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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Firearms Identification Held Outside of Defendant's Presence—In *Goodall v. U.S.*, 180 F. 2d 397 (1950), the defendant appealed from a verdict against him on the grounds that a firearms identification expert who testified at his trial conducted some scientific tests outside of the defendant's presence while the trial was in progress. This contention was based on the right given a defendant in a criminal proceeding to be present at every stage of the trial. The court disposed of this argument by holding that the test was not part of the trial and hence did not violate any of the defendant's rights. This is in-line with earlier Federal decisions which have held that the results of experiments made outside the courtroom are admissible as evidence in criminal trials, and the court in the instant case found no reason to distinguish the present situation merely because the tests were made during the course of the trial rather than prior to it.

Drunkometer Test Given Before Booking Held Not to Violate Due Process—In *Willenar v. State*, 91 N.E. 2d 178, (Ind., 1950) the defendant was charged with driving a motor vehicle on a public highway while under the influence of liquor. He had been arrested by officers and had submitted to a drunkometer test prior to being taken before an examining magistrate. Defendant claimed that any evidence obtained during his illegal detention was inadmissible, even though he had voluntarily submitted to the test. The Indiana Supreme Court denied his contention, stating that the fact of unlawful detention is not controlling, but only a factor to be considered in deciding whether the evidence should be admitted. The Court held that the United States Supreme Court case of *Watts v. Indiana*, cited by the defendant, did not contain any language which would warrant the interpretation that a confession secured during a period of unlawful detention would be inadmissible as a matter of law under the federal due process clause. (For an analysis of *Watts v. State* and related cases, see Inbau, *Legal Pitfalls to Avoid in Criminal Interrogation*, Vol. 40, page 211, of this *Journal*.)

Identification of Parties Through a Telephone Conversation—In *Benson v. Commonwealth*, 58 S.E. 2d 312 (Va., 1950) the prosecution alleged that the defendant was engaged in the numbers racket and had paid protection money to twenty-three officers of the local police force. One of the witnesses, a former police officer, testified for the state that he had obtained a telephone number from someone and was told that it belonged to the defendant. The witness was unable to recall who it was who gave him the number, or what the number was. He testified, however, that when he called this number the party on the other end of the line identified himself as the defendant, and that the ensuing conversation amounted to a confession of bribery on the part of the defendant. The Supreme Court of Virginia held that this testimony was inadmissible on the grounds that when such a call is placed it is necessary that the identity of the telephone be definitely established. Thus it was required that the witness secure the number from the telephone book, or at least verify it therein, before the Court would admit evidence as to the conversation.

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Confessions Obtained During a Period of Unnecessary Delay Between Arrest and Preliminary Hearing—Holding Suspect as a "Material Witness"—In *People v. Perez*, 300 N.Y. 208, 90 N.E. 2d 40 (1950) *certiorari denied*, 70 S. Ct. 483 (1950), the defendant was apprehended while attempting to pawn a fur coat belonging to the victim of a burglary-murder. After first telling the police that a stranger had given him the coat, as well as other articles belonging to the deceased which he pawned elsewhere, the defendant changed his story by naming a certain person as the one from whom he received the articles. After being confronted with this person's denial, defendant named still another person whom the police could not locate at the place designated by the defendant. After about twenty-four hours of fruitless questioning by thirteen detectives the defendant was brought into court and committed to jail as a material witness in default of a \$50,000 bail. (New York has a statute authorizing material witness commitment.) For several days thereafter the defendant was interrogated about the burglary-murder and when he finally confessed he was formally charged with the crime of first degree murder.

Defendant objected to the admissibility of the confession, alleging that it had been extorted from him by physical abuse on the part of his police interrogators. He also requested an instruction from the court to the effect that the jury might consider his detention an unnecessary delay in arraignment and as a factor bearing on the issue of the voluntariness of the confession. (Under a previous New York ruling, an unnecessary delay in arraignment is subject to such consideration.) The requested instruction was denied and the trial court's ruling was upheld in a 5-2 decision by the New York Court of Appeals. The majority of the court held that the defendant's detention was neither unlawful nor unnecessary—that his possession of the victim's property and his explanation that he received it from another person properly warranted holding him as a material witness under the New York material witness statute. That being so, there was no violation of the other New York statute requiring prompt arraignment of accused persons.

The two dissenting judges were of the opinion that the requested instruction should have been given. They pointed out the fact that the defendant had been held for twenty-four hours before being committed as a material witness. They also expressed the view that "it is a strange doctrine that a material-witness commitment, intended only to guarantee the presence of a witness at the trial, takes away from the 'witness' all protection against third-degree questioning, as a suspect . . ." The dissenting opinion also stated: "If this simple device, of treating an arrested person as a 'material witness,' legalizes any subsequent period of otherwise unlawful detention, it will indeed be a useful one for those who are impatient of the curbs of [the prompt arraignment statute]."

The Advisability of Photographing a Confessed Criminal Immediately After His Confession—In the foregoing *Perez* case, the majority of the New York Court of Appeals were very much impressed with the photograph of the defendant, taken shortly after his confession which showed him "in a smiling and completely self-possessed pose," and which belied the defendant's contention that he had been severely abused by the police. The usefulness of photographs for this purpose should not be overlooked by criminal investigators.