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Police Science Legal Abstracts and Notes

biological media and their differentiation from metabolic products are possible by means of colorimetry, ultraviolet spectrophotometry, and paper chromatography. Most of the methods have recently been published, and some have not yet appeared in the literature.

Levels in biological material following intoxication are given. Since these are few in number, correlation between dosage, concentration, and physiological effects cannot yet be established.

The authors hope that this paper will stimulate further investigation into these drugs and accumulation of information will aid in the proper handling of emergency cases and be useful to the medicolegal investigator in his evaluation of cases in which these drugs have been involved. (WEK)

A Microchemical Procedure for Paint Chip Comparison—Friedrich Klug and Livio L. Vagnina, *Journal of Forensic Sciences*, 4(1): 91–6 (January 1959). The scientific analysis of paint fragments of near-microscopic size is difficult. As the samples become smaller, techniques demand more sensitiveness and exactness. Because spectrographic analysis of paint samples are not always conclusive and have certain disadvantages, a new procedure was sought which would supplement spectrographic analysis. The authors discuss a new microchemical method for the comparison of paint chips, and explain in detail its advantages as applied to experience with hit-run investigations. Applications may also be made in connection with burglary and any other source of paint transfer. The new method consists of observation of the color change reactions caused by addition of the following five reagents:

1. Ethyl acetate.
2. Ammonia water (58%).
3. Concentrated hydrochloric acid.
4. Ammonium sulfide solution (half concentrated) or a 10% solution of sodium sulfide.
5. A 5% solution of silver nitrate in 20% nitric acid (3). (WEK)

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Police Roadblocks Are Illegal—The Miami police set up roadblocks to make a general check of motorists' licenses, and to check the possibility of traffic law violations. This policy was attacked, and a Florida state court held that the indiscriminate use of roadblocks violates the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, as well as Section 22 of the Declaration of Rights of the Florida Constitution. *Aronovitz v. City of Miami*, 27 U. S. L. WEEK. 2448 (2/20/59).

The court conceded that the police roadblocks had accomplished a great deal of good, and commended the police for their effort to remedy an inherently dangerous condition. However, the unheralded stopping of supposedly free motorists affected so many basic protections and rights granted by the Constitution that the court would not overlook or excuse the activity on the ground that it was producing good results.

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Court Upholds Arrest for Misdemeanor Committed Outside Presence of Police—As the defendant came out of a building, the police arrested him without a warrant on the basis of their belief that he had committed a felony while in the building. Thereafter he made a confession of several thefts and he was charged with petit larceny—a misdemeanor. At his trial, the defendant sought to suppress the confession, because it was obtained while he was being held pursuant to an illegal arrest. The Municipal Court of Appeals for the District of Columbia admitted the confession as evidence, holding that the District Attorney could reduce the crime charged from housebreaking (a felony) to petit larceny (a misdemeanor) without changing the circumstances of the arrest. *Scott v. United States*, 147 A. 2d 767 (D.C. 1959).

The defendant argued that he was charged with the crime of petit larceny and that the police had no right to make an arrest without a warrant for a misdemeanor not committed in their presence. The court rejected this argument, because it ignored the fact that the police had information which gave them probable cause to believe that the

defendant had entered the building with the intent to steal—a felony. The facts of this case indicated that a conviction could have resulted on either the charge of housebreaking or petit larceny; therefore, no warrant was needed, and the arrest was lawful.

Ohio Court Accepts Radar Evidence Without Expert Testimony—The defendant was found guilty of driving at an unreasonable speed when radar evidence indicated that his automobile was traveling 42 miles per hour. He challenged the conviction on the ground that no expert testimony concerning the general scientific principles and reliability of radar had been presented at the trial. The Ohio Supreme Court, in a case of first impression, decided that such testimony was unnecessary and the conviction was affirmed. *City of East Cleveland v. Ferell*, 154 N.E.2d 630 (Ohio 1958).

The court noted that early decisions in radar speeding cases required the prosecution to present expert testimony on the nature of radar. Since then, radar has come to be generally recognized and accepted as accurate and reliable. The court noted, however, that convictions should not be upheld in the absence of testimony concerning the accuracy of the *particular* radar device employed. In the instant case, this need was satisfied when testimony was presented that an electrician had checked the instrument on the morning in question, that trial demonstrations had been employed, and that the operator in charge was experienced in its use.

The court also raised, without answering, another interesting question. This concerned the police practice of having the operator of the radar car radio ahead to police parked down the road to stop the offending vehicle. In states which require a misdemeanor to be committed *in the presence* of the officer who arrests without a warrant, as in the instant case, this practice may be illegal.

City Liable for Informer's Death—The plaintiff's son recognized a wanted criminal and gave information to the police resulting in his capture. Three weeks later he was shot and killed by unknown assailants. Plaintiff brought suit against the city for damages for pain and suffering and wrongful death, alleging that the death occurred because the defendant failed in its duty to provide protection for the informant. The Court of Appeals of New York, by a vote of 4-3, reversed the trial court's dismissal on the city's motion and held that the complaint stated a cause of action. *Schuster v. City of New York*, 154 N.E.2d 534 (1958).

The majority, in a case which breaks new ground, held that "where persons actually have aided in the apprehension or prosecution of enemies of society under the criminal law, a reciprocal duty arises on the part of society to use reasonable care for their police protection, at least where reasonably demanded or sought." And it makes no difference, the court said, that plaintiff might not be able to prove that friends of the wanted man shot the informer. It was a question for the jury whether the events were so closely connected that it could be assumed it happened that way.

The dissenters argued that plaintiff's son had no duty to inform on criminals. Therefore, if he did, his only compensation should be the rewards which were offered, if any. The city owed him no duty of protection. The dissenters foresaw a situation where every witness in every criminal case would be entitled to ask for round-the-clock police protection, with disastrous financial results for the city and loss of ordinary police protection for the public.

Informer's Description Sufficient for Probable Cause—A federal narcotics agent was informed by a reliable, paid informer that the defendant was peddling narcotics to several addicts. The informer gave the agent a detailed physical description of the defendant, and the agent arrested him without a warrant. A search of the defendant yielded a quantity of heroin and a syringe. Prior to his trial for concealing narcotics, the defendant moved to suppress the evidence secured in the search. This motion was denied and following his conviction the defendant appealed. The United States Supreme Court affirmed the conviction, holding that the arrest without a warrant was lawful, since the informer's description had provided "probable cause" for arrest within the meaning of the Fourth Amendment. *Draper v. United States*, 358 U.S. 307 (1959).

The defendant contended that the informer's information was "hearsay" and since hearsay evidence is not legally competent evidence in a criminal trial, it should likewise be improper as a basis for assessing "probable cause" to arrest. The Court rejected this argument, because it required proof sufficient to establish guilt in order to substantiate the existence of probable cause for arrest. In fact, there is a great difference between the two things to be proved—guilt and probable cause—

and, therefore, the quantity and modes of proof for each are necessarily different.

The defendant also contended that the informer's information was insufficient to show "probable cause" for arrest, and thus his arrest was improper. The Court, in stating the general rule on this question said that probable cause exists where the facts and circumstances within the arresting officer's knowledge are based on trustworthy information, sufficient in itself to make a reasonable man believe that an offense has been, or is being, committed. Then, by applying this rule to the facts, the Court found "reasonable cause" for arrest, because every bit of the informer's description had been personally verified by the arresting officer.

Mr. Justice Douglas dissented on the ground that, since the arresting officer had no evidence that the defendant was committing a crime other than the mere word of an informer, there was not a proper basis for "probable cause" to make an arrest.

Court of Appeals Puzzled over Obscenity Law—The plaintiff brought an action against the Eastman Kodak Company to recover 10 reels of color film he had sent in to be processed. Eastman refused to return the film for fear that it might violate the obscenity laws of the city of Los Angeles and the state of California. The district court submitted special interrogatories to the jury which found that the film would not corrupt the morals of adults. The court ordered the film returned and Eastman appealed. The Court of Appeals for the Ninth Circuit reversed, holding that the real question was whether the film corrupted persons other than youths *by arousing lustful thoughts*, and that issue should have been submitted to the jury. *Eastman Kodak Company v. Hendricks*, 262 F.2d 392 (1958).

The court considered the film, "A Day In The Life Of Jennie Lee," (Jennie Lee being a burlesque dancer) in the light of several recent decisions of the United States Supreme Court in obscenity cases. It noted that the court had reversed decisions banning nudist magazines and a magazine for sexual deviates. The court thought that the test for obscenity was perhaps swinging from "the standard of distasteful to a majority of people to a standard of disgusting, really lewd, shameful, or excites morbid interest in sex. Perhaps, the shift is from 'bad' to 'awful.' "

The court concluded that this was a borderline case and one which furnished no guide to Eastman Kodak in these matters. After the court below tried the case again, with the new question added, the court hinted that it would not disturb the verdict regardless of which way it came out.

(For other recent case abstracts see pp. 46 and 68).

A Bar Association's Viewpoint Regarding the Lie-Detector Technique—The Committee on Criminal Law, in cooperation with the Committee on Post-Admission Education, held a lecture on November 19, 1958, at The Chicago Bar Association. . . . Professor Fred E. Inbau, a former member of our Committee, lectured on the lie detector technique and he had as his assistant, John E. Reid, a well known polygraph operator.

As a part of the work of the committee, an investigation of polygraphs and polygraph operators was started by the committee about a year and a half ago. Various persons appeared before the committee, including Professor Inbau of Northwestern University, and Lt. Frank LaValle and Lt. John Ascher, lawyers, both of whom head up the Crime Laboratory of the City of Chicago. There were also a number of independent operators who gave testimony.

It was the consensus of the committee from the evidence presented by the various parties:

a) That 95% of the results of the polygraph machine or so-called "lie detector" test are primarily due to the efficiency and capability of the polygraph operator, and that the machine itself is responsible for 5% of the accuracy of the results;

b) That a number of independent operators of polygraph machines were selling services in the Chicago area, issuing diplomas, and thereafter selling machines, without any educational standards being required. Short courses were offered, no educational background of the students was required, and none of the students were checked as to qualifications, including the possibility of criminal records, before being granted a certificate establishing their right to operate a polygraph machine.

During the year, our Committee made a thorough investigation of the use of polygraph machines or the so-called lie detector machine in the Chicago area. The Criminal Law Committee's inquiry was made because many people assume