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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Accuracy of Radar in Measuring Vehicle's Speed Not Proper Subject for Judicial Notice— Defendant was convicted of driving in excess of the speed limit. Over defendant's objection, the judge judicially noted the theory and accuracy of the operation of a radar device in measuring speed. On appeal, reversed. *People of City of Buffalo v. Beck*, 130 N.Y.S.2d 354 (1954). The appellate court concluded that "electronics is a recent development in the science embracing the mystery of electricity" and not "the general knowledge of the country" so as to be a proper subject for judicial notice. Moreover, every reasonable doubt as to whether a fact is so "notorious" that a court may take judicial notice of it should be resolved in the negative. Cited in the opinion is *People v. Offerman*, 204 Misc. 769, 125 N.Y.S.2d 179 (Sup. Ct. 1953) in which the court determines that the accuracy of radar evidence must be established by the ordinary rules of evidence unless the legislature enacts a prima facie presumption. But see also *State v. Moffitt*, 100 A.2d 778 (Del. 1953) where radar evidence of vehicle's speed was held admissible after an expert had testified in detail as to its operation, construction, and margin of error.

Police Officer May Not Discharge Firearm in Apprehending Motorist—A police officer who fired his revolver in the direction of an automobile whose driver failed to obey his signal to stop was held to have violated an Ohio statute declaring that no person shall discharge a firearm upon a public road or highway. *State v. Elder*, 120 N.E.2d 508 (Ohio 1953). The defense argued that the statutory phrase, "no person", was not intended to include persons lawfully authorized to bear firearms, but the court re-

fused to read any exceptions into this "plain and unambiguous" phrase. However, the court pointed out that generally peace officers may discharge firearms in the attempt to effectuate the arrest of a felon, but may not do so to effect an arrest for a misdemeanor even though the officer's purpose is merely to stop flight and the misdemeanant cannot otherwise be taken.

City Must Post Parking Regulation Signs— Defendant on four separate dates received summonses for parking on a public street in the City of Schenectady, New York in violation of a municipal ordinance regulating nighttime parking. He pleaded not guilty on the ground that signs had not been posted restricting the length of parking. The prosecution while conceding that no such signs were posted, alleged that after the defendant received the first summons he had actual notice, and therefore is guilty of at least the three subsequent violations. The prosecution also contended that actual notice is the equivalent or superior to posted signs and that it would cost approximately \$65,000 to post signs in a city the size of Schenectady. The court in overruling these contentions held that since the ordinance did not contain a provision for posting as required by state statute, it was defective and could not be cured by knowledge of its existence. As to the cost argument the court said that any relief would have to be obtained from the legislature. *People v. Evans*, 131 N.Y.S.2d 412 (1954). The question as to whether actual notice would suffice if the ordinance contained a provision for posting that was not complied with, was not considered. However, it seems clear that such a procedure would be invalid as not in accord with the mandate of the statute.

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Plea of Nolo Contendere to Drunken Driving Charge Does Not Create an Estoppel in Revo-

caction Proceeding—Petitioner had pleaded *nolo contendere* to the criminal charge of driving a motor vehicle while under the influence of intoxicating liquor. Thereafter, petitioner received notice that his driver's license had been suspended by the Commissioner of Motor Vehicles because he had "committed an offense" for which mandatory suspension is required. The Commissioner suspended the license solely on the conviction entered upon the plea. The Supreme Court of North Carolina affirmed a judgment for petitioner. The plea alone was not satisfactory evidence authorizing the Commissioner to suspend the license and did not estop the petitioner from denying his guilt in the civil revocation action. *Winslett v. Scheidt*, 239 N.C. 190, 79 S.E.2d 501 (1954). The court conceded, however, that if the suspension was part of the judgment in the case in which the plea was tendered or made a condition to acceptance, the defendant would have no cause for complaint.

Arrest Without a Warrant—Police officers arrested the defendant without a warrant for public drunkenness. The defendant, asserting he was not drunk, resisted the arrest and a scuffle ensued. The jury returned a verdict of not guilty of public drunkenness, but guilty of resisting arrest and simple assault. On appeal the Supreme Court of North Carolina reversed. *State v. Mobley*, 83 S.E.2d 100 (N.C.1954). The opinion is a lucid exposition on the subject of arrest. It is axiomatic that every person has the right to resist an unlawful arrest with such force as reasonably appears necessary. Since it was conceded that unnecessary force was not used, the question resolved to whether the

officers had the right to arrest without a warrant. The court points out the common law rule that an arrest without a warrant is unlawful. Exceptions were then made in the case of felonies and breach of the peace on the ground that public safety demanded "on-the-spot action." A statute declaratory or the common law confers on peace officers the right to make arrests without process when the officer has "reasonable grounds to believe" (1) a felony has been committed, (2) that a particular person is guilty, and (3) that such person may escape if not immediately arrested. Thus the felony need not be committed in the presence of the officer nor is it essential that it be committed at all as long as reasonable grounds exist. A private citizen may arrest only when a felony is actually committed in his presence and if he arrests either (1) the guilty person, or (2) the person he had reasonable grounds to believe guilty. Peace officers and private citizens have the power of arrest without a warrant in non-felony cases only for a breach or threatened breach of the peace. The court concluded that "mere drunkenness which is unaccompanied by language or conduct reasonably calculated to create public disorder" is not a breach of the peace so as to justify arrest without a warrant.

The dissent argued that to require an officer to determine at his peril before making arrest that a breach of the peace is actually committed would "inflict a crippling blow on law enforcement." It should be noted that many jurisdictions and municipalities have provisions allowing an arrest without process upon probable cause that a breach of the peace has been committed or for any crime committed in the presence of the officer.