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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Shooting A Policeman While Resisting An Illegal Arrest—The defendant, a runaway boy, was arrested without a warrant by a policeman because “he looked dirty and unkempt.” The defendant had not committed a misdemeanor in the presence of the officer nor had the officer any reason to think that the defendant had committed a felony. However, at the time of his arrest, the defendant carried a loaded pistol, and he used it to shoot the arresting officer in an attempt to escape.

In his appeal from a conviction of assault with intent to murder, the defendant contended that he could not be charged with murder because of the illegality of his arrest. The Maryland Court of Appeals, in reversing the conviction, held that there are two major lines of judicial reasoning in cases involving killings which occur while resisting an illegal arrest. Under one view some courts say that once the illegality of the arrest is established, the degree of homicide cannot be greater than manslaughter unless express malice is shown. Other courts reach the same result by the rationalization that an illegal result is such an affront to the ordinary citizen that it is to be conclusively presumed that there is aroused in him a passion amounting to exculpatory provocation.

The second major line of cases recognizes the wisdom and necessity of social policy but refuse to permit a reduction of the grade of the homicide to come about automatically. These cases apply a subjective standard and hold that to reduce murder to manslaughter it must be shown that the accused was in fact filled with passion aroused by the illegal arrest sufficient to meet the usual provocation test. The courts following this line usually classify illegal arrest with sudden combat, assault and battery upon one's person, and the sight of one's wife in an act of adultery as the type of situations in which a homicide will be manslaughter rather than murder.

In the present case the court held that the defendant was entitled to have the jury decide whether the shooting was a result of passion provoked by the illegal arrest, or whether it was with malice. *Davis v. State*, 102 A.2d 816 (Md. 1954). (Case note submitted by Barnard T. Welsh, Attorney at Law, Rockville, Maryland).

Test Bullet Used for Firearms Identification Purposes Need Not Be Introduced Into Evidence When Expert Testifies—In a murder trial the state's expert police witness offered his opinion that it was the defendant's gun that fired the fatal bullet. The opinion was based upon a study and examination conducted by the witness. The test bullet, however, was not introduced into evidence by either party. On appeal the defendant claimed that in the absence of the test bullet as evidence the testimony itself was inadmissible. The court affirmed the conviction stating that the test bullet need not be introduced in evidence in order to make admissible the expression of an expert's conclusion based upon his comparison of the fatal and test bullets. *State v. Wojculewicz*, 101 A.2d 495 (Conn. 1953).

Supreme Court Suggests Prosecution, Under the Civil Rights Act of Officers Who Make Illegal Searches and Seizures—In *Irvine v. California*, 74 Sup. Ct. 381 (1954) the Court reluctantly and narrowly upheld the use of evidence

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obtained by unlawful search and seizure in a state court for a state crime. (The merits of this decision are discussed in the Abstracts of Recent Cases section, *supra* p. 767). In an attempt to get evidence of defendant's gambling activities, the police made a key to his house, entered and attached a microphone in his bedroom and listened for a month; then they used the key to enter again in order to arrest the defendant. At no time were the police in possession of a search warrant.

Speaking for a divided Court, The Chief Justice and Mr. Justice Jackson reiterate that a person has the Constitutional right, secured by the Fourteenth Amendment, to be secure in his home against unreasonable search and seizures; and "Whoever, under color of law . . . willfully subjects any inhabitant . . . to the deprivation of any rights . . . secured by the Constitution . . . shall be fined or imprisoned." 62 *Stat.* 696, 18 U.S.C. (Supp. III) §242 (1946). Moreover, the Court recommended that a copy of the record of the case plus a copy of their opinion be directed to the Attorney General of the United States with a view to determining whether any officers had violated the defendant's constitutional rights.