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Police Science Legal Abstracts and Notes

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

Robert H. Klugman*

Oral Admissions of Accused Recorded by Reporter in Shorthand Admissible—In *Mobley v. State,* 85 N.E. (2d) 489 (Ind. 1949) the defendant was prosecuted for the murder of her three year old child. During the investigation of the case certain statements in question and answer form were made by the defendant to a reporter who recorded them in shorthand. The trial court ruled that these statements were admissible against the defendant as admissions. The Supreme Court of Indiana affirmed the conviction, specifically pointing out that admissions may be oral and may be testified to by anyone hearing them. There is no necessity that they be written or signed.

Lay Witness Competent to give Opinion of Distance from Target at which Firearm will make Powder Burns—In the recent case of *Colbaugh v. State,* (Tenn., 1948) 216 S.W. (2d) 741, the defendant, charged with murder, pleaded self-defense and contended that the fatal shot was fired at a distance of from seven to ten feet. The state, after producing evidence of powder burns on the deceased's face, called a sheriff and an ex-soldier who testified that a pistol such as that used by the defendant would not make a powder burn if fired from a distance greater than five feet from the target. In affirming the trial court's conviction, the Tennessee Supreme Court stated that the subject was one of common knowledge and lay opinion was admissible. It noted specifically that none of the witnesses was asked at what distance from the target the gun was fired but only the distance such a gun would leave powder burns. Appellant claimed that since the witnesses undertook to qualify as experts by stating their experience and knowledge of firearms, they must be treated as experts, and as such their qualifications were insufficient. The court ruled, however, that admissibility of the evidence was a matter for the discretion of the trial judge and would not be reversed unless clearly erroneous.

Defendant's Fingerprints at Scene of Crime Sufficient to Corroborate Testimony of Accomplice—Defendant was charged with burglarizing a theatre in the recent case of *Rushing v. State,* 199 P. (2d) 614 (Okla. Cr. App. 1948). A participant in the burglary gave a detailed account of the crime and testified that the defendant was his accomplice. Another witness for the state testified that fingerprints found at the scene of the crime contained fifteen points of similarity with those of the defendant in the police department records. The defendant's conviction was affirmed by the Oklahoma Criminal Court of Appeals. The court declared that the fingerprints alone satisfied the Oklahoma statute requiring corroboration of testimony of an accomplice.

Three Additional States Enact Legislation Concerning Use of Chemical Tests to Determine Degree of Intoxication—The legislatures of North Dakota, South Dakota, and Washington recently enacted legislation con-

* Senior Law Student, Northwestern University School of Law.

cerning the admission of evidence of the results of chemical tests of a driver's breath, blood, urine, or other bodily fluids. The new laws are all substantially the same, following closely the chemical test provisions of Act V of the Uniform Vehicle Code. Similar legislation has previously been enacted in Indiana, Maine, New York, and Oregon.

The new laws in general provide that in criminal prosecutions for driving while under the influence of liquor the results of chemical tests of the defendant's breath, blood, urine, or other bodily fluids shall be admissible to determine the amount of alcohol in the defendant's blood. Certain percentages by weight of alcohol in the blood give rise to presumptions as to whether the defendant was driving while under the influence of liquor. In most of these laws .05 percent or less is prima facie evidence that the driver was not intoxicated to an extent to impair his driving ability (Maine provides .07 percent); evidence of from .05 to .15 percent is admissible but gives rise to no presumption; if the defendant's blood contains .15 percent or more, he is presumed to be under the influence of liquor.

Provisions for the admission of evidence of chemical tests do not preclude admission of other evidence regarding a defendant's degree of intoxication. If a defendant voluntarily submits to a chemical test to determine the degree of his intoxication, he cannot have the evidence excluded under any privilege against self-incrimination. (*Spitler v. State*, 221 Ind. 107, 46 N.E. (2d) 591 (1943)). But no state law has specifically provided that a driver must submit to a chemical test, and the Maine and Oregon statutes provide that failure of a driver to have a test made cannot be used as evidence against him. (For an excellent discussion of the legal aspects of legislation upon this subject, see Mamet, Constitutionality of Compulsory Chemical Tests to Determine Alcoholic Intoxication (1945) vol. 36 of this Journal at page 132. For a discussion of the medical aspects of the problem, see Rabinowitch, Medicolegal Aspects of Chemical Tests of Alcoholic Intoxication (1948) vol. 39 of this Journal at page 225, and Comments on Dr. Rabinowitch's Paper by Harger and Muehlberger, volume 39 at pages 402 and 411.)

Admission of Evidence Obtained by Unreasonable Search and Seizure in State Court Prosecution Not Forbidden by Fourteenth Amendment—The United States Supreme Court upheld the admissibility of evidence obtained in an unreasonable search and seizure in a state court prosecution for a state crime in the recent case of *Wolf v. People of California*, 17 U.S. L. Week 4638 (1949). The majority opinion, written by Mr. Justice Frankfurter, stated that although the "due process of law" clause of the Fourteenth Amendment does not incorporate the first eight amendments, it does guarantee all those rights "implicit in the concept of ordered liberty." Included in this concept is security against arbitrary intrusion by the police. If a state, therefore, affirmatively sanctioned unreasonable searches and seizures, this would violate the Due Process Clause of the Fourteenth Amendment.

Nevertheless, even though the Constitution guarantees the right to be free from unreasonable searches and seizures, the Court declared that it was not necessarily true that such right need be enforced by excluding illegally seized evidence in a subsequent trial.

At present 17 states have adopted the federal doctrine prohibiting the

admission of illegally-seized evidence, while 30 are on record as opposing it. This situation is left unchanged by the decision in the *Wolf* case.

(For an interesting article dealing with this subject, see comment (1948) 39 J. Crim. L. & Criminology 354.

The Admissibility of Lie-Detector Test Results in Evidence—In *Boeche v. State*, 37 N. W. (2d) 593, decided by the Supreme Court of Nebraska on May 19, 1949, the defendant contended that the trial court erred in refusing to admit in evidence the results of a lie-detector test made on him by an investigator of the Nebraska Safety Patrol during the course of an investigation of a forgery case. Although the Supreme Court reversed the defendant's conviction on other grounds, a majority of the court sustained the trial court's ruling regarding the lie-detector evidence. Three of the seven justices expressed the opinion, however, that lie-detector test results now seem ready for court acceptance. Nevertheless, even these justices agreed with the ultimate conclusion of the majority regarding the rejection of the evidence in this particular case, since the prosecution did not lay a sufficient foundation to properly qualify the examiner as an expert; nor did the prosecution follow the proper procedure in offering the lie-detector records in evidence.

The majority of the court reviewed the previous decisions rejecting lie-detector evidence and concluded that "the scientific principle involved . . . has not gone beyond the experimental stage and . . . that it has not yet received general scientific acceptance." The majority opinion further stated that "the experimenting psychologists themselves admit that a wholly accurate test is yet to be perfected." On the other hand, three members of the court were greatly impressed by the testimony given in the earlier New York case of *People v. Kenny* by Summers who claimed perfection for his so-called "pathometer." They concluded that upon a retrial of the case the results of the lie-detector test should be admitted "if a proper foundation is laid whereby it would be established that the operator was an expert in that field, and that the apparatus used and the tests made thereunder have been given general scientific recognition as having efficacy."

For a detailed discussion of the accuracy of the lie-detector evidence and an exposition of the view that the test results should not be admitted in evidence, see Inbau, Lie Detection and Criminal Interrogation (2d ed., 1948).

Recent United States Supreme Court Decisions on Confession Admissibility—The cases of *Watts v. Indiana*, *Turner v. Pennsylvania*, and *Harris v. South Carolina*, all involving the question of the admissibility of confessions are analyzed and discussed on pp. 211-217 of this number of the *Journal*. The same article discusses the federal case of *Garner v. United States*, which also involved a confession problem.