

1947

Police Science Legal Abstracts and Notes

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Police Science Legal Abstracts and Notes, 38 J. Crim. L. & Criminology 306 (1947-1948)

This Criminology is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

Richard W. Cooper*

Liability of City for Wrongful Killing by Policeman—A New York City patrolman, while off duty and concededly intoxicated, shot and killed the deceased and seriously wounded another. The shooting, which was without provocation, occurred in the early morning as the participants met on the street. The officer's mental condition was diagnosed as "Psychosis due to alcohol; Paranoid deterioration type," and he was committed to a hospital for the insane.

Two actions at law were brought against the City of New York, one by the estate of deceased and the other by the deceased's companion who was injured by the shooting. The actions were consolidated and plaintiffs pleaded a breach of duty by the city in that it negligently failed to discharge the patrolman when it knew, or should have known, that he was an incompetent and vicious person; that since the city knew of a Police Department regulation requiring patrolmen to carry a revolver "at all times" it should have known the officer was a source of danger to the public. The jury returned a verdict in favor of both plaintiffs, but the Appellate Division reversed as a matter of law, ruling that the facts were insufficient to take the case to the jury. The Court of Appeals of New York reversed the Appellate Division and ordered a new trial. *McCrink et al. v. City of New York*, 296 N. Y. 99, 71 N. E. (2) 419 (1947).

Before the shooting, but over a period of fifteen years, the officer had been put on probation, by the Police Commissioner, three times. All three were for intoxication, the last being in 1937, six years before the shooting. At his last appearance before the Commissioner he was threatened with dismissal, and his record was marked "bad." The Commissioner, in reprimanding him said, "your conduct plus your record, . . . doesn't warrant, or justify anybody placing any confidence in you," but the officer was, nevertheless, put on probation for another year and retained on the force. These facts were urged by plaintiffs to show that the jury might find the Commissioner was fully aware of the character of the officer.

The Court of Appeals conceded the city's argument that the Commissioner is given a power of discretion, by statute, when dealing with the discharge, or retention, of police officers but pointed out section 8 of the Court of Claims Act which waives the State's sovereign immunity from suit and consents to have its liability determined in the same way as individuals or private corporations. Section 8 was construed by the court as limiting the discretion of the Commissioner and placing a duty upon him to abate any risk which might, with related circumstances, prove dangerous to the public. The court concluded that it was a question for the jury whether the retention of the patrolman, in service, involved danger to others reasonably to be foreseen.

* Senior Law Student, Northwestern University, School of Law.

Circumstantial Evidence—Sergeant Harold M. Kinder of the Flint, Michigan, Police Department has a "new slant" on circumstantial evidence since his experience of April 13, 1947. His own story, which was related in a letter to Dr. David G. Monroe, and originally published in the 1947 Summer issue of Northwestern University's *Traffic Review*, is as follows:

One of those impossible things that "just couldn't happen," did happen, and to me. If someone else had been in my position and I had been the investigating officer sent to the scene, I would have arrested that person and done everything in my power to convict him—if certain good breaks that came to my aid didn't come to his aid to give him the same out I had. Here's what happened:

During our spring floods all but two bridges in the city were washed out. We placed men on the streets approaching these two bridges to keep traffic flowing as smoothly as possible. My assignment was to patrol these approaches in a vehicle observing the traffic conditions, switching traffic posts to compensate for changes in flow, ascertaining that reliefs were being made (officers were working double shifts), etc.

On the night of April 13, I learned from one officer on post that another officer had not been observed at his nearby post on the last trip past the intersection. Fearing that something had happened to the man, I left immediately for his post. I moved along as fast as safety would permit, and in so doing I passed several cars.

About two blocks from my destination I observed, up ahead, what appeared to be a bundle of rags lying in the street. As I approached the object I saw that it was a small child lying prone on the pavement on the other side of the street. There was no traffic ahead of me and the nearest car behind was about a block away.

But cars were coming towards me in the lane in which the body was lying.

I slammed on the brakes, turned sharply to the left and skidded to a stop at the left side of the street, blocking off the approaching traffic. I leaped out of the car, ran back and hastily examined the small boy. He was unconscious, but there appeared to be no broken bones.

I picked him up and carried him into a cafe where I stretched him out on the counter so that I might examine him more carefully and call a physician. Other cars had stopped, and a small crowd had followed me into the cafe. As I was trying to bring the boy back to consciousness a man stepped up and said to me:

"Sergeant, you sure did everything you could to miss him."

I didn't think much about this. It didn't register until a minute later when someone came in and asked "what happened?"

"The officer just hit this young fellow," the man volunteered.

"Whoa, wait a minute," I said. "I didn't strike the boy. He was lying in the street when I drove up."

"Why, I saw you skid sideways when you struck him," the man said, and another man added, "He sure was going awfully fast when he passed me."

I looked into about 20 faces and there wasn't a friendly one among them. None of them believed me.

Being a policeman naturally trains one to take stock of a situation. I had been driving at a rapid rate of speed.

I had skidded the car sidewise, and at the moment my car was parked crosswise of the street and partially on the wrong side.

One man said he had seen me hit the child.

Worst of all, my left front fender had been dented at the city garage several nights before, but the damage was so slight that I failed to make any mention of it to anyone. It had seemed such a small thing at the time. It was a very big thing now!

If I had walked into that cafe and found someone else in my situation I wouldn't have believed him either.

No one ever worked harder to bring another person back to consciousness. Eventually the boy roused sufficiently to tell us that he had been to a Boy Scout meeting and that, on the way home, he had accepted a dare from some of his friends to "hook" a ride on the back of the special trucks which haul automobile bodies from the Fisher plant to the Buick factory. He caught the ride all right, but the truck was going so fast he was afraid to let go. Then he was afraid not to let go, and he lost his balance and fell off. That was the last he remembered.

The people in the cafe probably thought I was a ventriloquist as they listened to the boy's story. I took him home and explained the situation to his parents. As I left the boy's mother said to me:

"You don't know how grateful I am."

To myself I said, "Lady, you aren't the only one who's grateful."

That's the end of the story except for what might have happened. If the boy had died without regaining consciousness, no one but me would have known the true story. And no one would have believed me. I couldn't have blamed them if they didn't. I probably would have been suspended and charges might have been brought against me. Even the judge probably would have said "Guilty."

Yet all I did was to stop my car in such a manner as to prevent the boy from being struck by oncoming traffic—the same thing any thinking person would have done. Undoubtedly I did save that boy from being struck by another car. But by that very maneuver I found myself in the middle of a mass of circumstantial evidence from which I doubt very seriously I could have escaped.

Circumstantial evidence—bah! From now on I'll triple-check anything, no matter how "screwy" it may seem. And from now on, when I see things in the street in front of me, I'll stop the car and walk forward. It's safer.