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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Abusive Language Towards Police Officers Does Not Constitute Disorderly Conduct When Manner of Arrest Was in Itself Unjustifiable—Petitioner was convicted of disorderly conduct in violation of a municipal ordinance. The alleged violation consisted of vile and abusive language addressed to three plain-clothed police officers who physically overpowered petitioner, handcuffed him and placed him under arrest while he was returning to his automobile after purchasing a package of cigarettes. The Court of Appeals of Ohio reversed the conviction, holding that the language used by petitioner was justifiable under the circumstances, since it was occasioned by the manner in which he was arrested. *City of Columbus v. Guidotti*, 160 N.E.2d 355 (Court of Appeals, Ohio 1959)

Crucial to the decision of the court was the lack of evidence that petitioner had committed any violation of the law prior to his detention. This was confirmed by the fact that disorderly conduct

was the only charge placed against him at the trial. Petitioner contended that he was carrying almost one-thousand dollars on his person, and he feared that the three plain-clothes officers were attempting to rob him. The court agreed that defendant had been provoked, and "since defendant had committed no offense prior to his detention, no ground existed for his arrest, and he was justified in resisting them by any manner or means which may have been reasonably necessary to retain his freedom."

Statute of Limitations Runs From the Date of Crime, Not From the Date When Alleged Accessory before the Fact Last Urges Another to Commit a Crime—Petitioner McGinnis was convicted on various indictments as an accessory before the fact to the million-dollar Brinks robbery. Trial was postponed for six months because of newspaper publicity regarding the solution of the crime, most of which had been created by law enforcement officials. The last occasion upon which petitioner had incited, procured, aided, counseled,

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hired or commanded the principals to commit the substantive offense occurred more than six years before the institution of prosecution, and petitioner contended that the action was barred by the appropriate statute of limitations. The prosecution argued that a ten year statute of limitations on criminal offenses, passed after the commission of the crime, was applicable. The Supreme Judicial Court of Massachusetts affirmed the conviction, holding that although the ten year statute of limitations was inapplicable as *ex post facto* legislation, the six year statute ran from the date of the armed robbery, not from the date of McGinnis' last overt participation. *Commonwealth v. Geagan*, 159 N.E.2d. 870 (Mass. 1959).

Petitioners further argued that a fair trial was impossible in view of the widespread newspaper publicity regarding the solution of what was termed "the biggest armed robbery in the history of the country." When the long delayed trial finally took place, petitioners claimed that their right to a speedy trial had been denied. The court concluded that although the publicity created by law enforcement officials was indefensible, it did not follow "that the defendants must be released, because they can never constitutionally be tried." Since no motion was made for a further continuance or for a change of venue, it could reasonably be concluded that the effect of the publicity had abated by the date of the trial.

Statutes Granting Privilege From Arrest to Parties, Witnesses and Attorneys When Going to, Attending or Returning From Court Apply Only to Civil Arrest—Petitioner stood trial in the Municipal Court of Akron on a charge of driving an automobile while under the influence of alcohol and was acquitted of the charge. Returning home in his automobile he was stopped by a police officer and charged with running a red light and operating a motor vehicle without a driver's license. Petitioner claimed his statutory privilege against arrest, asserting that he could not be arrested while returning home from attending court, but was convicted over this objection. The Supreme Court of Ohio affirmed, holding that statutes granting privilege from arrest to parties, witnesses, attorneys and certain other officers of the court while going to, attending or returning from court apply only to civil arrest, since the statutes exclude cases of treason, felony or breach of the peace from their operation. *City of Akron v. Mingo*, 160 N.E.2d 225 (Ohio 1959).

The court interpreted the phrase "treason,

felony and breach of the peace" as excluding from operation of the statute all arrests and prosecutions for criminal offenses. This construction is in accord with the interpretation of the identical phrase in the United States Constitution, applicable to Senators and Representatives, announced by the United States Supreme Court in *Williamson v. United States*, 207 U.S. 425 (1908). A similar privilege applicable to members of the British Parliament has been construed in like manner.

Refusal of Homicide Suspect To Answer Questions Regarding Why He Had Engaged Counsel Not Admissible as Adoptive Admission—Petitioner was convicted of manslaughter under an indictment charging him with the second degree murder of his wife. At the trial, a police officer testified concerning a telephone conversation with the defendant in which the defendant stated that he did not wish to talk to any police official regarding the matter and that he had engaged a lawyer. The officer further testified regarding a conversation in the home of defendant's son in which the defendant refused to answer any questions and made no response to a question inquiring why he had engaged counsel "if he had nothing to worry about." The Supreme Judicial Court of Massachusetts reversed the conviction, holding that the testimony was improperly admitted "since the right to the advice of counsel would be of little value if the price for its exercise is the risk of an inference of guilt." *Commonwealth v. Burke*, 159 N.E.2d 856 (Mass. 1959).

The defense further objected to testimony and exhibits tending to show the existence of an adulterous relationship of several weeks duration between the defendant and another woman six months prior to the wife's death. While the court considered that such evidence might form the basis for an inference that the accused entertained feelings of hostility towards his wife, it thought that the challenged evidence involved circumstances too remote in time and thus should have been excluded.

Testimony of a police chemist regarding a blood stain found on the seat of the defendant's automobile was admitted over defendant's objection. The court agreed that such testimony was irrelevant since upon cross-examination the chemist revealed that he was unable to determine whether the blood was animal or human and could not tell how long the stains had been present.

(For other recent case abstracts see pp. 382 and 403).