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Police Science Legal Abstracts and Notes

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formal papers, and of discussion panels dealing with specific problems relating to questioned documents. (OH).

New Products

The Photo-Microscope—Carl Zeiss, Oberkochen, Württ. A microscope with built-in automatic

camera has a great appeal to the forensic field. Here is such an instrument. All of the usual methods of examination can be used, bright and dark field and phase may be employed as well as epi-illumination. The automatic camera is an integral part of the microscope. Black and white or color photographs may be taken. (JDN).

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

Francis A. Heroux*

Federal Exclusionary Rule Extended—The defendant was charged with housebreaking and larceny in the District of Columbia. However, the only evidence in support of this charge was money seized through an unreasonable search by the Maryland State Police. The Federal District Court did not exclude this evidence from the defendant's trial because there had been no federal officers involved in the illegal search. The defendant appealed on the ground that this evidence should have been suppressed. The United States Court of Appeals for the District of Columbia reversed the lower court's verdict and suppressed the evidence, holding that all evidence obtained by an unconstitutional search and seizure (whether by federal or state officers) is unacceptable in the federal courts. *Hanna v. United States* (D.C. Cir. 1958).

At the outset of its opinion, the court realized that this was an open question, at least in the Supreme Court. The main repositories of law on this issue are *Weeks v. United States*, 232 U.S. 383 (1914) and *Wolf v. Colorado*, 338 U.S. 25 (1949). The *Weeks* case held that an illegal search by federal officers was a violation of the fourth amendment and that any evidence thus procured was inadmissible in a federal court. The *Wolf* case held that an unreasonable search and seizure by a state officer violates the Constitution because the prohibition of the fourth amendment is included within the fourteenth amendment. Combining these two decisions, the court in the instant case reached the result of excluding in a federal court the evidence which state officers illegally seized.

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The exclusionary rule of the federal courts is based on the policy considerations of the integrity of the judiciary and the fourth amendment which prohibits unreasonable searches and seizures. Thus, there is no reason why these considerations are not equally applicable to the now unconstitutional seizures by state officers.

Confession Obtained After Indictment is Admissible Evidence—Following the investigation of a murder, the defendant was indicted and a bench warrant was issued for his arrest. On the following night, the defendant gave himself up to the police, and he was then questioned through the night until he confessed. At his trial, the defendant was convicted of this murder, and he appealed on the ground that his confession was inadmissible as evidence. The Court of Appeals of New York held that, if the confession was not coerced, it was admissible as evidence even if it was made during a period of detention in violation of the law. Three judges dissented. *People v. Spano*, 150 N.E.2d 226 (N. Y. 1958).

After establishing that the confession was not coerced, the majority opinion reiterates the settled New York law that a confession, if in fact voluntary, may be admissible in evidence even though it was taken from a prisoner during an illegal detention. By applying this rule, the court had no difficulty in allowing the use of the confession.

The dissenters, while agreeing with the general rule of law espoused by the majority, take issue with the application of this rule to the instant case. They accuse the majority of going outside the permissible bounds of the rule because they have applied it to a confession extracted during

the very course of judicial proceedings (after indictment and surrender on a bench warrant). In doing this, the court has denied a defendant the right to have the effective services of counsel at every stage of a criminal cause and also compels the defendant in the course of a criminal proceeding to incriminate himself by his own utterances.

Police Officer Liable for Detention Under a Void Ordinance—The plaintiff was an itinerent vendor of tailored clothing. He was arrested by a local police officer for violating a municipal ordinance which imposed an occupational tax on such an endeavor. At the time of the arrest, the police officer knew that the vendor claimed immunity from the ordinance by reason of the fact that he was engaged in interstate commerce. Furthermore, the officer knew that the vendor had been arrested on this same charge previously and that he had been released by the courts.

The vendor's action here was for false imprisonment, and the trial court dismissed his claim. On appeal, the United States Court of Appeals for the Tenth Circuit held that a cause of action was embodied in plaintiff's contention that the officer had detained the plaintiff under an ordinance which the officer knew was invalid or inapplicable. (One judge dissented.) *Miller v. Stinnett*, 257 F.2d 910 (10th Cir. 1958).

In reaching its decision, the majority stated that a detention made by a police officer in good faith reliance on an ordinance, valid on its face but invalid or inapplicable in fact, may be privileged. However, this privilege does not extend to a detention by an officer who knows or has reason to believe that the ordinance is invalid or inapplicable. In the instant case, this knowledge was furnished by the prior arrest and release of the vendor on the same charge.

The dissent could not accept this position. It pointed out that, under the ordinance, the police were required to arrest any violators of this law and thus the defendant lacked any discretion to determine the applicability of the ordinance to the vendor. Moreover, the dissent asked, how can any ministerial officer have the duty to judge the constitutionality of a statute or an ordinance? Public policy does not demand this.

Garlic Odor Proper Identification—The defendant was charged with an armed robbery committed by a masked bandit wearing a handkerchief

over his face and a large hat pulled down over his eyes. Even though the victims could not see the robber's face, they did notice a distinct odor of garlic about the gunman.

The defendant was arrested by the police on the basis of a general description and at his trial evidence was introduced that he had eaten spaghetti with garlic sauce just prior to the crime. The defendant was convicted and he appealed. A superior court of New Jersey held that the evidence showing that the defendant had consumed garlic-seasoned food was sufficient to identify the defendant as the robber, when witnesses testified that the crime had been committed by a bandit who emanated a garlic odor. *State v. Buffa*, 143 A.2d 833 (1958).

The court in its opinion stated that this evidence was not prejudicial, and in fact it had a significant probative value to link the defendant with the crime.

State Allows Use of Illegal Wire Tap Evidence—The defendant was convicted of bookmaking and pool selling in violation of a Pennsylvania statute. The only evidence that was offered at his trial was a transcript of certain telephone conversations which were intercepted by the local police authorities through the means of a wire-tap. The defendant appealed, challenging this evidence on the grounds that the use of a wire tap has been prohibited by a federal statute (47 U.S.C.A. § 605). The Pennsylvania Supreme Court rejected this appeal and held that wire-tap evidence secured in violation of a federal statute was admissible in the course of a criminal prosecution of a Pennsylvania crime in a Pennsylvania court under the Pennsylvania rules of evidence. *State v. Voci*, 143 A.2d 652 (1958).

Upon appeal, the defendant premised his arguments on a federal statute which prohibits the unauthorized interception and divulgence of telephone conversations. The defendant maintained that under this plainly worded statute it is illegal and unconstitutional to use in any criminal prosecution evidence obtained by wiretapping. The court, however, upheld the defendant's conviction on the basis of its previous holding that evidence secured by wiretapping is admissible under the Pennsylvania rules of evidence which are not governed by statute. *Chaitt v. State*, 380 Pa. 532, 112 A.2d 379 (1958). It believed that the doctrine of the *Chaitt* case was still binding precedent.