Journal of Criminal Law and Criminology

Volume 47 | Issue 4 Article 18

1957

Police Science Legal Abstracts and Notes

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

Warren L. Swanson and Roger Eichmeier*

Packages in the Mail are Protected from Unlawful Search and Seizure by the Fourth Amendment—Defendant was arrested and charged with the unlawful possession of narcotics and with depositing in the mail a poison composed of a large quantity of heroin. The complaint was based on evidence obtained through the opening by a postal employee, under the direction of federal narcotics agents, of a package placed in the mail by defendant and addressed to her husband. The package, sent air mail special delivery, was not sealed with glue but was wrapped in paper and tied with string. Inside the wrapping were two envelopes, sealed with glue in the usual way and found, upon opening and inspection, to contain heroin. Thereafter the envelopes were resealed by the postal employees with tape and replaced in the package which was re-tied in its original fashion and sent to its destination. Subsequently, upon delivery of the package, defendant and her husband were arrested by narcotics agents.

In answer to the complaint, defendants filed a motion to suppress the evidence found in the package on the grounds that it was obtained by an illegal search and seizure in violation of the fourth amendment. The trial court denied the motion to suppress and held that the search involved in this case did not violate the fourth amendment. *United States v. Oliver*, 140 F. Supp. 808 (W.D. Mo. 1956).

However, the court stated that under other circumstances the opening of packages and letters in the mail may be unlawful. Packages and letters which are sealed with an adhesive substance in such a manner as to evidence an intention on the part of the sender that the matter should not be opened are protected from inspection without a search warrant by the fourth amendment. Relying on the rule set forth in *Ex Parte Jackson*, 96 U.S. 727 (1877), the judge quoted Mr. Justice Field who said, "Letters and sealed packages of this kind in the mail are as fully guarded from examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable search and seizures extends to their papers, thus closed against inspection, wherever they may be."

Nevertheless, the court stated, to invoke the protection of the fourth amendment, postal regulations must be complied with. Thus, mail sent under the lower rate classification and bearing the legend "may be opened for postal inspection if necessary" may be inspected even though sealed with adhesive. Though postal regulations provide that first class mail may not be opened, such inspection will not violate the fourth amendment unless the package is securely sealed. In the present case, the postage was classified as first class matter, but the judge concluded that tying a package with twine does not fulfill the requirement that the article be "securely sealed."

The court easily disposed of defendants' contention that, even though the outside wrapper was not sealed, the envelopes contained therein were so secured and thus could not be lawfully opened. "What may be contained in the package," the court said, "is not a part of it for the purpose of classification and the right to open and inspect."

Statute Making Illegal the Possession without Satisfactory Explanation of Tools Which Could Reasonably Be Employed in Crime Is Unconstitutional as Applied to Tools Which Might Have Legitimate Uses—De-

* Senior Law Students, Northwestern University School of Law.

fendant was convicted of the possession of implements in violation of a "burglary tool" statute which provided, "no person shall have in his possession, . . . any instrument, tool or other implement for picking locks or pockets, or that is usually employed, or reasonably may be employed in the commission of any crime, if he is unable satisfactorily to account for the possession of the implement."

Acting on a tip from an informer, police arrested defendant in the hall outside his apartment. Officers broke into the apartment and a search revealed a length of knotted rope and a revolver. Police then searched the trunk of defendant's car parked outside and recovered a bag containing a sledge hammer, an axe, two wrecking bars, a length of knotted rope, a brace and a bit. When asked for an explanation of his possession of the tools, defendant replied, "You know what they are used for." The Court of Appeals for the District of Columbia Circuit, with one dissent, reversed defendant's conviction and held the statute unconstitutional as applied to implements which do not in themselves give rise to sinister implications. *Benton v. United States*, 232 F.2d 341 (D.C. Cir. 1956).

The court construed the statute as requiring, for its violation, that possession of the tools be coupled with intent to use them for an unlawful purpose. However, the statute created a presumption of criminal intent from a showing of possession without satisfactory explanation. To rebut the presumed intent, defendant must show that the implements were not in his possession for a criminal purpose. The majority could find no rational inference of criminal intent from the mere possession of tools which "reasonably may be employed in unlawful activities. Though the sledge hammer, axe, and hacksaw which appellant had quite clearly can be used criminally, they also may be, and for the most part are, used for legitimate purposes . . . In contrast, such implications (of intent) properly arise from articles like opium or lottery tickets which experience teaches are generally held for illicit purposes."

In a later case, the same court held the statute unconstitutional as applied to crowbars, allegedly used in a burglary. *Washington v. United States*, 232 F.2d 357 (D.C. Cir. 1956).

Evidence Seized Illegally by Municipal Officers is Not Inadmissible in a Federal Court Because of General Co-operation between Municipal and Federal Officials—Chicago police officers, recognizing defendant as a possible robbery suspect, halted defendant's car and, without a search warrant, proceeded to make a thorough search of the vehicle. In the trunk of the car the officers found a quantity of heroin. Defendant was then delivered to the Chicago narcotics squad which turned the case over to federal narcotics agents for prosecution. At the trial in a federal district court, defendant objected to the admission into evidence of the material seized without a warrant by Chicago police. The Court of Appeals for the Seventh Circuit affirmed defendant's conviction and approved the admission of the evidence. *United States v. Moses*, 234 F.2d 124 (7th Cir. 1956).

Defendant had contended on appeal that there was general co-operation between city and federal narcotics agents in the exchange of evidence and information. In arriving at its decision the court analyzed the positions taken by various federal courts and adopted the view that co-operation between city and federal officials will not render inadmissible in federal courts evidence illegally seized by city officials unless the search and seizure was a direct outcome of the agreement. The degree of co-operation, the court concluded, must be such as to have encouraged the unreasonable search. In the present case the court recognized that there was cooperation between city and federal narcotics agents. The search and seizure, however, was made by members of the Chicago robbery detail in the course of a theft investigation. "The subsequent accidental discovery of narcotics in the defendant's possession," the court said, "had no causal relationship with either the fact that the complaining party was a federal officer or the practice of turning nar-

cotics law violators over to the federal government for prosecution." The court implied that such evidence might have been inadmissible in a federal court if it were secured illegally by city narcotics agents pursuant to a narcotics investigation.

Drunkometer Test Must be Administered by an Expert and Results of the Test Must be Supported by Expert Testimony—Defendant was arrested on a charge of operating an automobile while intoxicated and submitted to a breath test for sobriety after he was warned by the arresting officer that refusal to take the test would result in the revocation of his driver's license. The test was conducted by an officer who had attended a school where the use of the Harger Drunkometer was shown and had used the device on various occasions. At the trial in a justice court, without a jury, the officer described the method used in administering the test and related the changes in coloring of the chemicals used. However, the officer was unable to explain the nature or significance of the chemical reactions involved and stated, "All I have to do is match the colors and then take a reading." The appellate court reversed defendant's conviction and held that the results of the Drunkometer test should have been excluded by the trial judge. *People v. Davidson*, 152 N.Y.S. 2d 762 (Monroe County Ct. 1956).

The court easily disposed of defendant's contention that he did not voluntarily consent to the test but was coerced into taking it by the officer's statement that defendant's driver's license would otherwise be revoked. New York law provides for revocation of a motorist's license upon refusal to submit to a sobriety test and the officer's statement, the court said, "was a gratuitous offering of information as to the provisions of the statute," and did not render the test involuntary. However, the officer who administered the test, the court stated, was not shown to have the requisite qualifications and no witness was called at the trial who was able to explain the operation of the machine or to verify that it was in good working order. The court implied that the person who conducts the test should have an understanding of the chemical processes involved and, in addition, it was said that "the trier of facts . . . is entitled to have a reasonable explanation of the workings of some new or strange device, before he is asked to accept testimony of its end-result as competent proof of a criminal act."

The court went on to criticize the use of the name "Drunkometer" for the sobriety testing device and indicated that where a case is tried before a jury, the name might be prejudicial to the defendant. ". . . the very name of the device," the court stated, ". . . might very well be misinterpreted to mean that only those who were 'drunk' or intoxicated were to be tested by it; . . . the very name somehow lent weight to the result which it produced."

Police Officer's Opinion as to Speed of Automobile is Insufficient to Sustain Speeding Conviction; the Accuracy of a Police Car's Speedometer Must be Established by a Witness who has Observed the Speedometer Tested—Defendant was arrested for exceeding the speed limit. At the trial in a justice court the arresting officer testified that he clocked defendant's speed with the squad car's speedometer. The accuracy of the speedometer was attested to by the officer's statement that it had been tested and found to be correct; presumably by another officer. The appellate court reversed defendant's conviction in the trial court on the grounds that, in the absence of other competent evidence, a police officer's opinion as to the speed of the defendant's vehicle is not sufficient to sustain a conviction. *People v. Rothstein*, 152 N.Y.S. 2d 757 (Westchester County Ct. 1956).

Since the arresting officer did not testify to the accuracy of the squad car's speedometer from his own knowledge, the court ruled that such testimony should have been excluded. "The police officer's testimony", the court said, "is thereby reduced to a mere opinion as to defendant's speed and may also be disregarded."

At a trial in another justice court of a similar speeding charge, the arresting officer testified that he clocked defendant's speed and further