Journal of Criminal Law and Criminology

Volume 50
Issue 6 *March-April*

Article 16

Spring 1960

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Extraneous Substance in Blood Sample Does Not Necessarily Negate Blood Test for Intoxication—Petitioner was convicted of a homicide which he committed while driving under the influence of alcoholic beverages. At the request of a police officer a blood sample had been taken from petitioner. A private laboratory analyzed the sample according to an accepted method and determined that the alcohol content of petitioner's blood was .018 percent by weight, an amount in excess of that deemed prima facie evidence of intoxication by statute. The laboratory report also indicated the presence in the blood of a foreign substance which was later determined to be a preservative chemical, sodium chloride. Petitioner contended that the presence of this extraneous chemical rendered the results of the test inadmissible, since there was no guarantee that the percentage of alcoholic content was not changed by the addition of the chemical. The Supreme Court of Nebraska rejected this contention and affirmed, holding that the jury could properly rely upon expert testimony indicating that the sodium chloride served only as a coagulant and preservative and that no change in the alcholic content resulted. *Rimpley v. State*, 98 N.W.2d 868 (Neb. 1959).

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Radar Speed Measurement Equipment Must Be Proven Accurate on Location—Petitioner was convicted of speeding on a public highway. The conviction rested upon a radar unit reading which measured defendant's speed at approximately 72 miles per hour. Petitioner contended that although there was testimony to the effect that a test automobile had been driven in front of the radar unit after it had been set up at the location where petitioner was arrested, there was no evidence as to the result of the test. The Court of Criminal Appeals of Texas reversed, holding that the evidence was insufficient to support a verdict since there was no proof of the accuracy of the radar unit at its location. *Wilson v. State*, 328 S.W.2d 311 (Tex. Crim. App. 1959)

While the equipment in the instant case was constructed according to a type which was accepted

as dependable by scientists and the witness using it was qualified by training and experience, the court felt it necessary to insist upon the further requirement of accuracy on location. This requirement gave some assurance that the equipment had not been damaged in transit, and that there were no peculiarities in the location where the unit was installed which might render its results inaccurate.

Arrest for Parking Violation Justifies Search of Person—Petitioner was convicted of the unlawful possession of narcotics. He was arrested for *improper parking* while sitting in an automobile parked in the middle of the street. Although there was no evidence that petitioner attempted to resist arrest or otherwise demonstrated dangerous propensities, the arresting officers searched his person and discovered twenty capsules containing a white powder. Laboratory analysis determined that the white powder was heroin, and the capsules were introduced into evidence against the petitioner. The Supreme Court of Indiana affirmed the conviction, holding that the search and seizure were pursuant to a valid arrest. *Wilson v. State*, 161 N.E.2d 484 (Ind. 1959).

Police Officer Liable in Tort Where He Uses More Force Than Reasonably Necessary to Carry Out His Duties—Plaintiff brought an action for damages against a state police officer alleging that the officer unlawfully, wilfully and maliciously assaulted him by ejecting him from a tavern where he had been disorderly. Two bones in plaintiff's left leg were broken as a result of plaintiff's violent contact with the pavement when he was thrown out the door of the tavern by the officer. A jury awarded $6,000 compensatory damages and $1000, punitive damages. The Supreme Court of New Mexico affirmed the award, holding that the evidence supported a finding that the officer had used more force than was reasonably necessary under all the circumstances of the case. *Mead v. O'Connor*, 344 P.2d 478 (N.M. 1959).

A fellow police officer attempted to impeach the testimony of the plaintiff that he was a man of sober habits by citing instances upon which he had seen the plaintiff drink large quantities of whisky. The court concluded that since the earliest of the instances cited occurred seven months after the alleged assault, they could have no bearing upon the condition of the plaintiff at the time of the assault. Thus the testimony was inadmissible as an attempt to impeach on a collateral issue.

Presence in the Automobile of a Known Seller of Narcotics Is Not Sufficient Cause for Arrest and Search Without Warrant—Petitioner was convicted of the unlawful possession and sale of marijuana. He was arrested without a warrant while seated in the automobile of a known seller and user of marijuana and was searched against his will. The search disclosed that the defendant possessed marijuana, and the fruits of the search were admitted in evidence against him. The Third District Court of Appeal of California reversed, holding that the mere presence of the defendant in the automobile of a known narcotics peddler did not constitute reasonable grounds for his arrest without a warrant. *People v. Ingle*, 343 P.2d 780 (Cal. App. 1959).

The prosecution contended that the search was justified because it revealed that the defendant was in fact guilty of a felony. The court rejected this contention, insisting that the search could be justified only if the defendant was committing an offense in the officer's presence or if the officer had reasonable cause to believe he had committed a felony.

Prosecutor's Remarks to Jury Likening Their Role to That of Arresting Officer Held Proper—Petitioner was convicted of reckless driving upon a state highway. In his closing argument, the prosecutor stated to the jury that "your position is no different than a highway patrolman." Petitioner insisted that the trial court's refusal to exclude this argument from the jury was prejudicial error. The Court of Appeals of Alabama affirmed, holding that "standing alone, this remark is not clear in its meaning and without its complete contextual setting is not *per se* prejudicial". *Graham v. State*, 115 So.2d 289 (Ala. 1959).

The petitioner contended that the plain meaning of the statement was that the acts of accusing and convicting were inseparable and thus the same considerations which led the highway officer to arrest should lead the jury to convict. The court rejected this contention, insisting that the remarks were capable of several other interpretations.

(For other recent case abstracts see pp. 565–567).