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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Unnecessary Delay in Formally Charging Arrestee—Plaintiff's factory identification badge was found upon the highway near the body of a hit and run victim. He acknowledged having driven along the road, but asserted that he must have lost the badge during a stop to adjust a load of lumber attached to the top of his car. Thereupon defendant police officers arrested the plaintiff without a warrant and he was imprisoned for five days until finally discharged. An Indiana appellate court affirmed a \$4,000 judgment in a subsequent false imprisonment action. *Matovina v. Hult*, 123 N.E.2d 893 (Ind. 1955). The court declared a police officer cannot legally hold a person, arrested upon reasonable or probable cause that a felony has been committed, in custody for a longer period of time than is reasonably necessary to obtain a proper warrant. The court rejected defendant's contention that their action could be justified upon the ground that such delay was necessary in order to investigate the case and procure evidence against the accused.

Parking May Not Be Restricted on a Public Street to Those Residing on That Street—Defendant was convicted of parking in violation of a village ordinance. The ordinance provided, in substance, that parking on a certain street was strictly restricted to residents living on the particular street. On appeal, reversed. *People v. Greemon*, 137 N.Y.S.2d 388 (1954). The court declared that it is within the power of city authorities to regulate parking only if such regulations are reasonable. "A regulation in order to be reasonable must operate with substantial equality and uniformity. . . . The regulation under review is discriminatory and void in that it bears no relation to the welfare of the

public generally but is designed for the convenience and interest of a special class."

In a companion case, *People v. Gilbert*, 137 N.Y.S.2d 389 (1954), the court affirmed a conviction of a *non-resident* who parked in a village parking area which was reserved for residents. The court held that a village or municipality can establish an *off street* parking area exclusively for the use of its residents where the land was paid for out of taxes levied on all taxable property within the village.

Silence After Being Accused of a Crime Is Not an Admission of Guilt When the Circumstances Do Not Naturally Call for a Reply—Police surprised and arrested two men who were attempting to loot a storehouse. The men admitted their guilt and signed a statement naming the defendant as an accomplice. The defendant was arrested, and at that time denied any connection with the burglary. During an interview which took place in jail, the accusatory statements of the two men were read to the defendant and he made no reply. At the conclusion of the interview, however, he again denied being involved in the crime. The trial court admitted into evidence, as a tacit admission of guilt, testimony as to defendant's silence after the reading of the statements. The Supreme Court of Virginia reversed his conviction of burglary. *Knight v. Commonwealth*, 196 Va. 433, 83 S.E.2d 738 (1954). Although stating the general rule to be that silence following an accusation of crime is admissible as evidence of an admission of that crime, the court limited the rule to situations naturally calling for a reply or denial. Such a situation was not present here since defendant had previously denied his guilt upon arrest, was not questioned as to the truth of the statements at the time they were

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read, and again denied his guilt after the interview.

Liability for Charging Person With Non-Existent Ordinance Violation—Defendant deputy sheriff arrested plaintiff and brought him before defendant justice of the peace after observing plaintiff's truck swerving back and forth on the highway. Plaintiff was charged with violating a non-existent village ordinance, "driving on the wrong side of the road," and pleaded guilty. He was detained in custody about four hours until the fine levied was paid. Subsequently plaintiff appealed this conviction, the cause was dismissed and the fine refunded. In a later false imprisonment action, plaintiff recovered a judgment against both defendants. On appeal, defendant deputy sheriff contended

he was not liable because he arrested the plaintiff while committing a misdemeanor in his presence. The court, however, while conceding there may have been probable cause for arrest, held this did not justify his action in suggesting that plaintiff be charged under a non-existing ordinance. Defendant justice of the peace contended that he was immune from liability since he was acting within the scope of his judicial capacity. The court rejected this contention saying, "No rule is more firmly established than that judicial officers are not liable for the erroneous exercise of judicial powers vested in them; however such officers are not immune from liability where they act wholly in excess of their jurisdiction. Defendant . . . well knew that the village had no such ordinance." *Vickrey v. Dunivan*, 279 P.2d 853 (N.M. 1955).