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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

John E. Reid

Police Officer as an Expert Witness

In the case of *Commonwealth v. Capalbo*, 34 N.E. (2d) 225 (Mass., 1941), involving a murder prosecution, the trial court allowed a police officer to testify that he examined and determined the percentage of alcohol present in the brain, blood, and stomach contents of the deceased. The trial judge admitted the testimony of the policeman who stated in his qualifications that since leaving college in 1923 he had been working as a biologist and chemist in the Boston Police Department in conjunction with the Medical Examiner. He claimed to have worked on more than one hundred and forty cases for this Department on problems relating to toxicology and on many occasions had testified as an expert. The records of the trial did not indicate

that the defendant questioned the qualifications of this officer.

Upon appeal by the defendant the Massachusetts Supreme Court held: "The decision of the trial judge can determine in the first instance, whether the witness possesses the qualifications adequate to enable him to testify as an expert. This decision is conclusive, unless it appears upon the evidence to be erroneous as a matter of law." This decision substantiated the ruling of the Indiana Supreme Court in the case of *Pettibone v. Howard*, 34 N.E. (2d) 12 (1941), where the court stated: "The qualifications of a witness as an expert is a question for the trial judge in the exercise of reasonable discretion."

Evidence Obtained from Autopsy to Disprove Claim of Self-Defense

In the same case, *Commonwealth v. Capalbo* (supra), the defendant in this murder prosecution claimed self-defense. He stated he was attacked by the deceased with a knife, and he had to shoot the deceased to protect his own life. The knife, contended to have been used by the deceased as an attacking weapon, was found some distance away from the scene of the shooting. The Medical Examiner, who performed an autopsy, described the course of the bullet fired by the defendant and the resulting damage to the brain of the deceased. He further testified that the bullet destroyed a large part of the

motor tract, with the immediate effect upon the victim having been an instant collapse; inability to walk, move, or stand; followed by a flaccid collapse and then a flaccid paralysis, continuing until death; and that anything which he held in his hand would have dropped as the victim relaxed and fell.

The Supreme Court affirmed the holding of the Trial Court that self-defense was a fabrication, because by the testimony of the Medical Examiner the knife would have dropped from the victim's hand and would have been found in close proximity to his fallen body.

Ballistics Expert Required to Answer Hypothetical Question

In the case of *Phillips v. People*, 110 Pacific (2d) 977, a Colorado case, an admitted ballistics expert was asked on the witness stand to answer this question: "Assume that the bullet in question was discharged from this gun at about fifteen feet from the victim whose arm it penetrated, and some further distance (about two to six feet) it struck the side of a very hard stone wall at an angle of about 45°, what would be the condition of the bullet, as compared to the bullet you see in these X-ray pictures?"

Objection was made that the witness was not qualified as an expert to interpret X-ray pictures. The Supreme Court of Colorado held that such qualifications were not necessary and stated that any layman would know that a lead bullet fired from a rifle, and striking a stone wall, would be flattened. The witness was not asked to interpret the X-ray picture but simply to make a comparison with what he saw and the bullet mentioned in question.