Journal of Criminal Law and Criminology

Volume 45 | Issue 2 Article 20

1954

Police Science Legal Abstracts and Notes

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Only a General Intent is Required by Statute Rendering Criminal the Possession of Burglar's Tools with Intent to Commit Burglary—Defendant was observed as he entered the vestibule of an apartment building and rang a particular bell. The elevator indicator showed his ascent to the floor of that dwelling and short hesitation there. Other brief stops were made on the way down, and his apprehension in the lobby revealed burglar's tools concealed on his person. A conviction followed under indictment charging the possession of burglar's tools with intent to break into a specific apartment. Upon appeal he contended that the indictment charged intent with reference to a particular apartment and that such was not proved. The Illinois Supreme Court held, *People v. Taranto*, 119 N.E. 2d 221 (Ill. 1954), that the statute required only a general intent to use the tools for criminal purposes and that the allegation specifying a particular apartment was immaterial.

City Liable for Injuries Sustained by Citizen While Aiding Police—A private detective who sustained injuries when he responded to the request of a police officer to assist in arresting persons who were attempting to assault the officer has been awarded a judgment against the City of New York. *Riker v. City of New York*, 126 N.Y.S. 2d 229 (1954). A group of youths who were loitering around a business establishment from which they had been ordered to leave, began to throw objects at the police officer. The court held the situation did not constitute a call to aid in suppressing a riot (in which case the city would not be liable) and awarded damages under a statute.

Religious Speaker Must Comply with Police Order Not to Obstruct Traffic—The police department had allocated a certain corner to a religious speaker for his meetings. A large crowd was attracted by the speech with a consequent obstruction of traffic. After the defendant speaker ignored three requests to move closer to the curb, he was arrested by the officer assigned to the corner. The court found the defendant guilty of disorderly conduct and imposed a suspended sentence. *People v. Kunz*, 128 N.Y.S. 2d 157 (1954). The opinion conceded that primarily it was the responsibility of the police department to regulate the corner after permitting its use. However the defendant knew what cooperation he was reasonably expected to give. The right to preach is not absolute. It is relative and must be subordinate to the public good.

Compulsory Chemical Tests for Intoxication—N.Y. Vehicle and Traffic Law, §70-a (1952) provides in effect that an operator of a motor vehicle is deemed to consent in advance to submit to chemical and blood tests administered at the direction of a police officer having reasonable grounds to suspect the operator of driving in an intoxicated condition. A refusal to submit is grounds for revocation of his driver's license. In *Schutt v. MacDuff*, 127 N.Y.S. 2d 116 (1954), the statute was held unconstitutional because it failed to provide for a hearing before revocation, and because it was not limited to a case where there had been a lawful arrest. However, the *Schutt* case established that the statute is not violative of the constitutional privileges against self-incrimination or against unreasonable searches and seizures. In *People v. Kovacik*, 128 N.Y.S. 2d 429 (1954), some further aspects of the statute were upheld. Defendant submitted to a blood test after being told he would lose his license if he did not. The court held that there was no duress present, but merely a statement of the statutory provision. (Although this case was decided after the *Schutt* case, the

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statement was made previous to it). The court also rejected contentions that the statute was unconstitutional because of a failure to include a provision giving defendant notice of the statutory right to have his own physician administer an additional test, and that the drunkometer is inaccurate and unreliable so as to be an arbitrary exercise of authority. The courts now have passed on practically every facet of the statute, and since the statute has recently been amended to provide for a revocation hearing, the statute in its entirety should be upheld in a subsequent test.

(An early issue of the *Journal* will contain a leading article dealing with the N.Y. statute in further detail.)

Sheriff Serving Writ, Valid on its Face, is Not Liable for False Imprisonment—Plaintiff, a member of the armed forces, was arrested by two Vermont deputy sheriffs on writs of attachment and capias (mesne process). After twenty-two days confinement, the plaintiff obtained his release by habeas corpus and brought a false imprisonment action against the sheriff for the action of his deputees. A federal statute provides, "No enlisted man shall, during his term of service, be arrested on mesne process...." 3 *Stat* 225 (1815), 10 *USC* §610 (1946). The court held that while the person who sued out the writ or his attorney might be liable, where the process proceeds from a court having authority to issue such process and there is nothing upon its face to fairly warn the server that it is defective, the officer is protected from irregularities existing behind the process. *Williams v. Franzoni*, 120 F. Supp. 444 (D. VT. 1954).

Power of State Police in Incorporated Areas—Defendant was found guilty of accepting bets on horse races and maintaining premises for such purposes. The commissioner of police of Cumberland, Maryland, an incorporated municipality, had requested the assistance of state police to investigate gambling in Cumberland. Two state police officers, who had been detailed in compliance with this request, testified against the defendant as to matters observed by them in defendant's pool hall. A statute provided that the state police shall not act within the limits of any incorporated municipality "except when requested to act... by the chief police officer of the municipality in question." Defendant's principal contention was that the court erred in instructing the jury that the police commissioner had authority to request the detailing of state police to the investigation. On appeal, the conviction was affirmed. *Little v. State*, 105 A. 2d 501 (Md. 1954). The court held that even though Cumberland also had a chief of police (who made no request), the phrase "chief police officer" referred to the ranking police officer who in this case was the commissioner. Moreover, said the court, even if the detailing of these officers were not authorized, as members of the general public they had a legal right to enter the pool hall and could testify as to their observations there.