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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Expert Witness—False Representations as to Qualifications—Perjured Testimony of Fingerprint "Expert"

One of the most flagrant and brazen acts of perjury ever committed by an alleged witness is recorded in a recent decision of the Kentucky Supreme Court— *Shelton v. Commonwealth,* 280 Ky. 733, 134 S. W. (2d) 653 (1939). In this case (a prosecution for murder) an "expert" by the name of H. G. Coffey, who testified that he had found the defendant's fingerprints on a stone which had been used as a fatal weapon and also on the shoes of the deceased, stated as the basis for his qualifications as an expert that he had studied fingerprint identification at "Cook and Evans University, Sunshine Avenue, Chicago, Ill.," that he had been "associated with Earl Stevens, Superintendent of the Police Identification Bureau in Detroit," and that he had also been "on the payroll of the Michigan Secret Service Police, Bovine Avenue, Detroit." The attorneys for the defendant wrote letters to these various persons and organizations, as well as to others mentioned by the witness, and all letters were returned unclaimed with the exception of the one addressed to Lieutenant Stevens who informed the attorneys that he had never heard of such a person as Coffey. In view of these indications that the witness had misrepresented his qualifications (at the preliminary hearing in this case), the attorneys for the defendant requested a continuance of the defendant's trial so that they might have an opportunity to further investigate Coffey's qualifications before he should be permitted to testify at the trial. This request was denied, and the witness was permitted to testify at the trial. He then reiterated the above-mentioned statements as to his qualifications. The defendant was convicted, but upon appeal the trial court's decision was reversed because of error committed by the trial court in not granting a continuance for the purpose of permitting defense counsel to make a further investigation of the witness Coffey. (In so deciding the appellate court found that the defense counsel had not been lax in their duty and had not had sufficient opportunity to thoroughly investigate the witness's alleged qualifications.)

This case represents the third recorded instance where Mr. Coffey has misrepresented his qualifications. The first time was in *Ingram v. Commonwealth,* 265 Ky. 323, 96 S. W. (2d) 1017 (1936), where the witness stated that he had studied the subject of fingerprinting for two years at Northwestern University and also in the Detroit Police Department for two and a half years. In the *Ingram* case the defense counsel failed to object to the witness's qualifications in this respect, and upon appeal the court held that the objections were untimely and therefore the trial court's conviction was affirmed. The second recorded instance of Coffey's misrepresentations occurred in *Green v. Commonwealth,* 268 Ky. 475, 105 S. W. (2d) 585 (1937) (previously noted in this Journal in Vol. 28, No. 3, at p. 443). In this case (a rape prosecution) Coffey alleged that he found the defendant's fingerprints on an empty cigarette package at the scene of the crime, and here again Coffey stated as proof of his qualifications that he "had had instruction off and on" for two and one half years at Northwestern University. This time the defense counsel obtained affidavits from the director of the Scientific Crime Detection Laboratory at Northwestern University who reported that there was no record of any man by the name of this witness having attended the Laboratory or the University for instruction and, furthermore, that no one on the staff of the Laboratory recalled having even talked to such a person by the name of Coffey. But despite the information contained in this deposition, the trial court

refused to permit it to be read to the jury for the reason that since the witness did not state that he had been enrolled as a student at the University but had merely received instruction there "off and on," the deposition was in no sense contradictory to the witness's testimony. The same view was taken by the Supreme Court of Kentucky in a decision affirming the trial court's conviction.

Firearms Identification—Evidence and Testimony Regarding Firing Distance Based Upon Shot Pattern Experiments

In the case of *State v. Criger,* 98 Pac. (2d) 133 (Kans. 1940), in which the accused was being tried for the murder of his wife, the trial court admitted in evidence the testimony of witnesses to the results of experiments made for the purpose of approximating the distance at which the deceased had been shot. The accused admitted the shooting but stated that it was accidental and that the fatal shot was discharged as he was handling his shotgun preparatory to going out hunting. Since the results of the shot pattern experiments tended to refute the accused's testimony with regard to the distance of the firing, this evidence was of considerable importance in the trial. In the making of the experiments shells of the same kind as the evidence shell were used, and they were fired in the fatal weapon from various distances at blotting paper which served as the target material. As stated in the appellate court's opinion, the experimenters had "considerable experience" in the handling of firearms. Upon appeal from a trial court conviction, the defendant argued that the evidence adduced from the shot pattern experiments was inadmissible because the experiments were not made under the supervision of the court or in the presence of the defendant and were not shown to have been made under conditions similar to those under which the gun was fired at the time of the fatal shooting. In answer to these objections the appellate court in affirming the conviction made the following statement: "Experiments of this character frequently are made in homicide cases, and uniformly received in evidence. The purpose of the experiments in this case was to determine the spread or pattern of the shot when the gun was fired at various distances from the target. There is no reason to think that the spread or pattern of the shot would be different when the gun was fired at the time of the tragedy than when the experiments were being made. We think there was no error in the admission of this testimony. In this connection it also was argued that it was error for the court to admit in evidence the targets used in these experiments, which showed the spread or pattern of the shot when the gun was fired at various distances from the target. If the testimony respecting these experiments was competent there was no reason to exclude the targets."

Blood Grouping Statutes Recently Enacted in New Jersey, Ohio and Maine

Until recently only two states had enacted legislation regarding blood grouping tests. These two were New York and Wisconsin. During 1939, however, the legislatures of New Jersey, Ohio, and Maine also enacted statutes upon this subject. For the interest of Journal readers the statutes in these three states are reproduced herewith.[1]

New Jersey. "An Act concerning evidence and witnesses, and supplementing subtitle eleven, of Title 2, of the Revised Statutes.

"Be it enacted by the Senate and General Assembly of the State of New Jersey:

"Whenever it is relevant to the case of the prosecution or the defense in a proceeding involving parentage of a child, the trial court, by order, may direct that the mother, her child, and the defendant submit to one or more blood grouping tests to determine whether or not the defendant can be excluded from the probability of being the father of the child. The testimony of experts to the result of the test shall be receivable in evidence, but only

[1] For copies of the New Jersey and Ohio statutes the Editor is indebted to Dr. Philip Levine of Newark Beth Israel Hospital, Newark, N. J.; and for the ones from Maine, to Mr. George Wiener, Attorney-at-law, Brooklyn, N. Y.

in cases where definite exclusion of parentage of the defendant is indicated. The tests shall be made by duly qualified physicians, to be appointed by the court. Such experts shall be subject to cross examination by both parties after the court has caused them to disclose their findings to the court or to the court and jury. Whenever the court orders such blood grouping tests to be taken and one of the persons thus directed shall refuse to submit to such tests, such fact shall be disclosed upon the trial in the discretion of the court.

"Whenever it shall be relevant in a civil action to determine the parentage or the identity of any child or other person, the court, by order, may direct that any party to the action and the person whose parentage or identity is involved submit to one or more blood grouping tests, to be made by duly qualified physicians under such restrictions and directions as the court or judge shall deem proper. Whenever such test is ordered and made, the testimony of the experts to the results thereof, subject to cross examination as in section one, shall be receivable in evidence, but only in cases where definite exclusion is indicated. The order for such blood grouping tests also may direct that the testimony of such experts and of the persons so to be examined be taken by deposition. The court shall determine how and by whom the costs of such examination shall be paid."

Ohio. "An Act to supplement section 12122 of the General Code by the enactment of supplemental sections 12122-1 and 12122-2, relative to paternity tests in illegitimacy proceedings and in civil and criminal actions generally.

"Be it enacted by the General Assembly of the State of Ohio:

"Section 1. That section 12122 of the General Code be supplemented by the enactment of supplemental sections 12122-1 and 12122-2 to read as follows:

"Section 12122-1. Whenever it shall be relevant to the defense in a bastardy proceeding, the trial court on motion of the defendant, shall order that the complainant, her child, and the defendant submit to one or more blood-grouping tests to determine whether or not the defendant can be excluded as being the father of the child. The tests shall be made by duly qualified physicians or other qualified persons, not to exceed three, to be selected by the court, and under such restrictions and directions as the court or judge shall deem proper. In cases where exclusion is established the results of the tests together with the findings of the expert or experts of the fact of non-paternity shall be receivable in evidence. Such experts shall be subject to cross-examination by both parties after the court has caused them to disclose their findings to the court or to the court and jury. Whenever the court orders such blood-grouping tests to be taken and one of the parties shall refuse to submit to such tests, such fact shall be disclosed upon the trial unless good cause is shown to the contrary. In the event such tests have been made prior to the trial, the results thereof shall be receivable in evidence. The court shall determine how and by whom the costs of such an examination shall be paid.

"Section 12122-2. Whenever it shall be relevant in a civil or criminal action or proceeding to determine the paternity or identity of any person, the trial court on motion, shall order any party to the action and any person involved in the controversy or proceeding to submit to one or more blood-grouping tests, to be made by duly qualified physicians or other qualified persons not to exceed three, to be selected by the court and under such restrictions or directions as the court or judge shall deem proper. In cases where exclusion is established the results of the tests together with the findings of the expert or experts of the fact of non-paternity shall be receivable in evidence. Such experts shall be subject to cross-examination by both parties after the court has caused them to disclose their findings to the court or to the court and jury. Whenever the court orders such blood-grouping tests to be taken and one of the parties shall refuse to submit to such tests, such fact shall be disclosed upon the trial unless good cause is shown to the contrary. The court shall determine how and by whom the costs of such examination shall be paid."

Maine. "An act permitting blood grouping tests in bastardy proceedings.

"Be it enacted by the People of the State of Maine, as follows:

"R.S. c. 111, additional. Chapter III of the revised statutes is hereby amended by adding at the end thereof a new section, to be numbered 12, and to read as follows:

"Sec. 12. *Blood Grouping Tests.* After the return day, the Court in term or vacation, on motion of the respondent, shall order the complainant, her child, and the respondent, to submit to one or more blood grouping tests to determine whether or not the paternity of the respondent can be excluded; the specimens for the purpose to be collected and the tests to be made by duly qualified physicians and under such restrictions as the court shall direct, the expenses therefor to be audited by the court and borne by the respondent. The results of such tests shall be admissible in evidence, but only in cases where exclusion is established. The order for such tests may also direct that the testimony of the examining physicians may be taken by deposition."

With regard to legislative action in other states during 1939, the following communication from Mr. George Wiener of Brooklyn, N. Y., is of interest:

"The State of Minnesota had two bills introduced in 1939, by Mr. Erickson of the House, being House File Nos. 84 and 85, referred to Committee on Judiciary, and reported favorably. Then sent to Senate and also reported favorably by the Judiciary Committee of the Senate, but no action was reached or taken thereon.

"A bill was likewise again (for the second time) introduced in California by Assemblyman Redwine, this bill being identical with section 306-A of the Civil Practice Act of New York, but no action was taken thereon for the reason that other business occupied the attention of the Legislature.

"Section 306-A of the Civil Practice Act of New York was further amended in 1939, by chapter 647 of the Laws of 1939, to have these tests ordered in any court of record in the state."

Procedure and Practice with Regard to Blood Grouping tests under New York Statute

In the October 5, 1939, issue of the New Jersey Law Journal there is an interesting article by Mr. Sidney Schatkin and Dr. Philip Levine entitled "Paternity Blood Tests" in which a description is given of the practice and procedure followed under the New York statute. The New York law states that the courts shall order blood grouping tests to be made by a "duly qualified physician," and it is with regard to the appointment of such a physician that an interesting and commendable practice and procedure has been developed in New York City. There, according to the authors of the article in the New Jersey Law Journal, the Corporation Counsel's Office is charged with the duty of handling all paternity determinations or bastardy proceedings. That office, in an effort to secure the proper kind of testimony, has obtained from the New York Academy of Medicine a list of physicians the Academy considers qualified to make blood grouping tests. The only physicians who conduct the blood grouping tests and who appear in the courts of New York City are those selected from this particular list. This, of course, is a very desirable practice for it offers considerable assurance not only as to the competency of the person making the test but also as to his honesty and integrity.

The authors of this article also comment upon certain precautions taken by New York physicians in order to avoid the perpetration of frauds upon themselves. It would be a relatively easy matter, of course, for the parties to a suit of this nature to send to the examining physician some relative or friend with the proper blood group to support their contention one way or the other. To prevent such a fraudulent practice in New York, whenever a person presents himself to the appointed physician for the purpose of submitting to a blood grouping test, the physician takes the person's fingerprint and signature if he or she happens to be one of the adults, and if it be the infant a footprint is taken. Then, at the time when the physician appears in court to testify,

similar identification data are obtained from the parties appearing in court, and in this way the physician can be certain that in testifying as to the results of his laboratory tests he is referring to the proper parties and not to someone who may have appeared in their place as substitutes.

A Recent Blood Grouping Decision under the Wisconsin Statute

The appreciation of the value of blood grouping tests in paternity determinations in the State of Wisconsin is indicated by a recent Wisconsin decision. In this case, *Euclide v. State,* 286 N. W. 3 (Wis., 1939), blood grouping tests had been made upon the complaining witness, her child, and the accused father, the results of which indicated that it was not possible for the accused to have been the father of the child in question. Unfortunately, however, the specific procedure outlined in the Wisconsin statute was not adhered to and the blood grouping evidence was not admitted at the trial. The Wisconsin statute provides that the tests shall be made by a physician or duly qualified person *appointed by the court.* It so happened in this particular case that the physician appointed by the court turned the blood specimens over to the Wisconsin State Toxicologist who, of course, would have been qualified to testify had he been the appointed party. Since the statutory procedure was not followed, however, the court naturally refused to permit the blood grouping testimony to be introduced. Although the results of the test indicated the impossibility of the accused's being the father of the child, a verdict was rendered in favor of the plaintiff. Upon appeal the appellate court held that in the interest of justice the case should be reversed so that on subsequent trial the court could have the benefit of the results of the blood grouping tests. The appellate court was here inclined to attach considerable significance to the blood grouping evidence and apparently thought that if such evidence had been available at the trial a different verdict and a more just one would have resulted.

A Recent Blood Grouping Decision from Ohio

Many experts will undoubtedly disagree with the decision of the Ohio Court of Appeals in the recent decision of *State ex rel. Slovak* v. *Holod,* 63 Ohio App. 16, 24 N. E. (2d) 962 (1939), and yet it must be conceded by all that the court's opinion is supported by some very sound reasoning.

The defendant in this case, a bastardy proceeding, was adjudged to be the father of the complainant's child, despite the fact that a serologist testified in the defendant's behalf that the results of blood grouping tests excluded the defendant as the possible parent. Upon appeal the defendant contended that the verdict was against the weight of the evidence, and that the trial court erred in refusing to give certain requested instructions regarding the weight to be given to the expert's testimony as to the results of the blood grouping tests. (According to the appellate court these instructions, if given, would have permitted the jury to decide the case upon that evidence alone.)

In affirming the trial court's decision it was held that since absolute conclusiveness and infallibility of blood grouping test results had not been definitely established, the court would not be justified in ruling that the test results in this case should nullify all the complainant's evidence to the contrary. Moreover, the court very justifiably raises the point that a ruling to that effect would also have to presuppose absolute honesty and thorough competence on the part of the expert, and also the preclusion of all chances of innocent mistakes. The appellate court also stated that the requested ruling would have placed the trial court in the position of singling out the testimony of a particular witness and commenting upon it in violation of the established rule prohibiting the trial judge from expressing his opinion as to the value and weight of the evidence.