

1959

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Recommended Citation

Police Science Legal Abstracts and Notes, 49 J. Crim. L. Criminology & Police Sci. 402 (1958-1959)

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

Francis A. Heroux*

Defendant Had Right To Resist Arrest—The defendant, who ran a rooming house, claimed she had an agreement with one of her tenants under which he gave her the keys, title and possession of his automobile and she, in turn, agreed to act as his chauffeur when he requested her to do so. The roomer later backed out of the arrangement, and when the defendant refused to return the car the roomer called the police. After hearing both sides, the police officer decided that the landlady was in error and ordered her to give up the car or he would arrest her for disorderly conduct. She forcefully resisted his attempt to give the roomer possession of the car and was arrested. The disorderly conduct charge was dismissed, but the defendant was convicted for resisting arrest. The Court of Appeals of Ohio reversed, holding that since the arrest was unlawful, the defendant had the right to protect her property and resist unlawful arrest by the "use of such force as may be necessary." *City of Columbus v. Holmes*, 152 N.E. 2d 301 (1958).

The court indicated that the proper remedy for the roomer to pursue was an action for replevin. This being so, the officer had no authority "to settle a private dispute over the right to possession of personal property."

Denial Of Counsel by the Police Does Not Violate Due Process—The defendant was arrested for the murder of his paramour. He was taken to police headquarters and questioned several times intermittently. During this period he requested that he be allowed to call an attorney for legal counsel but this request was denied. Subsequently, the defendant made a written confession of the crime. Then he was allowed to call his lawyer. Upon his conviction for murder, the defendant appealed and argued that his confession was involuntary and that the denial of immediate legal aid violated due process. The United States Supreme Court held that the use of a voluntary confession made by the defendant after the denial of his request to contact his attorney while in police custody did not violate the principle of funda-

mental fairness. *Crooker v. State*, 78 S. Ct. 1287 (1958).

The majority opinion referred first to the defendant's claim that the confession admitted into evidence over his objection had been coerced from him by state authorities. This contention depended almost entirely on the denial of the defendant's request for an opportunity to engage counsel. However, the Court pointed out that while coercion is more likely in cases of denial of counsel, it is not always the result. Therefore, the circumstances are important to determine the fact of coercion and such a conclusion is negated in this case by the age, intelligence and education of the defendant. He was thirty-one years of age, a college graduate and he had spent one year in law school. Thus, he knew his rights and knew of his privilege to remain silent. On this record the majority was able to conclude that the confession was voluntary.

The defendant's second contention was that even if the confession was voluntary, its use was in violation of due process just by reason of the fact he had been denied counsel. The Court accepted the fact that the right of an accused to counsel for his defense was of significant importance for the preservation of liberty. This right includes not only the right to have counsel at one's trial on the merits but also the right to have counsel for any part of the pretrial proceedings. However, a denial of counsel only offends due process if the defendant is so prejudiced thereby as to infect his subsequent trial with an absence of the fundamental fairness essential to the very concept of justice.

The petitioner, however, sought a stricter rule so that every state denial of a request to contact counsel would be an infringement of constitutional rights without any regard to the circumstances involved. The Court rejected this proposal, pointing out that such a rule would make the denial of immediate counsel a complete bar to conviction. Furthermore, this rule would effectively preclude any police questioning of a suspect—whether fair or unfair. The court concluded that this was not a requirement of due process.

Four judges of the Court dissented because they felt that the right to have the assistance of counsel is too fundamental and absolute to allow courts to

* Senior law student, Northwestern University School of Law.

indulge in nice calculations as to the amount of prejudice arising from its denial. Moreover, the dissent stated that if the right to counsel extends to pretrial proceedings as well as to the trial itself, it should also be extended to restrain the coercive power of the police and the possible evil of the "third degree." "A person accused of a crime needs a lawyer right after his arrest probably more than at any other time." Therefore, the dissenters concluded that the due process clause demands that the accused who wants a counsel should have one at any time after the moment of arrest.

Two other Supreme Court cases to the same effect as the majority opinion in the instant case are: *Cicenia v. La Gay*, 78 S. Ct. 1297 (1958), and *Ashdown v. Utah*, 78 S. Ct. 1354 (1958).

Complaint Not Stating Probable Cause Is Insufficient—An agent of the Federal Narcotics Bureau was informed that the petitioner was carrying on illegal activities. Going on this information, he obtained a warrant for the arrest of the petitioner from the United States Commissioner in Houston, Texas. This warrant, issued under Rules 3 and 4 of the Federal Rules of Criminal Procedure was based on a written complaint, sworn to by the agent. The complaint stated that the petitioner concealed heroin with knowledge of its illegal importation.

The agent served the warrant and arrested the petitioner, who at the time was carrying on his person a quantity of heroin. At his trial the petitioner moved to suppress as evidence the use of the heroin seized incident to the arrest—his theory being that the arrest was improper. The trial court denied this motion and the petitioner appealed. The United States Supreme Court, with three judges dissenting, reversed the petitioner's conviction, holding that, under the Federal Rules of Criminal Procedure, a complaint merely charging the concealment of heroin with knowledge of its illegal importation in violation of designated statute and containing no affirmative allegations upon which a finding of probable cause could be made did not provide a sufficient basis upon which such a finding could be made and did not authorize a United States commissioner to issue a warrant of arrest for the petitioner. *Giordenello v. United States*, 78 S. Ct. 1245 (1958).

In reaching its decision the Court said that Rule 4 of the Federal Rules of Criminal Procedure demands that a complaint must demonstrate that

there is probable cause to believe that an offense has been committed and that the petitioner has committed it. The protection afforded by this Rule, when it is viewed against its constitutional background, is that the inferences from the facts which lead to the complaint must be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of uncovering crime. When the complaint in this case is judged with these considerations in mind, it is clear that it must fail because it does not provide any basis for the Commissioner's determination under Rule 4 that probable cause existed. The complaint recited no more than the elements of the crime charged and this is not sufficient for a finding of probable cause. In conclusion the Court stated: "Indeed, if this complaint were upheld, the substantive requirements would be completely read out of Rule 4, and the complaint would be of only formal significance entitled to perfunctory approval by the Commissioner. This would not comport with the protective purposes which a complaint is designed to achieve."

Police Must Announce Purpose Before Breaking Into Home—The defendant was suspected by the police of being a dope peddler. In an effort to apprehend him, the police arranged for a contact man to buy narcotics from him with marked money. By keeping the defendant under surveillance, the police were certain that the purchase had been made in the defendant's apartment, and, following this lead, they closed in on him early one morning. The police knocked on his apartment door and he inquired, "Who's there?" They replied in a low voice, "Police." The defendant opened the door that had on it an attached door chain and asked what the men were doing there. Before they responded he attempted to close the door. The officers ripped off the door chain and entered. The police searched the apartment, finding the marked money and narcotics, and then arrested the defendant.

At his trial, the defendant sought to suppress the use of the marked money as evidence. The lower court denied this motion, but the United States Supreme Court held that the arrest and the search were unlawful because the police broke the door of the defendant's home without first giving notice of their authority and purpose in demanding admission. *Miller v. United States*, 78 S. Ct. 1190 (1958).