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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Search and Seizure Incident to Arrest for Minor Traffic Violations—Police officers noticed a car parked illegally, blocking access to a beach area, and questioned the occupants for the purpose of determining why the vehicle was parked in that position. While doing so, the officers observed a substance that looked like marijuana on the driver's shirt. On the basis of this suspicion the car and the occupants were searched and quantities of marijuana were discovered. Then the defendant was arrested. Over the objection that the evidence was illegally seized and therefore inadmissible because the officers did not have probable cause to search either the car or its occupants, the conviction for possession of narcotics was sustained, for the "circumstances disclosed a reasonable search and seizure incident to a valid arrest." *People v. Martin*, 295 P. 2d 33 (Cal. App. 1956).

However, where the defendant had failed to signal for a turn off the main highway onto a secondary road, in violation of the statutory duty to signal, a subsequent search and seizure was declared unreasonable. In this case, after the officers stopped the car and examined defendant's driver's license, they searched the car, without any warrant, finding certain bottles of whiskey, the presence of which constituted an unlawful transportation of intoxicating liquor under the state law. The court granted a motion to suppress the evidence on the theory that "ordinarily a minor traffic violation will not support a search and seizure." Testimony by the officers had disclosed that they always suspected that automobiles going down secondary roads contained whiskey. The arrest, therefore, was predicated solely upon suspicion. Since this search was not incident to a lawful arrest or upon probable cause of the commission of a felony, it was held to have violated the state constitution. *Ellsworth v. State*, 295 P. 2d 296 (Okla. Crim. 1956).

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Radar Evidence Will Sustain Conviction for Speeding If Proper Elements of Proof Are Presented—The defendant was charged with speeding on the basis of evidence obtained through the use of a radar unit. In the Magistrate's court the defendant pleaded not guilty and challenged the use of radar as a reliable means of ascertaining the speed of an automobile. In particular, the question was raised whether the accuracy of a radar unit would be affected by the presence of other moving vehicles in close proximity to the suspected vehicle. Testimony established that the patrolmen who had operated the radar unit had been given an intensive four month course in the technical aspects of radar and, in addition, a further training period of two months in the operational use of the machine. The radar net in this case involved two squad cars; the car containing the radar was placed to give the operator a clear view both of moving vehicles and of the arresting squad car which was stationed some distance down the road. The unit, installed in the rear of the squad car, emitted a beam which, when reflected off of the suspected vehicle, returned to the unit. This reaction registered on a dial which indicated the speed of the moving car. A third instrument graphically recorded the evidence of the speed of the vehicles. Further testimony indicated that if the radar unit was not in the proper position the radar may record the speed of cars going in the opposite direction and erroneously attribute such speed to the suspected vehicle; while this tended to support the defendant's theory, it was rebutted by a showing that accurate results will almost always occur if the radar car is in the proper position. When the machine indicated a speeding vehicle, the officer would phone the description of the

speeding car ahead to the arresting squad car which would then apprehend the violator. The suspected car was in view of the officer in the radar car from the time it was clocked until it was stopped by the second squad car. It was also standard procedure to test the accuracy of the radar unit at frequent intervals by means of a police car with a calibrated speedometer passing through the radar beam. In addition, other testimony established that weakening of the radar tubes through prolonged use will result in the registering of a lower speed and produce an error in the defendant's favor. On the basis of this evidence the defendant was convicted of speeding. The New York Supreme Court affirmed the conviction and accepted the use of radar as a proper instrument for measuring the speed of vehicles, provided that adequate proof was presented to the court. *People v. Sachs*, 147 N.Y.S.2d 801 (N. Y. Munic. Ct. 1956).

In the future, the court said, the results of radar may be introduced in evidence without the use of expert testimony, such as was necessary in the instant case. However, the court set out nine elements of proof which must be established in every case before evidence obtained by radar will be accepted. The prosecution must show: (1) that the radar car was properly set up in its detecting location; (2) that the radar instruments were working; (3) that the apprehending car was set in its own location; (4) that both cars were visible to each other at a reasonable distance; (5) that a vehicle equipped with a calibrated speedometer had been used at the beginning and the end of the tour to test the accuracy of the radar set; (6) that the graph sheet shows the results of these tests; (7) that the speedometer on the testing vehicle was accurate; (8) that the radar car officer observed the speeding vehicle as well as any other vehicle and accurately described the speeding vehicle; and (9) that the proper defendant was arrested and served with the summons. The court, after setting out this procedure, declared: "it would seem that the defendant under this method of proof is fully protected in his rights."

See *Dietze v. State*, 75 N.W.2d 95 (Neb. 1956), where a somewhat less substantial foundation was held proper to sustain the conviction.

Enlarged Color Photographs Are No More Prejudicial Than Ordinary Ones—The nude body of a fifteen year old girl was found in a garage; she had been raped and strangled. The defendant was arrested that same day, questioned at length and finally confessed to the killing. However, he repudiated his confession, pleaded not guilty and was tried before a jury, receiving a sentence of life imprisonment. At the trial the medical examiner, a pathologist attached to the Harvard Medical School and the state police, testified to the results of the autopsy he had performed, illustrating what he had seen by the use of enlarged color photographs produced upon a screen. Other evidence connecting the accused to the crime was produced by an expert chemist attached to the state department of public safety. He applied benzidin tests to the body of the defendant, with his consent, in an effort to discover the presence of human blood which may not have been seen upon "gross examination." The tests showed blood on the defendant's left wrist, his upper left arm, the back of his neck and the entire area of his groin. Similar tests on clothing also showed the presence of blood. This blood was consistent with the blood of the murdered girl, but not with that of the defendant.

The appeal following the conviction raised numerous exceptions, including objections to the use of the enlarged color photographs to illustrate the pathologist's testimony on the ground that they were inflammatory and prejudicial. The court rejected defendant's objections, referring first to the fact that no question had been raised as to the identification of the slides or as to their being a fair representation of the conditions which the pathologist discovered in the autopsy. The court then pointed out that no cases had been found where the admissibility of photographs depended upon a distinction between the use of ordinary photographs and the use of colored ones. Aside from prejudice no reason for such

a distinction could be made. It was noted that since "all the evidence in this case was such as to indicate that the crime was committed with such extreme atrocity and violence, these slides could add little to inflame or prejudice the jury." *Commonwealth v. Makarewicz*, 132 N.E.2d 294 (Mass. 1956).

Identification of Voices Heard Through Wire-Tapping and Explanation of Bookie Jargon Deemed Inadequate for Conviction—Under the authority of court orders a special investigator for the local district attorney listened in on over one hundred telephone conversations among the defendants during some two weeks' time for six hours each day. While he was doing this wire-tapping, the investigator was "busily making pencilled notes and attempting to record the substance of the conversations on the telephones." Some three months later the defendants were brought to trial for conspiracy and book making. At this time the investigator identified all nine defendants as possessing voices he had heard in the wire-tapping, although admitting he did not know most of the persons to whom the voices belonged. A further element in the prosecution was the explanation of the conversations thus recorded. These conversations had been carried on in a jargon peculiar to the business of book making. Although the jargon was in English, it was unfamiliar to the judge and presumably to the laymen on the jury. However, the judge did not require, nor did the prosecution present, an expert to explain the meaning of the expressions used. The New York Court of Appeals reversed the convictions for substantial error in these two elements of proof. *People v. Abelson*, 132 N.E.2d 884 (N. Y. 1956).

With regard to the identification of the voices of the telephone conversants, the court held that since there was no individual identification, but only a collective, or general, description, the recognition of the voices heard over the tap by the investigator "falls below the standards necessary to rebut the presumption of innocence and to prove the guilt of defendants beyond a reasonable doubt." In the case of the bookie jargon the court deemed the failure to qualify an expert to explain the normal meaning of the expressions was error, for it "permitted the (jury) to speculate as to their meaning."

(For other recent case abstracts see pages 231–236)

In an Arson Trial Testimony Relating to the Burning Time of a Candle is Competent although not Based on Experiments Conducted Under Substantially Similar Conditions—About 2 o'clock A.M. a fire broke out in the defendants' house. At the time no one was at home, the family having left on a vacation around 4:30 the previous afternoon. When the fire was finally extinguished, an investigation was made by the firemen and police officers, whose suspicions had been aroused by the incendiary character of the fire and the smell of gasoline. The search disclosed a small candle holder among a lot of debris which contained fuel oil and gasoline. The state presented the theory that the fire was a delayed one, and that a candle had been used for the purpose of starting it. During the trial the prosecution called an expert witness who had conducted certain tests as to the burning time of candles. Over the objection of incompetency, irrelevancy, and immateriality the witness was allowed to testify that he had performed tests with candles of similar composition to some found in the ruins, and that from these tests he had found that the burning time of candles was at the rate of "approximately one inch every two hours." The Supreme Court of Oregon rejected the defendants' contentions of error on the objections and affirmed the conviction. *State v. Molitor*, 289 P. 2d 1090 (Ore. 1955)

After stating that the burning time of the candle was "hardly a matter for expert testimony", the court continued: "Having established the probability of use of a candle in producing the delayed fire, testimony respecting the burning time of particular candles was not necessary to the state's case, yet it cannot be said that such evidence was wholly incompetent, irrelevant, and immaterial. . . ."

The objection that the state did not first show that the experiments had been conducted under conditions substantially similar to those prevailing at the time and place of the fact in controversy was dismissed for two reasons. First, the defendants asserted no such ground of objection at the time of trial; therefore, it could not be raised for the first time on appeal. Furthermore, the court stated, the tests made by the expert "with respect to the burning time of candles are not experiments of the type necessary to bring them within the rule" that experiments must be conducted under substantially similar conditions.

Extent of Judicial Review over Civil Service Commission Discharge Orders of Policemen—Four cases contesting the discharges of patrolmen by the Civil Service Commission of the City of Chicago for misconduct raised the issue of the scope of judicial review of the discharge orders. In *Nolting v. Civil Service Com'n of City of Chicago*, 129 N.E. 2d 236 (Ill. App. 1955), the Commission had found the patrolman guilty of abandoning his post without permission and of failing to report an accident that he was subsequently involved in. In *Foreman v. Civil Service Commission*, 129 N.E. 2d 245 (Ill. App. 1955), the officer had also been found to have abandoned his post without permission. In *Martin v. Civil Service Commission*, 129 N.E. 2d 248 (Ill. App. 1955), two policemen had been discharged for taking money from an arrested person, keeping part and failing to turn in the rest for inventorying until two days later. The officer in *Watkins v. Civil Service Commission*, 129 N.E. 2d 254 (Ill. App. 1955), was discharged for permitting a prisoner to escape while in his custody. In all four cases the trial court (the original reviewing court) had reversed the orders, holding that the Commission's decisions were "harsh and unwarranted and therefore contrary to the manifest weight of the evidence." The Appellate Division reversed the trial court's reinstatement of the patrolmen without back pay, in effect a reduction of the penalty from discharge to suspension, holding that in all the cases the Commission's findings of fact were fully supported by the evidence. The trial court in each case had not based its decision on the grounds that the findings were actually against the manifest weight of the evidence, but rather that the punishment of discharge was too severe. In other words, what the trial court had measured "was not the evidence but the gravity of the charge against the severity of the punishment."

The issues before the Appellate Court required an examination of the Commission's power or authority to suspend the patrolmen. If this power were not present, then the trial court certainly could not find the Commission in error for failing to exercise a power the commission did not possess. It was found that section 4 of the Cities Civil Service Act, ILL. REV. STAT. c. 24½, §4 (1955), provided for two kinds of punishment, suspension of not more than 30 days by the appointing officer or discharge by the Commission; thus, the Commission did not have the authority to suspend. The ultimate issue, therefore, is to what extent may the trial court ignore the action of the Commission by reducing the degree of punishment even though the original decision was based on the manifest weight of the evidence. The trial court, as the initial court of review, is limited to determining whether the Commission has followed the proper rules of procedure, whether the findings of fact are against the manifest weight of the evidence, whether the Commission has jurisdiction, and whether the ruling was arbitrary or capricious.

Since none of these limited powers of review would support the decision of the trial court, the only theory for the reversal of the Commission order was that the trial court thought that it had the power to modify these orders. In rejecting this idea the Appellate Court found that the question of discipline of the City police force should be left entirely in the hands of the Commission and the Police Commissioner. They are experts in the field and they alone have the responsibility to the public for maintaining an efficient and well disciplined force. The police force was compared to a military establishment where strict discipline is an absolute requirement to efficient opera-

tion. To substitute judicial judgment for executive judgment in these matters would only create chaos.

In conclusion, the opinions remarked that evidently there was a "marked difference of understanding between the appellate courts and the original reviewing courts with respect to the limitations of review in this class of cases," citing Note, 47 Nw. L. REV. 660 (1952), and stated categorically that it is not only a matter of law but also a matter of public policy that the hiring and discharge of Civil Service employees remains an executive function.