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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Admissibility of Scientific Evidence of Alcoholic Intoxication where Specimen of Blood Obtained without Defendant's Knowledge—The defense of privilege against self-incrimination in connection with an intoxication test was the subject of controversy in *People* v. *Tucker* (California, 1948) 198 P. (2d) 941. Defendant was taken to a hospital following an automobile accident. A sample of his blood was obtained without his knowledge and tested for alcoholic content. In a criminal prosecution for violation of a section of the Vehicle Code pertaining to injuring while intoxicated, the doctor was permitted to testify, over defendant's objection, that the blood contained an alcoholic content of 3.5 milligrams of alcohol per c.c. and that such amount of alcohol indicated a definite degree of intoxication. Defendant was convicted, and he appealed.

The California District Court of Appeal, while citing no California case directly in point, concluded that the admission of testimony concerning the blood test was not error and did not violate defendant's right against self-incrimination. There is no clear indication whether the decision rested on the defendant's lack of objection at the time of the test (he was apparently unconscious) or on the assumption that a forced physical disclosure never violates the rule against self-incrimination. Although there is some language in the court's opinion which indicates that if a defendant objected to the taking of the specimen the results of the test might be inadmissible, the court cited *People* v. *One 1941 Mercury Sedan,* 74 Cal. App. (2d) 199, 168 P. (2d) 443 (1946), with approval. In that case a defendant was forced to allow his stomach to be pumped and the contents analyzed for evidence of narcotics allegedly swallowed. The privilege against self-incrimination was held there to apply only to oral or written forced disclosures and not to forced disclosure of physical facts. It would seem that a forced blood test would fit within that formula and that in California a defendant can now be forced to submit to such a test. (For additional information regarding this general problem see particularly the following articles previously published in this *Journal*: Vol. 28, page 261; Vol. 36, page 132.)

Gambling Offense Committed in Presence of Officer Justifies Seizure of Evidence—A somewhat unique method of obtaining evidence of unlawful operation of a gambling establishment was upheld by the Supreme Court of Arizona in *State v. Pelosi,* (Arizona, 1948) 199 P. (2d) 125. An employee of the attorney general visited the alleged gambling establishment and placed a one-dollar bet on a Florida horse-race. Relying on this information the attorney general obtained from the superior court a temporary restraining order enjoining the conducting or continuance of a public nuisance. The attorney general, three deputies, and reporters then entered the defendant's premises to serve the temporary restraining order. Defendants were engaged at the time in "calling" the progress of a race. Officers then seized abundant evidence of over 30 violations of a statute prohibiting wagering on horse or dog races.

Appellants moved to suppress the evidence on the grounds that it was

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the result of an illegal search and seizure since there was no warrant for their arrest and no warrant to search their property.

The Arizona Supreme Court affirmed the conviction, pointing out the fact that appellants were committing an offense, namely maintaining a public nuisance, in the presence of the arresting officers. This was adequate reason for seizure of evidence, and evidence lawfully seized is competent to prove any offense charged. The officers were not trespassers but entered defendants' premises for a lawful purpose. On seeing an offense committed in their presence, they were justified in arresting defendants and seizing evidence relating to that offense. (See the following notes on search and seizure which have appeared in the current volume of this *Journal*: Vol. 39, pages 208 and 354.)

Firearms Identification: Evidence of Similarity of Class Characteristics of Fatal Bullet and Defendant's Pistol—Defendant in a recent case was convicted of involuntary manslaughter. Among other errors assigned, objection was made to rulings relating to the admissibility of defendant's revolver and the bullet extracted from the deceased. A gun, fully loaded with special .38 caliber shells, was found in the tavern where the shooting occurred. This was identified as a Colt revolver belonging to the defendant and registered in his name. A special agent for the F.B.I. identified the bullet extracted from the deceased's body as a special .38 caliber bullet fired from a gun having riflings similar to those of the gun found. He also stated that Colt and no other American-manufactured revolvers have this type of rifling. The bullet was too badly deformed to positively identify it as having been fired from the gun found, however.

The Supreme Court of Montana, in overruling defendant's contention that unless the gun could be identified positively it could not be admitted in evidence, stated that weapons which appear to have been employed in the commission of a crime are admissible and that no clear, certain, or positive evidence is required. The court also stated that no instruction was necessary, or in fact proper, to the effect that the exhibits were not admitted to connect the defendant with homicide. This would have invaded the province of the jury, for the evidence, although circumstantial, was sufficient to justify the jury in finding that the bullet extracted from the deceased's body was fired from defendant's revolver. *State* v. *Allison* (Montana, 1948) 199 P. (2d) 279.

Fingerprint Evidence: Expert's Opinion Regarding Conclusiveness of Similarity between Defendant's Prints and Questioned Prints; Required Number of Points of Similarity—Three interesting aspects of expert testimony concerning fingerprint comparison were discussed in the case of *State* v. *Viola*, 82 N. E. (2d) 306; 148 Ohio State 712, 76 N. E. (2d) 715 (Ohio, 1947). Defendant was linked to a barroom killing by two latent fingerprints on a drinking glass. The prosecution called to the stand an agent of the Federal Bureau of Investigation who had compared the fingerprints on the glass with defendant's fingerprints in the general files of the Federal Bureau of Investigation in Washington.

The first error urged on appeal in connection with the agent's testimony was the statement that the fingerprints on the drinking glass were those of the defendant and "no other finger made the impression or could have made it." The appellate court concluded that this was opinion testimony and not testimony of an ultimate fact, since the ultimate fact would be the guilt or the innocence of the accused.

Secondly, it was urged that the statement made by the agent on cross-examination that the F.B.I. recognized no rule that twelve points of similarity were necessary to identify fingerprints was a subject of controversy and the defendant should have been allowed to produce a certain document showing that twelve points were requisite. The appellate court held that since the witness had admitted that the document in question existed but had merely maintained that the F.B.I. did not recognize the rule and since one of the two fingerprints did contain twelve points of similarity, this was not reversible error.

Thirdly, appellant urged that the statement by the agent that the F.B.I. "in my opinion . . . is recognized as being the world's authority on prints" constituted reversible error. This contention was also overruled, and the conviction for murder was affirmed.

Firearms Identification Expert Must Identify Death Weapon by Statement of Opinion, Not Fact—During the course of a trial resulting in the defendant's conviction for voluntary manslaughter, a firearms identification expert was called by the state to establish the fact that the bullet which killed the deceased came from the defendant's gun. He explained in detail the experiments which had been made with the weapon in question and recounted the findings of a comparison test between his test bullet and the death bullet, following which he was asked if he could state positively that the death bullet was fired from the defendant's gun. He answered that he did so state. Objections to this question were overruled, and the defendant appealed on the grounds that such testimony was expert testimony, limiting the witness to expressions of opinion only. The reviewing court construed the answer as a statement of fact and upheld the defendant's contention. *State v. Martinez,* 198 P. (2d) 256 (N.M., 1948).

Recognizing that firearms identification methods are intrinsically reliable, the court based its decision on the fact that the ability and knowledge of the individual expert may vary considerably, and a rule of general applicability should take account of such variations. In so doing it ignored the preliminary qualification procedure necessary to introduce expert testimony as a protection against that weakness. The rule of this case seems dubious in view of the fact that fingerprint experts may make factual identifications. (*People v. Jennings,* 252 Ill. 534, 96 N.E. 1077 (1911); *State v. Kuhl,* 42 Nev. 185, 175, Pac. 190 (1918). Actually the problem presented is one of phraseology of questions and answers since the State's Attorney could just as well have asked if it was the expert's opinion that both bullets were fired from the same gun.