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Police Science Notes

POLICE SCIENCE NOTES*

Scientific Determination of Alcoholic Intoxication—The Supreme Court of Arizona in the recent decision of *State* v. *Duguid*, 72 Pac. (2d) 435 (Ariz., 1937), had occasion to pass upon the admissibility of the results of a urine analysis made for the purpose of determining whether the defendant was under the influence of intoxicating liquor while driving upon the public highways of Arizona, as was charged by the State in its prosecution for the offense.

After the defendant's arrest he was taken to a clinical laboratory where a physician made a chemical analysis for ethyl alcohol in the defendant's urine, a specimen of which he furnished the doctor. Upon the trial the physician testified as to the results of the analysis. The defendant objected, and contended that the admission of this evidence compelled him to give evidence against himself in violation of his constitutional privilege against self-incrimination. The evidence introduced at the trial indicated that the urine specimen was given upon request. Upon appeal the Supreme Court of Arizona ruled adversely to the defendant's contention. The opinion of the appellate court stated: "This evidence shows respondent acted under no compulsion but freely and voluntarily. Under such circumstances there can be no doubt of the admissibility of the doctor's findings. The fact that the respondent may not have known why he was asked to give (the doctor) a sample of urine will not render the doctor's analysis inadmissible."

According to the doctor's testimony the analysis of the defendant's urine indicated the presence of "two milligrams of ethyl alcohol per cubic centimeter of urine." The doctor explained how this much alcohol would affect a person: "There are four ordinary standards which we use to determine drunkenness, depending upon the amount of alcohol which we recover in the urine or blood. This ranges from one to four or five milligrams per cubic centimeter. One milligram, a patient may be drunk, but decently so. Two milligrams, distinctly drunk. Three milligrams, usually drunk and disorderly. And four milligrams or more, dead drunk."

In connection with this decision the reader is referred to the following article which appeared in a previous issue of this Journal, and particularly to that section of the article dealing with the admissibility in evidence of the results of tests for alcoholic intoxication: Inbau, F. E., "Self-Incrimination—What Can an Accused Person Be Compelled to Do?", 28 J. Criminal L. and Crim. 261-93 at pp. 288-293 (1937).

Photography — Admissibility of Sound Movie of Accused Person Making a Criminal Confession—During the course of the trial of *People* v. *Hayes*, 71 Pac. (2d) 321 (Cal. App., 1937), involving a prosecuting for

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manslaughter, the court permitted a sound motion picture of the defendant making a confession to be received as competent evidence.

In objecting to the admissibility of this evidence the defendant contended that it constituted a violation of his right to be confronted by witnesses against him; of the right to cross-examine the witnesses who testified against him; of the privileges and immunities secured to him by the constitution of the state of California; and further, that the sound movie constituted "unsworn testimony, hearsay evidence, compelled him to be a witness against himself, and deprived him of due process of law."

In approving of the trial court's ruling in admitting this evidence the appellate court said: "If after a preliminary examination, the trial judge is satisfied that a sound moving picture reproduces accurately that which has been said and done, and the other requirements relative to the admissibility of a confession are present *i. e.*, it was freely and voluntarily made without hope of immunity or promise of reward, then, not only should the preliminary foundation and the sound moving picture go to the jury, but in keeping with the policy of the courts to avail themselves of each and every aid of science for the purpose of ascertaining the truth, such practice is to be commended as of inestimable value to triers of fact in reaching accurate conclusions.

"This particular case well illustrates the advantage to be gained by courts utilizing modern methods of science in ascertaining facts. The objection is frequently heard in criminal trials that a defendant's confession has not been freely and voluntarily made, he testifying that it was induced either by threats or force or under the hope or promise of immunity or reward, which is denied by witnesses on behalf of the People. When a confession is presented by means of a movietone the trial court is enabled to determine more accurately the truth or falsity of such claims and rule accordingly."

Admissibility of Wire Tapping Evidence—The Supreme Court of the United States on Dec. 30, 1937, in the case of *Nardone* v. *U. S.*, 58 Sup. Ct. 275, 82 L. Ed. 258, reversed a decision of the Federal Circuit Court of Appeals and held, contrary to the Circuit Court's ruling, that the evidence obtained by federal officers in this case involving a tapping of telephone wires carrying interstate messages was inadmissible. (The decision of the Circuit Court of Appeals was noted in the last issue of this Journal.)

The Supreme Court held (with two justices dissenting) that in view of the provisions of the Communications Act of June 19, 1934, no evidence procurred by a federal officer in tapping interstate telephone wires could be used in a criminal prosecution. Section 605 of the Communications Act provides that no person who, as an employee, has anything to do with the sending of any interstate communication by wire shall divulge or publish it or its substance to anyone other than the addressee or his authorized representative, or to authorized fellow employees, save in response to a subpoena issued by a court of competent jurisdiction, or on demand of other lawful

authority; and that no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication to any person. In interpreting this provision Justice Roberts stated in the Supreme Court's opinion: "Taken at face value the phrase 'no person' comprehends federal agents, and the ban on communications to 'any person' bars testimony to the contents of an intercepted message." The government had contended that Congress did not intend to prohibit authorized federal agents from tapping telephone wires to procure evidence. But the Court said: "We nevertheless face the fact that the plain words of Section 605 forbid anyone, unless authorized by the sender, to intercept a telephone message, and direct in equally clear language that 'no person' shall divulge or publish the message or its substance to 'any person'."