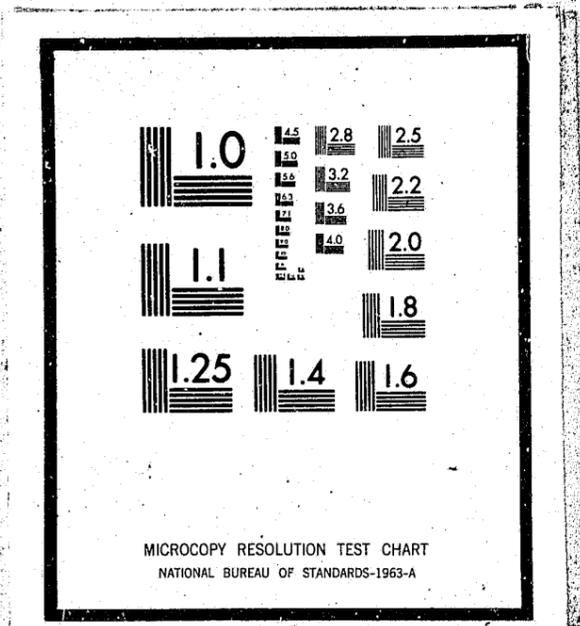


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U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
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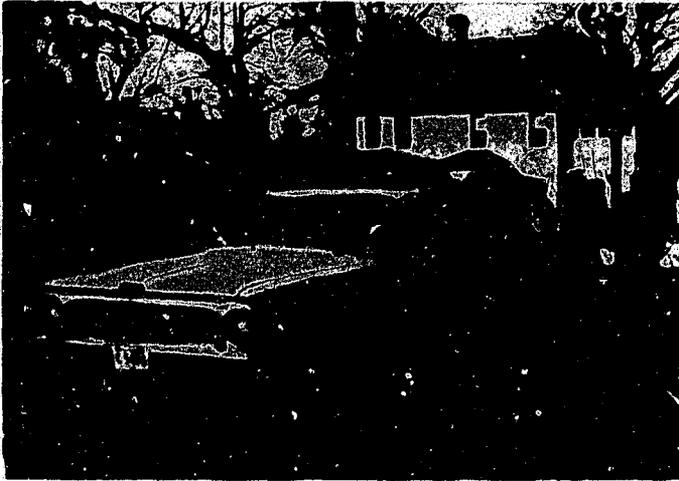
RULES OF EVIDENCE

PART V

Prepared by SOUTH CAROLINA LAW ENFORCEMENT AGENCY in cooperation with SOUTH CAROLINA EDUCATIONAL TELEVISION NETWORK

South Carolina **LAW ENFORCEMENT - Educational Television**
E.T.V. TRAINING PROGRAM - From Crime to
Court - **RULES OF EVIDENCE,**

PART V 5



BY:
Assistant Attorney General
(South Carolina)
Hon. Joseph C. Coleman

Sponsored by:

South Carolina Law Enforcement Division

in co-operation with

South Carolina Educational Television Network

Endorsed by:

South Carolina Governor Robert E. McNair
South Carolina Sheriffs' Association
South Carolina Law Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina F.B.I. National Academy Associates
South Carolina Southern Police Institute Associates

PROGRAM OBJECTIVE:

This material will present information relative to Rules of Evidence.



LECTURE OUTLINE:

1. MAY A DEFENDANT BE TRIED IN HIS ABSENCE?



A. Yes. A defendant may be tried in his absence for a misdemeanor, providing the defendant has had reasonable and lawful notice of the time and place. He may not be tried for a felony in his absence.

NOTE: Authority is by common law and not statutory law.

(1) By custom (not law) a sentence may be written down and placed in a sealed envelope. This is not necessary, however.

B. A trial in absence, for a misdemeanor, followed by a sealed sentence is applicable in all trial courts including magistrate's and recorder's.

OBSERVATION: All cases handled in absentia in magistrates' or recorders' courts will usually be concluded by the judge (magistrate or recorder) applying the cash bond to payment of the fine imposed.

2. MAY A POLICE OFFICER IN SEARCHING THE BODY OF A PERSON GO SO FAR AS TO SEARCH BODY CAVITIES FOR CONTRABAND?

A. Yes. Body cavities may be searched provided the search is reasonable and meets lawful standards such as:

- (1) The suspect must be detained in lawful custody.
- (2) There must be some facts to indicate possible violations of a law (example--pinpricks on arm indicating narcotics addiction).

NOTE: The courts have under certain extreme circumstances permitted the x-raying of body cavities such as the stomach as well as the administration of medicine such as epsom salts and castor oil.

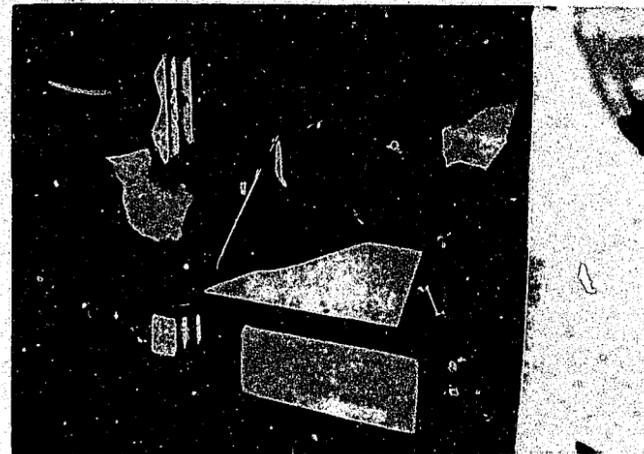
3. MAY A POLICE OFFICER WITHOUT A SEARCH WARRANT SEARCH A SUSPECT'S HOTEL ROOM, BOARDING HOUSE ROOM OR MOTEL ROOM FOR POSSIBLE EVIDENCE OR CLUES AFTER HE HAS CHECKED OUT?



A. Yes. The basis for this decision is that once a person has checked out he has no more right to the privacy of these premises.

NOTE: In the event the desk clerk of the hotel or the motel or the manager of the rooming house does not consent, the search would probably be illegal.

4. MAY ILLEGALLY OBSERVED EVIDENCE BE SEIZED BY OFFICERS AFTER AN ENTRANCE HAS BEEN GAINED TO A ROOMING HOUSE ROOM WITHOUT A SEARCH WARRANT, AFTER THE SUSPECT VOLUNTARILY OPENED THE DOOR TO THE ROOM HE OCCUPIED AND HAS DENIED OWNERSHIP OF SUCH EVIDENCE?



A. Yes. the basis is that officers were legally in the room and that the suspect denied ownership of the illegal

observed items. (The denying of ownership of the illegal items would place these items in the category of abandoned and unclaimed things.)

5. WHAT DID THE MAPP VS. OHIO CASE SAY?

A. The Mapp vs. Ohio case says that "fruits of the poison tree" cannot be used, which means that any illegally seized evidence either in state or federal action cannot be used successfully in a criminal court proceeding.

NOTE: The tree is the search and its fruits are the evidence, poison.

6. DOES THE UNITED STATES SUPREME COURT FREQUENTLY REVERSE ITSELF IN LEGAL DECISIONS?

A. No. On many occasions it has modified its opinions by subsequent additional detailed explanations.

7. ARE THERE ANY INDICATIONS THAT THE UNITED STATES SUPREME COURT IS MOVING CONSTANTLY INTO A MORE RESTRICTIVE DIRECTION REGARDING SEARCHES AND SEIZURES?

A. Yes. The United States Supreme Court is moving into a more restrictive direction regarding searches and seizures, particularly with reference to implied coercion.

OBSERVATION: In view of recent decisions there is a strong indication of a growing likelihood that the court will hold that a person cannot consent without all of the warnings covered in Miranda to the search of himself or his premises, if a demand

is made of him by persons known by him to be police officers or while he is under arrest.

NOTE: In the following case, a state court rules that evidence seized was illegal. A driver was arrested on a speeding charge, handcuffed, placed in jail; the officers at the jail asked him why he had given them so much trouble suggesting that he must be hiding something. The suspect replied angrily he was not. Officers said, "If you are not, then give us permission to search your car." The arrested man said, "You have the keys, go ahead." His car was then searched and illegal liquor found. The court said in ruling that the seizure was illegal and stated that the accused was in no reasonable position to refuse permission to the officers.

8. DOES THE SPECIAL PROTECTION ACCORDED BY THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION (WHICH COVERS SEARCH AND SEIZURES) TO PEOPLE IN THEIR PERSONS, HOUSES AND EFFECTS EXTEND TO OPEN FIELDS?



A. No. Much more latitude is permitted by police officers in the open search of yards, lots and fields than is permitted in houses, rooms, persons and automobiles.

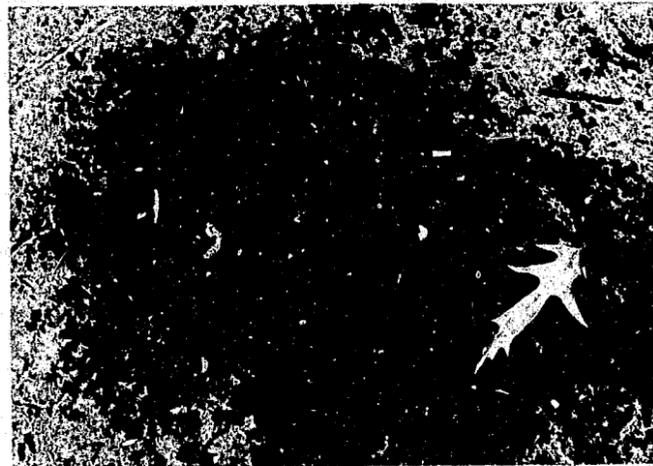
- (1) A police officer can legally trespass as long as he:
- (a) Is on official duty.
 - (b) Is not simply prying.
 - (c) Remains outdoors.
 - (d) Does not enter any building or motor vehicle.
 - (e) Does not open any windows or doors of a building or vehicle.

NOTE: An officer may lawfully look through windows or doors.

OBSERVATION: If an officer upon looking into a window or door observes a violation being committed, he has the legal right

to then forcibly enter and make an arrest for this violation being committed in his presence.

9. CAN AN INVESTIGATOR COMPEL A SUSPECT TO PLACE HIS SHOE IMPRINT IN THE IMPRESSION OF A SHOE IMPRINT LEFT AT A CRIME SCENE?



A. Yes, and it has been so held by the South Carolina Supreme Court.

NOTE: The court said:

(1) That compelling the suspect to place his shoe imprint in the impression of a shoe imprint left at a crime scene was not compelling the suspect to testify against himself, and further, that the officer could testify that the imprint of the accused's shoe fitted exactly the imprint at the crime.

10. IS THE TAKING OF HANDWRITING SAMPLES BY A POLICE OFFICER FROM A SUSPECT CONSIDERED TO BE OF A SELF-INCRIMINATING NATURE, CAUSING THE SUSPECT TO TESTIFY AGAINST HIMSELF?

A. No. According to the court, a defendant in submitting handwriting samples is not being forced to testify against himself because another person (a handwriting expert) states that a known sample of the suspect's handwriting is the same as that of a piece of handwriting submitted as evidence in a court procedure.



END