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Abstracts of Recent Cases

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Evidence—Constitutional law—Effect of delay in arraignment in admissibility of confessions, *Texas Law Review*, 35: 728, May 1957.

McNabb rule: Upshaw through Mallory, *Virginia Law Review*, 43: 915, October 1952.

Leyra case. *Criminal Law Review*. Volume 4, page 83. Spring 1957.

McNabb rule: Upshaw through Mallory. *Virginia Law Review*. Volume 43, page 915. October 1957.

Under the McNabb rule a confession can be excluded from evidence because of an illegal detention only if shown to be the product of that illegal detention (*Rettig v. United States*, 239 F. 2d 916), *Georgetown Law Journal*, 45: 504. Spring 1957.

Restrictions in the law of interrogation and confessions. *Northwestern University Law Review*. Volume 52, page 77. March–April 1957.

Right of an accused to obtain pretrial inspection of his confession. *Journal of Criminal Law, Criminology and Police Science*. Volume 48, page 305. September–October 1957.

Safeguards in the law of interrogation and confessions. *Northwestern University Law Review*. Volume 52, page 86. March–April 1957.

Utah court holds evidence independent of extrajudicial confession insufficient to establish corpus delicti. *Utah Law Review*. Volume 5, page 549. Fall 1957.

ABSTRACTS OF RECENT CASES*

Uniform Act to Secure Attendance of Out-of-State Witnesses is Valid—The states of New York and Florida had enacted similar statutes, known generally as the "Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings." A request was made under the Florida statute by New York authorities to have the respondent delivered into their custody to be transported to New York to testify before a grand jury proceeding. This request was refused by the Florida courts on the ground that the statute violated the United States Constitution. On *certiorari*, the United States Supreme Court reversed and held that the statute did not violate the privileges and immunities clause, nor the due process clause, of the 14th Amendment. *New York v. O'Neill*, 79 Sup. Ct. 564 (1959).

The respondent claimed that the right to ingress and egress between the states is a privilege of national citizenship protected by the Fourteenth Amendment, and that the instant statute violates this privilege. The Court rejected this argument, saying that, even under the broadest scope possible, this statute did not violate the Constitution. Florida could have held the respondent within Florida if he had been a material witness in a criminal proceeding within that state, yet this would not have been less of a limitation on his claim of the right of ingress and egress than is an order to attend and testify in New York. Thus, this statute does not violate the freedom of travel in its essential sense, but is only a temporary interference with voluntary travel, particularly in this era of jet transportation.

The respondent argued further that, inasmuch as what was to be ordered under the statute was

to be carried on in a foreign jurisdiction, the Florida courts could not constitutionally be given jurisdiction to order it. The Court rejected this because the Florida courts had immediate personal jurisdiction over respondent by virtue of his presence within that state, and this gave the Florida courts constitutional jurisdiction to order the doing of an act, even though that act is to be performed outside of the state.

On a broader level, the Court noted the beneficial aspects of this statute, holding that it served a self-protective function for each of the enacting states, and was a catalyst of cohesion for the federal union. Thus, the Court recognized that, to strike down this statute would be an unwarranted constriction of state and national powers, and would hobble the effective functioning of federalism.

Two Justices dissented on the ground that the statute violated the constitutional right of a citizen to free ingress and egress between the states.

Newly discovered evidence of wrong identification of accomplice merits new trial—Upon the uncorroborated testimony of a fifteen-year old boy, defendant was convicted of second-degree robbery. The boy testified that he had spent twelve hours in an automobile with the defendant and the driver (who was not apprehended). The boy identified the driver as a tall, mustached Indian with whom he had been previously acquainted. The defendant was also identified as the person who assaulted the boy and took \$2 from his person. The Supreme Court of Minnesota reversed and remanded on the ground of newly discovered evidence that the boy was completely wrong in his identification of the driver and that the prosecution was aware of this evidence before

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the trial. *State v. Warren*, 89 N.W. 2d 702 (Minn. 1958).

The court reasoned that if the jury knew that the prosecuting witness was completely wrong in his identification of the driver, they would not have believed his testimony regarding the identity of the defendant. The trial court was said to have abused its discretion in denying a motion for a new trial.

The dissenting justice insisted that while a new trial might properly have been granted upon the record, the denial of the motion did not involve a "violation of a clear legal right or a manifest abuse of judicial discretion."

Illinois Court Re-defines Crime of Burglary—

Four men entered a warehouse and pushed a safe belonging to the company out of the second floor window into the yard below. The safe proved too heavy to move, so the four men left for help. The defendant, who had no prior knowledge of the crime, was recruited to give his aid, but, upon returning to the warehouse yard, the men were arrested while in the act of lifting the safe into their car.

The defendant was tried and convicted of the crime of burglary, and he appealed, contending that the evidence was insufficient to prove him guilty of the crime charged. The Supreme Court

of Illinois reversed the conviction, holding that proof that the defendant was guilty of assisting burglars after they had removed a safe from a building would not make the defendant a principal in the crime of burglary. *Illinois v. Zierlion*, 157 N.E. 2d 72 (Ill. 1959).

The defendant argued that, to warrant a conviction for burglary, it must be shown that the accused entered a building with intent to commit a felony, and that, since the evidence failed to show such conduct on the part of defendant, the instant conviction could not stand. The court accepted this theory, noting that while the defendant may have been an accessory after the fact, this was an independent offense and had no relevance to the crime of burglary.

The dissent charged the majority of the court with erroneously assuming that the burglary had been completed prior to defendant's participation in efforts to remove the safe from the warehouse premises. The dissent agreed that prior court decisions have held that a burglary is complete upon the breaking and entering with intent to steal, but it believed that this should not preclude the crime from being a continuing one, as long as the participants are still in the process of committing larceny of the property.

(For other recent case abstracts see "Police Science Legal Abstracts and Notes," pp. 215-216).