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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

Arthur Rollin*

An Untested Speedometer Plus a Police Officer's Estimate of Speed Sufficient to Convict on Speeding Violation—The defendant was arrested for exceeding the speed limit in a 40 m.p.h. zone. At the trial, the arresting police officer testified that he had observed the defendant's car for a distance of 2½ miles, and for one quarter-mile stretch he was approximately 100 yards behind the defendant. During this sustained period, the untested speedometer on the patrol car registered 64 m.p.h. In addition, the officer testified that he had been estimating the speed of cars for over 18 years, and his estimates had usually come within five miles of the speed shown by radar devices and speedometers. On the other hand, the defendant testified that during the time he was followed by the officer, his speedometer registered approximately 40 m.p.h., and that he later had his speedometer tested and it proved accurate. The defendant was found guilty of speeding and the Court of Appeals of New York affirmed, holding that the evidence sustained the conviction. *People v. Heyser*, 2 N.Y. 2d 390, 141 N.E.2d 553 (1957).

The court indicated that evidence supplied by an untested speedometer alone would not have been enough to sustain the conviction, and cited many cases involving untested speedometers where convictions were not sustained. The court noted, however, that in such cases "there was no evidence in the record as to the *expertise* of the patrolman in judging speed, . . . or the patrolman did not have an adequate opportunity for observation of the defendant's car." Thus, since there was adequate opportunity to observe the defendant's car, the testifying officer was qualified to estimate speeds, and the speed estimated was 20 m.p.h. over the limit, the judgement was affirmed.

* Senior Law Student, Northwestern University School of Law.

The lone dissenter, Judge Van Voorhis, felt that the evidence was not sufficient to prove that the defendant was guilty beyond a reasonable doubt.

Evidence Obtained Through Seizure of Entire Contents of House Inadmissible—Two fugitives from justice were discovered living in a secluded cabin by F.B.I. agents, and were arrested outside the cabin by the agents who had warrants for their arrest. Then, the agents went into the cabin and arrested, without warrant, two persons found inside the cabin. The cabin was thoroughly searched and its entire contents were seized by the agents, who did not have a search warrant. The property seized was taken about two hundred miles away to an F.B.I. office for examination, and some of the material found was used as evidence against the defendants. The court of appeals affirmed their conviction, with one judge dissenting. However, the United States Supreme Court reversed and granted a new trial holding, over the dissent of two judges, that the evidence seized from the cabin was inadmissible. *Kremen v. United States*, 77 S. Ct. 828 (1957).

The Court said that the seizure of the entire contents of a house and removing it two hundred miles was "beyond the sanction" of any case. On the other hand, the dissenting opinion expressed the view that the evidence was legally seized and that legality of a seizure should not be predicated upon the quantity of goods seized. In addition, since only a small portion of the items seized were introduced into evidence, the dissent said that even if the items were inadmissible the conviction still should be affirmed because there was other admissible evidence sufficient to prove the guilt of the defendants. Thus, the rule of harmless error should have been applied to sustain the verdict.

Illegal Entry Rendered Evidence Subsequently Found Outside House Inadmissible—After receiving information that a known prostitute and drug addict was using narcotics at the defendant's house, two officers went there without a search warrant or warrant of arrest. Upon arriving at the house, in which some of the rooms were occupied by persons other than the defendant, the officers opened the front door and took a few steps into the first floor hallway after no one answered their knock on the door. The defendant then walked past the officers and out the front door, across the porch down the front steps, and to a trash can located under the porch. There, she acted as though she was placing something into the trash can, but the officers, who had followed her outside, saw nothing in her hand. Shortly thereafter, one of the officers looked in the trash can and removed a phial of pills that later proved to be narcotics. At the defendant's trial, the phial and its contents were introduced as evidence against the defendant over her motion to suppress the evidence, and she was convicted of concealing narcotics known to have been illegally imported. The court of appeals reversed the conviction, with one judge dissenting, holding that the above mentioned evidence was inadmissible because it was obtained as a result of an unreasonable search and seizure. *Work v. United States*, 243 F.2d 660 (D.C. Cir. 1957).

The court was of the opinion that the entry of the officers into the house of the defendant without any warrant was illegal because, even though occupied by others, it was her private home, and the hallway the officers entered was an integral part of that home, not a public or semi-public lobby or entrance. In addition, the court found that the placing of the phial of narcotics in the trash can by the defendant was the direct result of the illegal entry. The court also rejected the government's argument that the placing of the phial in the trash can outside the house, where it would be accessible to the trash collector, was an abandonment. The court stated that since the trash can was under the porch, there was an abandonment only to those who had actual or implied authority to remove the contents of the trash can. Thus, the act of placing the phial in the can was in essence a "hiding" of an object within the "curtilage or 'general enclosure surrounding the dwelling'."

The dissent indicated that the defendant's "home" was in reality a rooming house and the officers were seeking one of its tenants. Thus, the hallway that the officers entered was a semi-public entrance where, according to the dissent, callers on the tenants of the rooming house had a right to be. Consequently, the entry by the officers was not illegal and the search was not unreasonable. The dissent stated that "reasonableness is determined neither by a piecemeal examination of the facts nor by application of rigid formulas; the question must be resolved upon an appraisal of the 'total atmosphere of the case' ". Also, the dissent objected to basing the admissibility of evidence on the subjective test of what was the motive behind the defendant's discarding of the phial. Furthermore, the dissent pointed out that the Supreme Court has emphasized that there is a difference in degree of protection afforded rightfully possessed private property and such items as customs contraband, stolen goods, and counterfeit money. Thus, the reremoval of narcotics from a trash can accessible to the public should not have been protected.

Taking of Blood Sample Without Consent is not an Unreasonable Search and Seizure—Moving at a high rate of speed, the defendant's car ran off the highway and into the bank of an irrigation ditch. When the ambulance driver, who was also the coroner of the county, arrived at the scene of the accident, he found beer cans on the floor of the defendant's car, and the smell of alcohol on his breath. A highway patrolman requested the driver to obtain a sample of the defendant's blood for an alcohol test, and the driver asked the defendant for permission. The driver testified that he could not remember the exact answer of the defendant, but that at the time he was extremely ill. However, when a nurse attempted to take a sample of the defendant's blood, the defendant withdrew his arm and the sample was taken

only after the driver held the defendant's arm. The blood sample of the defendant was tested and showed an alcohol content of .22%. At the trial an expert testified that a person is under the influence of alcohol when the alcohol content of his blood reaches .15% and that the person from whom the blood sample was taken was not capable of operating an automobile. The defendant was convicted of driving while intoxicated and causing personal injury, a felony. The California Supreme Court with one judge dissenting, affirmed the conviction and held that the extraction of the defendant's blood was not an unreasonable search and seizure, even assuming that the defendant had not consented to the taking of the blood sample. *People v. Duroncelay*, 312 P. 2d., 690 (Cal. 1957).

The court said that because of the circumstances involved, the admissibility of the blood sample must be considered as though the defendant failed to give his consent to the taking of the sample. The court pointed out that previous cases have held that the admission in evidence of the results of an involuntary blood test is not a violation of due process, and that the privilege against self-incrimination is not applicable to the present situation, because it does not apply to real evidence. Thus, the court was faced solely with the question of whether or not the result of the blood test could be excluded on the grounds that it was obtained as a result of an unreasonable search and seizure. The court noted that California has recently adopted the rule that evidence obtained through an unreasonable search and seizure is not admissible in a court of law. The court recognized that the taking of blood for a test is an every day occurrence and since the defendant's blood was extracted under adequate medical supervision by a registered nurse, the extraction was not brutal or shocking. The court stated that "so long as the measures adopted do not amount to a substantial invasion of individual rights, society must not be prevented from seeking to combat" the public hazard created by the intoxicated driver. Thus, because of the "scientific reliability of blood alcohol tests in establishing guilt or innocence", the public interest involved, and the fact that the blood was extracted in a medically approved manner, the court stated that the taking of a sample of the defendant's blood without his consent was not an unreasonable search and seizure.

The dissent stated that taking a blood sample without consent of the defendant was an unreasonable search and seizure in violation of his constitutional rights, and also a denial of the privilege against self-incrimination.

(For other recent case abstracts see pp. 312-314, supra.)