

1947

Police Science Legal Abstracts and Notes

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Police Science Legal Abstracts and Notes, 38 J. Crim. L. & Criminology 86 (1947-1948)

This Criminology is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

Joel W. Townsend*

Sound Recording of Defendant's Confession Admissible for Playback to Jury—In the case of *State v. Perkins*, . . . Mo. . . ., 198 SW (2nd) 704 (1946) (rehearing denied Jan. 1947), the defendant, while in custody on a rape charge, made an oral confession, and was identified at the police "show-up" by the prosecutrix and her parents. He was then taken to a police laboratory, placed before a microphone, and informed that a recording was to be made of his conversation with a police officer. He proceeded to describe the crime in detail, and shortly thereafter signed a written confession. At his trial the recording was "played to the jury," and his written confession received in evidence. He was convicted of rape and sentenced to death. On appeal the Supreme Court of Missouri sustained the trial court's ruling admitting the confessions in evidence.

Since no precedent in its own jurisdiction aided the court on the question of the admissibility of the phonographic recording, it examined and relied upon a number of related decisions in other states and upon prominent legal writers. *Commonwealth v. Clark*, 123 Pa. Super. 277, 187 A. 237, 240, a bribery case, held that *secretly made* records of conversations with the defendant were properly "played in the presence of the jury." In *People v. Hayes*, 21 Cal. App. (2nd) 320, 71 P. (2nd) 321, 322, a talking motion picture of defendant making a confession was shown to the jury. The test applied there was that if the trial judge, after a preliminary examination, decides that the picture reproduces accurately that which has been said and done it may go to the jury.

Wigmore, in the 1943 pocket supplement to Wigmore on Evidence, p. 32 §852, suggested a mechanical means of verifying all contested confessions, by a rule of court requiring that all oral confessions "must be recorded on a sound film . . . showing the place, the date and hour, the names of every person present, and all statements made by any person present." The court concludes its survey of applicable authorities by citing *Commonwealth v. Roller*, 100 Pa. Super. 125, and *Commonwealth v. Allbright*, 101 Pa. Super. 317. Both cases express the attitude of progressive courts in accepting and making full use of scientific knowledge and devices for the accurate recording of facts.

The Right to Handcuff a Defendant During His Trial—Prior to his present murder trial in the case of *Tunget v. Commonwealth*, Ky. . . . ; 198 S W (2nd) 785 (1946) (rehearing denied Feb. 7, 1947), the defendant had been convicted of another murder and was sentenced to the penitentiary for life. After serving eight months of his sentence he attempted an escape, shot and killed a warden and wounded a guard. He was convicted of murdering the warden and received a death sentence. On appeal the defendant contended that

* Senior Law Student, Northwestern University School of Law.

being handcuffed throughout his trial prejudiced his substantial rights and was therefore reversible error. The Kentucky Court of Appeals promptly disposed of the defendant's claim by holding that the trial court exercised sound discretion in dealing with a man of such demonstrated desperation, and that although a court would not be justified in allowing such a practice in one murder case out of an average hundred, this case was a clear exception to the rule.

Proper Attire for a Defendant on Trial—In the murder case of *Eaddy v. People*, Col., 174 P. 2d 717 (1946), the defendant, a colored soldier in the United States Army at the time of his arrest, was brought into court wearing striped coveralls with the words "County Jail" written in large letters across the back. The defendant's objection to this garb and his request that the court direct the officer to return him to the courtroom properly attired were overruled. The defendant was convicted of murder in the first degree and sentenced to life imprisonment. Upon appeal to the Supreme Court of Colorado, the court held that although the matter of proper clothing for a defendant should be left within the sound discretion of the trial court, compelling him to wear clothing throughout his trial bearing the words "County Jail" in large letters was an abuse of discretion. The court stated that the defendant as a member of the armed forces was entitled to wear his uniform during the trial even though it might have created a prejudice in his favor (as by the same logic the garb in which he was required to appear might create a prejudice against him). The court was of the opinion that the mind of a prisoner would be as much disturbed, and his mental faculties as much confused and embarrassed, by carrying on his person such a brand of incarceration as here required, as by physical shackles, and that a prejudice against a prisoner might equally well be created thereby in the minds of the jurors. The court concluded that the presumption of innocence requires the garb of innocence, and every defendant is entitled to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man, except as the necessary safety and decorum of the court may otherwise require.

Is an Expert Witness Qualified to Give an Opinion in Reference to a Problem Which He Has Never Before Encountered?—In the case of *Commonwealth v. Bellino et al.*, Mass., 71 N.E. 2d. 411 (1947), the defendants were indicted for murder in the first degree and upon trial both were found guilty and sentenced to death. (The defense had been that the deceased attacked them and that defendant Bellino had shot in self-defense.) One of the errors assigned on appeal was the admission in evidence of the testimony of a practicing surgeon that "speckles" observed by him outside the wound made by the bullet fired into deceased's bare back, and a black appearance under the skin, were due to powder and that the muzzle of the gun was directly on the deceased's skin when the bullet was fired. The surgeon had been a medical examiner for fifteen years, operated on persons with gun shot wounds, looked at bodies of persons dying from bullet wounds, and examined bullet wounds in bare parts of victim's bodies. But the defendant objected to his qualifications for

the reason that the surgeon had never seen a wound from a bullet fired at close range that had not passed through clothing.

The Supreme Judicial Court of Massachusetts, in affirming the convictions, held that even though the presence or absence of clothing might affect the appearance of a wound, the professional experience of the witness placed him in a better position than the average jurymen to form conclusions as to the position of the gun when the bullet was fired. The court stated that a witness' training and experience may well qualify him to give an opinion in reference to a problem which he has never before encountered in precisely the same form, and that the conclusion of the trial judge that a witness is competent to express an opinion upon a particular matter can be disturbed only where there is no evidence to warrant that conclusion.
