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Police Science Legal Abstracts and Notes

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

William G. Morgan

Admissability in Evidence of Sobriety Test Obtained by Coercion—Defendant was taken into custody after an automobile collision and examined to determine the extent of his intoxication. He was required to write his name and perform other acts which would indicate the state of his muscular reflexes and mental reactions. He was in legal custody throughout the period of the examination. Defendant moved to suppress evidence of the test under the privilege against self-incrimination of the Delaware constitution. Held in *State v. Smith,* 91 A.2d 188 (Superior Ct. Del. 1952): such evidence is admissable, violating neither the Delaware constitution nor the Fourteenth Amendment to the Federal Constitution.

The court considered the conflicting precedent as to whether acts that tend to incriminate are included within the privilege against self-incrimination. The opinion concludes that the privilege relates only to testimonial evidence by which the individual is compelled to "act as a witness."

The compulsion used to elicit the evidence was deemed irrelevant by the court. Under the doctrine of *Rochin v. United States,* 342 U.S. 165 (1952), evidence obtained by state officers by means repugnant to the decencies of civilized conduct and offensive to the traditions and conscience of the law is inadmissable as constituting a deprivation of due process. The court in the *Smith* case recognized the *Rochin* doctrine but considered the compulsion of the defendant reasonable and inoffensive under the circumstances.

Wiretapping Evidence Admissible in State Court—The Supreme Court held that the Federal Communciations Act 48 Stat. 1064, 47 U.S.C. 151 *et seq* (1951), which places a ban on wiretapping, does not bar state courts from admitting recordings of intercepted telephone conversations as evidence in a criminal trial. *Schwartz v. Texas,* 21 U.S.L. WEEK 4055 (December 15, 1952).

This holding adds one more to the series of cases where the Supreme Court announces the doctrine that although evidence, if obtained by a federal officer would be inadmissible in a federal court, it is nonetheless admissible in a state court. *Wolf v. Colorado,* 338 U.S. 25 (1948); *Weeks v. United States,* 232 U.S. 383 (1914). This question has been before state courts many times, and they have uniformly held that the Act does not apply to exclude such communications from evidence in state courts. Heretofore, the Supreme Court never had the opportunity to rule on this question of wiretapping as evidence in state courts.