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Abstracts of Recent Cases

ABSTRACTS OF RECENT CASES

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Alibi—*Halko v. State*, 175 A.2d 42 (Del. 1961). Defendant was convicted of driving while under the influence of liquor, driving while his license was revoked, and possession of a revoked license. On appeal, he contended that the trial court erroneously instructed that defendant bore the burden of proving his alibi defense to the satisfaction of the jury. The Supreme Court of Delaware affirmed the judgment on the possession count but reversed as to the counts involving driving, holding that the instruction, which had the effect of placing on defendant the burden of proving his alibi defense by a preponderance of the evidence, was an incorrect statement of the law, since alibi is not an affirmative defense but rather a denial of any connection with the crime; and consequently defendant should have been acquitted if the proof of alibi raised a reasonable doubt as to his guilt.

Arrest—*People v. Rucker*, 17 Cal. Rptr. 98 (Dist. Ct. App. 1961). Defendant was convicted of possession of heroin. On appeal, he contended that the trial court erred in admitting evidence seized pursuant to an illegal arrest without a warrant. The District Court of Appeal affirmed, holding that when police officers who were in a hotel corridor with the consent of the manager for the purpose of checking lights and fire escapes overheard a conversation, emanating from a room known by them to be rented by an addict, regarding the intravenous taking of narcotics and the penetration of a needle, they had probable cause to believe that the occupants of the room were engaged in the commission of a felony, and thus the officers validly arrested defendant who was then in the room; and the fact that probable cause arose from information obtained by eavesdropping did not render the arrest invalid as the result of an unlawful search, since eavesdropping in lack of trespass does not constitute a search.

Arrest—Uniform Arrest Act—*Kavanagh v. Stenhouse*, 174 A.2d 560 (R.I. 1961). In a civil action against a police officer for false arrest, the jury returned a verdict for defendant. Excepting to certain portions of the charge and to the trial court's denial of his request for certain instructions and of his motion for directed verdict, plaintiff contended that the temporary detention statute, [R.I. GEN. LAWS ANN. §12-7-1 (1956)], pleaded by defendant as justification for having detained plaintiff, is unconstitutional as a violation of due process, since it is an invalid attempt to distinguish between "arrest" and "detention" and it allows detention upon mere suspicion. The Supreme Court of Rhode Island overruled plaintiff's exceptions and ordered that judgment be entered on the verdict, holding that since the two-hour detention permitted by the statute is reasonably limited in time, is free from unreasonable restraint, and is based upon circumstances reasonably suggestive of criminal involvement, the legislature in the exercise of its police power constitutionally provided a distinction between arrest and detention though none existed at common law, and that the words "reason to suspect" establish a just standard for detention as distinguished from arrest.

Arrest, Search and Seizure—*Busby v. United States*, 296 F.2d 328 (9th Cir. 1961). Defendants were convicted of possession of unregistered firearms. On appeal, they contended that the district court erred in admitting as evidence a sawed-off shotgun which had been obtained as a result of an illegal search and seizure. The Court of Appeals for the Ninth Circuit affirmed, holding that although the arresting officers lacked probable cause to arrest defendants or search their car prior to discovery of the shotgun, there was no arrest under applicable law [which requires "taking a person into custody," CAL. PEN. CODE §834] when defendants were asked to step out of their car; that once defendants left the car and the officers saw the shotgun, they thereby acquired the requisite probable cause to arrest without a warrant; and consequently the evidence was

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admissible whether the search pursuant to the valid arrest preceded or followed such arrest.

Arrest, Search and Seizure—*People v. Torres*, 17 Cal. Rptr. 495 (1961). Defendant was convicted of possessing narcotics. On appeal, he contended that illegally obtained evidence was used against him. The Supreme Court of California affirmed, holding that where the arresting officer observed defendant in an area known to be frequented by narcotics users and sellers, saw two men whom defendant drove to a drugstore purchase milk sugar and gelatin capsules, and saw a known addict leave defendant's apartment, it was reasonable for the officer and his partners to believe that defendant was involved with narcotics, and proper for them to seek to interview him at his home; that when upon entering defendant's apartment the officers saw a woman running toward the bathroom, they had reasonable cause to believe that she was attempting to dispose of narcotics; and since at that point the officers had probable cause to arrest defendant, the narcotics seized in a search incidental to defendant's arrest were properly admitted even though the search preceded the arrest.

Arrest, Search and Seizure—*People v. Ruiz*, 16 Cal. Rptr. 855 (Dist. Ct. App. 1961). Defendant was convicted of possession of heroin. On appeal, he contended that the trial court erred in denying his motion to suppress evidence obtained during an unlawful search pursuant to an arrest without a warrant which was illegal for want of probable cause and for lack of compliance with CAL. PEN. CODE §844. The District Court of Appeal affirmed, holding that where information from an anonymous informer was coupled with the facts that defendant's companion, one Bruner, attempted to slam the door on an arresting officer known by Bruner to be a police officer, and that needle marks on Bruner's arm were then visible to the officer, there was probable cause to arrest Bruner; that when defendant dashed to the bathroom upon the officers' forcible entry, they had probable cause to believe that he was about to attempt to dispose of heroin and could thereupon legally arrest him without a warrant; that the officers were excused from compliance with §844, requiring that a peace officer demand and be refused admission before he may lawfully make a forcible entry, since they believed both reasonably and in good faith that compliance would frustrate the arrest and permit the destruction of evidence; and consequently evidence seized during a reasonable search pursuant to defendant's arrest was properly admitted at his trial.

Concurrent State and Municipal Jurisdiction—*City of St. Paul v. Ulmer*, 111 N.W.2d 612 (Minn. 1961). Defendant was convicted of driving while intoxicated in violation of a St. Paul city ordinance. On appeal from the judgment and from the municipal court's denial of his motion to dismiss, defendant contended that since he did not waive a jury trial, the municipal court should have impanelled a jury as in any criminal case. The Supreme Court of Minnesota reversed, holding that a state statute [MINN. STAT. §169.03 (1957)], which permits local authorities to adopt traffic regulations covering any subject for which a penalty is provided by state law so long as the local penalty is identical to the state penalty for the same offense, requires by implication that procedures governing enforcement of such a local law be identical to state criminal procedures used in enforcing the state law covering the same offense; and since defendant was charged with violating a municipal traffic ordinance the violation of which constitutes a violation of a state criminal law, the municipal court's failure to provide a jury was reversible error where defendant had not waived his right to trial by jury.

Confessions—*Harling v. United States*, 295 F.2d 161 (D.C. Cir. 1961). Defendant was convicted of assault with a dangerous weapon and of robbery. On appeal, defendant contended that the district court erroneously admitted testimony of damaging statements which he made while in police custody and while under jurisdiction of the Juvenile Court. The Court of Appeals for the District of Columbia Circuit reversed and remanded, holding that in order to preserve the non-criminal philosophy upon which the Juvenile Court is based and to maintain the Court's *parens patriae* relation to juvenile offenders, juvenile proceedings must be insulated from adult proceedings; and consequently that admissions made by defendant in connection with juvenile proceedings at a time before the Juvenile Court had waived its original and exclusive jurisdiction should not have been used against him in adult criminal proceedings.

Confessions—*United States v. Ladson*, 294 F.2d 535 (2d Cir. 1961). Defendant was convicted of selling or facilitating the sale of heroin and of conspiracy. On appeal, he contended that the confession which he made to an Assistant United States Attorney after arrest and before arraignment was erroneously used against him at the trial in violation of the *McNabb-Mallory* rule. The Court of Appeals for the Second Circuit affirmed, holding that, notwithstanding the availablity of a United States Commissioner, a delay of defendant's arraignment hearing for one hour for the purpose of questioning him and reducing his prior oral admissions to writing in order to aid the Assistant United States Attorney, whose duty it was to determine what charges should be made, was not an "unnecessary delay" within Federal Rule 5(a); and hence defendant's statement was properly admitted at the trial.

Confessions—*United States v. Meachum*, 197 F. Supp. 803 (D.D.C. 1961). Defendant was arrested for robbery. His pre-trial motion to suppress was based on the contention that a confession which the government planned to introduce at his pending trial had been illegally obtained. Citing *Mapp v. Ohio*, 367 U.S. 643, abstracted at 52 J. CRIM. L., C. & P.S. 292 (1961), the District Court suppressed the confession, holding that since there was no probable cause to arrest and detain defendant after the robbery victim failed to identify him in a "line-up," defendant's Fourth Amendment rights were violated when he was not then released; and evidence consisting of his confession, which was procured as a result of such violation, must be suppressed. The court noted that defendant's confession was inadmissible for the additional reason that it had been obtained in violation of Federal Rule 5(a).

Confessions—*People v. Brown*, 17 Cal. Rptr. 884 (Dist. Ct. App. 1961). Defendant was convicted of assault, rape, perversion, and robbery. On appeal, defendant contended that his conviction was based on his coerced damaging admission to a polygraph operator. Noting that the case was one of first impression in California, the District Court of Appeal reversed, holding that defendant's admission was coerced inasmuch as it was made in reliance upon a promise by the polygraph operator, one Harmon, that if defendant confessed, he would not be charged; and that although Harmon was not a law enforcement officer, the admission should have been excluded since defendant reasonably believed that Harmon had been designated by the prosecuting officers as one whose promises would probably be fulfilled.

Confessions—*People v. Bodkin*, 16 Cal. Rptr. 506 (Dist. Ct. App. 1961). Defendant was convicted of selling marijuana to a minor. On appeal from the judgment and from an order denying his motion for new trial, defendant contended that the trial court should not have admitted the tape recording of his confession, since the confession was made before he was informed of his right to counsel and was recorded without his knowledge. The District Court of Appeal affirmed, holding that recording defendant's confession without his knowledge did not constitute an invasion of his rights since there was no physical invasion of a constitutionally protected place; and that neither recordation nor failure to advise defendant of his right to counsel rendered his confession inadmissible.

Confessions—*Campbell v. State*, 122 S.E.2d 533 (Ga. 1961). Defendant was convicted of voluntary manslaughter. Excepting to the trial court's overruling of his motion for new trial, defendant contended that since no statement made by him constituted a confession, the trial court should not have charged on the law of confessions. The Court of Appeals of Georgia reversed and remanded, holding that since a jury could acquit defendant even if it believed all statements made by him which were in evidence, the statements were not confessions; and that when the trial court charged on the law of confessions it committed reversible error where there was no evidence of a confession by defendant.

Confessions—*People v. Jackson*, 178 N.E.2d 299 (Ill. 1961). Defendant was convicted of armed robbery. On writ of error, defendant contended that the trial court should not have admitted his voluntary confession on the ground that it was made while he was being detained in violation of ILL. REV. STAT. ch. 38, §660 (1957), which is identical to FED. R. CRIM. P. 5(a). The Supreme Court of Illinois affirmed, holding that where the five hours which intervened between the time police obtained information sufficient to support

formal charges against defendant and the time he signed the confession was taken up with the examination of defendant and the three men arrested with him, the next day was a legal holiday, and defendant was taken before a magistrate the following day, there was no unreasonable delay, inasmuch as the statute cannot be construed so strictly as to require police officers to forsake essential and reasonable investigatory duties. The court indicated that the same result would have been reached even if the detention had been illegal, since Illinois should not adopt an evidentiary rule comparable to the federal *McNabb-Mallory* rule.

Confessions—*State v. Young*, 351 S.W.2d 732 (Mo. 1961). Defendant was convicted on three counts of forcible rape and of burglary in the first degree. On appeal from the trial court's order overruling his motion to vacate, defendant contended that since his coerced admissions of guilt were heard by the grand jury which indicted him, the judgment entered pursuant to the indictment was void. The Supreme Court of Missouri affirmed, holding that the judgment and sentence imposed on defendant's admittedly voluntary plea of guilty to the indictment was not void or subject to collateral attack, since the admissions were not used against defendant at the trial and the grand jury's indictment could be supported by other evidence.

Confessions—*United States v. Vita*, 294 F.2d 524 (2d Cir. 1961). Defendants were convicted of bank robbery, putting lives in jeopardy by use of a dangerous weapon while committing robbery, and conspiracy. On appeal, defendant Vita contended that the district court erred in denying his motion to exclude damaging admissions and confessions on the ground that they were uttered while he was being held in custody in violation of Federal Rule 5(a). The Court of Appeals for the Second Circuit affirmed, holding that if Vita had willingly accompanied FBI agents to headquarters at 10 a.m. and had voluntarily remained there and submitted to questioning, he was under detention at no time prior to his arrest at 6:52 p.m.; that if, contrary to the district court's finding of fact, Vita was detained against his will, detention for questioning until about 4:45 p.m., at which time the agents had obtained enough evidence to justify his arrest, was not equivalent to arrest, and consequently Federal Rule 5(a), which deals with detention subsequent to arrest, did not apply; and even if detention of Vita after 4:45 p.m. was tantamount to arrest because the FBI agents could then have arrested him, their failure to take him before a committing magistrate until the next morning did not render his statements inadmissible, inasmuch as the detention, which was for purposes of essential investigation rather than as an excuse for delay during which a confession could be extracted, was not an "unnecessary delay" in violation of Federal Rule 5(a).

Discovery—*Jones v. Superior Court*, 17 Cal. Rptr. 575 (Dist. Ct. App. 1961). See Self-Incrimination, *infra*.

Double Jeopardy—*Commonwealth v. Colonial Stores, Inc.*, 350 S.W.2d 465 (Ky. 1961). After defendant was convicted on one of 416 separate indictments, each charging a violation of a statute proscribing the sale or offering for sale of a quantity of any commodity less than the quantity represented, the Commonwealth sought a trial on the other indictments, but the trial court dismissed the indictments, sustaining defendant's plea of former jeopardy. The Commonwealth requested a certification of the law, the question being whether under the statute, KY. REV. STAT. §363. 280 (4) (Supp. 1956), the offering for sale at one time of 416 separately wrapped packages of meat, each package weighing less than the weight stamped thereon, constituted one offense or 416 offenses. The Court of Appeals of Kentucky certified that such action constituted only one offense, holding that in case of ambiguity a penal statute should be construed so as to avoid turning a single transaction into multiple offenses, especially in a case such as this, where the opposite construction would result in a punishment totally disproportionate to the gravity of the offense [*i.e.*, a fine of $10,400 to $41,600 and imprisonment of 11 to 68 years]; and hence at the *offering* stage the goods constituted only one commodity under the statute although offered in separate packages. The Court noted that at the *selling* stage a separate offense would be committed as to goods passed to one purchaser in one sale regardless of the number of packages involved.

False Pretenses—*Stokes v. State*, 366 P.2d 425 (Okla. Crim. App. 1961). Defendant was con-

victed of obtaining services by false pretenses. On appeal, he contended that telephone service was not a "valuable thing" within the meaning of the statute [Okla. STAT. tit. 21, §1541 (1951)], and that the judgment and sentence were excessive. The Court of Criminal Appeals of Oklahoma affirmed as modified, holding that although telephone service is intangible and non-corporeal, it is a "valuable thing" since it is bought and sold as a commodity at legally established rates, and consequently defendant violated the statute when he was permitted to make a long distance telephone call by fraudulently representing that he was authorized to use a credit card of the telephone company; and though the sentence of six months in jail and fine of $250 were not excessive under the statute, the judgment should be modified to 30 days in jail and a fine of $100 in the interest of justice, since the cost of the telephone call was 67¢.

Grand Juries—*State v. Young*, 351 S.W.2d 732 (Mo. 1961). See **Confessions**, *supra*.

Hypnotism—Evidence Based Upon—*People v. Busch*, 16 Cal. Rptr. 898 (1961). Defendant was convicted of first degree murder, two counts of second degree murder, and assault with intent to commit murder. On appeal, defendant contended that the trial court erred in sustaining the prosecution's objection to the proferred testimony of one Bryan, a physician, regarding defendant's sanity and ability to premeditate and deliberate at the time the alleged crimes were committed. The excluded opinions were formed as a result of Dr. Bryan's hypnosis of the defendant. The Supreme Court of California affirmed, holding that the trial court properly sustained the objection, since hypnotism has not yet been recognized by any court as being sufficiently reliable as a basis for such opinions, and defendant failed to lay a proper foundation for the introduction of Dr. Bryan's testimony by showing the successful use of hypnosis for similar purposes in other instances.

Illegal Detention—*Payne v. United States*, 294 F.2d 723 (D.C. Cir. 1961). Defendant was convicted of grand larceny. On appeal, he contended that evidence resulting from his illegal arrest and detention should not have been admitted at the trial. The Court of Appeals for the District of Columbia Circuit affirmed, holding that although defendant was illegally detained after being legally arrested on probable cause without a warrant, the trial court properly allowed the victim of the robbery to identify defendant at the trial, notwithstanding the fact that the victim had originally identified him during the period of illegal detention, since suppression of testimony of a complaining witness in such a case is not necessary either to control police conduct or to protect a defendant's rights. Noting that no evidence obtained by interrogation of defendant during detention was used at his trial, the court distinguished such evidence from that resulting from the confrontation involved in the instant case, reasoning that because it is a precaution against unfounded charges, confrontation is likely to be more beneficial than harmful to an accused, even if it occurs during a period of illegal detention.

Improper Remarks by Prosecutor—*People v. Love*, 16 Cal. Rptr. 777 (1961). Defendant was convicted of first degree murder, and the jury fixed the penalty at death. On appeal from the judgment and from the order denying his motion for new trial, defendant contended that the prosecutor committed prejudicial misconduct by discussing the deterrent effect of the death penalty in his summation. The Supreme Court of California reversed and remanded as to the question of penalty, holding that when the prosecutor stated as a matter of fact the disputed proposition that capital punishment is a more effective deterrent of crime than is imprisonment, his statement was prejudicial since it tended to affect the jury's attitude in fixing the penalty; and since the error was of such character that it could not have been cured by prompt admonition and cautionary instructions, defendant was entitled to a redetermination of penalty even though he had failed to object to the statement at the trial.

Improper Remarks by Prosecutor—*State v. Davis*, 122 S.E.2d 633 (S.C. 1961). Defendant, a white man, was convicted of having raped a negro woman. On appeal, defendant contended that his trial was unfair because the prosecutor stated in his closing argument: "[I]f you turn this man loose I'm going to turn the others loose," since the jury knew that one of the "others" referred to was one Sharpe, a negro, soon to be tried for assault with intent to ravish a white woman. See **Taking Photographs in Court**—*State v. Sharpe*, 122 S.E.2d

622 (S.C. 1961), *infra*. The Supreme Court of South Carolina reversed and remanded, holding that in light of the great amount of local publicity concerning defendant's and Sharpe's trials, the statement complained of, which obviously was a threat of a nolle prosequi in the *Sharpe* case, may well have had the effect of compelling defendant's conviction; and since the court doubted that the statement's evil influence upon the jury was dispelled by a cautionary instruction that no other case had anything to do with defendant's case, his conviction must be reversed.

Insanity—*United States v. McNeill*, 294 F.2d 117 (2d Cir. 1961). Petitioner, who had served a New York state robbery sentence from 1934 to 1938, was transferred to Matteawan State Hospital, an institution for the criminally insane, after having been civilly committed in 1949 to Pilgrim State Hospital, an institution for the mentally ill. On appeal from the district court's denial of his petition for writ of habeas corpus, petitioner contended that by detaining him in Matteawan, the State of New York was depriving him of his Fourteenth Amendment rights to due process of law and to equal protection of the laws. The Court of Appeals for the Second Circuit reversed, granted the writ, and directed that petitioner be returned to Pilgrim State Hospital, holding that the New York statute [N.Y. CORREC. LAW §412], which included a provision that an inmate of a state mental hospital who has previously been convicted of a crime may, without a hearing and upon ex parte determination that he still manifests criminal tendencies, be transferred to Matteawan State Hospital, was unconstitutional as applied to petitioner, since in operating to deny a judicial transfer procedure to persons who have been civilly committed after fully serving criminal sentences, the statute arbitrarily discriminates against this class of patients.

Insanity—*Gans v. State*, 134 So.2d 257 (Fla. Dist. Ct. App. 1961). Defendant was convicted of first degree murder. On appeal, defendant contended that it was prejudicial error for the trial court to read to the jury its order finding him sane and able to stand trial. The District Court of Appeal reversed and remanded, holding that the reading of the valid order indicated to the jury that the trial court was of the opinion that defendant was not insane, and its effect was to adjudicate summarily the issue of defendant's sanity at the time the alleged crime was committed, which was the only real issue in the case; and since it was impossible to determine whether the jury construed the order as unrelated to the question of whether defendant was sane at the time of the crime, reading the order constituted reversible error which could not be corrected even by the subsequent clarifying statements made by the trial court.

Juries—*Hoyt v. Florida*, 82 Sup. Ct. 159 (1961). Defendant was convicted of second degree murder. On appeal from the Florida Supreme Court's affirmance of her conviction, defendant contended that she had been convicted in violation of her Fourteenth Amendment rights by an all-male jury selected under a state statute [FLA. STAT. §40.01 (1) (1959)] which operates to exclude women from jury service. Speaking through Mr. Justice Harlan, the United States Supreme Court affirmed, holding that because of women's family responsibilities, classification for jury duty purposes by sex is not unreasonable, and hence the statute, which automatically exempted women from jury duty but permitted them to serve if they chose to register was not invalid on its face; and in the absence of evidence showing that Florida arbitrarily excluded women from jury service, the statute was not unconstitutional as applied to defendant, since in the administration of jury laws proportional class representation is not a constitutionally required factor.

Juries—*State v. Dodge*, 365 P.2d 798 (Utah 1961). Defendants were convicted of second degree burglary. On appeal, they contended that they were deprived of their constitutional right to due process of law because the trial court gave intelligence tests to prospective jurors and restricted the panel to those who achieved a certain minimum grade. The Supreme Court of Utah affirmed, holding that although the restriction of the panel in this manner was error, since it could tend to deny a defendant his constitutional right to be tried by a fair and impartial jury procured from a cross-section of the community, defendants failed to show that they were in fact prejudiced thereby.

Juvenile Proceedings—*Harling v. United States*, 295 F.2d 161 (D.C. Cir. 1961). See Confessions, *supra*.

Right to Counsel—*People v. Bodkin*, 16 Cal. Rptr. 506 (Dist. Ct. App. 1961). See **Confessions**, *supra*.

Robbery—*Carey v. United States*, 296 F.2d 422 (D.C. Cir. 1961). Defendant was convicted of manslaughter and robbery. On appeal, he contended that as a matter of law he could not be guilty of robbery, since the victim was already dead when defendant took money from her body. The Court of Appeals for the District of Columbia Circuit affirmed, holding that since the applicable statute [D.C. CODE ANN. §22–2901 (1951)] expands the common-law crime of robbery, the victim was a "person" under the statute even if she was dead at the time defendant took her money, in light of the shortness of time between stabbing and robbery, and especially since defendant did not know she was then dead.

Search and Seizure—*Vasquez v. Superior Court*, 18 Cal. Rptr. 140 (Dist. Ct. App. 1962). Petitioner was being tried on two counts of possession of heroin. On petition for writ of prohibition to restrain the Superior Court from continuing with the trial, he contended that evidence in support of each count was obtained as the result of an illegal search and seizure. The District Court of Appeal granted the writ, holding that when police forcibly administered apomorphine to petitioner, causing him to vomit, after they saw him swallow a condom of what they believed to be and which later proved to be heroin, their conduct constituted a search and seizure which was brutal, shocking to the conscience, and in violation of petitioner's constitutional rights; that the search without a warrant of petitioner's apartment several miles from where he was arrested was not incidental to arrest and consequently illegal; and that since evidence essential to support each count was procured by means of these illegal searches, the requested writ must be granted.

Search and Seizure—*People v. Kelley*, 177 N.E.2d 830 (Ill. 1961). Defendant was convicted of armed robbery. On appeal, he contended that the trial court erred in failing to suppress evidence obtained through an unlawful search. The Supreme Court of Illinois affirmed, holding that where defendant denied possession of a watch and wallet which were found in an alley some 40 feet distant from the point at which defendant was arrested, he lacked standing to question the legality of the search. Noting that this is a settled principle of law in Illinois, the court distinguished the present case from the exception to that rule, wherein a defendant who is charged with possession of articles taken in a search need not allege possession in order to object to the search.

Search and Seizure—*State v. Valentin*, 174 A.2d 737 (N.J. 1961). Defendant was indicted for carrying a shotgun concealed in his automobile without a permit. On leave to appeal from the Appellate Division's affirmance of the trial court's denial of his pre-trial motion to suppress, defendant contended that the shotgun was taken from his car in an unreasonable search and seizure. The Supreme Court of New Jersey remanded for reconsideration of the motion, holding that where the prosecution, in reliance upon the then existing law of New Jersey, a non-exclusionary rule state, had not submitted evidence as to the circumstances surrounding the search and seizure, and *Mapp v. Ohio*, 367 U.S. 643, abstracted at 52 J. CRIM. L., C. & P.S. 292 (1961), which renders inadmissible in a state criminal prosecution evidence obtained by unreasonable search and seizure, was decided after denial of defendant's motion to suppress but before argument of the present appeal, the matter must be remanded to the trial court to permit both parties to introduce all proof relevant to the new issue generated by *Mapp*.

Search and Seizure—*People v. Morgan*, 16 Cal. Rptr. 838 (Dist. Ct. App. 1961). See **Wiretapping**, *infra*.

Self-Incrimination—*Jones v. Superior Court*, 17 Cal. Rptr. 575 (Dist. Ct. App. 1961). After petitioner was granted a continuance of his trial for rape on the basis of an affidavit alleging that he needed additional time to obtain medical proof of his inability to obtain a penile erection, the trial court granted the prosecution's motion for an order requiring petitioner or his attorney to produce medical records and names of physicians. On petition for writ of prohibition to restrain enforcement of the order, petitioner contended that such discovery would constitute a violation of his privilege against self-incrimination. The District Court of Appeal issued the writ, holding that the privilege is not limited to testimonial compulsion, and consequently since petitoner

denied physical capacity to commit the alleged crime, he could not constitutionally be required to produce the material covered by the order.

Shoplifting—*State v. Hales*, 122 S.E.2d 768 (N.C. 1961). After she was convicted of shoplifting, defendant appealed to the Superior Court, which granted her motion to quash on the ground that the statute [N.C. GEN. STAT. §14-72.1 (1957)] was unconstitutional in that it required no felonious intent, *i.e.*, intent to deprive the owner permanently of his property. On appeal, the State contended that the legislature could constitutionally pass such a statute in the exercise of its police power. The Supreme Court of North Carolina reversed, holding that the statute, which provided that one who without authority wilfully conceals the goods or merchandise of any store, not theretofore purchased by the person, while on the premises of the store, shall be guilty of a misdemeanor, violated neither state nor federal due process, since the prohibited act was reasonably related to the protection of merchants from shoplifting, the end sought to be accomplished.

Speedy Trial—*People v. Bryarly*, 178 N.E.2d 326 (Ill. 1961). Defendant was convicted of assault with intent to kill. On writ of error, defendant contended that in failing to issue a warrant for his arrest until four and one-half years after it could have done so, the State of Illinois deprived him of his constitutional right to a speedy trial [ILL. CONST. art. II, §9]. The Supreme Court of Illinois reversed, holding that although defendant had wrongfully left the jurisdiction when proceedings were pending against him, the State denied him a speedy trial by not issuing a warrant for his arrest until four and one-half years after it first learned of his incarceration in Ohio, since Illinois' knowledge of defendant's incarceration placed upon it the burden of promptly initiating extradition proceedings to return the defendant to Illinois for trial.

Suicide—*State v. Willis*, 121 S.E.2d 854 (N.C. 1961). Defendant's motion to quash the bill of indictment charging that he "unlawfully and feloniously did attempt to commit suicide" was granted on the ground that the bill failed to state a crime. On appeal, the State contended that since suicide is a crime in North Carolina, an attempt to commit suicide constitutes the indictable offense of criminal attempt. The Supreme Court of North Carolina reversed, holding that inasmuch as suicide was felonious homicide at common law, it is also a crime in North Carolina under a statute [N.C. GEN. STAT. §4-1 (1957)] which adopts the common law; that the criminal character of the act is not abrogated by the fact that a successful perpetrator of suicide cannot be punished; and consequently the trial court should not have quashed the indictment, since an attempt to commit a crime is an indictable offense. As further justification for its decision, the court noted that accessories before and after the fact to suicide cannot be punished as criminal offenders in jurisdictions which do not deem suicide to be a crime.

Taking Photographs in Court—*State v. Sharpe*, 122 S.E.2d 622 (S.C. 1961). Defendant, a Negro, was convicted of having assaulted a white woman with intent to ravish her, and was sentenced to death. On appeal, defendant contended that the trial court erred in permitting photographers and newsreel men to take pictures in the courtroom during his trial. The Supreme Court of South Carolina reversed and remanded, holding that allowing photographs to be taken at the trial constituted reversible error, since such practices tend to undermine the decorum and dignity of the judicial process essential to the preservation of a defendant's constitutional right to a fair trial. The court also held that Canon 35 of the Canons of Judicial Ethics should be enforced in all trials in South Carolina.

Wiretapping—*Carnes v. United States*, 295 F.2d 598 (5th Cir. 1961). Defendants were convicted of violating Internal Revenue Liquor Laws. On appeal, they contended that their convictions were based upon evidence which, having been obtained in violation of section 605 of the Federal Communications Act of 1934, should not have been admitted at the trial. The Court of Appeals for the Fifth Circuit affirmed, holding that when a federal agent recorded and listened to telephone conversations with the consent of one party but without the knowledge or consent of the other, he committed no violation of section 605, and consequently evidence so obtained was properly admitted at the trial.

Wiretapping—*People v. Morgan*, 16 Cal. Rptr. 838 (Dist. Ct. App. 1961). Defendant was con-

victed of second degree robbery. On appeal, he contended that a recording of his damaging admissions should not have been introduced as evidence on the ground that the recordation was unlawful as a violation of his Fourth Amendment rights, of section 605 of the Federal Communications Act of 1934, and of his right to privacy. The District Court of Appeal affirmed, holding that since the admissions were made during a conversation on a telephone which was part of the County Jail's independent and private intercommunication system, recordation did not constitute either an illegal search and seizure, inasmuch as no physical trespass was involved, or a violation of §605, because the Act was not intended to apply to so private a telephone system; and since lack of privacy is a necessary adjunct of imprisonment, defendant could not complain that his privacy had been invaded.

Wiretapping—*Commonwealth v. Dougherty*, 178 N.E.2d 584 (Mass. 1961). Defendants were convicted of murder in the second degree and of conspiracy. On appeal, they contended that their incriminating conversation should not have been used as evidence at the trial, since it had been recorded by police officers in violation of a state statute and of the Fourth Amendment. The Supreme Judicial Court of Massachusetts affirmed, holding that since defendants were in police station cells when their conversation was recorded, the police officers did not violate either the statute [MASS. GEN. LAWS ANN. ch. 272, §99 (1959)], inasmuch as the exclusive control of the premises by the police department caused the statutory exception [*Id.*, §101] to apply, or the Fourth Amendment, since the officers did not physically invade a constitutionally protected place.

Wiretapping—*Cameron v. State*, 365 P.2d 576 (Okla. Crim. App. 1961). Defendant was convicted of perjury. On appeal, defendant contended that since recordation and disclosure of his incriminating telephone conversation violated Oklahoma law [OKLA. STAT. tit. 21, §§1757, 1782 (1951)], a tape recording of the conversation should not have been admitted as evidence. The Court of Criminal Appeals reversed, allowing the State to retry defendant if it could obtain admissible evidence to support the charges against him, holding that since the purposes of the statute are to protect telephone company facilities against trespassers and users of telephone service against invasion of privacy by eavesdroppers, the federal agent who recorded defendant's conversation by placing recording equipment on the extension phone of one Walker, a party to the conversation, violated the statute even though Walker consented to the interception; that the evidence so obtained was inadmissible; and consequently defendant's conviction must be reversed, since without the inadmissible recording the remaining evidence was insufficient.

Withholding Evidence—*Brady v. State*, 174 A.2d 167 (Md. 1961). Defendant was sentenced to death on a conviction of first degree murder. On appeal from denial of his application for post conviction relief, defendant contended that at the time of his trial, the police knew that his accomplice, one Boblit, had confessed to the actual killing, and that the state's failure to inform defendant of the existence of this confession constituted a violation of due process. The Court of Appeals of Maryland reversed and remanded for a new trial on the question of punishment only, holding that the State was under a duty to produce the confession or at least to inform defendant of its existence, since it had knowledge that defendant chiefly relied upon the hope that he might not receive capital punishment if the jury believed his testimony that Boblit did the actual killing; that the State's withholding of material evidence tending to exculpate defendant constituted a violation of due process even though it was not the result of guile; and since defendant was prejudiced by the unconstitutional withholding to the extent of the significance the jury might have attached to Boblit's undisclosed confession in its determination of punishment, a new trial must be held on that issue.