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## Police Science Legal Abstracts and Notes

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## POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Recent Criminal Cases Involving Lie-Detector Tests.—Four recent decisions have been rendered involving the use of the lie-detector. In two of the cases, its use and the admission of the test results were requested by the defendant. In the other two cases, it was used by police officers in obtaining confessions from the accused. The courts in all four decisions refused to uphold its use or to admit in evidence the results of the test or the confessions obtained thereby.

In the case of *People v. Becker*, 300 Mich. 562, 2 N.W. (2d) 503 (1942), in which the defendant was convicted of manslaughter, one of the assignments of error urged by the defendant on appeal was the trial court's refusal of defendant's request to allow the results of a lie-detector test to be admitted in evidence. The defendant in this case had submitted himself to the lie-detector test while in custody of the sheriff and after making a statement to the state police and to the prosecuting attorney to the effect that he killed the deceased in self-defense. The Supreme Court of Michigan, in sustaining the trial court's ruling, based its decision upon the following reason: "There was no testimony offered which would indicate that there is at this time a general scientific recognition of such tests. Until it is established that reasonable certainty follows from such tests, it would be error to admit in evidence the result thereof."

In the case of *State v. Cole*, — Mo. —, 188 S.W. (2d) 43 (1945), the defendant was convicted of murder in the first degree and sentenced to death for the killing of a seven year old girl by strangulation in the attempted commission of a rape upon her. The defendant made a written confession of the crime after his arrest and the confession was witnessed by nine persons who testified on trial that it was given voluntarily. At the trial the defendant pleaded not guilty, and objected to admission of the confession as being coerced from him. At the beginning of the trial, before any witness had testified, the defendant made a motion that a lie-detector be used on all witnesses, including himself, for the purpose of testing the truthfulness of their testimony. This motion was overruled by the trial court before any witness had testified. Later, after four witnesses had left the stand, the defendant presented to the court out of the jury's presence an officer of the St. Louis Police Department as an expert witness in support of his motion, who testified to his familiarity with the lie-detectors. When he was asked to explain how the machine works, the court sustained the State's objection on the ground that any evidence illicitly obtained thereby would have no probative value recognized by the Missouri courts. The Supreme Court of Missouri, in affirming the defendant's conviction, held that the question was not one of the privilege of the accused against self-incrimination, nor was it a question of his right to introduce evidence showing how the witness had reacted to the machine when previously examined extrajudicially, but that the defendant's motion contemplated the *compulsory* use of the machine on *all* the witnesses during the trial *before the jury*. The court then said that in its opinion "the day has not come when all the witnesses in a case can be subjected to such inquisitorial and deceptive tests (or to drugs like scopolamine, or to hypnotism) without their consent.

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Furthermore, such dramatics before the jury would distract them and impede the trial — this latter also because it is necessary for the inquisitor to ask both harmless, irrelevant and 'hot' questions in order to bring out the contrast in the witness' emotional responses." The court concluded that "no doubt the lie detector is useful in the investigation of crime, and may point to evidence which is competent, but it has no place in the court room." The court further held that there was no error in the trial court's refusal of the defendant's request that *he* be subjected to the lie detector test, as strictly speaking he did not make a motion to that effect: he merely said he was "willing" to have the test made. But irrespective of that fact, the court went on to state that even upon proper request no error was committed as such tests could not be made before the jury during the trial, and defendant's offer of proof did not show that such method of detecting guilt had sufficient scientific support, or wide scientific approval as a producer of judicial proof.

In the case of *Bruner v. People*, 113 Colo. 194, 156 P. (2d) 111 (1945), the defendant was arrested on suspicion of murdering his wife and was held incommunicado, although he alleged that he requested the privilege of communicating with an attorney. After ten days of interrogation for periods of one and a half or two hours each morning, afternoon, and evening, the defendant made a statement telling about the death of his wife and how he disposed of her body (which was never found), but explained that her death was accidental. The police officers were not satisfied with the defendant's explanation of the cause of the wife's death and called for the assistance of a lie-detector operator from Chicago, who interrogated the defendant and used a lie-detector on him. Subsequently, according to police officers who testified at the trial, the defendant admitted he strangled his wife. This the defendant denied when he testified on his own behalf, and he further contended that he had not requested nor consented to undergo a lie-detector examination, and that the machine was attached to his body and was left attached for over ten hours, except for a period of time when the defendant removed it because his whole arm became bloodshot. The defendant further testified that he was not permitted to leave the chair on which he was seated and was not permitted to go to the toilet, although he requested permission to do so; that he was advised he would continue to undergo this treatment until a favorable statement was obtained, and that he had nothing to eat from breakfast time until after 3:30 A.M. the next morning. The defendant also testified that during the course of the examination he was accused of being "heartless," "lower than a snake," and was referred to as "a son-of-a-bitch," and that the lie-detector operator told him that a little "Chicago treatment" would do him more good than anything else; that "back there they hang them over a door with handcuffs, with their feet about a foot from the floor and beat them within an inch of their life." The defendant's testimony to this effect was uncontradicted by any of the state's witnesses. The Chicago lie-detector operator did not testify, nor did the prosecution account for his absence. (According to information received by the writer of this note, the operator was in military service, and on foreign duty, at the time of the trial.)

The Supreme Court of Colorado reversed the defendant's murder conviction and remanded the case for further proceedings, holding that under the facts and circumstances of the case, as appeared from the *uncontradicted* evidence, the oral confession, if made, was obtained as a

result of inhuman treatment and therefore involuntary. The court said that continued and persistent questioning and accusations to the point of exhaustion of a defendant may be just as effectual in obtaining a confession as threats, promises, or physical abuse. The court further stressed the point that it was guided solely by the evidence contained in the record and that the decision did not preclude the introduction of additional evidence as to the voluntariness of the alleged confession in the event of a new trial.

In the recent case of *People v. Sims*, 395 Ill. 37, 69 N.E. (2d) 336 (1946), the defendant, a girl of 17 years, was suspected of murder, taken into custody and retained without being booked, from a Tuesday until the following Saturday. The defendant was taken to the Chicago Police Scientific Crime Detection Laboratory, where she was given a lie-detector examination, after which she confessed her guilt. According to the opinion of the Supreme Court of Illinois, which reversed the defendant's manslaughter conviction, the defendant had objected to the use of the lie-detector without first talking to her attorney. Several of the state's witnesses admitted that she objected to the use of the lie-detector and was without the advice of counsel.

The Supreme Court of Illinois, in reversing the judgment and granting a new trial, held that the lie-detector was used illegally, because of the probability that its application influenced, if it did not induce, the statement of the defendant. The use of the lie-detector was against her wishes and so far as the court was advised, no court has ever held that a lie-detector may be used on the accused without his consent. Also, that since she was without the advice of counsel, it seemed probable that a girl of her age supposed, as she said, that because of the use of the lie-detector and the fact that it was attached to her, she was required to make a statement.

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