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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Dismissal of Police Officers for Refusal to Waive Self-Incrimination Immunity Upheld—During the investigation of the murder of James M. Ragen in the Chicago "scratch sheet" publishing war, police officers Drury and Connelly discovered three witnesses from whom they obtained signed statements to the effect that they could identify the killers. As a result of the testimony of the two officers and the three witnesses the Cook County Grand Jury indicted three men for the murder on March 17, 1947. Later two of the witnesses recanted their testimony and when recalled before the grand jury stated they could identify no one connected with the Ragen killing. The two police officers were then summoned and, since they had reason to believe that they were suspected of manufacturing the evidence through subornation of perjury, bribery and threats, they refused to sign the waiver of constitutional immunity against self-incrimination normally obtained from suspects or material witnesses before the grand jury.

As a result of this action the two police officers, one of whom was a Lieutenant and the other a Captain, were suspended from duty and dismissed from the police force as a result of a Civil Service Commission trial which found them guilty of conduct unbecoming a police officer. In *certiorari* proceedings brought by the officers to obtain judicial review of the Commission's action, the Illinois Appellate Court upheld the finding of the Civil Service Commission and reversed the Superior Court of Cook County. (*Drury* v. *Hurley,* 339 Ill. App. 33 (1949.)

In reaching this result the court held that the review of such cases is limited to the question of whether or not there is evidence tending to support the finding of the Commission. In arriving at its decision the court pointed out that there is a difference between the ordinary citizen exercising his constitutional privilege and a police officer invoking the same privilege in connection with an investigation which has been carried on as part of his official duties.

On the basis of the instant case, and the many authorities cited therein, a police officer has the same right as an ordinary decision to claim constitutional immunity in testimony before a grand jury or a court but his claim of the privilege and his refusal to testify is sufficient justification for his dismissal from the police force "for cause." For a general discussion of the case see Comment (1948) 38 J. Crim. L. & Criminology 619.

Harger Drunkometer Evidence Inadmissible in Michigan—In *People* v. *Morse,* 38 N. W. (2d) 322 (Mich., 1949), the Michigan Supreme Court held that evidence obtained through the use of the Harger Drunkometer was not admissible to prove that the defendant was driving while intoxicated. In so holding, the court, basing its reasoning on the cases dealing with the lie detector, held that the Harger test was not a generally accepted scientific test and could not be introduced in evidence. As with the lie detector, according to the Michigan court, the opinion as to in-

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toxication rests on an indirect deduction from observable physical symptoms.

In using the lie-detector analogy what the court failed to realize was the existence of an additional step in the reasoning supporting the lie-detector findings. While the Harger Drunkometer involves merely the indirect measurement of the amount of alcohol in the bloodstream, a clearly physical phenomenon, the lie-detector involves an attempted correlation between the following elements: (1) an attempt to lie; (2) certain emotional tensions; (3) the physiological manifestations of these emotional tensions. Thus it would seem that there is a difference between the two in both the extent of the deduction used and, qualitatively, in the phenomenon observed and its relationship to the fact sought to be established.

For a better treatment of the Harger Drunkometer, admitting it but imposing high standards of care in its use, see *State* v. *Hunter,* 68 A. (2d) 274 (N. J. 1949), discussed at 40 J. Crim. L. and Criminology 394 (1949). As regards the scientific validity of the test see Harger, " 'Debunking' the Drunkometer" in this issue of the JOURNAL at p. 497.

Stomach Pump Use Held Unreasonable Search and Seizure Under Federal Rule—Consequent to a prearranged plan by a Federal officer, an informer arranged to purchase heroin from the defendant, paying him in currency whose serial numbers had been noted by the agent. After the payment had taken place and before the delivery of the heroin, the agent attempted to arrest the defendant in his automobile. The defendant fled and was subsequently halted by a shot in a tire of his car. The resulting search disclosed the presence of the marked bills but no heroin. Because one of the agents recalled that he had seen the defendant make a brushing motion toward his mouth, he was taken to a local hospital where a stomach pump was applied over his protest. The results of this treatment produced a package of heroin which the defendant had swallowed. The Federal court for the Southern District of California ruled that the heroin was not admissible as evidence since, although the search and seizure was lawful, the stomach pump was an unreasonable means of search and seizure within the scope of the Fourth Amendment. (People v. Willis, 85 F. Supp. 745 (S. D. Calif., 1949.)

In arriving at this decision the court argued from the cases involving the sacredness of the person and premises from unreasonable searches and seizures and an analogy to surgery and blood tests. As can be seen from a discussion of the search and seizure cases (Comment (1947) 38 J. Crim. L. & Criminology 244) the word unreasonable has been interpreted to refer to the circumstances of the search, that is the presence or absence of a warrant or probable cause, and not to the means. The use of the analogy to blood tests suggests that the proper legal question involved was the privilege against self-incrimination which has functionally been the category under which such things as blood tests, voice identification and footprints of the defendant have been dealt with and limitations on police practices in gathering such evidence imposed. Authority to the contrary, although not dealing with the Federal rule, can be found in *People* v. *One 1941 Mercury Sedan,* 74 Cal. App. (2d) 199, 168 P. (2d) 443 (1946). This would at least seem valid on the question of unreasonableness.

As a result there is reason to believe that the use of the stomach pump by Federal officers may be illegal under the rule governing searches and seizures, and the question certainly arises under the self-incrimination rule. This latter ground appears to be a better basis for decision. Thus any official use of the stomach pump should be considered in the light of this decision although the subject case does not represent final authority and should not be persuasive outside of the jurisdiction because of the defect in legal theory involved. Moreover, this decision is only one of a trial court and not of a court of appellate jurisdiction. On the general problem of the extent to which force or compulsion can be used to obtain evidence from, upon or within a person's body see (1937) 28 J. Crim. L. & Criminology 261, and also 36 *ibid.* 132.

Disorderly House Warrant Does Not Justify Seizing Evidence of Illegal Liquor and Gambling—After watching the premises of the defendant for several days and observing a number of persons, mostly men, leaving it in a state of intoxication, the arresting officers obtained a warrant for the arrest of the defendant but did not obtain a warrant for the search of the premises. Upon making the arrest, they engaged in a thorough search of the premises and seized a number of lottery slips and empty liquor bottles. Upon trial the defendant's objections to the introduction of the evidence were overruled and an appeal was taken. *Johnson* v. *State,* 66 A. (2d) 504 (Md. 1949). The Maryland court, stating that the federal rule against unreasonable searches and seizures had been enacted into state law, held that the evidence was inadmissible since it was not germane to the charge shown on the warrant. The court pointed out that the warrant was for "running a disorderly house", and since the officers had witnessed conduct tending to establish the other charges as well, they had reason to suspect the violation of the liquor laws. There was no reason to suspect gambling. Thus, the court reasoned, a search warrant could have been obtained for the premises on the grounds of liquor law violations and the failure to do so made it an unreasonable search. In a strong dissent, one member of the court claimed that the illegal sale of liquor was an element tending to prove the operation of a disorderly house and hence the evidence was lawfully obtained as an incident to the arrest.

Where the Federal rule is applied, extreme care in obtaining the proper search warrants is necessary on the part of arresting officers. The instant case stands for the proposition that a warrant for running a disorderly house will not serve as a catch-all to justify seizure of evidence proving other violations discovered by the search incident to the arrest. Police officers using such warrants should be extremely careful in specifying the details of the suspected violations, and they should obtain warrants charging any additional offenses and searches incidental to them. For a discussion of the rules on searches see this Journal, vol. 37, p. 255; vol. 38, pp. 239 and 244; vol. 39, pp. 208 and 354.