

1951

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, 41 J. Crim. L. & Criminology 545 (1950-1951)

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

R. P. Gremel*

A Single Circumstantial Fact Held Sufficient to Support Conviction—In *Stoppelli v. United States*, 183 F. (2d) 391 (9th Cir. 1950), the defendant had been found guilty of having heroin in his possession. There was no direct evidence of the crime, the prosecution resting its case on the fact that one of the envelopes which contained the heroin bore the defendant's fingerprint. A fingerprint expert testified on the behalf of the government to the effect that the fingerprint was placed on the envelope at a time when it contained a powdery substance. Heroin being a powder, the inference was that the defendant handled the envelope while it contained the narcotic. The defendant appealed from conviction on the ground that this fingerprint evidence, by itself, was not sufficient to support the verdict. The Federal Court of Appeals, however, affirmed, stating that the evidence was sufficient to support the conviction, and quoted with approval the following statement of the trial judge in ruling on a motion for a new trial: ". . . if at the time the defendant had it (the envelope) in his possession there was a powdery substance in it, and when captured by the officers it had a powdery substance, which consisted of heroin, isn't it rational to draw the inference that at the time the defendant had it in his possession it had heroin in it." In a vigorous dissent Chief Judge Denman argued that it was the duty of the court to determine whether the circumstantial evidence upon which conviction was based did not warrant the inference of innocence as well as guilt, and that if either inference were possible, the conviction should be set aside. Taking issue with the majority's conclusion that any inference of innocence would require flights of imagination, the dissenting justice pointed out that although the expert witness for the government was of the opinion that the envelope contained a powdery substance when the print was made, due to the concavity of the print, the witness did not state that a concave print of this type could not have been caused in another manner. Stating that such a print could possibly have been obtained while the envelope was empty, the Chief Judge was of the opinion that the inference of innocence was just as strong as that of guilt, and hence the conviction should be set aside.

Application of the Upshaw Rule to Confession Secured Prior to Arraignment—In *Patterson v. U. S.*, 183 F. 2d 687 (5th Cir. 1950), the defendant was taken into custody at about 11:15 A. M. and, after being informed of his right to remain silent, he signed a written confession. He was arraigned about 2:00 P. M. Testimony as to the period of time which elapsed between the arrival at police headquarters and the confession ranged from 30 minutes to 2 hours. The defendant claimed that his confession was inadmissible on the basis of the doctrine set forth in *McNabb v. U.S.* (318 U.S. 332), and expounded in *Upshaw v. U.S.* (335 U.S. 410). The rule laid down in these cases would render inadmissible any confession secured after the time had elapsed during which the accused should be arraigned as required in Rule 5 (a) of the Federal Rules of Criminal Procedure. This rule provides: "An officer making an arrest under a warrant issued upon a complaint . . . shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons

* Senior law student, Northwestern University School of Law.

charged with offenses against the laws of the United States." Examining the record, the court was not willing to conclude that the "unnecessary delay" rule of the *Upshaw* case was violated, stating that there was no testimony to the effect that a magistrate was available before the confession was made, nor did the record disclose any other reason for the delay. The court concluded with the statement that once the prosecution has made a *prima facie* showing that the confession was voluntary, the defendant must carry the burden of proving that Rule 5 (a) was violated, which was not done in this case. For a full discussion of the "unnecessary delay" problem in connection with Rule 5 (a), see Inbau, *The Confession Dilemma in the United States Supreme Court* (1948), 43 Ill. L.R. 442, and a later article by the same author, *Legal Pitfalls to Avoid in Criminal Interrogations*, Vol. 40, page 211, of this *Journal*.

Weapon Under the Front Seat of Automobile as a Violation of Concealed Weapon Statute—An application of the concealed weapon statute to an interesting set of facts appeared in the recent Illinois case of *People v. Liss*, 94 N.E. (2d) 320 (Ill., 1950). The defendant was found guilty of violating Sec. 4 of the act relating to deadly weapons (Ill. Rev. Stat. 1949, chap. 38, par. 155) which provides: "No person shall carry concealed on or about his person a pistol, revolver or other firearm." The evidence showed that the defendant had driven his automobile through a red light and was curbed by a member of the Chicago Police force. The officer searched the car and found an automatic pistol beneath the front seat of the car, "at about the middle thereof, six inches back under the seat." The evidence showed that the distance between the floor board and the bottom of the seat was some three inches. In reversing the verdict of the lower court the Illinois Supreme Court stressed the fact that the evidence failed to show that the defendant could reach the pistol without materially altering his position. "We think a reasonable construction of this statute . . . is that there must be concealment of the weapon, and it must be on or about the person; and it must be so placed that it may be used without appreciable change in the position of the owner. It requires no great wisdom to know it is impossible to reach a pistol under a front seat of a car without changing position at the wheel, and it is also necessary to bend forward to reach under the seat." Mr. Justice Daily, dissenting, agreed with the majority's construction of the statute, but contended that the court had adopted an "extreme test" as to what was necessary to constitute a material change in position. "In the present case the facts established by the arresting officer, when coupled with common knowledge, show that the defendant could have easily maintained his sitting position, kept one hand on the wheel, his eyes on the road and have secured the gun merely by leaning forward and reaching down with his other hand. . . . Reaching for any concealed weapon will entail some change of position, and to limit that movement to the narrow confines set forth by the majority, is to render the statute nugatory as to weapons found 'about' the person of an accused."

(For abstracts of other recent criminal cases turn to page 456.)
