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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Admissibility in Evidence of Defendant's Refusal to Submit to Test for Alcoholic Intoxication—In the case of *State v. Nutt*, 65 N.E. (2d) 675 (Ohio, 1946), in which the defendant was prosecuted for operating a motor vehicle while under the influence of intoxicating liquor, the Ohio Court of Appeals (Greene County) admitted in evidence the testimony of a chief of police and a physician that the accused refused to submit to a physical examination or furnish a sample of urine. The court held that this evidence did not violate the defendant's constitutional privilege against self-incrimination, that the evidence offered was not required to be given by the defendant himself, but was given by the chief of police and the physician called by the police to make the examination of the defendant. The constitutional prohibition against self-incrimination relates only to disclosure by utterance of the defendant himself. The court further held that this failure to submit to the tests may be considered by the court and jury and may be the subject of comment by the prosecution.

(For a complete discussion of the aspects of this problem as to compulsory tests for alcoholic intoxication and the desirability and constitutionality of provisions relating to compulsory testing, under the authority of the police power of the state to regulate the use of highways for the protection of the public, see: Mamet, B. M., Constitutionality of Compulsory Chemical Tests to Determine Alcoholic Intoxication, 36 Jour. Crim. Law & Criminology 132-147 (1945).

Is a Person Entitled to the Return of His Fingerprints and Photographs After His Acquittal on a Misdemeanor Charge?—An interesting decision with regard to the return of fingerprints and photographs to a person acquitted of a misdemeanor charge was rendered recently by the Supreme Court of Indiana in *State ex rel. Mavity v. Tyndall et al.*, 66 N.E. (2d) 755 (1946). In substance, the court said that the actual taking of fingerprints under ordinary circumstances is not an indignity, and in this case there was no valid reason for their surrender or destruction by the police. It is not for the court to make the decision if any of the records are to be returned or destroyed, as in the absence of a statute, discretion in the matter belongs to the police to decide whose identification papers will be apt to assist them in the performance of their duty. However, the court held that even though the police could retain the acquitted person's prints and photographs, such a person is entitled to an injunction *against the exhibition of his photograph* in the "rogues gallery," as a violation of his right of privacy.

(A future issue of this Journal will carry a more complete and annotated discussion on this case).

Blood Grouping Tests—Self-Incrimination—Admissibility in Evidence of Blood Grouping Test Results Showing That Blood of Prosecuting Witness Was of Same Type as Blood on Overcoat of Defendant—Upon the arrest of the defendant in *Shanks v. State*, 45 A. (2d) 85 (Md., 1945), for the crime of rape, the police found blood on his clothing, which he said was the blood of a certain person with whom he had a fight. Blood grouping tests showed how-

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ever, that the blood on the defendant's clothing was of a type (type *O*) different from that of the named combatant's blood (type *A*). However, the tests did show that the blood on the defendant's clothing was of the same type as that of the rape victim's (type *O*). Expert testimony, regarding the results of the blood grouping tests, was admitted over the defendant's objection that the evidence was self-incriminating, prejudicial, remote and valueless. Upon this and other corroborating evidence, the defendant was found guilty by the court, sitting without a jury, and sentenced to be hanged.

The Maryland Court of Appeals, in affirming the defendant's conviction, briefly dismissed the defense of self-incrimination, for the reasons that the blood was taken from his *coat* rather than from *him*, that the experiments and comparisons were made outside of court, and the evidence came from the lips of witnesses other than the defendant. The court also readily held that it was competent for the State to offer evidence to disprove that part of the defendant's explanation that the blood on his coat came from a third person, by showing that the tests proved that the blood could not have come from that person, on the legal theory that a false statement by the accused to a material circumstance may be considered against him because such falsity tends to show guilt.

A much more troublesome problem was involved, however, as regards the defense that the evidence of similarity in blood type between the blood on defendant's clothing and the victim's blood was too remote and valueless, in that it only showed that the blood on the coat of the defendant *could have* come from the victim and that 45% of all the population have this blood type (*O*). In disposing of this issue, the court said that blood types are now matters of common or ordinary knowledge, that even if they were not, it is adequate to explain to the judge and jury that 45% of the population have "*O*" type blood, and it could not be assumed that such an explanation would be disregarded and not given its proper weight; in other words, the objection of remoteness goes to the weight of the evidence rather than to its admissibility. The court further held that there is no analogy to bastardy cases where blood tests are used only to disprove paternity by establishing definite exclusion, as provided by statute; because in those cases the courts and legislatures are then dealing with a situation where self-incrimination is involved, as blood must be taken from the accused to make such tests, and where the nonscientific evidence is often quite unreliable and scientific evidence may be conclusive only as to non-paternity.

(Although blood grouping tests are generally held admissible, previous cases and authorities in the field have expressed the view that the results of such tests should be used only when they definitely establish a fact, *i.e.*, that the accused could not possibly be the parent, or that the blood on defendant's clothes is not the blood of a certain person. It should be noted, however, that in the instant case the evidence of similarity of blood type was coupled with the evidence excluding the source alleged by the defendant.)

(For. a further discussion of the aspects of this problem, see: Muehlberger, C. W. and Inbau, F. E., "The Scientific and Legal Application of Blood Grouping Tests," 27 Crim. Law & Criminology 578-579 (1936)).

(A future issue of this Journal will carry a more complete and annotated discussion of this case.)