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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Admissibility of Results of Chemical Test of Defendant's Hands Indicating Presence of Blood Stains—In a recent murder trial in Massachusetts the sole issue was the identity of the perpetrator of the slaying of an aged caretaker in a wayside diner. The state's case against the nineteen year old defendant was wholly circumstantial and as the appellate court in its affirmance admitted, "might well have been stronger." Only the most tenuous connection was established between the accused and the sordid crime, based on an admission the defendant had made to a friend on the night of the killing. No fingerprints were found, nor blood on the defendant's clothing, nor was the defendant's conduct subsequent to the date of the crime inconsistent with his innocence. Yet the verdict of the jury was upheld largely on the basis of the testimony of a chemist as to the results of a benzidrene reagent test made on the defendant's hands three days after the crime. According to this witness, blood will seep down into the pores and crevices of the skin and withstand washings for as long as five days. It was contended by the defense that an identical blue reaction could be produced on someone who had come in contact with plant tissues, and more cogently, that the blood could have come from any number of sources, even from the accused himself. The Supreme Judicial Court nevertheless held the test results competent evidence. *Commonwealth v. Moore,* 80 N. E. (2d) 24 (Mass., 1948).

Mode of Proof in Prosecution for Falsely Impersonating a Police Officer—On the appeal in *Taylor v. United States,* App. D. C. 1948, No. 9697, the Government attorneys were sharply reprimanded by Judge Clark for their failure to affirmatively show that the defendant in the impersonation proceeding below was in fact not a police officer. The "easy and conventional" manner of proving such crimes, according to the Court of Appeals, is to put the officer in charge of the official rolls and records on the witness stand and have him testify from them whether the defendant was at the time a member of the force. However, even in view of this failure of proof, the verdict of conviction was affirmed on the basis of the established principle "that where defendant is charged with falsely pretending to be an officer of the United States, and he fails to produce evidence showing he was such an officer, the presumption arises that the evidence, if produced, would have been unfavorable to defendant." This inference from inaction on the part of the defense was supported by evidence that at the time of arrest the defendant had not once offered to produce credentials, was without a badge, and attempted to escape when his thin guise of authority was stripped from him.

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Chief of Police Must Qualify as an Expert Before Testifying on Operation of a Handbook—In a trial of a gambling charge without a jury, the state called the chief of police to the stand and without testing his competency as to the lore of horse-racing nor demonstrating his personal knowledge of the facts, proceeded to have the chief identify certain racing forms, tickets and other paraphernalia commonly used in the operation of a handbook which were seized at the time of defendant's arrest. Defense counsel objected throughout to the effect that the witness had not been qualified as an expert and was not stating even the source of his information or the basis of his opinions. Upon conviction and appeal therefrom, a majority of the Supreme Court of Louisiana thought these objections well taken and remanded the case for a new trial. A comparison of the majority and two dissenting opinions reveals interestingly the wholly subjective nature in close cases of the distinction, carefully observed in the law of evidence, between matters of fact and opinion. To the judges of the majority, the questions propounded to the chief involved "knowledge obtained only by means of special training or experience." The terms employed "are not matters of common knowledge" and required elucidation by an expert. On the other hand, the seized documents held no mystery for the dissenting judges. Because the documents "spoke for themselves," the chief when identifying them was testifying as to facts and not giving his conclusions based on some special learning. Analogizing, one judge said, "One does not have to be an experienced gambler to testify that a poker chip is a poker chip, and to explain how it is used in the game. These articles involved here . . . are not unusual things about which the public in general is totally ignorant. The Daily Racing Form may be purchased at any news stand." *State v. Damico,* 35 So. (2d) 654 (La., 1948).

Criminatory Admission During Illegal Detention of Motorist Validates Subsequent Seizure of Contraband—The question decided in *Brinegar v. United States,* 165 F. (2d) 512 (C. C. A. 10th, 1948), was whether an equivocal or vaguely incriminating statement made by the accused during the progress of a concededly unlawful search of himself and his car could be used to furnish the "probable cause" needed to validate the otherwise invalid seizure of contraband therein. After being stopped and arrested on the basis of little or no reliable evidence, the officers inquired of defendant as to how much liquor he was carrying, as to which he replied, "Not too much." Purporting to rely on this admission, the officers then searched the trunk and indeed found a copious supply of whiskey. The majority of the Circuit Court of Appeals felt that the only test to apply under the circumstances was one of voluntariness, viz., whether under the so-called Federal rule of confessions the statement by itself would have been admissible in a criminal trial. As no coercion of the defendant was proved the conviction based upon the evidence thus obtained was affirmed. *Writ of certiorari* has been granted by the United States Supreme Court. (16 L. W. 2300).

The Right to Counsel in Probation Revocation Proceedings—Where there is a strongly contested issue of fact in a probation revocation proceeding as to identity of the person who committed the crime with which defendant is charged, the Illinois Appellate Court holds that the probationer has the right to procure his own counsel or, if unable, to have a public defender appointed to assist him in cross-examining the accusing witnesses. In the case under scrutiny the state had contended that the probationer had stolen a woman's purse on a street car, thus warranting revocation of probation. Defendant denied having been on the car and having taken the purse. Certain facts brought to light gave strong credence to his assertions. He requested that he be allowed counsel to more effectively present his defense. On review of the order of revocation, the court expressed some doubts as to the substantiality of the evidence linking defendant to the purse-snatching charge, observing that although under the Probation Act a violation need not be proved beyond a reasonable doubt, still any showing less than the most convincing proof on the issue of identity "would not satisfy the requirements of justice." On the issue as to whether counsel is requisite to defend against a charge of probation violation, the court said: "We are not unmindful of the rule set forth in *People v. Foster,* 394 Ill. 194, 68 N. E. (2d) 252, aff'd 332 U. S. 134 [holding that a trial court need not apprise the accused in a non-capital criminal trial of his right to counsel]. The record before us plainly indicates that the defendant wanted an attorney and thought he had one. We think that justice required that he be given some opportunity to determine whether he had an attorney and if he did not have one, to obtain one. On the other hand, if, for some reason, the court did not see fit to continue the hearing, the defendant should have been offered the service of the Public Defender." *People v. Burrell,* 79 N. E. (2d) 88 (Ill. App., 1948). (Regarding revocation of parole proceedings generally, see Vol. 37 of this *Journal* at p. 308.)

Evidence Illegally Seized Admissible for Purposes of Revoking Suspended Sentence—Whereas the court in the preceding case seemed to recognize the substantial equivalence between a hearing on charges of violation of probation and an ordinary criminal trial so far as fairness to the accused is concerned, the Florida Supreme Court in *Brill v. State,* 32 So. (2d) 607 (Fla., 1948), held the two types of proceedings distinguishable on the question of whether evidence ordinarily inadmissible could be considered by the judge in a revocation hearing. After the defendant had been arrested on the basis of information that he was again engaged in "moonshining" operations, agents raided his home without a warrant and seized a still therein. This evidence was subsequently judicially suppressed when the state threatened to prosecute anew. However, when the defendant was brought before the court for hearing on the charge of violating the "good behavior" condition of his suspended sentence on a conviction eight years before, the judge ruled the seized articles admissible for the purposes of that particular hearing. The Florida Supreme Court confirmed this ruling, saying: "Such hearings are informal and do not take the course of a regular trial, nor does the evidence have the same objective as that taken at a regular trial. Its purpose is to satisfy the conscience of the court as

to whether the condition of the suspended sentence has been violated. A second purpose is to give the person accused a chance to explain away the accusation, but even this does not contemplate a strict or formal trial . . . information as to whether a suspended sentence for selling moonshine liquor has been violated is different in category from evidence appropriate to convict one of a crime."

The Confession Dilemma in the United States Supreme Court—An article bearing the foregoing title appears in the current (September-October) issue of the *Illinois Law Review.* The author is Fred E. Inbau, Professor of Law, Northwestern University.

Mr. Inbau's article discusses the development of the present Supreme Court's attitude regarding the admissibility of confessions in federal and state cases. It deals specifically with the problem now before the Supreme Court in *Upshaw v. United States,* 168 F. (2d) 167, 68 S. Ct. 1505, in which the Court is faced with the dilemma it created for itself by the *McNabb* and *Mitchell* case decisions (318 U. S. 332; 322 U. S. 65). The article also presents for the Court's consideration an extensive discussion of the practical police difficulties regarding the matter of confessions. Mr. Inbau suggests that the Court's best way out of the dilemma is to overrule the *McNabb* case. (Copies of the Review may be secured from the office of the *Illinois Law Review,* 357 East Chicago Avenue, Chicago 11, Illinois, at a cost of $1.00.)
