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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Seizure Of Clothes Worn During Robbery Permissible—During the commission of a bank robbery, one of the bandits stood upon a marble counter and left a shoe heel print. When the defendant was arrested, a pair of his shoes were seized and at his trial they were introduced into evidence and compared with photographs of the heel print found on the bank counter. The defendant moved to suppress the use of the shoes as evidence, but this motion was denied and he was convicted. The United States Court of Appeals, in affirming the conviction, held that articles of clothing used during the commission of a felony may be seized as an incident of arrest pursuant to Rule 41 of the Federal Rules of Criminal Procedure. *United States v. Guido*, 251 F.2d 1 (1958).

Rule 41(b) recognizes the right "to search for and seize any property . . . (2) Designed or intended for use or which is or has been used as the means of committing a criminal offense." The rule further provides that "(g) the term 'property' is used in this rule to include documents, books, papers, and other tangible objects."

The defendant contended that articles of clothing are not *the means* of committing an offense merely because they have been worn during the commission of an offense. The defendant sought to distinguish between articles such as masks and gloves, which are actively used to further the commission of a crime by concealing identity, and articles of clothing such as shoes. The court rejected this distinction, saying that it would be difficult to place different articles of clothing in separate categories. The court pointed out that shoes, while on the surface only incidental to the commission of a crime, may become an integral part of the crime. "Surely," the court said, "the wearing of shoes would facilitate a robber's getaway and would not attract as much public attention as a robber fleeing barefooted from the scene of a holdup."

Police Officer's Subsistence Allowance Not Taxable—The city council of Albany, Georgia adopted an ordinance which gave to each member of its police force a five dollar per diem subsistence allowance. At the same time, an ordinance was adopted cutting each policeman's salary by five dollars per diem. The net effect of these ordinances was to leave the total salary amount unchanged, but to convert five dollars per diem into a "subsistence allowance." The plaintiff, a member of the police force, brought suit for refund of income taxes paid on the subsistence allowance. The court held that the five dollars per diem allowance was not taxable for income tax purposes, and that the officer was entitled to the refund. *Parrish v. United States*, 158 F. Supp. 238 (1958).

The plaintiff claimed the tax refund under Section 120 of the Internal Revenue Code of 1954, 26 U.S.C.A. §120 which provides in part that, "Gross income does not include any amount received as a statutory subsistence allowance by an individual who is employed as a police official by a State . . . (or) by any political subdivision" of a state, provided that the subsistence allowance did not exceed five dollars per day. The government claimed that "subsistence" pay meant only that payable as an allowance for expenses incurred by a policeman when he was away from home. The court concluded that the ordinary meaning of "subsistence" was not so limited. Moreover, the word "subsistence" was to be found in other statutory provisions where it was not so limited. The court conceded that the statute conferred a benefit upon police officers that was not shared by the public at large, but concluded that, absent a constitutional attack on the statute, it must be enforced according to its plain meaning.

Administering Medicine to Procure Evidence Concealed Internally is Not an Unreasonable Seizure—In an effort to smuggle heroin into the United States, the defendants encased the drugs in rubber sheaths and swallowed them. Customs officials at the border, noting needle marks on the defendants' arms, searched them and found nothing. Fluoroscopic examinations were then given and they revealed a foreign object in the

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