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ABSTRACTS OF RECENT CASES

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Supreme Court Extends Escobedo—*Miranda v. Arizona*, 86 S.Ct. 1602 (1966). In a sweeping opinion written in four consolidated cases, the Supreme Court of the United States has widely extended the *Escobedo* rule. Mr. Chief Justice Warren, writing for a five man majority, held that current interrogation techniques are designed to obtain confessions by reliance on ignorance of the rule against self-incrimination and that the "inherent compulsion" of stationhouse interrogation can only be overcome if, "when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any way," he is told that he need not speak, that anything he says may be used against him in a criminal case, and that he has a right to consult with counsel before and during interrogation.

The right to counsel also extends to indigent prisoners, who must be offered the service of free counsel prior to interrogation if they so desire. These rights may be waived, said the Court, but only by an explicit statement to that affect by the defendant. A confession which merely follows; the warnings does not, by itself, indicate waiver.

The rules are applicable to all statements, whether deemed confessions or admissions, and whether denominated exculpatory or inculpatory. And no amount of evidence that the defendant was aware of his rights will substitute for proof of police warnings.

In a later decision, *Johnson v. New Jersey*, 86 S.Ct. 1772 (1966), the Court also held that the *Miranda* ruling would apply only to cases in which the *trial* began after June 13, 1966 and that the *Escobedo* rule is applicable only to cases in which the trial began after June 24, 1964. Thus, the benefits of the rule do not apply to any pending appeals or litigated cases, whether the relief is requested by way of direct or collateral attack upon a conviction.

Delay Between Arrest and Reindictment Not Fatal—*United States v. Ewell*, 86 S. Ct. 773 (1966). Defendants were convicted of selling narcotics without an order form under 26 U.S.C. §4705(a). After pleas of guilty, they were sentenced to minimum terms. Several months later, the Court of Appeals held, in another case, that the indictment forms used in these kinds of cases was improper. The defendants applied for collateral relief which was granted approximately a year after their original convictions. The defendants were then immediately rearrested on new complaints and subsequently reindicted. The indictments this time charged not only the original §4705(a) violation, but also violations of §26 U.S.C. 4704(a) and 21 U.S.C. §174.

The defendants then filed motions to dismiss the indictments on the ground that their right to a speedy trial under the sixth amendment had been violated. The motions were granted. On a petition for rehearing, the government said that upon a plea or finding of guilty, all counts of the indictment except that charging a violation of §4704(a) would be dropped, leaving the defendants to face minimum sentences less than those which had been imposed after their original convictions under §4705(a). Rehearing was denied by the district judge and the government appealed that portion of the order dismissing the count charging a §4704(a) violation. The Supreme Court of the United States reversed and remanded the indictment for trial.

The Court first rejected the defendants' argument that a nineteen month delay between the original arrests and the hearings on the reindictments constituted a violation of the sixth amendment right to a speedy trial. "In large measure," the Court said, "because of the many procedural safeguards provided for an accused, the ordinary procedures for criminal prosecution are designed to move at a deliberate pace. A requirement of

unreasonable speed would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself." In this case, the Court held, since the defendants were promptly indicted and convicted after their original arrests and were immediately arrested and reindicted after their original convictions had been set aside on their motion, the nineteen month period, "does not in itself violate the speedy trial provision of the Constitution."

Moreover, the Court added, drawing upon analogous cases decided under the double jeopardy clause, it "has long been the rule that when a defendant obtains a reversal of a prior, unsatisfied conviction, he may be retried in the normal course of events." The policies underlying retrial ("the societal interest in trying people accused of crime, rather than granting them immunization because of legal error at a previous trial, and because it enhances the probability that appellate courts will be vigilant to strike down previous convictions that are tainted with reversible error"), the Court held, would be "seriously undercut by the interpretation given the Speedy Trial Clause by the court below . . . [and] such an interpretation would place a premium upon collateral rather than upon direct attack because of the greater possibility that immunization might attach."

The Court then considered the defendants' argument that new trials were barred because the government was seeking to proceed upon a new charge and "the passage of time has allegedly impaired their ability to defend themselves on this new and different charge. . . ." In rejecting this argument, too, the Court noted that the reindictment was brought within the statute of limitations "which usually is considered the primary guarantee against bringing overly stale criminal charges" and, moreover, "the indictments and convictions of 1962 might well have enhanced appellees' ability to defend themselves, for they were at the very least put on early notice that the Government intended to prosecute them for the specific sales with which they were then and are now charged." And, the Court added, the defendants had put forth no specific claims of prejudice; the new charge was based upon the same facts as the old, and "the problem of delay is the Government's too, for it still carries the burden of proving the charges beyond a reasonable doubt."

Spot Checks for Drivers' Licenses Upheld— *Mincy v. District of Columbia*, 218 A.2d 507 (D.C.Ct.App.1966). Convicted of driving with a revoked license, defendant appealed on the ground that his arrest, which revealed the fact of operating a motor vehicle without a valid permit, was unconstitutional. The Court of Appeals held to the contrary and affirmed.

Defendant had been driving his automobile in the District about midnight when he halted for a traffic light. A policeman on foot approached the car, tapped on the window and told defendant to pull over to the curb. Asked for his license and car registration papers, defendant produced the registration, but could not produce a license, and finally admitted to the officer that it had been revoked. Defendant was arrested and taken to the police station where he was charged.

At the trial the officer testified that he did not stop defendant for improper driving; that he was merely making a "spot check" for a driver's license and that it was his habit to make five or six such checks while on his tour of duty. He further testified that while he had not been directed by the department to make such checks he was usually asked by the officer in charge of the precinct how many he had made on his current tour.

Defendant argued that when the officer requested him to pull to the curb he was put under arrest, and since the officer had no probable cause for an arrest at the time, the discovery of his failure to have a valid license was the product of unlawful action and the evidence, together with his subsequent admission, should be suppressed.

In rejecting this claim, the court pointed out that the law in the District provided that persons operating motor vehicles must have, in their possession, a valid license and that they must "exhibit such permit to any police officer when demand is made therefore." In denying that the defendant had been put under "arrest" when the demand was made in this case, the court said:

> "The officer's stopping of appellant to ascertain whether he possessed a valid permit was a 'routine interrogation' and was not an arrest. ***Enforcement of this law, and many other laws and regulations, can be accomplished only by routine investigation and interrogation. In some jurisdictions road-blocks have been set up and all passing motorists required to stop and exhibit their permits. Surely no one would say that such a motorist who is stopped, exhibits his

permit and then is allowed to proceed, has been arrested.

A routine spot check of a motorist to ascertain if he has complied with the requirement of possession of a permit is neither unreasonable nor invalid, provided such check is not used as a substitute for a search for evidence of some possible crime unrelated to possession of a driver's permit."

Search At Police Station After Arrest Permissible—*Dolan v. State*, 185 So. 2d 185 (Dist. Ct. App., Fla. 1966). Convicted of forgery and unlawful use of a credit card, defendant appealed on the ground that the search of his person at the police station following his arrest was unlawful, and that the credit card revealed by the search should not have been allowed in evidence. The District Court of Appeal held the search lawful and affirmed the convictions.

Defendant was arrested, on a warrant, in the city of Miami Beach and frisked for weapons. Finding none, the police took him to the station where he was booked and again searched. He alleged that this second search was unlawful since it was made without warrant and was too remote, in time and place, from the place of arrest to properly be classed as a search incident to arrest.

In rejecting this argument, the court said:

"The apprehension and delivery of the defendant to the police station for detention was all a part of the arresting process. The search was not remote as to time or place with respect to the arrest. A second search of an arrested party, in the course of arresting or securing him, is not in violation of law."

Comment: For a seemingly contrary result on similar facts, see *People v. Bowen*, 194 N.E. 2d 316 (Ill. 1963).

Indigence And Bail Pending Appeal—*McCoy v. United States*, 357 F.2d 272 (D.C. Cir. 1966). Convicted of unauthorized use of an automobile and contempt of court, defendant appealed. Pending appeal, he asked that bail be fixed and bail was subsequently set at $1000, an amount later reduced to $500. After counsel was appointed, a motion was made for release on personal recognizance on the ground that although the bail premium was only $40, no bondsman would write the bond because defendant had already begun serving his sentence. Counsel alleged:

"The reason given by the bondsmen is that once a man has actually served some of his time in prison and is released on bond, he will, if his appeal is unsuccessful, flee the jurisdiction rather than return to finish serving his sentence."

The Court of Appeals found that defendant was a good risk for bail and that it "would be manifestly unjust to permit professional bondsmen to 'hold the keys to the jail in their pockets,' when their refusal to write a bond is due to the fact that the appellant has begun serving his sentence." The court thereupon entered an order allowing the defendant to execute a personal bond in the amount of $500 to be signed by two close relatives who were residents of the District, on the further conditions that he reside with a member of his family and report to the probation officer of the District.

"We think it appropriate," said the court, "for the courts to avail themselves of their flexibility to vary terms and conditions as well as amounts of bail, and provide substitutes, in the case of indigent defendants, for conventional bonds of professional bondsmen."

In dissent, Judge Burger indicated his belief that the question of release on personal recognizance should first be explored by the District Court, but added that he agreed "with Judge Leventhal's approach to the need for experimenting with various devices for release on personal assurances to the end that more discriminating release procedures can be developed."

Evidence Seized Following Stop And Frisk Admissible—*State v. Terry*, 214 N.E.2d 114 (Ct. App., Ohio 1966). Defendant was convicted of possessing a concealed weapon. He appealed on the ground that the weapon had been seized in a search following an unconstitutional arrest and should therefore have been suppressed at the trial. The Court of Appeals for Cuyahoga County held the seizure to be reasonable and affirmed.

The arresting officer testified that the conduct of the defendant and a companion had attracted his attention because, while standing on a street corner, one would walk down the street to look in the window of a jewelry store or airline office as the other waited on the corner. After the procedure was repeated two to five times, and the two conversed briefly with a third person, the detective, of the belief that they were "casing" the stores, approached the men, identified himself and asked for their names. "Receiving only a mumbled response,

the detective turned the defendant around, quickly patted down the outside of his clothing, and, perceiving a hard object in the inner breast pocket of his topcoat, inserted his hand and removed a fully loaded automatic."

At this point, the three were taken into custody and a similar frisk and search revealed another weapon on the person of the co-defendant. The third man had no gun.

Defendant claimed that he had been arrested without probable cause when the detective stopped him for questioning, that the frisk and search which revealed the existence of the weapon was not incident to a lawful arrest, and that the gun should have been suppressed.

In affirming the conviction, the court held that the police officer had the right, because of the suspicious circumstances, to stop and question the defendant; that no arrest took place at that time; that the officer was entitled to "frisk" to protect himself from attack; that finding a hard object, he was entitled to search and that no arrest took place until after the gun had been discovered. The court said:

> "... the better view seems to be that the stopping and questioning of suspicious persons is not prohibited by the Constitution. *** An individual who acts in a suspicious manner invites a preliminary inquiry by the proper authority. It does not unreasonably invade the individual's right to privacy to hold that the price of indulgence in suspicious behavior is a police inquiry. *** Such a minor interference with personal liberty would 'touch the right of privacy only to serve it well.' *** If such questioning failed to reveal probable cause, it would thereby forestall invalid arrests of innocent persons on inadequate cause and the attendant invasion of personal liberty and reputation. If it revealed probable cause, it would do no more than open the way to a valid arrest. The business of the police is not only to solve crimes after they occur, but to prevent them from taking place whenever it is legally possible.***
>
> Having determined that the police officer could validly inquire into the activities of the defendant, then it follows that the officer ought to be allowed to 'frisk,' under some circumstances at least, to insure that the suspect does not possess a dangerous weapon which would put the safety of the officer in peril. *** What is the officer to do in this situation? Are we to allow him the right of inquiry and then, when this right is exercised, reward him with an assailant's bullet? The practice of 'frisking' is well accepted in police practice, and police officers seem unanimous in stating that 'frisking' is done for self-protection and not as a mere evidentiary 'fishing expedition.' "

The court also said that even if the Supreme Court of the United States were to hold that *federal* law enforcement officials could not "stop and frisk" under such circumstances, the latitude allowed the states under the rule of *Ker v. California*, 374 U.S. 23 (1963), saved the procedure here since the "necessities of law enforcement in large urban areas require the procedures utilized in the instant case."

Moreover, the court said, even if the stop and frisk here was unreasonable, the evidence should not be excluded since the purpose of the exclusionary rule—to deter unlawful police conduct in a search for evidence—would not be served. "A judicial rule rendering evidence produced as the result of a 'frisk' inadmissible would fail to deter the police from 'frisking' suspects believed to be armed," the court reasoned, "as police 'frisk' for their own protection rather than for the purpose of looking for evidence."

Proper Identification of Ballistics Evidence—*People v. Dilworth*, 214 N.E. 2d 9 (Ill. App. 1966). Sentenced to the penitentiary following his conviction for murder, defendant raised as error the use of a bullet taken from the body of his victim. The appellate court held that the handling and identification of the slug raised no questions concerning the propriety of its use as an exhibit and affirmed.

The coroner testified that he removed a bullet "similar" to the one offered in evidence from the body of the victim and took it to the police station and gave it to a detective. That detective testified that he received the same slug from the doctor and passed it to another detective. That officer put no mark on the bullet "as he was afraid such a mark might impair ballistics examination, and ... he sent this slug in an identified or labeled box to the F.B.I. laboratory."

In objecting to the use in evidence of the bullet, defendant argued that "because no identification mark was placed on this slug, and because the F.B.I. personnel, receiving the slug in the labeled box, examining it, and then returning it to the box

and mailing it back to the Galesburg police, did not testify, there was a failure of proper identification, and lack of proof of continuity of possession."

In upholding the propriety of the handling involved, the court found that it would not have been "feasible" to mark the bullet and that the testimony of the police officers and the coroner provided a sufficient foundation, especially in view of the fact that the subject bullet was of the same caliber as other bullets and a gun taken from the defendant by the police.

Expert's Qualifications In Narcotic Cases—*State v. Garcia*, 413 P.2d 210 (N.M. 1966). Convicted of possession of marijuana, defendant complained on appeal that the expert presented by the state to testify to the narcotic quality of the substance possessed should not have been allowed to testify because he had no degree in chemistry. Affirming the conviction, the court said:

> "[The witness] did have a B.S. degree in chemical engineering; had six years of experience working in a laboratory analyzing substances for chemical content, and had examined between six hundred and eight hundred specimens to determine if they contained marijuana. It is the trial judge's responsibility to determine whether an offered expert is sufficiently qualified to testify in a cause . . . [and we] see no abuse of discretion here."

Seizure Of Clothing After Arrest Is Reasonable—*United States v. Caruso*, 358 F. 2d 184 (2d Cir. 1966). The defendant, convicted of bank robbery, appealed on the ground, *inter alia*, that the seizure of his clothing six hours after his arrest was unreasonable and that its use as evidence should not have been permitted. The Court of Appeals rejected this contention and affirmed the conviction.

Citing *Preston v. United States*, 376 U.S. 364 (1964) (in which the Supreme Court held unreasonable the search of an automobile at police headquarters after its occupants had been committed to jail), defendant argued that the time lapse of six hours between his initial arrest and the final seizure of his clothing removed the seizure here from the category of search *incident* to arrest. Answering this argument, the court said:

> "Here the clothes were constantly in sight [from the time of arrest], were taken on the person of the suspect at the time of arrest and were continuously in custody. The appellant's contention means that the seizure of his clothing could have been made constitutionally only if, immediately on his arrest, he had been stripped to the buff on the public highway. Even though that April 13th may have been a very pleasant spring day, we are of the opinion that the argument is somewhat extreme."

Comment: A similar result has also been reached by the Supreme Court of New Jersey in *State v. Mark*, 216 A.2d 377 (N.J. 196). There the defendant was arrested and taken to the county jail. Sometime later his clothing was removed and delivered to the trooper who had made the original arrest in defendant's rented room. The New Jersey court said:

> "The taking of the clothing and the examination of the trousers for bloodstains were clearly proper police procedures and were neither unreasonable nor violative of any of the defendant's constitutional rights. *** As the facts before us well illustrate, it would make no sense to insist that a defendant's clothes be removed immediately at the time of his arrest though facilities are not available, rather than after his delivery to jail where facilities are available. If we are to view the matter in terms of reasonableness and practicability, as everyone seems to concede, the removal here of the defendant's clothing at the . . . jail for examination was clearly lawful. Nothing in Preston v. United States, supra, suggests an intent to carry over an inflexible requirement of contemporaneity to this readily distinguishable type of situation involving internal prison routine and supervision."

Pre-trial Statements Of Witness Not Available For Impeachment—*Noel v. State*, 215 N.E.2d 539 (Ind. 1966). Appealing a conviction for enticing a female into an immoral place, defendant claimed as error the refusal of the trial judge to allow him to receive from the state, and use for impeachment purposes, a statement given by the complaining witness to a deputy sheriff prior to trial. The Supreme Court of Indiana upheld the trial court's refusal and affirmed the conviction.

In denying what has become routine discovery in other states, the Supreme Court of Indiana held, first, that the federal cases allowing such relief (e.g., *Jencks v. United States*, 353 U.S. 657) laid down no constitutional mandate and were not, therefore, binding upon the state courts. Secondly, the court said, if the relief requested here was to

be granted "there would be logic in the same rule applying to any witness which the *defendant* may produce . . . [but this] rule would not apply to a defendant himself unless he took the stand and waived his constitutional immunity against self-incrimination." (Emphasis added.) Moreover, the court said, adoption of such a rule would inevitably lead to demands that the state and defendant be entitled to learn the names of witnesses prior to trial and that grand jury investigations be opened to discovery. Lazy lawyers, said the court, would take advantage of the diligence shown in pre-trial investigations by industrious lawyers. Finally, the court noted, adoption of such a rule would constitute a "serious" departure from a "centuries" old rule.

Impeachment by Evidence Of Prior Conviction—*State v. Hawthorne*, 218 A.2d 430 (Cnty. Ct., N.J. 1966). Defendant was indicted for assault and battery, and, fearing that at his forthcoming trial the prosecution would, should he take the stand attempt to impeach him by introducing evidence of his prior convictions, he filed a motion asking the trial judge to suppress the convictions as evidence. The motion was granted.

The petition alleged that the defendant had previously been convicted in 1945 of auto larceny and armed robbery, and in 1956 of robbery. Although the applicable statute provided that previous convictions of crime "*may* be shown by examination or otherwise," and although the appellate court had previously held that the state "has the unquestioned *right* to prove prior convictions of misdemeanors and high misdemeanors to affect a defendant's credibility, and *may* inquire of him to that end" (*State v. Jones*, 154A. 2d (640), the trial court in this case concluded that the word "may," in both the statute and appellate court opinion, indicated not a right on the part of the state, but a discretion on the part of the trial court, since to "permit a prosecutor to use a prior conviction as a matter of right in every case is fundamentally unfair."

The court then concluded that all of the prior convictions were not only remote in point of time, but if "the prior convictions were permitted in evidence to affect [the defendant's] credibility the jury could well conclude that the defendant is habitually involved in crimes—this despite a cautionary charge." The probative value of the prior convictions for the purpose of impeachment, the court said, was outweighed by the danger of prejudice to the defendant, and the convictions were therefore suppressed as impeaching evidence.

Amnesia Not Grounds For Postponement Of Trial—*Commonwealth v. Price*, 218 A.2d 758 (Pa. 1966). Indicted for murder, defendant filed a pre-trial petition for writ of habeas corpus alleging that he had suffered a permanent loss of memory concerning events before, during and after the homicide. He requested that he be discharged from custody and the indictment dismissed, or, alternatively, that the trial be continued until he had recovered his memory and that, meanwhile, he be admitted to bail. Relief was denied, the petition was dismissed, and defendant appealed to the Supreme Court of Pennsylvania which affirmed the order of the lower court.

The deceased was found in defendant's car with a gunshot wound in the head. Defendant was found some 100 feet away and he also had sustained a gunshot wound in the head. Although he claimed a total loss of recall concerning these events, it was stipulated that he was then, and at the time of the hearing on the petition, completely sane and competent. Although the medical experts were unable to say that defendant was feigning loss of memory, only two out of the five who testified expressed the opinion that the loss of memory was permanent.

The Supreme Court said that although "for over 100 years, lack of memory in murder cases has been a common and frequent defense . . . when carefully analyzed, amnesia actually is no defense at all and the statement in four prior decisions of this Court that it is an affirmative defense is too broad and is hereby disavowed." Since amnesia "does not absolve or exculpate the defendant from any of his criminal acts or from total criminal responsibility," the court said, "[it] is not admissible to prove guilt or innocence . . . [but is merely] a circumstance which the Judge or the jury may consider in determining the penalty, if they believe it to exist."

The court also held that defendant was not entitled to a continuance of the trial since a defendant incompetent to stand trial must be one who is insane or mentally ill. "This defendant," said the court, "is able to comprehend his position as one accused of murder, is fully capable of understanding the gravity of the criminal proceedings against him, and is as able to cooperate with his counsel in making a rational defense as is any defendant who alleges that at the time of the

crime he was insane or very intoxicated or completely drugged, or a defendant whose mind allegedly went blank or who blacked out or who panicked and contends or testifies that he does not remember anything."

Recent Cases Defining Probable Cause For Arrest—*People v. Rogers*, 50 Cal. Reptr. 559 (D.C.A., Cal. 1966); *Richardson v. State*, 147 S.E. 2d 653 (C.A.Ga. 1966); *People v. Evans*, 141 N.W. 2d 668 (C.A. Mich. 1966). In *Rogers*, a policeman on routine patrol at 4 a.m. saw defendant getting into his parked car in front of recently burglarized business establishments. He asked defendant what he was doing and Rogers replied that he had just fixed a flat tire. After the officer asked him where the tire was, defendant said that he had not had a flat, but that he had pulled off the road to drink a can of beer. Checking the defendant's driver's license and registration papers, the officer noticed cartons and loose packages of candy and cigarettes in the back seat of the car. After radioing headquarters for assistance, the officer asked Rogers whether he had ever served time in the pentitentiary. Rogers replied that he had previously been convicted of burglary, theft and robbery. When the other officers arrived on the scene they found that a nearby bar had been broken open and its coin machines broken into. Rogers was then placed under arrest.

In approving the conduct of the arresting officer, the court in *Rogers* said:

> " 'It is well established that a police officer . . . may detain and question a person when the circumstances are such as would indicate to a reasonable man in a like position that such a course is necessary to the proper discharge of [his] duties.' *** Most such occurrences involve persons outdoors at night at times and in areas where one would not reasonably expect to see them and whose behavior on the surface suggests some extraordinary circumstances. *** [While first seeing Rogers at that time and place] did not give the officer probable cause to make an arrest, it did permit him to question Rogers and to investigate what was going on. *** [The contradictory answers and what he saw in the rear seat] properly aroused the officer's suspicion that a crime had been committed and justified him in detaining Rogers until other officers arrived and an investigation of the neighboring premises could be made. On such investigation the . . . burglary was discovered. Probable cause then existed for Rogers' arrest and for the search of his vehicle incident to his arrest."

In *Richardson*, two county policemen on patrol in the middle of the night, about seven miles from a town where, unknown to them, a burglary had just taken place, saw defendant approaching their car with a seamen's sack slung over his shoulder. After passing defendant and proceeding for about two hundred yards, the police turned their car around and pulled up alongside defendant with the intention of questioning him. As they pulled up to him, defendant attempted to flee across a field, but, when the officers prepared to give chase, he stopped. Although they knew of several recent burglaries in the area they had no knowledge of the one defendant had in fact committed. Nevertheless, they seized the defendant's bag and, after ascertaining its contents (two pocket watches, 1,000 pennies, 11 pairs of pants, a rifle, pistol and a necklace) placed him under arrest.

In upholding the validity of the arrest, the court said that although none of the facts known to the officers before defendant's seizure would alone or together constitute probable cause for arrest, the factor of flight was sufficient to tip the scales. "The particular circumstances here, added together, make a very strong case for *suspicion*, and a weak but adequate one for *probable cause* to suspect that a felony had been committed by the defendant." (Emphasis added.)

In *Evans*, two police officers on patrol at about 4:45 a.m. saw defendant walking at a rapid pace carrying a package. He turned a corner and disappeared from their sight. Their curiosity aroused, the officers turned their squad car around and went to the intersection where they had last seen the defendant. He was not there, but when the officers proceeded down a nearby alley they found the defendant crouched behind a garbage can, holding the package in his hand. The officers told him to place the package down and to raise his hands. They then searched him and found a full fifth of whisky, another partially filled fifth capped by a metal pouring spout and 18 nickels.

In the package, the police found three partially filled fifth bottles of liquor. Each bottle was capped by the same kind of spout. The defendant claimed that he had bought the liquor from a "dark-looking fellow for $6.30 and that he had paid the man in nickels."

After placing defendant in the squad car, the officers conducted a search of nearby liquor establishments to determine if there had been any

break-ins. They found none. At this time, they had no knowledge of any complaints or other information which revealed any burglaries in that vicinity. They then took the defendant to the police station for "investigation." Two days later he was charged with burglary and larceny.

At his trial defendant contended that his arrest was illegal and that evidence of the liquid should have been suppressed. In response to this argument, the Court of Appeals said:

> "This Court makes no decision as to the existence of reasonable grounds for arrest of the defendant before he was searched. In Michigan, the validity of search and seizure without a warrant is not dependent upon a prior valid arrest. *** The test is whether or not under all the circumstances, the search and seizure is reasonable. *** [The] cases seem to be based upon the theory that when a person, upon discovering that he is being observed by the police, takes obviously evasive action, he gives the police reasonable cause to believe that he is committing or has committed a felony or is in the process of committing a misdemeanor, thereby justifying immediate search and seizure. This Court concludes, therefore, that the defendant Evans, by evading and hiding from the police, gave them sufficient reason to make immediate search and seizure."

No Bail For Narcotics Defendant Pending Government Appeal Of Suppression Order—*United States v. Llanes*, 357 F.2d 119 (2d Cir. 1966). Defendant moved to suppress as evidence narcotics taken from his person following his arrest by federal agents. The District Judge, while indicating that he believed the testimony of the agents, held that the facts to which they testified did not establish probable cause, granted the motion, and released defendant on his own recognizance. After referring the matter to "Washington," the United States Attorney's office for the Southern District of New York appea ed the order of suppression and the Court of Appeals for the Second Circuit reversed.

Disagreeing with the District Judge, the appellate court found that probable cause was made out by the agents' testimony. And though the court found the District Judge believed the agents' testimony, it said that because there was some confusion about this matter, "it would be the better practice to make... findings when, as here, one party seeks them and it is apparent that an appeal may be taken," even though, as the court recognized, "district court judges are not *required* to make findings on a hearing to suppress evidence under Federal Rule of Criminal Procedure 41(e)...." (Emphasis added.)

Moreover, the court said, release of the defendant on his own recognizance was improper. Since the act which allows the government to appeal motions to suppress which are granted in narcotics cases provides that the appeal must be taken in 30 days and prosecuted "diligently," and contains no express provision for release of the defendant upon his own recognizance, the court held, "the government was remiss in not having sought a stay from this court pending an expedited appeal."

> "Moreover," the court said, "there is every reason why appeals from orders suppressing evidence in narcotics cases should be expedited. Failure of the government to seek review promptly may well merit dismissal in the absence of good reason for delay. And, in the future, we will look with increasing skepticism upon the justification suggested here for lack of expedition—the necessity to refer the matter to Washington."

Evidence Taken In Police Station Inventory Admissible—*People v. Rogers*, 50 Cal. Reptr. 559 (D.C.A., Cal. 1966). Defendant, convicted of burglary, appealed on the ground that a set of keys, taken from him at the police station following his arrest, were unlawfully seized and should have been suppressed prior to trial. The District Court of Appeals held the seizure lawful and affirmed the conviction.

The defendant had been arrested near the burglarized premises, at which time his car was searched. Following his arrest, he was taken to the police station where his personal possessions were taken from him. Some were put into an evidence locker, and the remainder, including a set of keys, were put in a "personal property locker." The defendant was later, with his possessions and the evidence, turned over to the custody of the sheriff.

Following his transfer to the custody of the sheriff, a detective investigating the burglary obtained the set of keys and fit them in the locks of the burglarized premises. Employees of the premises then identified the keys as belonging to the establishment.

Defendant contended that the keys were inadmissible since they had been taken from the

custody *of the sheriff* without the use of a search warrant. In rejecting this argument, the court noted that the keys had been taken *from Rogers* at the time of his booking and a "search of an arrested person at the time of his booking has always been considered contemporaneous to his arrest and is a reasonable search. *** Once articles have lawfully fallen into the hands of the police they may examine them to see if they have been stolen, test them to see if they have been used in the commission of a crime, return them to the prisoner on his release, or preserve them for use as evidence at the trial. *** During their period of police custody an arrested person's personal effects, like his person itself, are subject to reasonable inspection, examination and test."

Moreover, the court noted, since the keys did not belong to defendant and, indeed, were stolen property, he could not complain about their subsequent use by the police.

Results of Urinalysis Test Properly Admitted—*Bungardeanu v. England*, 219 A.2d 104 (D.C.C.A. 1966). The petitioner appealed from a decision of the Director of the Department of Motor Vehicles revoking his driver's license and argued, *inter alia* that the results of a urinalysis test should not have been admitted into evidence against him at the hearing. The court held the evidence admissible and affirmed.

Petitioner contended that the results of the test were inadmissible because "the urine specimen did not necessarily show its alcoholic content at the time that he was operating his automobile since it was given more than an hour later and was not analyzed until the next morning."

> In rejecting this argument, the court held that " 'the very nature of this specimen made improbable any change in it which would have disadvantaged defendant short of deliberated tampering with the bottle.' And it seems to us that the specimen was given in close enough proximity to the events in question to provide an accurate indication of the alcohol in petitioner's system at that time. Any delay would have been to his advantage."

Trial Judge's Remarks To Death Qualified Jury Error—*Coley v. State*, 185 So. 2d 472 (Fla. 1966). Defendant was tried for rape, convicted and sentenced to death. He appealed on the ground that the trial judge, during the *voir dire* examination of the jury, made remarks which constituted prejudicial error. The Supreme Court of Florida agreed and reversed the conviction.

During the *voir dire*, the court asked the potential jurors whether any had conscientious scruples against the infliction of the death penalty. Eleven said that they did. The judge then said:

> "Well, gentlemen, as I explained, the maximum penalty involved in the charge of rape is death by electrocution, and the law provides it. I realize some people don't believe in it, and I also realize that some of those people that say they don't believe in it, if their little daughter or their wife was raped, they would believe in it fast. Or if their wife was murdered, or some of their family was murdered, they would holler to high heaven to get them a Courtroom, a Judge and a Jury."

The state urged that the conviction be affirmed despite these remarks of the trial court on the grounds that (1) they were made in response to feigned opposition to capital punishment on the part of the veniremen, and (2) they were capable of the interpretation that if murder befell the family of a juror he would seek, not death, but "simply a courtroom, a judge and a jury."

In reversing, the court held that though judges and lawyers might agree that the remarks were intended to mean what the state contended they meant, it was asking too much of lay jurors to reach the same conclusion. In addition, the court held, only the latter part of the remarks were subject to the state's interpretation. The vice of the remarks, the court said, flowed from the first of them which obviously implied that the judge believed that a rape had been committed in this case and that death was the proper punishment.

Wrong Address Does Not Vitiate Search Warrant—*State v. Daniels*, 217 A.2d 610 (N.J. 1966). The defendants, indicted for gambling, moved to suppress as evidence paraphernalia taken in a search and seizure under the authority of a search warrant. The trial judge granted the motion to suppress on the ground that the address of the premises to be searched differed from that of the premises actually searched. The Supreme Court of New Jersey held the difference insubstantial and reversed.

The affidavit for search warrant subscribed to by a police officer set out facts which amply showed probable cause, but the premises to be searched were described in both the affidavit and warrant as "a candy store" or "confectionery store"