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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Removal of Defendants' Property without a Search Warrant from Place of Arrest for Subsequent Search Elsewhere Does Not Violate Fourth Amendment—Defendants were arrested without warrant by F.B.I. agents and charged with harboring and concealing persons convicted of a Smith Act violation. Officers had placed under surveillance a cabin occupied by defendants, and, being satisfied that the fugitives sought were present, proceeded to make the arrests. Subsequently, without a search warrant, officers entered the cabin, removed all personal property of the defendants except the furniture, and transported the articles two hundred miles to San Francisco where a search of the material was made. Testimony indicated that the F.B.I. agents were not looking for specific articles but that "they were searching for weapons . . . contraband or anything that would be a part of the crime." The Court of Appeals for the Ninth Circuit, with one dissent, affirmed defendants' conviction and the denial by the trial judge of defendants' motion to suppress evidence obtained from the search. *United States v. Kremen*, 231 F.2d 155 (9th Cir. 1956).

The majority emphasized the fact that a preliminary search of the house and of the material found therein had been made at the time of the arrest and concluded that removal of all of the contents of the house, except for the furniture, for a more detailed examination elsewhere was not unlawful.

Chief Judge Penman, dissenting, maintained that a search without a warrant to be incident to an arrest and therefore lawful must take place at the location where the arrest is made. "Certainly the siezure and transportation to San Francisco, the home of none of the appellants, of all their personal property other than that found to constitute evidence was beyond the authority of the federal officers . . . the intent was to search their papers, and effects in San Francisco and not in the place of arrest which may have been authorized."

In an analogous case, defendants were arrested at a motel on the outskirts of Chattanooga on charges of bank robbery and interstate transportation of stolen automobiles. F.B.I. agents, without a search warrant, towed defendants' automobile from the driveway of the motel to a garage in downtown Chattanooga and there searched the vehicle, recovering a revolver from the glove compartment. The Court of Appeals for the Fifth Circuit affirmed the denial by the trial judge of the defendants' motion to suppress evidence obtained from the search. *Bartlett v. United States*, 232 F.2d 135 (5th Cir. 1956).

The court held that the search was "substantially contemporaneous" with and therefore incident to the arrest, even though the search took place at a later time and in a location other than where the arrest was made.

Search without Warrant Immediately Preceding Arrest Is Not Incident to Arrest—Acting on information received from "a reliable source" that defendant had participated in a theft and had several stolen guns in his apartment and in his automobile, police proceeded to defendant's apartment and entered without a search or arrest warrant. After first investigating the premises and the trunk of defendant's automobile parked outside, they recovered the guns and thereupon arrested defendant. The trial court denied defendant's motion to suppress the evidence

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found in the search because it was allegedly siezed unlawfully by the officers, and defendant was convicted of grand larceny. The Circuit Court of Appeals for the District of Columbia Circuit, with one dissent, reversed defendant's conviction on the grounds that the search without a warrant preceded and was therefore not incident to the arrest. *Lee v. United States*, 232 F.2d 354 (D.C. Cir. 1956).

The prosecution contended that the search was incident to an arrest and that the arrest was lawful because the officers had probable cause to believe that a felony had been committed and that defendant had committed it. The majority concluded, however, that even if the informer's tip were deemed to have given the police authority to arrest defendant without a warrant at once upon entering his apartment, the officers did not do so but proceeded to first search for additional evidence upon which to predicate the arrest. "All this testimony shows that guns were siezed before the arrest, and that the arrest in fact was caused by the discovery of the guns."

Confessions Obtained from Servicemen in Violation of the Uniform Code of Military Justice Are Admissible in State Courts—At the request of civilian police, a naval officer conducted defendants, members of the armed forces, to police headquarters for interrogation about defendants' participation in an alleged murder. The naval officer in charge of the defendants testified that he informed defendants of the nature of the ensuing civilian interrogation and that anything they might, in the meantime, say to the naval officer could be used against them as evidence in a subsequent court-martial. Article 31 of the Uniform Code of Military Justice provides: "No person . . . shall interrogate . . . an accused without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial."

The naval officer was present during the interrogation of defendants by the civilian police but did not participate in the questioning. At the conclusion of the interrogation, defendants remained in the custody of the naval officer and were returned to their base. Thereafter, upon exhibition of warrants for their arrest, the military authorities surrendered defendants to the civilian police. At the subsequent trial in a state court, defendants objected to the admission in evidence of incriminating statements made to police during the interrogation on the grounds that defendants were at that time in the custody of the military and the naval officer in charge did not fully conform to the requirements of the Uniform Code of Military Justice. The Supreme Court of Massachusetts affirmed defendants' conviction and concluded that the Uniform Code is applicable only to military court-martial proceedings. *Commonwealth v. Beaulieu*, 133 N.E.2d 226 (Mass. 1956).

The court found that, in fact, the military officer was not a participant in the civilian interrogation and that, in any case, the officer substantially complied with the requirements of the Uniform Code. However, the court further indicated that a violation of the statute by the military officer would in no way affect the admissibility of the confession in a state court. "Such a warning as the United States statutes prescribe is not required as a condition of the admission of such statements in our courts . . . Granted Congress could direct those in United States military service not to permit the interrogation of persons subject to their control in the absence of warnings (which this statute does not do), there appears no basis for an attempt, were it to be made, to bar the use of evidence so obtained in State Courts. The Fifth Amendment is only applicable to Federal actions. Due process as used in the Fourteenth Amendment does not require that a defendant be exempted from compulsory self-incrimination in the courts of a state."

Inducing Confession by Veiled Promise of Assistance Does Not Render Confession In-

voluntary—Defendant was convicted of poisoning her husband on the strength of an oral confession obtained from defendant by the district attorney, the sheriff, and a deputy. The defendant was questioned alone for a period of five and one-half hours. However, she had at the commencement of the interrogation been informed of her constitutional rights and told that any statement she made might be used against her in court. Defendant knew her interrogators personally and during the course of the interrogation, the district attorney related to defendant that when he was in the army, himself accused of killing four men, he had received the co-operation of the investigating officers and had been exonerated by telling the truth. Defendant did not request counsel until she had revealed all elements of the crime except where she had obtained the poison. The district attorney at that time advised her that counsel was unnecessary because she had told them everything except where she had obtained the poison. Defendant then signed a written confession. The trial court determined that the oral confession was voluntary but excluded all statements made after defendant requested counsel. The Utah Supreme Court affirmed the conviction and the admission of the oral confession. *State v. Ashdown*, 296 P.2d 726 (Utah, 1956). The crucial question for the Supreme Court in ruling on the voluntariness of this confession was whether the district attorney's statement to the accused as to his own experiences was such a veiled promise of more lenient treatment as to render the confession involuntary.

The court stated that, ". . . There is a wide disparity in the views of the courts dealing with the problem of the effect of such vague, implied promises, and it is obvious that each of such cases must be considered in light of all the circumstances." The court rejected the English view which renders inadmissible as involuntary any confession obtained after the accused is exhorted to confess by a person in authority and adopted the prevailing view in the United States "that telling the accused that it would be better for him to tell the truth does not furnish any inducement, . . . , to render objectionable a confession thereby obtained, unless threats or promises are applied."

The court further stated that adoption of the majority view is well supported by the evidence in this instance because: 1) There was uncontradicted testimony that the district attorney related his tale early in the interrogation; 2) Defendant was warned of the possible use of any statements made by her in court; and 3) Defendant was told that the authorities did not want a confession from an innocent person.