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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Radar As Evidence Of Vehicle's Speed—Defendant was convicted of driving in excess of the speed limit. The only direct evidence offered by the prosecution was the reading of a radar device which "clocked" the defendant at 11 m.p.h. over the speed limit. Over the defendant's objections, the judge permitted several witnesses to testify as to the accuracy of the machine. The main testimony was that of the two officers who operated the device. In substance one officer testified that in testing the device he reported the speed of his "pick-up" car to another officer in the radar-car who told him that the speed checked according to the radar device. The other witness introduced by the city as an expert was the police officer who installed the radar devices but who, admittedly, knew nothing about their operation. On appeal the supreme court reversed on the grounds that the first testimony was clearly hearsay and the second was not that of a qualified expert in the field. *People* v. *Offermann,* 125 N.Y.S.2d 179 (1953). In its opinion the court makes clear two things: (1) it does not reject radar evidence in and of itself but (2) "push-button justice" cannot replace the established rules of evidence. The court further points out that the legislature has not yet ascribed a prima facie presumption to radar evidence and therefore until that time the accuracy of such devices must clearly be established by the ordinary and established rules of evidence. But see also *State* v. *Moffitt,* 100 A.2d. 778 (Del. 1953) where radar evidence of vehicle's speed was held admissible. Here, however, a competent expert testified in detail as to the construction and operation of the device as well as its margin of error if properly functioning, and the means of testing its accuracy. The court also points out that radar evidence is not conclusive since the accuracy of the device is subject to the scrutiny of the jury.

Prosecution Of Misdemeanor By Police Officer Held Not To Violate Statute Prohibiting Officer From Acting As Attorney—An ancient New Hampshire statute (1791) provided that no sheriff or police officer "shall appear in any court or before a justice as attorney for any party in a suit." Similar statutes are found in other New England states. Most of these other jurisdictions decided that the statute applied only to civil cases and therefore police officers could prosecute criminal cases. In *State* v. *Urban,* 100 A.2d 897 (N.H. 1953), New Hampshire adopted this view. The court also stressed, however, the inherent inconsistency between this statute and countless other state laws providing that it is the duty of police officers not only to arrest but also to prosecute violations. Faced with this problem, the court adopted the view of its neighbor states that the statute applies only to civil cases.

Waiver Of Preliminary Hearing Not Absolute Defense To Suit For False Arrest—After defendant, an FBI officer, arrested petitioner, the latter waived a preliminary hearing before a commissioner and was subsequently detained. In suit for false arrest defendant argued that the waiver and subsequent detention amounted to a finding of probable cause which would justify the arrest. The court disagreed, holding that such facts could be, at best, prima facie evidence of probable cause. *Kozlowski* v. *Ferrara,* 22 U.S.L. Week 2320

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(January 6, 1954). While the court agreed with the general authorities that the finding of probable cause and the detention of an accused by a magistrate after a hearing bars an action for false arrest or malicious prosecution, the mere waiver of a hearing will not support the same proposition.

Compulsory Chemical Tests For Intoxication—For some time New York has provided that voluntary blood tests are admissible into evidence and that certain presumptions as to the intoxication or non-intoxication of the driver would arise in accordance with the amount of alcohol found in the blood. For example, if less than five-hundreths of one per-cent were present a prima facie presumption would arise that the driver was not intoxicated. *N.Y. Vehicle and Traffic Law,* §70(5) (1952). In July, 1953, the State of New York put some teeth into these provisions by a new enactment which provides in substance: (1) any driver licensed by the state shall be deemed to have consented to a chemical test of his breath, blood, urine, or saliva to determine alcohol content; (2) the police officer directing the test must have reasonable grounds to suspect that the driver is intoxicated; (3) if the person refuses to submit the test shall not be given but his license to drive shall be revoked. The statute also provides certain safeguards: only a licensed doctor can withdraw blood; the person tested can have his own physician administer an additional test; and the person tested may request the results of any test taken at the direction of a police officer. *N.Y. Vehicle and Traffic Law,* §71-a (1953).

In a recent New York case, (citation unavailable at present) the state supreme court held the statute unconstitutional because it failed to provide for a hearing by the commissioner of motor vehicles before the license could be revoked. An amendment to provide for this inadequacy has already been proposed in the legislature. If the amendment passes, as it probably will, the statute should be upheld in a subsequent test. Moreover, it seems that such a statute would not violate the Federal Constitution because the self-incrimination clause of the 5th amendment is not included within the fourteenth. *Twining* v. *New Jersey,* 211 U.S. 79 (1908); see also *Constitutionality of Chemical Tests,* 36 J. Crim. L. & Criminology 132 (1946).

Lack of Consent of the Prosecuting Witness Necessary to Sustain A Conviction For Assault—The defendant was convicted of assault on the testimony of a police officer who said that simultaneous with an invitation to a homosexual act with the defendant put his hand on the officer's genital organ. The Municipal Court of Appeals for the District of Columbia reversed this conviction because the officer had placed himself in the position of consenting to the defendant's touching. The court found a series of events lasting more than forty minutes which led up to the gesture by the defendant. The court held that a police officer by his own "insidious conduct" of patiently and cleverly encouraging the defendant placed himself in a position of consent and should not be heard to say that he was assaulted. The duty of police officers is to prevent crime and it is not their duty to incite it for the sole purpose of punishing the offender. Such a case of assault can only be sustained by proving that the prosecuting witness did not consent. *McDermett* v. *United States,* 98 A.2d 287 (D.C. 1953).