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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

John E. Reid [Ed.]

Expert Testimony—Invasion of Province of Jury

An objection was raised by the defendant in the recent case of *People vs. Jersky*, 36 N. E. (2d) 347 (1941) to the testimony of an expert as to the distance from the deceased at which a revolver had been fired. The defendant pleaded self-defense, contending that the gun was fired at close range—as he and the deceased were wrestling for its possession. Since the question of self-defense was one for the

jury to decide, he alleged that an expert's opinion as to the firing distance was an invasion of province of the jury. In upholding the trial court's conviction the Illinois Supreme Court held that the expert's opinion pertained only to an evidentiary fact and not to an ultimate fact and that therefore his opinion could not be considered as an invasion of the jury's province.

Can an Accused Person Be Compelled to Submit to Tests for Alcoholic Intoxication?

In the recent case of *Apodoca vs. State*, 146 S. W. (2d) 381 (Texas, 1940), the Texas Court of Criminal Appeals held that it was in violation of the constitutional privilege against self-incrimination to compel a motorist (under arrest for killing a pedestrian) to submit to various tests for alcoholic intoxication. The tests consisted of the usual police observational tests (right angle turn while walking, finger to the tip of the nose, etc.) and also a urine analysis.

The opinion of the Texas court is very brief and hardly represents more than a mere statement of a conclusion. Moreover, it is a conclusion not shared by vari-

ous legal authorities who have written upon this particular aspect.¹

Law enforcement officers in Texas are required by statute to follow some rather stringent rules when securing a criminal confession.² The customary Texas restrictions imposed by this statute and by court decisions thereunder undoubtedly affected the decision of the court in this alcoholic intoxication case. Since no other state has so strict a statute or so consistently conservative decisions upon the general subject of criminal confessions, this recent decision loses some of its significance in so far as other jurisdictions are concerned.

¹ See articles by Inbau, Fred E., "Self-Incrimination—What Can an Accused Person be Compelled to Do?" 28 J. Crim. Law and Criminology (Police Science Section) 291 (July-August 1937); and Ladd, Mason and Gibson, Robert B., "The

Medico-Legal Aspects of the Blood Test to Determine Intoxication," 24 Iowa Law Review (January 1939).

² See Articles 726 and 727 of Vernon's Texas Statutes, 1936.