Journal of Criminal Law and Criminology

Volume 43 | Issue 1 Article 7

1952

Abstract of Recent Cases

for a metropolitan police force may be too great to surmount at the present time. Possibly the creation of a metropolitan police system can only be acheved in the future through the slow territorial expansion of Chicago with eventual city-county governmental consolidation.[83]

The creation of a metropolitan police force, nevertheless, is the only permanent solution to the organizational problems of law enforcement in Cook County. Present efforts toward voluntary cooperation and coordination are commendable, but no permanent solution to the problems inherent in the structure of law enforcement can be obtained without a consolidation of control and responsibility. This consolidation should be obtained through a reorganization of the law enforcement structure at the local level rather than through a usurpation of local police power by the state.

Abstract of Recent Cases

State Constitutionally Brings Prosecution After Acquiring Jurisdiction by Force—In *Frisbie v. Collins,* 72 S. Ct. 509 (1952), defendant, acting as his own counsel, brought habeas corpus proceeding seeking release from a Michigan state prison where he was serving a life sentence for murder. He alleged that while he was living in Chicago, he was forcibly seized, handcuffed, blackjacked and carried into Michigan. He claimed violations of the Due Process Clause of the Fourteenth Amendment and the Federal Kidnapping Act, 18 U.S.C.A. §1201 (1952). Mr. Justice Black, writing the opinion for a unanimous court, held that forcible abduction from one state to another in violation of the Federal Kidnapping Act would not invalidate a subsequent conviction and sentence in the latter state on the ground of denial of due process. The Court thus reaffirmed the rule announced in *Ker v. Illinois,* 119 U.S. 436, 444 (1886), that the power of a court to try a person for a crime is not impaired by the fact that the court acquired jurisdiction by force.

Prior Conviction of Drunkenness Not Admissible to Refute Claim of Unavoidable Accident—In *State v. Crawford,* 105 N.E. 2d 443 (Ohio 1951), the defendant appealed a conviction of unlawfully killing another person in an automobile collision while operating a motor vehicle "without due regard for safety." The defendant purchased the car the day before the accident, had it completely checked, and had driven the car through city traffic with the brakes operating effectively. He saw the other car at "an assured clear distance," applied the foot brakes and discovered he had no such brakes. The collision followed. The lower court permitted the jury to consider a former municipal court conviction of the defendant of a charge of drunkenness for the purpose of refuting the claim of "unavoidable accident" on the theory that the prior act may be material in considering the defendant's absence of "mistake or accident." OHIO GEN. CODE §13444-19 (1951). The appellate court held this instruction to be prejudicial error.

Limitations on Impeachment of Witnesses—In a prior criminal case, witnesses for the prosecution gave surprise testimony which was contrary to written statements made previously. A mistrial was declared. Subsequently the

83. In 1899 there was a strong movement led by Judge Tuley for a constitutional amendment to extend the boundaries of Chicago to the limits of Cook County, and thus unite the two governments. This plan failed although it obtained 45 out of a total of 111 votes. *Id.* at 147.

counsel retained by the witnesses was charged with having suborned these witnesses to testify falsely. *Culwell v. United States,* 194 F.2d 808 (5th Cir. 1952). In Culwell's trial the government relied upon the same witnesses who had previously given false statements. In the course of direct examination of one of these witnesses, the government's attorney accused the witness of giving false testimony, then produced a written statement previously made by the witness, and over strenuous and repeated objections of appellant's counsel was permitted to read the lengthy statement before the jury with a query to the witness at the end of each sentence as to whether her previous statement was true or false. Held, that hearsay testimony over appellants' objection was prejudicial error. The court pointed out: 1) that impeaching testimony must be limited to the point of surprise; 2) it cannot be permitted to go beyond the purpose of removing the damage caused thereby; and 3) the rules of evidence against hearsay and ex parte statements cannot be disregarded.

Constitutionality of Gamblers' Occupational Tax Not Settled—The Federal District Courts are arriving at various conclusions concerning the legality of Section 471 of the Internal Revenue Act of 1951, 26 U.S.C.A. 3285 (1951), depending upon the avenue of approach. In *Combs v. Snyder,* 101 F. Supp. 531 (D. C. 1951), the court denied an injunction to restrain the enforcement of the 10 per cent excise tax on wagers on the theory that the plaintiff came into court with "unclean hands." The court dismissed the constitutional questions as "unnecessary to discuss."

The question of self-incrimination was considered and decided in the government's favor by the court in *United States v. Forrester,* 20 U.S.L. WEEK 2415 (U.S. March 18, 1952). Here the court pointed out that the Fifth Amendment is not violated when disclosure may lead to a state prosecution only.

In *United States v. Kahriger,* 20 U.S.L. WEEK 2536 (U.S. May 13, 1952), the court considered the statute as an invasion of the "sanctuary of state control" under the guise of the taxing power. The court maintained the position that the federal government may not impose penalties above and beyond those specified by state law for infractions of a state's criminal code.

These decisions are not to be considered final but are interesting in terms of the varying approaches taken by the District Courts.

Scope of Statute Making Highway Accident Reports Inadmissible as Evidence—In *Rockwood v. Pierce,* 51 N.W. 2d 670 (Minn. 1952) the defendant Pierce, a party to an automobile accident, made an admission against his interest while giving evidence to a Highway patrolman for the purposes of a police report. While in the hospital the day following the accident, Pierce told the police he did not know just what happened. A Minnesota statute (similar to the statutes in California, Illinois and Michigan) renders all police accident reports inadmissible as evidence in civil or criminal cases. MINN. STAT. §169.09 subd. 13 (1947). The Supreme Court of Minnesota held that where statements are made to a highway patrolman relating to the manner in which an automobile collision occurred, such statements are not privileged but are admissible within the statute as "proof of the facts to which the police report relates." The court cited like holdings in California, Illinois and Michigan. *Carpenter v. Gibson,* 80 Cal. App. 2d 269, 181 P. 2d 953 (1947); *Ritter v. Nieman,* 329 Ill. App. 163, 67 N.E. 2d 417 (1946); *Heiman v. Kolle,* 317 Mich. 548, 27 N.W. 2d 92 (1947).