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Police Science Notes

POLICE SCIENCE NOTES*

Admissibility of Recorded Wire Tapping Evidence—The Supreme Court of Minnesota in the recent decision of *State* v. *Raasch*, 275 N. W. 620 (Minn., 1937) upheld the admissibility of a recording of wire tapping evidence. Because of the importance of this decision in the field of police science, the following excerpts from the court's opinion are here reproduced:

"Upon examination of the record we find that the witnesses who testified to the transcribing of the telephone conversations upon the pamograph records sufficiently identified the defendant's voice. True, they did not know his voice at the time they started making the records, but not only did the defendant respond to his name when his office was called on the telephone, but after the making of the records these witnesses saw the defendant and heard him talk repeatedly, so at the time they testified they were able to testify positively that the voice they had heard over the telephone at the time the pamograph records were taken was the defendant's voice. They also recognized and identified the voices of other participants in the conversations who were identified with the gamblers. They said that the conversations they heard were truly recorded by the pamograph and truly reproduced by that instrument in court. In our opinion this was a sufficient identification of the defendant as a participant in the conversations, and laid a sufficient foundation for the introduction of the pamograph records. *Davis* v. *State*, 200 Ind. 88, 161 N. E. 375, 382.

"For the convenience of court and counsel, the recorded conversations were transcribed in typewritten form and were used to follow the conversations as they were reproduced by the pamograph in court. The pamograph was equipped with a sufficient number of headsets so that the jury, court, and counsel could listen to the record while the conversations were being reproduced. At times the court did not use the headset which was provided for it, but, in the presence of jury and counsel, followed the typewritten transcript. Objection was made by the defendant to the court not listening through the headset. While it would have been preferable for the court to have listened, we do not think there was any prejudice to the defendant in its not doing so. The jury and counsel for both parties heard the conversations as reproduced, the court was at all times present and in control of the trial, and had any objection been made or question raised it could have acted. There were occasions upon the trial when the needle of the reproducing mechanism jumped from one groove of the record to another, thus omitting a part of the conversation, but in such cases the record was played over and the whole conversation reproduced. The typewritten transcripts were not introduced, but used as memoranda to refresh the memory of

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the witnesses who had heard the conversations that were recorded. In each instance they were checked back against the pamograph records. We think their use was not prejudicial.

"The fact that there was no record made of those parts of the telephone conversations which related to subjects other than those of which the defendant stands here accused did not render the relevant part of the conversations inadmissible. The operators of these machines were informed as to the nature of the conversation which they were asked to record, and so when the conversation began to relate to other subjects they did not record it. If there was further conversation which the defendant thought bore upon the matter, he was, of course, perfectly at liberty to show it by the other party to the conversation if he did not care to go upon the stand."

Blood Grouping Tests—Paternity Determinations — Effect of Expert Testimony— Two very interesting decisions were rendered recently by the California Supreme Court and by the District Court of Appeals. In the case of *Arais* v. *Kalensnikoff,* 74 Pac. (2d) 1043 (Calif., 1937) an interesting and important question arose regarding the utilization of the results of blood grouping tests in a paternity determination. At the trial the results of the test were admitted and they indicated the impossibility of the defendant's being the father of the child in question. Nevertheless, because of other evidence introduced at the trial the court found in favor of the plaintiff. Upon appeal to the Second Appellate District Court the case was reversed and for the following reasons as they appear in the appellate court's opinion:

"Is there substantial evidence in the record to sustain the finding of the trial court that defendant is the father . . . ?

"The question must be answered in the negative. The law is settled that courts will take judicial notice of all matters of science and common knowledge. . . . It is likewise settled that it is not the province of this court to decide disputed questions of fact, and we are bound to give plaintiff the benefit of all favorable inferences which may be drawn from her testimony and that of other witnesses; yet we are not required to believe what physical facts demonstrate to be untrue or that which is contrary to immutable physical laws. . . . Hence a finding of fact based solely upon the testimony of a witness contrary to a scientific fact will be set aside by this court on appeal as not supported by substantial evidence.

"Applying the foregoing rules to the instant case, we take judicial notice of the Landsteiner Blood Groupings and the results derived therefrom upon test.

"In passing, our research discloses that the blood-grouping test requires only a few drops of blood, is painless and in no way is prejudicial to health. Therefore, since the charge of paternity is one easy to make and very difficult to disprove, it would tend to simplify this problem . . . ."

An appeal was then taken to the Supreme Court of California which sustained the trial court's decision and for the following reasons as stated in the Supreme Court's opinion:

"Whatever claims the medical profession may make for the test, in California 'no evidence is by

law made conclusive or unanswerable, unless so declared by this code.' Section 1978, Code Civ. Proc. . . . The law makes no distinction whatever between expert testimony and evidence of other character. . . . Although it encourages the demonstration of the truth of the issues before a court by any means which are generally accepted as tending to prove the facts in dispute, 'when there is a conflict between scientific testimony and testimony as to the facts, the jury or trial court, must determine the relative weight of the evidence.' Parentage is not exclusively a subject of expert evidence. The trial judge heard the testimony of the mother of the child and the witnesses who corroborated her concerning the numerous visits of the appellant to her house, and his actions with the child. The admissions of the defendant as related by these witnesses are also a part of the evidence. It was the duty of the judge to determine the fact of parentage upon all this evidence and to resolve the conflict arising from the testimony of the mother and her witnesses on the one hand and the evidence of the defendant, including the blood test, on the other. The finding so made was based upon substantial evidence and may not be successfully challenged upon appeal."

Firearms Identification—Qualifications of Expert Witness— In the case of *State* v. *Couch,* 111 S. W. (2d) 147 (Mo., 1937) an expert witness testified to the effect that various shells were fired from certain guns in evidence, which testimony served to secure a conviction against the defendant. Upon appeal the defendant contended that since the witness was not a "ballistic expert" he should not have been permitted to testify. To this objection the Supreme Court of Missouri said:

"The witness did testify that he was not a ballistic expert, but that he had much experience in the work of identifying firearms; that the term "ballistic expert' did not apply to his line of work. In this the witness may be technically correct. But, be that as it may, the witness' testimony disclosed that he was an expert in the identification of firearms and bullets by the comparison method by means of a microscope. The method used in this case to identify the shells and revolvers was similar to the method employed in the case of *State* v. *Shawley,* 334 Mo. 352, 67 S. W. (2d) 74. The question was there fully considered and it was held that the witness was qualified to testify. The rule is now well settled that such evidence is competent and may be considered by the jury in arriving at a verdict."

Firearms Identification — Expert Testimony as to the Distance a Fired Shell Had Been Ejected— In the case of *Commonwealth* v. *Peronace,* 195 Atl. 57 (Pa., 1937) an expert testified that a revolver such as that used by the defendant would throw shells a certain distance (8 feet) if held in a normal position. To this testimony the defendant objected because "there was no specific evidence to show that appellant held the gun in a normal position." Upon appeal from the trial court's conviction the Supreme Court stated that "In the absence of evidence to the contrary, appellant having admitted firing the gun, the jury could infer that he held it in a normal position."