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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Confession Held Valid Where Arraignment Delayed 24 Hours—The Court of Appeals for the Ninth Circuit again faced in *Haines v. U. S.*, 188 F. 2d 546 (9th Cir. 1951) the vexatious problem of when an accused must be arraigned to render valid a confession made while in custody. See also *Carignan v. U. S.*, 185 F. 2d 955 (9th Cir. 1950), *cert. granted*, 20 U. S. L. WEEK 3006 (U. S. July 14, 1951). Immediately after being taken into custody, the defendant in the *Haines* case was warned by the arresting officers that any statements made would be used against him. After two hours of imprisonment, the prisoner made an oral confession which was reduced to writing and signed later in the day. His preliminary examination was deferred so that the officers might have additional time to verify the confession and also collect certain evidence thought to be helpful to the prosecution in the arraignment proceeding. The defendant claimed the delay in arraignment rendered his confession invalid under the doctrine of *Upshaw v. U. S.*, 335 U. S. 410 (1948). The court of appeals, in a 2-1 decision affirmed the conviction. The majority of the court was of the opinion that the *Upshaw* case did not invalidate a confession because of a "bare failure" to arraign before the statement was received. Rather the *Upshaw* case required an examination of all circumstances to determine whether the failure to bring before a magistrate amounted to an illegal detention, thus voiding the confession. Here all circumstances indicated to the court that the confession was voluntary. The majority was also of the opinion that in the light of all pertinent facts the failure to arraign was not an "unnecessary delay" as contemplated by Rule 5 of the Federal Rules of Criminal Procedure. The dissenting opinion expressed the view that the decisions of the Supreme Court required a holding that the confession be declared inadmissible because it was obtained prior to preliminary examination.

(The confession problem since the *McNabb* and *Upshaw* cases will be discussed in an article appearing in the next issue of the *Journal*. For an article dealing with the problem to date, see Volume 40 of this *Journal* at p. 211.)

Wire Recording of Oral Confession Held Admissible—Unbeknownst to the defendant, police officers recorded the oral confession he made while held in custody. The recording tape was then placed in the care of a police officer who kept it in the county sheriff's office safe until trial. The transcription was held admissible in *State v. Alleman*, 51 So. 2d 83 (La. 1951) despite a claim of entrapment and a possibility that the tape could be later altered. The Louisiana court held that so long as full disclosure is made of all circumstances surrounding the obtaining of the recording and adequate measures are taken to safeguard it before trial, there is no error in allowing it to be introduced in evidence. The decision is in accord with the holdings of other jurisdictions which have considered the problem.

Search of Defendant's Yard Proper If Made During Lawful Arrest—*Cavness v. U. S.*, 187 F. 2d 719 (9th Cir. 1951), is another application of the right of federal officers to a reasonable search as established by *U. S. v. Rabinowitz*, 339 U. S. 56 (1950). Federal officers, having received information that

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Cavness had recently peddled cocaine, procured a warrant allowing them to search his house for narcotics. Upon arrival at Cavness' home, the officers found him in his back yard and there attempted to serve him with the warrant. A struggle ensued during which the suspect tried to destroy an inhalator tube in his possession. After he was subdued the officers searched the yard immediate to his arrest and found six capsules of cocaine. The court held these capsules admissible since they were the product of a reasonable search made incident to what was found to be a lawful arrest.

Cast of Footprint Admissible Although Taken After Crowd Had Congregated at Scene—In *Vanover v. Commonwealth*, 237 S. W. 2d 539 (Tenn. 1951), the defendants were charged with ambushing and killing a county sheriff. At the spot where the presumed assassin had lain in wait, a footprint was found and cast the morning after the murder. The defendants contended that the impression was unreliable because a number of people had milled around the scene of the crime before the impression was taken. The court held that in view of evidence proving the integrity of the site and testimony by an agent of the Federal Bureau of Investigation establishing that the print was made by one of the defendant's shoes, the cast was admissible evidence.