Journal of Criminal Law and Criminology

Volume 49 | Issue 3 Article 18

1958

Police Science Legal Abstracts and Notes

16¾"), with nearly equal land and groove widths. The gun is designed with a 10 round magazine, a thumb safety and magazine safety. Take down instructions are included as well as a parts legend. (JDN)

Differentiation of Inks by Electrochromatophoresis—C. L. Brown and P. L. Kirk, *Mikrochimica Acta*, 1956: 1729–34. Comparison analysis of inks indicated that a combination of paper chromatography and zone electrophoresis produced sharper definition of the separation of the ink components. A buffer, consisting of 4 gms of sodium acetate and 0.5 ml glacial acetic acid in 1 l. of solution, is used. An e.m.f. of 350 v was impressed across the electrodes for approximately one hour. (JDN)

Identification of Minute Amounts of Metals and Alloys by Electrosolution and Electrophoresis—C. L. Brown and P. L. Kirk, *Mikrochimica Acta*, 1956: 1593–9. Small fragments of metal are dissolved on paper by electrosolution. This metal is then separated into components by paper electrophoresis. The separated metals are detected by fumes of ammonia, kojic acid and 8-hydroxyquinoline, dithizone, or Eriochrome Black T. Although the method is essentially qualitative, semi-quantitative results can be seen. (JDN)

A Microtechnique for Combined Analytical or Continuous Chromatography and Electrophoresis—A. Karler, C. L. Brown, and P. L. Kirk, *Mikrochimica Acta*, 1956: 1585–91. A description is given of a microapparatus with which paper chromatography and electrophoresis can be accomplished, simultaneously or separately. With this technique, the components of blood sera, inks, and dyes have been separated. (JDN)

Reproduction of Tool Marks—The compound for modeling objects reported by Zhukov[1] has been found to possess resolving power adequate to record the fine striations of tool marks. Equal parts of Al (NH_4) $(SO_4)_2 \cdot 12H_2O$ and Al_2 $(SO_4)_3 \cdot 18H_2O$ are fused together resulting in a mixture melting at 86°C. The melt is poured on to the surface or mark to be recorded. The resulting cast has good dimensional stability and fair strength. Hot water at 90° will remelt or dissolve the cast and the solution can be reused. On some surfaces, a light dusting with stearate prior to casting is helpful. (JDN)

Fraudulent Check File—J. McCarthy and W. E. Kirwan, *Bulletin of Bureau of Criminal Investigation*, New York State Police, *23*(2): 7–12 (1958). A review of the classification of fraudulent checks according to "trade-marks". The authors deplore the practice of allowing restitution on checks proven and then permitting the swindler to continue his trade. The courts and investigative bodies should not be used as collection agencies. (JDN)

[1] Modelling Compounds Made of Hydrated Sulfates. A. A. Zhukov, *Liteinoe Proizvodtvá*, 1958 (1): 19–20.

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

Francis A. Heroux*

Repeated Persuasion and Inducement of Defendant Constitutes Entrapment—The petitioner, a narcotics addict, was charged with making three sales of narcotics in violation of 21 U.S.C. §174.

In August, 1951, a government informer, who was also an addict, introduced himself to petitioner. The two became well acquainted through their mutual efforts to overcome the drug habit. After several months, the government informer asked petitioner to supply him with heroin. The petitioner refused and was evasive, but after the informer's constant requests due to his presumed suffering, the petitioner acquiesced. He secured drugs for the informer on several occasions and the relationship even prompted his own return to the use of drugs. Subsequently, the informer re-

* Senior Law Student, Northwestern University School of Law.

ported the petitioner to the federal authorities and he was arrested.

At his trial, the defense was entrapment; however, the jury found him guilty and he appealed. The United States Supreme Court reversed, holding that the undisputed testimony of the prosecution's witnesses that petitioner obtained narcotics for the informer only after repeated persuasion, including an appeal to sympathy and the inducement of the petitioner to return to the narcotics habit, established the defense of entrapment as a matter of law. *Sherman v. United States*, 78 S. Ct. 819 (1958).

The majority based its decision on the previous case of *Sorrells v. United States*, 287 U.S. 435 (1932). In that case, the Court firmly recognized the defense of entrapment in the federal courts. It stated that entrapment occurs only when the criminal conduct is "the product of the *creative* activity" of law-enforcement officials. Thus, when the criminal design originates with the officials of the government and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute, the defense of entrapment will protect the accused. Following this precedent, the Court sought to determine whether the informer had convinced an otherwise unwilling person to commit a criminal act or whether petitioner was already predisposed to commit the act and exhibited only the natural hesitancy of one acquainted with the narcotics trade. The Court concluded from the testimony of the prosecution's witnesses that entrapment was established as a matter of law and thus the issue should not have gone to the jury. The government sought to avoid this result by showing that the petitioner was predisposed to commit this type of crime. It introduced as evidence the record of his two former convictions for similar offenses. The Court said that while such evidence may demonstrate a disposition to crime, the former convictions introduced in the instant case were over five years old and thus insufficient to show the petitioner's readiness to sell narcotics.

Four Justices concurred in the result, but reached their decision by different reasoning. Mr. Justice Frankfurter, speaking for the four, stated that the reasoning of the *Sorrells* case is not the proper analysis of the problem and that the whole theory of the law should be clarified so that the lower federal courts may be able to apply the doctrine of entrapment. They maintained that it is wholly irrelevant to ask if the "intention" to commit the crime originated with the defendant or government officers, or if the criminal conduct was the product of "the creative activity" of law enforcement officials. Rather, the issue is whether the Court can countenance the methods employed on behalf of the government.

". . . The federal courts have an obligation to set their face against enforcement of the law by lawless means or means that violate rationally vindicated standards of justice, and to refuse to sustain such methods by effectuating them." Furthermore, the concurring opinion rejects the doctrine of the *Sorrells* case because it believes that a test that looks to the character and predisposition of the defendant rather than the conduct of the police loses sight of the underlying reasons for the defense of entrapment. The mere fact that a defendant has a bad criminal record should not be used to balance the deplorable police tactics used to ensnare him.

Defendant's Undisputed Testimony Is Insufficient to Establish Entrapment as A Matter of Law—The petitioner was charged with the illegal sale of narcotics. At his trial, a government agent testified that he had asked the petitioner to procure heroin for him. The petitioner declined at first, but later he secured the desired heroin for the agent. The petitioner testified that he was only a gambler and while he knew people who were involved in the narcotics traffic, he personally had nothing to do with it. Furthermore, he stated that he had contacted the narcotics' seller only upon the inducement of the government agent. The trial court sent the issue of entrapment to the jury and the petitioner was convicted. He appealed the conviction and the United States Supreme Court affirmed, holding that the defendant's own testimony, though undisputed, could not alone establish entrapment as a matter of law and issue was properly submitted to the jury. *Masciale v. United States*, 78 S. Ct. 827 (1958).

The majority, in line with its decision in *Sherman v. United States*, 78 S. Ct. 819 (1958), stated that the defense of entrapment could only be established as a matter of law from the undisputed testimony of the prosecution's witnesses and not from the sole testimony of the defendant, even though undisputed. Thus, while the petitioner presented enough evidence for the jury to find in his favor, they could also disbelieve his statements and so find for the government on the issue of guilt.