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Police Science Legal Abstracts and Notes

lumen-seconds for black and white has been announced by General Electric Company. Its dimensions permit use in some sort of rapid fire mechanism resembling the clip of an automatic pistol. (JDN)

Nite-Eye Infra-Red Viewer—The Q.O.S. Corporation, 621 East 216th Street, New York 67, New York, has announced the availability of an infrared viewer weighing five pounds, capable of positive identification of subjects up to 150 feet away. Identification of major characteristics can be made as far as 400 feet. The weight noted above does not include power for the infrared lamp. This power may be supplied by 12 volt battery or from a cigarette lighter plug-in. (JDN)

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Policeman Recovers for Libelous Complaint of Irate Citizen—After the defendant received a ticket for parking overtime at a parking meter, he sent an enraged complaint to the City Mayor. The letter stated among other things that "your tinhorn cop sits in nearby concealment sipping beer until he sees a car parked over 12 minutes at a defective meter, and then sneaks over, places a ticket on the car and hustles back to his beer. I can smell skunk perfume a long way and this definitely smells like a racket, and the situation stinks". The policeman began an action for libel and, upon the defendant's demurrer, the Court of Appeals of Maryland held that the letter was libelous *per se* and entitled the policeman to sue for damages. *Thompson v. Upton*, 146 A. 2d 880 (Maryland 1958).

The court interpreted the letter as exposing the policeman to public scorn, hatred, contempt and ridicule, and also charging him with conduct which would make him unfit to carry out, faithfully and correctly, his duties as a policeman. Both of these results are included within libel and are actionable.

The defendant argued that the letter should be interpreted as an average person would understand it and thus it should be treated in a humorous vein. The court rejected this, pointing out that when such charges are leveled at a law enforcement officer they are of a grave and serious character.

Nalline Narcotic Test Upheld—Defendant was convicted for the violation of a statute making it unlawful to be under the influence of narcotics. Nalline, an anti-narcotic agent, was administered to the defendant by a physician and a comparative measurement of the dilation of the pupils of the eyes before and after the administration of the drug indicated the recent use of narcotics. Defendant consented in writing to the test and conceded that such consent was freely and voluntarily given. The Appellate Department of the Superior Court, Alameda County, California *affirmed*, holding that the opinion evidence of the physician, based upon the test, was admissable. *People v. Williams*, 331 P. 2d 251 (Cal. 1958).

The defendant contended upon appeal that the Nalline test was not generally accepted by the medical profession and that its results were inadmissable as evidence against him. The court noted, however, that the medical testimony was undisputed that the Nalline test was known to be reliable among those who would be expected to be familiar with its use. Furthermore, the legislature had specifically authorized the use of synthetic opiate anti-narcotic agents and this was interpreted as a legislative mandate that the results of such tests had probative value.

The defendant also contended that venue, was improper as it was never shown where the narcotics were taken. The court held that venue was proper anywhere the defendant was apprehended as the offense consisted of the presence of narcotics in the system and not of the taking of narcotics.

Police Officer Exercises Sovereign Power of the State and Therefore Immune from Civil Liability—The plaintiff sued a policeman to recover damages for a wrongful death, alleging that his decedent's death resulted from an assault and battery committed by the policeman while performing his assigned duties. The defendant moved for summary

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judgment on the grounds that the policeman was an "officer" of a sovereign power, and thus immune from suit, just as his employer, the City of Los Angeles. The California District Court granted summary judgment, holding that a policeman is an "officer" of the city and immune from suit until a claim is filed against the city. *Davis v. Hendricks*, 336 P. 2d 247 (Cal. 1959).

The court said that while a policeman may not be an officer in every sense of the term, in the discharge of his duties he does stand in a relationship to the governing authority differing greatly from that of a mere employee or agent. This relationship, for many purposes, is indistinguishable from, and may be classified as, that of a "public officer."

Blood Sample Taken From Unconscious Defendant is Improper Evidence—The defendant was involved in an automobile accident sustaining serious injuries. He was taken to a hospital and, while unconscious, a sample of his blood was taken for analysis. The sample proved that the blood contained .15% alcohol and such percentage indicated intoxication. Subsequently, suit was brought for the wrongful death of the other motorist involved in the accident. At the trial, the defendant objected to the use of the blood sample as evidence. The lower court overruled the objection, but, on appeal, the Supreme Court of Michigan upheld this objection, holding that the taking of blood for purposes of analysis from the person of one who is unconscious at the time constitutes a violation of his rights, and that testimony based on the analysis of such blood should not be admitted in evidence. *Lebel v. Swincicki*, 93 N.W. 2d 281 (Mich. 1958).

The defendant contended that he was unconscious at the time the blood was taken from him, that he knew nothing about it and at no time gave his consent to the taking. Thus, he argued that this action, without consent, should be held to violate the right to the security of the person guaranteed by the Michigan Constitution. The court accepted this argument, noting that in an analogous situation, a criminal defendant must consent before he can be physcially examined. If consent is a necessary element, and since no defendant can give his consent when he is unconscious, the taking of the blood sample in this case was a violation of defendant's rights.

Validity of Search Warrant Immaterial if Police Have a Common Law Right to Search—The defendant, a restaurant owner, was prosecuted for receiving and concealing stolen property—a cash register. He filed a motion to quash the search warrant and to suppress the evidence seized in the search. The Supreme Court of Indiana upheld the search warrant and the conviction. *Brown v. Indiana*, 157 N.E. 2d 174 (Ind. 1959).

In the course of its opinion the court dealt with a side issue to support its conclusion. Upon argument, the defendant had accepted the fact that the cash register in question was in plain view of the officers when they entered the restaurant and also that the restaurant was a place open to the public. Thus, the defendant conceded that no search warrant was necessary to enter the premises when operated openly and to which the public was invited. However, the defendant urged that, if the search warrant was invalid, then any search pursuant to it was also invalid. Or, stated another way, that the police had no right to rely upon their common law rights to make a search if they were acting pursuant to an improper warrant.

The court rejected this argument, stating that it would not sanction such a supertechnical argument where there was no statute or constitutional provision compelling such a result. If the court had accepted this argument, it would have meant that an arresting officer, acting under what he thought was a valid warrant, could not defend in a suit for false arrest or imprisonment if the warrant was later shown to be invalid for any technical reason. This would be so, even though the policeman had probable cause and good ground to arrest for a felony without a warrant. In dealing with this problem in *dictum*, the court has seemingly set it to rest.

(For other recent case abstracts see pp. 185–186).