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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

John L. Flynn*

Supreme Court of Illinois Upholds Claim for False Imprisonment.—Plaintiff was arrested without a warrant by defendant police officers on suspicion of burglary. He was held in police custody about two days "pending investigation" and then booked on a disorderly conduct charge which was subsequently dismissed when neither officer appeared to testify against him. Plaintiff's claim of false imprisonment was based on two contentions. He claimed that his arrest was violative of a provision of the Criminal Code which states that an officer may make an arrest without a warrant only when "he has reasonable grounds for believing that the person to be arrested has committed the crime." He also contended that the officers failed to comply with a statute which requires that "When an arrest is made without a warrant . . . the person arrested shall, without unnecessary delay, be taken before the nearest magistrate. . . ." The trial judge set aside a verdict awarding plaintiff $4,000 damages and entered judgment for defendants. On appeal, the supreme court reversed and reinstated the jury verdict. *Fulford v. O'Connor*, 121 N.E. 2d 767 (Ill. 1954).

As to the contention that the arrest was made without probable cause, the facts on which the arresting officers relied were plaintiff's criminal record, his former employment with the concern which had been robbed, and his absence from work on the night the offense was committed. The court, while recognizing that existence of probable cause does not require the degree of evidence requisite to sustain a conviction, nevertheless decided that a jury question was presented.

Moreover, the court ruled that the procedure followed by the defendants following the arrest also constituted false imprisonment. It was uncontroverted that plaintiff could have been charged before a magistrate on the morning following his arrest. One of the defendants testified that "Actually there had never been any disorderly conduct, but this is a technical charge. We bring a man in as a burglary suspect and we cannot prove it. We bring him to court on what we call disorderly." The court condemned this practice saying "the fact that there is as yet insufficient evidence to justify preferring charges against a criminal suspect is not an excuse for detention, but is precisely the evil the statute is aimed at correcting."

Resisting an Illegal Arrest—As defendant was about to enter his basement apartment, he was accosted by two plain-clothes police officers who were watching the building. Admittedly, the arrest was illegal since a warrant had not been obtained nor was there was reasonable grounds to believe that a crime had been committed. In a case which reached the highest court in New York, it was held that defendant was not guilty of assault in using more force than necessary in resisting the arrest when he bit the thumb of one of the officers. *People v. Cherry*, 307 N. Y. 308, 121 N.E. 2d 238 (1954). The fact that the police officers had exhibited their badges was said to make no difference since "a badge may not substitute for a warrant of arrest." Two Justices dissented arguing that the amount of force that would have been deemed necessary by a reasonable person is dependent on the circumstances, one of which would be that defendant knew the two men were officers since official badges had been displayed. Therefore, the dissent concluded that the three lower courts should not be reversed on a fact determination.

Insults Do Not Justify Arrest—The City Civil Service Commission ordered the discharge of two police officers accused of beating a citizen after he protested a parking ticket which the officers had given him. The policemen testi-

* Senior Law Student, Northwestern University School of Law.

fied it was customary for policemen to arrest persons who called them names, and contended they used only enough force to place the complainant under arrest. The Illinois appellate court, in reversing a lower court determination that the two should be restored to duty, held that a citizen's insulting remarks do not necessarily justify the citizen's arrest. "An officer of the law must exercise the greatest restraint in dealing with the public. He must not conceive that every threatening or insulting word, gesture, or motion amounts to disorderly conduct. Words addressed to an officer in an insolent manner do not, without any other overt act, tend to breach the peace because it is the sworn duty and obligation of the officer not to breach the peace and beyond this to conduct himself to keep others from doing so." (Decided October 19, 1954—citiation not available at present.)

Further Judicial Approval of Radar as Evidence of a Vehicle's Speed—In *State v. Dontonio*, 105 A.2d 918 (N. J. 1954), New Jersey joined the ranks of states allowing the admission of radar readings as evidence of speed. A witness with a Doctor of Engineering Degree in electrical engineering testified as to the theory and accuracy of these devices. He pointed out that if any defects in the radar equipment were to develop, such as defective tubes or condensers, it would tend to decrease the number of electrons admitted from the heat surfaces within the tube and give a lower reading. Therefore, all defects in the equipment resolve in favor of the motorist. Other witnesses testified that the equipment in question was properly functioning and tested for accuracy.

The court ruled that the fact that the radar operator and patrol car driver were in radio communication with each other and compared readings in testing the equipment, did not make their testimony hearsay. "Each officer testifies as to independent facts. Radio communication is merely incidental. The fact of the speed of the patrol car . . . and the observation of the radar operator, remain the same without benefit of radio communication."