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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Legality of Taking a Sample of Blood for Alcoholic Intoxication Tests

In the recent case of *State* v. *Weltha*, 292 N. W. 148 (Iowa, 1940), the Supreme Court of Iowa rendered an important decision regarding the legality of taking a sample of blood for alcoholic intoxication tests. The question before this appellate court was whether or not the trial court had been correct in admitting in evidence the testimony of a chemist regarding the results of alcoholic intoxication tests made on a sample of blood which had been taken from the defendant shortly after an automobile collision that had resulted in the death of another motorist. At the time of the taking of the sample of blood from the defendant, he was in an unconscious condition with a broken jaw, broken leg, and cuts and bruises generally. When the sample was thus taken the defendant was not under arrest, and up until then no charges had been placed against him. The physician who obtained the blood sample was a coroner from another county of the state than the one in which the accident occurred or in which the hospital was located.

In reversing the trial court's ruling in admitting the evidence, the appellate court stated: "We have here a situation where a volunteer, without legal warrant and without express or implied assent, intrudes himself into an operating room and takes from an unconscious patient a blood sample to be used to make or sustain possible future criminal prosecution. We cannot bring ourselves to approve such a course; and we find no authority which requires us to do so."

The court also found objectionable the careless method in which the evidence was handled up to the time it reached the expert.

Should the Results of Alcoholic Intoxication Tests Be Accepted as Conclusive Legal Proof of the Fact of Intoxication?

How much weight should be given to the testimony of an expert regarding the results of alcoholic intoxication tests? For instance, should his opinion receive greater weight than lay witness testimony to the contrary? The Supreme Court of Wisconsin was recently called upon to answer such a question in the case of *Kuroske* v. *Aetna Life Ins. Co.*, 291 N. W. 384 (Wis., 1940). In this case the defendant insurance company was being sued for recovery on an accident insurance policy issued to the plaintiff's son who had been killed in an automobile-train collision. The insurance company denied liability on the grounds that at the time of the accident the insured was intoxicated to such an extent as to "impair his ability to care for himself and thereby increased the probability of his suffering accidental injury"—and, consequently, according to a clause in the policy, his beneficiary was precluded from recovery.

Shortly after the accident, while the insured and his brother (another occupant of the car) were in a hospital, samples of blood were taken from each one for the purpose of making tests for alcoholic intoxication. The results, according to the testimony of a chemist who appeared as witness for the insurance company, indicated that the insured's blood contained .25 per cent of ethyl alcohol by weight. This figure was interpreted by two additional experts as definitely indicative of a state of alcoholic intoxication. The evidence introduced by the plaintiff consisted largely of lay witness testimony regarding the relatively small amount of beer consumed by the insured prior to the accident and also of testimony as to his prior condition and appearance. The jury found in favor of the plaintiff and permitted recovery on the insurance policy. The defendant insurance company appealed and alleged that the verdict of the jury was contrary to the law and evidence in the case. The defendant contended that the alcoholic intoxication test results and the expert testimony concerning such tests "constituted physical or scientific facts which

should be given the same controlling effect that has often been accorded to undisputed physical facts by this court." The appellate court, however, affirmed the trial court's decision, stating: "The sample of blood taken from the deceased was, of course, a physical fact. Its alcoholic content, if accurately shown, was a physical fact. The opinions of [the doctors], however, were obviously expert testimony, and its weight, as such, was clearly for the jury. It is generally recognized that the relative weight and sufficiency of expert and opinion testimony is peculiarly within the province of the jury to decide and that the same tests commonly applied in the evaluation of ordinary evidence are to be used in judging the weight and sufficiency of expert testimony.*** We therefore conclude that the evidence adduced by the plaintiff was sufficient to raise a jury question; that the opinions of the experts were properly received in evidence; that the weight of the testimony of the lay witnesses hearing upon the question of intoxication of the deceased . . . was for the jury; that the opinions of the experts were not conclusive and the weight to be given them was for the jury."

The Care and Preservation of Scientific Evidence

In both of the foregoing cases (*State* v. *Weltha* and *Kuroske* v. *Aetna Life Ins. Co.*) the samples of blood were very carelessly handled prior to the time when the chemical tests were made. This fact most certainly had its influence upon the court in the *Kuroske* case, and perhaps in the *Weltha* case as well. The careless methods used in both instances are worth noting as horrible examples of how not to care for and preserve scientific evidence. In the *Kuroske* case the doctor who took the samples from both the insured and his brother placed an identification "memorandum" on each test tube containing the blood specimens. The test tubes were then taken by the doctor to his office where he turned them over to his secretary with instructions to deliver them to the traffic officer who had requested the doctor to take the samples. The secretary placed the unsealed test tubes on a test tube rack where they remained for several hours until the officer called for them. The officer kept the test tubes in the pocket of his automobile "for two days." Then the samples were turned over to a railroad agent who wrapped them in a package and sent them "by company mail" to the general claim agent in another city. The stenographer in the general claim agent's office upon receipt of the package unwrapped it and delivered the test tubes to the chemist who was selected to make the tests. It is perfectly apparent, therefore, what the appellate court had in mind when it stated that "The sample of blood . . . passed through so many hands that the jury may not unreasonably have entertained some doubt whether its integrity as a sample had been preserved." Indeed, the court might well have held that in view of the careless handling of the sample of blood no evidence should have been admitted as to the results of any alcoholic intoxication tests made thereon.

In the *Weltha* case the physician who obtained the blood sample placed it in a test tube which he carried around "in his pocket . . . for about two hours." He then gave it to a nurse who in turn gave it to a secretary who mailed it to the State University for analysis, without addressing the package to any particular person. Because of its not having been addressed to some specific individual, the package was not promptly delivered to the chemist for whom its delivery was intended. Consequently, it was not until three days after the date of mailing that the package reached the expert who made the test and who appeared in court as a witness to testify as to the results of his analysis.

Needless to say, scientific evidence, and particularly of this type, should be transmitted to laboratory technicians as soon as it is possible to do so. Moreover, considerable discretion should be exercised in effecting the transmittal of such evidence.

Cross-Examination of Handwriting Expert by Experimentation

In the recent case of *State* v. *Maxwell*, 151 Kan. 951, 102 Pac. (2d) 109 (1940), involving a forgery prosecution, defense counsel attempted to cross-examine a handwriting expert who testified for the state by presenting him with an experimental test and requesting him to render an opinion thereon. The state objected to this proposal on the ground that it did not constitute proper cross-examination and that if admitted it would give rise to a determination of purely "collateral issues" and would "extend the trial interminably on collateral issues and tend to confuse rather than clarify the particular issues involved in the instant charges." The trial court sustained the state's objection, and upon appeal the trial court's ruling was affirmed. In other words, the court held that it was not proper to cross-examine the expert by the use of experimental tests.

Self-Incrimination: Can an Accused Person be Compelled to Permit His Face to be Shaved and His Hair Cut?

In a recent New York case, *People v. Strauss*, 22 N. Y. S. (2d) 155 (Kings County Court, 1940), the prosecuting attorney sought a court order which would require the defendant to submit to a face shaving and a hair cut, for purposes of his appearance in court. While in jail awaiting trial the defendant let his hair go untrimmed and his face unshaven, until his scalp hair became quite long and his face substantially hidden by a heavy beard. At the same time he behaved in such a manner as to cause a medical examination to be made as to his sanity. In support of the motion for the court order the prosecutor contended that the defendant's purpose in disguising his face was (1) to assume a wild appearance of manic psychosis, and (2) to make identification difficult if not impossible. In answer to this the defendant contended that his constitutional rights would be invaded by the proposed order and that the order would exceed any legitimate court function. In ruling against the defendant's contention and in granting the motion, the court said: "The constitutional safeguard against compelling a defendant in a criminal proceeding to be a witness against himself does not apply. That refers to testimonial compulsion, as a 'witness,' at a court hearing or trial, and the word 'witness' is the keyword. . . . The trial court may direct where the defendant shall sit, in what direction he shall face, and to stand up for the purpose of identification. Also, it may strip him of any artificial covering or disguise, and may compel him to submit to compulsory disrobing for the purpose of revealing bodily marks or characteristics which may aid in identification. It may hardly be gainsaid that a defendant may be compelled to appear cleanly washed, suitably dressed and with hair properly combed and brushed. The defendant's argument that this being a natural, rather than an artificially applied, disguise, provides a controlling basis for distinction, is not well taken. In all moot matters the stretching of basic assumptions may admit of sufficient in logic to support either side of the question. Therein lies the peril to sensible decision. That peril should be avoided here. Sound public policy seems to be the determining factor in a holding, which is now made, that any and all manner of disguise, whether naturally or artificially applied, are intolerable where—with all legitimate individual rights duly respected—a public right may be invaded by the use of a disguise with the reasonable likelihood of impeding thereby the enforcement of criminal law."