, (2) That no one can waive the immunity of the Defendant, as it is a personal right.

I have been in this case a very short time and have been unable to present all of the authorities to the Court. Under the circumstances, I endeavored to do the best I could.

William Greenfeld

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State

vs  
Silverstein

could not in any way, shape or form, waive any rights that Silverstein had, especially waive any immunity against the unlawful search and seizure that the case at bar, Stewart, an employee in the grocery store of Silverstein, may not be waived except by the person whose rights are affected. In the above quoted, "That immunity against unlawful search and seizure is person and floor apartment of the Defendant was searched; and the Court said as were occupied as a tavern, and in addition to the search of the tavern the gave the police officer the right of search, due to the fact that the In the above case, a search was made relying upon a statute which lawfully in his possession.

and that it protects not only such person's dwelling, but also any premises

Filed  
18 Nov. 1938.

STATE OF MARYLAND

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IN THE

VS.

: :

CRIMINAL COURT OF

LOUIS SILVERSTEIN

: :

BALTIMORE CITY

: :

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.....

The Defendant, LOUIS SILVERSTEIN, by William Greenfeld, his attorney, moves for a new trial in the above entitled case, for the following reasons:-

1. Because the verdict is against the evidence.
2. Because the verdict is against the weight of the evidence.
3. Because of errors in the rulings and instructions of the Court.
4. Because of errors of law in the admission of evidence which should have been excluded because of an arrest, search and seizure in violation of the Defendant's constitutional rights.
5. And for other reasons to be assigned upon the hearing of this Motion.

*William Greenfeld*  
 \_\_\_\_\_  
 Attorney for Defendant.

3720/1938 ✓

IN THE  
CRIMINAL COURT OF  
BALTIMORE CITY

STATE OF MARYLAND

VS.

LOUIS SILVERSTEIN

MOTION FOR NEW TRIAL

Mr . Clerk:-

Please file, etc.,

*William Greenfeld*  
Attorney for Defendant.

WILLIAM GREENFELD  
ATTORNEY-AT-LAW  
COURT SQUARE BUILDING  
BALTIMORE, MD.

NOV 18 1938

STATE OF MARYLAND

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IN THE

VS.

: :

CRIMINAL COURT OF

LOUIS SILVERSTEIN

: :

BALTIMORE CITY

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.....

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4. Because of errors of law in the admission of evidence which should have been excluded because of an arrest, search and seizure in violation of the Defendant's constitutional rights.
5. And for other reasons to be assigned upon the hearing of this Motion.

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Attorney for Defendant.

No. 3750 Docket 1938

STATE OF MARYLAND  
vs.

**Criminal Court of Baltimore**

*2/2*

*Sgt*

Term, 1938

*Louis Albenstein*

INDICTED for

*Lottery*

Enter my appearance for Defendant and summon for defense the

MR. CLERK:

Witness whose names are endorsed hereon.

FILED *Nov 27-38*

*William Greenfield*

Attorney.



IN THE SUPREME BENCH OF BALTIMORE CITY

NO 3720, September Term, 1938.

STATE OF MARYLAND

vs.

LOUIS SILVERSTEIN

FROM THE

CRIMINAL COURT

OF BALTIMORE

Motion for a New Trial.

~~Motion in Arrest of Judgment~~

FOR VIOLATION OF LOTTERY LAWS

The above entitled cause having been duly heard and considered it is by the Court here on this third day of December A. D. 1938, adjudged and ordered that the MOTION FOR A NEW TRIAL ~~be and the~~ same is hereby overruled and that the case be remanded for further proceedings.

Samuel K. Dennis Chief Judge.

Eli Frank Asso. "

Duke Bond Asso. "

Eugene O'Dunne Asso. "

Rowland K. Adams Asso. "

Edwin T. Dickerson Asso. "

J. Abner Saylor Asso. "

Asso. "

Asso. "

Asso. "

Asso. "

True Copy  
Test:

*M Luther Pittman*

Clerk.



# Supreme Bench.

No. 3720 / 1938

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STATE OF MARYLAND

*vs.*

LOUIS SILVERSTEIN

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Order of Court.

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Filed.....day of.....19

DEC 5 1938

3720

PART 2 Criminal Court of Baltimore

226

PART 2

Bail

4	Jacob Klutzman	AW	OK			822 N. Broadway
10	Louis Silverstein	AW	OK			535 Dolphin St

Returnable 9.30 AM <sup>from</sup> Dec 7 22

to testify for state vs Louis Silverstein  
TO THE SHERIFF OF BALTIMORE CITY.

EDWARD GROSS, Clerk



STATE OF MARYLAND

: :

IN THE

VS.

: :

CRIMINAL COURT OF

LOUIS SILVERSTEIN

: :

BALTIMORE CITY

. . . . .  
.

Mr. Clerk:

Please enter an Appeal on behalf of Louis Silverstein to the  
Court of Appeals of Maryland.

*William Greenfeld*  
Attorney for Defendant

STATE OF MARYLAND )  
                                ) TO WIT:  
CITY OF BALTIMORE )

I HEREBY CERTIFY, That on this 7th day of December, 1938, before me,  
the subscriber, a Notary Public of the State of Maryland, in and for the City  
of Baltimore, personally appeared WILLIAM GREENFELD, Attorney for Louis  
Silverstein, and he made oath in due form of law that the above Appeal is not  
being taken for the purpose of delay.

AS WITNESS my hand and Notarial Seal.



*Dorothy Mc Man*  
Notary Public

3720/1938

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IN THE  
CRIMINAL COURT OF  
BALTIMORE CITY

STATE OF MARYLAND

VS.

LOUIS SILVERSTEIN

ORDER OF APPEAL

Mr. Clerk:-

Please file, etc.,

*William Greenfeld*  
Attorney for (Defendant)

WILLIAM GREENFELD  
ATTORNEY-AT-LAW  
COURT SQUARE BUILDING  
BALTIMORE, MD.

DEC 14 1938

INDICTMENT NO. 3720/1938

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STATE OF MARYLAND

VS.

LOUIS SILVERSTEIN  
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Before Hon. Joseph N. Ulman

BILLS OF EXCEPTIONS

FIRST EXCEPTION

Officer Harry Scott testified for the State and his evidence was admitted subject to exception. Officer Scott testified that he is assigned to the vice squad and works out of headquarters, and together with Sgt. Amrein and other officers, they were detailed in plain clothes, and on information went to the vicinity of No. 535 Dolphin Street which is a grocery store conducted by Silverstein. As he came in the door there were eight or ten customers, and as the witness passed Silverstein, Silverstein shouted to Stewart, "Watch out", and in about two steps the witness had approached the counter where Stewart had a lottery ~~number~~<sup>book</sup> writing a number for Adams. The witness looked at the book and didn't say anything and when Silverstein said, "Watch out", all eyes turned toward the door. Stewart took the book off the counter and dropped it under the counter. A few minutes later, Silverstein came over and asked the witness what he wanted and the witness replied he wanted to write a number. Silverstein said, "I don't write numbers". The witness said, "alright". The witness stayed in the place and Silverstein went back waiting on his customers. In the meantime, a fellow came to the door and a signal transpired between the fellow and Silverstein. A few minutes later Sgt. Amrein and the squad came in and the witness gave them the information he had obtained. He further testified that he saw Sgt. Amrein pick up slips off the floor. The store is about 12 feet wide and on the

corner of Division and Dolphin Streets. There is one door leading into the store on Dolphin Street. The store is about 25 feet long. Silverstein was standing about 8 feet from the door behind the counter at the time the witness walked in. Stewart was standing behind the short counter which is at the end of the long counter which runs along the inside wall of the store; writing on the short counter that is in the back of the store. The book was on the short counter and he was leaning over. Adams was standing in front of the short counter. Stewart was dressed in a white coat. All the papers and the book were picked up in back of the counter, ~~actually~~ <sup>practically</sup> at Stewart's feet.

On cross examination, Officer Scott testified that when he was a little past or abreast of Silverstein, Silverstein saw him and at that time the witness had a view of the hands, head and shoulders of Stewart who was writing in the book, and the only person who was near Stewart was Adams. He further testified that when the Defendant saw him he turned his head in the direction of Stewart and shouted, "Watch out"; that when he shouted, "Watch out", he could have been shouting to anybody in the store. That after Silverstein had shouted, "Watch out", Stewart looked at the front of the store and just pulled the book off and dropped it behind the counter. It is admitted that Stewart was at the time employed by Silverstein as a clerk in his grocery business.

Officer Scott was recalled for further cross examination and testified as follows:-

By Mr. Greenfeld:-

Q. Officer Scott, I don't recall whether I asked you or not, but when you were in a position to see Stewart and you saw him writing - - -

A. Yes.

Q. - - -I believe you did testify he was writing in this book (indicating), is that correct?

A. That's right.

Q. Could you tell what he was writing in the book?

A. Yes.



Q. What could you tell that he was writing in the book at that particular time?

A. Well, I will tell you. I had approached close enough to see him writing.

Q. Yes?

A. And there were numbers he was putting in the book.

Q. And could you tell -- you first didn't know Adams who was standing there, did you?

A. No.

Q. You didn't know whether Adams was a customer for a lottery slip or whether he was a customer in the store generally?

A. No, I didn't.

Q. And you could not tell whether or not Stewart while writing in the book was recording an order or was figuring up numbers as to how much Adams might have owed him in the course of a transaction with regard to groceries, could you, officer?

A. No.

MR. COULTER: We object to that, unless he adds "or writing numbers".

THE COURT: Read the question.

(NOTE: Thereupon, the above question, directed to be read by the Court, was read by the Court Stenographer.)

By Mr. Greenfeld:

Q. Or was writing lottery numbers?

A. No.

Q. And you had no way of telling at that particular time?

A. No.

Q. And it was at that particular time, I believe, officer, that the lottery book was thrown underneath the counter?

A. That's right.

Q. And then it was you called Sergeant Amrein in?

A. Well, there were a few minutes that elapsed before he came up.

Q. I believe the time that elapsed was when you went over to Mr.

Silverstein and asked him or he asked you what you were doing or what you wanted?

A. Asked me what I wanted. I stayed at the end of the counter where the book had been dropped and he came to me.

Q. And in order for you to get the book, or for Sergeant Amrein to get the book while you were there, it was necessary to go behind the counter, is that correct?

A. That's right.

**OFFICER SCOTT TESTIFIED IN REDIRECT EXAMINATION AS FOLLOWS:**

Q. Was that lottery book in Sergeant Amrein's possession before the arrest of Silverstein was made?

A. Yes, sir.

At the conclusion of the testimony the Defendant made a motion to strike out the testimony and the Court overruled the motion and granted the Defendant an exception.

#### SECOND EXCEPTION

Sergeant Ralph Amrein testified for the State and his evidence was admitted subject to exception.

Sergeant Amrein testified for the State that he works out of headquarters with the vice squad and that he made the arrest of Silverstein that morning. He went to premises No. 535 Dolphin Street after sending Officer Scott there. Due to the information he received from Officer Scott, he called Silverstein and told him that he was a police officer and that he was going to look in back of his counter, and told Silverstein what Officer Scott had told him. He looked behind the counter and found a lottery book. On one of the pages in the book, he found that lottery had been written, but it had not been finished. (Defense counsel admitted the Sergeant's qualifications to testify what was lottery.)

After he picked the book up, he showed it to Silverstein and Stewart. Along with the book he found other papers that are lottery tickets that were torn. They were laying alongside of the lottery book. In the presence of Silverstein, the Sergeant said to Stewart, "Who do you write numbers for?" And he said, "Him", pointing to Silverstein. Sergeant asked Stewart whose

book this was and he said Silverstein's.

Then Sergeant Amrein placed Silverstein under arrest. Silverstein took his coat off and laid it on the counter and the witness reached in the lower left hand pocket of the coat and brought out some lottery tickets. He asked Silverstein whether or not they were his and the answer was "I don't know nothing about them".

The witness further testified that Silverstein said he was the proprietor of the store.

*gm*  
~~Adams was searched and three lottery tickets were found in his possession. Stewart was searched and four lottery tickets were taken from him.~~

On cross examination, the witness testified that Stewart did not give any explanation about the particular tickets found in Silverstein's coat, and Silverstein said he didn't know anything about them.

The State offered in evidence Silverstein's coat, and <sup>the</sup> lottery book in which Stewart had been writing, the lottery slips taken from the pocket of Silverstein's coat and the torn lottery tickets found by Sergeant Amrein lying alongside of the lottery book.

**The** judicial notice of the Court was directed to the plea of guilty entered by Stewart, Silverstein's co-defendant in the indictment on which Silverstein was being tried.

The Defendant made a motion to exclude Silverstein's coat, <sup>the</sup> lottery book in which Stewart had been writing, the lottery slips taken from the pocket of Silverstein's coat and the torn lottery tickets found by Sergeant Amrein. The motion was overruled and exception noted.

The Defendant prayed the Court to sign this, his Bill of Exceptions,  
which action is accordingly taken this 3 day of ~~December~~ <sup>January</sup>, 1939

*Joseph Newman*  
udge.

Approved as to form:

*J. Edmund Wall*  
State's attorney.  
*William Greenfield*

Attorney for Defendant.

3250/1672

*James J. ...*

RECEIVED

3720, 1928 ✓

State

vs

Louis Severin ten

Approved as to form:

*[Handwritten signature]*  
State's Attorney

*[Large handwritten signature]*  
JAN 3 1939

JAN 3 1939

# COURT OF APPEALS OF MARYLAND

No. 16, April Term 1939

Louis Silverstein,  
vs.  
State of Maryland.

Appeal from the Criminal Court  
of Baltimore City.  
Filed: February 4, 1939.  
May 17, 1939, Judgment affirmed, with  
costs.  
Opinion filed. Op.- Parke, J.

## Appellant's Cost in the Court of Appeals of Maryland,

Record . . . . .	\$ 30.00	
Brief . . . . .	\$ 19.00	
Appearance Fee . . . .	\$ 10.00	
Clerk's Costs . . . . .	\$ <u>2.00</u>	\$61.00

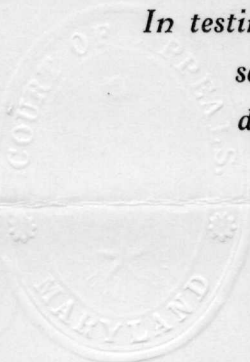
## Appellee's Cost in the Court of Appeals of Maryland,

Brief . . . . .	\$ 25.50	
Appearance Fee . . . .	\$ 10.00	
Clerk's Costs . . . . .	\$ <u>.75</u>	<u>36.25</u> \$97.25

## STATE OF MARYLAND, Sct:

I, James A. Young, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this ----- seventeenth ----- day of ----- June ----- A. D. 19 39



*James A. Young*  
Clerk  
of the Court of Appeals of Maryland.

3720/1938

Stue

vs

Louis Swinsten

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Mandate

of the

Court of Appeals of Maryland

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Judgment affirmed  
with costs.

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JUN 19 1939