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Police Science Notes

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POLICE SCIENCE NOTES*

Document Examination—Handwriting Examination, Etc., in Election Fraud Cases—The Supreme Court of Illinois recently had occasion in *People v. Fedele*, 10 N. E. (2d) 346 (Ill., 1937), to pass upon the admissibility of the following type of evidence in a prosecution for election fraud practices: A handwriting expert called by the prosecution testified that, in his opinion, "certain cross-marks were made by a different person than the one who marked the remainder of the ballot." The expert also testified as to certain erasures and substituted crossings on various ballots. He further testified that indentations on the reverse side of various ballots indicated that the cross-marks were made on these ballots while they were on top of other papers, which could not have occurred had the ballots been marked in the ballot booths since the shelves in the booths were made of metal and the voter could write or make a cross upon a single piece of paper on top of the metal surfaces and no such indentation or mark would appear on the reverse side of the paper. To all this evidence the defendants objected on the ground that this testimony constituted an invasion of the province of the jury. To this contention the Supreme Court, in upholding the conviction, said: "The witness merely stated his opinion as to a fact and the jury were free to accept it for what it was worth. The province of the

jury was in no manner invaded."

In this connection see the following article pertaining to the subject matter concerned in this case: "Documentary Evidence Involved in an Election Dispute (Indentations and Embossed Cross Marks on Ballots)," by Katherine Keeler, 27 J. Criminal Law and Crim. 249-263 (1936).

The Extent and Scope of Expert Testimony—In *State v. Brown*, 70 Pac. (2d) 147 (N. M., 1937), the Supreme Court of New Mexico gave a very interesting definition of the extent and scope of expert testimony generally. The case itself involved a prosecution for cattle stealing in which expert testimony was introduced regarding the changing or burning of brands on cattle. In his objection to the admissibility of expert testimony on this subject the defendant urged that the jury were as well circumstanced as the expert witness to determine from an examination of the hides whether or not the brands had been mutilated. To this objection the appellate court said: "It is well settled that expert testimony is admissible when the subject matter of the inquiry is of such a character that only persons having skill and experience in it are capable of forming correct judgment as to any facts connected therewith, and *expert testimony is not confined to specified professions, but is applicable where par-*

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tical skill applied to a practical problem is necessary to explain results." (Italics added.)

Admissibility of Wire Tapping Evidence—The Federal Circuit Court of Appeals (2nd Circuit), in *U. S. v. Nardone*, 90 Fed. (2d) 630 (1937), recently upheld the admissibility of evidence obtained by means of wire tapping. In doing this, of course, it merely followed the precedent set by the Supreme Court of the United States in *Olmstead v. U. S.*, 277 U. S. 438, 48 Sup. Ct. 564, 72 L. Ed. 944, 66 A. L. R. 376 (1928). In addition to the general objection as to the use of this evidence, the defendants contended that since the government agents who intercepted the messages by this means were unable to testify that they took down verbatim all that was said the portions of the messages were therefore inadmissible. The court found no merit to this contention.

Firearms Identification—Testimony as to Similarity Between Expert's Technique and That Accepted by Authorities in the Profession—Firearms Identification Generally—In the recent case of *State v. Dallao*, 175 So. 4 (La., 1937), it was held proper for an expert to state by way of his qualifications the similarity between his technique used in the identification of firearms and that used by others accepted as authorities in this field.

The following are two recent decisions concerning the identification of firearms generally: *Riner v. State*, 176 So. 38 (Fla., 1937), and *People v. Richardson*, 297 N. Y. Supp. 514 (Sup. Ct., App. Div., 3rd

Dept., 1937). In the latter case the court in a three to two decision affirmed a conviction based partly on the identification of the defendant's pistol as the one used in the commission of the crime, by finding that this evidence, together with certain other facts in the case, was sufficient to sustain the conviction.

Personal Identification—The High Court of Australia in the recent case of *Davies & Cody v. The King* (1937), reported in 11 Australian Law Journal 70 and commented upon editorially at page 39, reversed a murder conviction where among other objectionable features of the case the accused persons were observed singularly by identifying witnesses rather than as one of a group. The High Court held that the view accepted in England and elsewhere in the Dominions should be applied in Victoria, Australia. That view is as follows: "If a witness, whose previous knowledge of the accused man has not made him familiar with his appearance, has been shown the accused alone as a suspect and has on that occasion first identified him the liability to mistake is so increased as to make it unsafe to convict the accused unless his identity is further proved by other evidence, direct or circumstantial."

Photography—In *State v. Weitzel*, 69 Pac. (2d) 958 (Ore., 1937), which involved a prosecution for sodomy, it was held proper to admit a photograph of the prosecutrix showing her condition on the morning after the assault in question.