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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Use of Blood Grouping Test Results as Conclusive Evidence—In *Commonwealth v. Statti,* 73 A. (2d) 688 (Pa., 1950), the defendant was charged with rape. It appeared from the evidence that he had dragged his victim into his automobile, and in the course of the struggle, she had bitten his finger, causing it to bleed. The victim also bled from lacerations caused when her assailant ripped her mouth. The defendant was apprehended upon identification of both himself and his automobile by the prosecuting witness. Samples of the defendant's blood were taken for classification and comparison with blood stains on his jacket. The examination showed that the defendant's blood belonged to Group *O* (approximately 45% of the population shares this grouping), and the victim's blood to Group *A*. These facts were admitted in evidence along with testimony to the fact that stains on the victim's jacket were of type *O,* the same as the defendant's. In instructing the jury as to the weight of this evidence the trial court carefully pointed out that while such evidence might be conclusive in establishing the fact of exclusion (that is, where incriminating blood stains were of a type different from defendant's grouping), such evidence could not be considered to be conclusive where the types matched, as here, but is "merely a circumstance" in corroboration of the victim's testimony. On appeal of the case two questions were presented: first, the usual argument of self-incrimination, and second, the admissibility of the blood group tests as evidence.

In deciding that the privilege against self-incrimination was primarily concerned with testimonial complusion the Pennsylvania court adopted the prevailing view on the subject. (See Vol. 39, page 533 of this *Journal,* Vol. 40, page 629.) Despite a vigorous dissent which objected to taking the defendant's blood against his will, the court was unable to find any appreciable difference between requiring a defendant to have his fingerprints taken and submitting to a blood test. Nor did the court feel that the results of the blood test should have been inadmissible because it was a person other than the accused who testified to the results.

Regarding the general admissibility of the results of blood grouping tests as evidence the court found them to be "properly admitted as a circumstance bearing on the identification of the defendant, in corroboration of the testimony of the prosecuting witness that he was her assailant." In answer to the defendant's claim that Type *O* blood is common to about 45% of the world's population, the court stated that this fact did not destroy the entire probative value of the test, which was still competent "as some evidence, just as evidence of how an assailant was dressed, however conventionally, would be competent though by no means conclusive of identity." (See Vol. 39, pages 126, 128, 273, 418 and 546 of the *Journal* for additional data on blood grouping tests, and as regards the self-incrimination issue in this type of case, as well as the probative value of blood groups similarity, see Inbau, *Self-Incrimination* (1950) 83-87.)

Misdemeanor Must Be Committed in Presence of Officers to Permit Incidental Search Without Warrant—In *Turner v. State,* 73 A. (2d) 472 (Md., 1950), two police officers, while on duty, observed a number of people milling around the entrance to a building. Some of this group were drinking beer

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and several seemed intoxicated. Feeling impelled to investigate, the officers entered the building and found the main floor filled with people drinking beer. They also discovered two slot machines in the center of the room. The officers seized some of the beer and both of the slot machines and this evidence was used against the proprietor in a prosecution for selling beer without a license and operating a gambling device. The defendant appealed on the grounds that this evidence was secured without a search warrant and was, therefore, inadmissible. In reversing the judgment the Court of Appeals of Maryland noted that where a misdemeanor is committed in the presence of the arresting officer he has the right to search the person arrested as well as the immediate premises for any evidence or "instruments of the crime," but here the officers had no knowledge that a crime was being committed in the building until after they were inside and discovered the actual sale of beer and the slot machines. There had been no disturbance which amounted to a breach of the peace. Noting that if such a search and seizure were held lawful there would be nothing to stop officers from entering any dwelling where people were seen drinking beer, the court concluded that it was of the opinion that "the search and seizure in this case, made without a search warrant or other warrant not for the purpose of making an arrest, and no offense being committed in the presence and view of the officers, was unlawful and the evidence procured thereby was not admissible." (The rules of search and seizure have been exceedingly unsettled in recent years, particularly in the federal courts. See this *Journal*: Vol. 38, pp. 239, 244; Vol. 39, pp. 208, 354, 420, 693; Vol. 40, pp. 254, 393, 535, 770, 818, 819; for the most recent Supreme Court decision see page 325 of this issue.)

Indirect Admission of the Results of Lie-Detector Test Denied—The question as to the admissibility of the results of a lie-detector test reappeared recently in the case of *People v. Wochnick*, 219 P. (2d) 70 (Cal., 1950). The defendant had submitted to the test and admitted to the officer operating the machine that he was unable to explain the violent reaction which appeared on the graph of the machine when he was shown the murder instrument and asked if he had seen it before. The officer who had given the test took the stand on behalf of the state and testified to the conversation between himself and the defendant and the latter's inability to explain the results of the test. The defendant claimed on appeal from his conviction that by the use of the officer's testimony the state was able to place in evidence the damaging results of the lie-detector test. The state, on the other hand, argued that the results of the test were not placed in evidence, claiming that the witness testified merely to an accusatory statement made by the defendant. The state further pointed out that the trial court gave specific instructions to the jury not to consider as evidence any portion of the testimony given which related to the results of the lie-detector test.

In reversing the case, the California appellate court adopted the prevailing view that the lie-detector has not yet gained sufficient scientific recognition to warrant the acceptance of the results of such tests as evidence. Such direct evidence being inadmissible, the court refused to let the results of the test be admitted indirectly, stating that "Despite the instruction of the court, the evidence of the partial results of the lie detector test with respect to defendant's reaction upon being shown the murder weapon was indelibly implanted in the minds of the jurors and could not but have had a prejudicial effect." (For a discussion of the admissibility of lie-detector results in evidence see Inbau, *Lie Detection and Criminal Interrogation* (2d ed., 1948) 83-96.)

Confession Secured Prior to Preliminary Hearing Held Admissible—The question of the lawfulness of a confession secured from a defendant prior to the holding of a hearing arose again in *Commonwealth v. Agoston,* 72 A. (2d) 575 (Pa., 1950). There the defendant had been arrested at 2:30 P.M. on December 17th and examined, with intermittent rest periods, until late the next evening when the confession was made. According to statements made to friends at the conclusion of the examination he had been well treated throughout the period of interrogation. Evidence showed that he had declined offer of counsel. On the fourth day after the arrest a preliminary hearing was held. On the basis of the confession and corroborative evidence he was brought to trial. There he claimed that the confession was secured through coercive methods on the part of the police and had been made before he had been supplied counsel. After conviction the defendant appealed. The Supreme Court of Pennsylvania, in affirming the judgment below, stated: "In judging the admissibility of confessions these facts and principles must be taken as established: (1) The fact that the confessor is in custody and has no counsel does not invalidate a confession made by him. (2) The fact that the interrogation of a suspect continues until he confesses is not per se a ground for invalidating his confession, nor is the fact that the interrogation lasted for a considerable period of time any ground for invalidating the confession, unless the interrogation was so long in duration as to amount to mental or physical coercion and duress." The court then added: "A long interrogation is not per se fundamentally unfair. If officers of the law are to be denied the privilege of interrogating with reasonable persistence persons suspected of committing crimes and, instead of doing so, are to 'close the books on the crime and forget it, with the suspect at large' [quoting from Justice Jackson's dissent in *Turner v. State,* 338 U. S. 58, 69 S. Ct. 1357] the already vast number of unsolved crimes in this country will be greatly increased." (For further discussion on the question of the admissibility of confessions see Vol. 40 of this *Journal* at pages 113, 211, and 255.)