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Abstracts of Recent Cases

If the Supreme Court meant to allow relief in such an extreme situation it is possibly all that can be hoped for. If the fugitive's return to the demanding state will not subject him to extreme and dangerous punishment while he litigates the issues in that state, the arguments in favor of his return are not quite so objectionable. However, if the Supreme Court's ruling in the *Sweeney* case means that no relief is to be accorded the fugitive in any case other than the remote situation where the state courts are actually closed to him, the decision would seem effectively to strip the federal courts of any power to protect a fugitive who clearly will be risking his life upon being returned to the inhumane prison life from which he escaped.

Abstracts of Recent Cases

Witness Not Guilty of Contempt When Refusing to Testify Before Television and Newsreel Cameras—Defendants were indicted for contempt of Congress for refusing to testify before the Special Committee of the Senate investigating organized crime in interstate commerce. Their refusal was based on the ground that their Constitutional rights would be violated if they were compelled to testify while being televised or while there were newsreel cameras and other apparatus in operation. The United States District Court for the District of Columbia upheld this view. *United States v. Kleinman,* 107 F.Supp. 407 (1952). The court indicated that the real question to be decided was whether the refusal of the defendants was capricious and arbitrary. Here the defendants were in close proximity to television and newsreel cameras, news photographers, radio microphones, and a large crowded hearing room. It was in the context of these conditions that the defendant's stand was considered. It was the feeling of the court that these conditions might disturb and distract any witness to the point where he might testify erroneously and the court, therefore, held that the refusal of the defendants to testify was justified.

It is interesting to note in connection with this subject that the 68th General Assembly of Illinois passed HB 344 which provides that no witness shall be compelled to testify at proceedings conducted by a court, commission, administrative agency, or other tribunal if any portion of his testimony is to be broadcast or televised, or if motion pictures are to be taken of him while testifying.

Validity of the Appointment of a Special Prosecutor—The case which involved this issue arose as a by-product of the publicized murder trial of Micheal Moretti, a former Chicago police officer who was assigned to the investigation staff of the State's Attorney of Cook County. The defendants in the instant case are Thomas Moretti, Lawrence Moretti, and Pasquale Moretti, who are brothers of the police officer, Micheal Moretti. The three brothers were convicted in the Criminal Court of Cook County of conspiring to obstruct justice by inducing a witness in the murder prosecution of Micheal Moretti to testify falsely that he was not sure whether the murder victim had had a gun or not. Upon appeal the defendants questioned the validity of the indictment, stating that the court was without jurisdiction to enter an order appointing Harold A. Smith as special prosecutor. The statute provides that such an appointment may be made whenever the state's attorney is sick, absent, unable to attend, or is *interested* in any cause which it is his duty to prosecute or defend. The state's attorney had disqualified himself on the ground that he was a prospective witness in the forthcoming trial. The court held that this is *sufficient in-*

terest within the statutory language to justify the court's appointment of a special state's attorney. To hold otherwise and to construe the statute strictly would make it impossible to appoint a special prosecutor when the state's attorney was a prospective witness which could result in an injustice to defendants and serious embarrassment to the state's prosecution. *People v. Moretti,* 109 N.E. 2d 915 (1952). Also see *People v. Doss,* 384 Ill. 400, 51 N.E. 2d 517 (1943).

The *Moretti* case also discusses the ability of the special state's attorney to appoint an assistant special state's attorney. It is held that, since the county had provided for assistants, the appointment was valid and that the special assistant could appear before the grand jury without affecting the validity of the indictment.

Fifth Amendment Bars Contempt Conviction of Witness Who Refused to Answer Questions About His Association with Racketeers on the Ground of Self-Incrimination—It has recently been held that the privilege against self-incrimination applies not only to answers which would support a conviction under a criminal statute but also to answers which would furnish a link in the chain of evidence needed for prosecution for a federal crime. *Hoffman v. United States,* 341 U.S. 479 (1951). In the present case the defendant was convicted in the District Court for the Northern District of Ohio because of his refusal to answer certain questions before a Senate Committee investigating organized crime. The Court of Appeals for the Sixth Circuit held that he was entitled to refuse to answer questions on the ground that his answer might tend to incriminate him. The court said that to sustain the privilege of a witness against self-incrimination it need only be evident from implications of the question that a responsive answer might be dangerous. The court felt that it was evident that answers to the questions asked the witness might well have furnished a link in the chain of evidence needed for his prosecution for a federal crime as most of the information sought was already in the hands of the Congressional crime committee. *Aiuppa v. United States,* 201 F.2d 287 (1952).

Acquittal of Reckless Driving Does Not Preclude Trial for Manslaughter—In the recent case of *State v. Shoopman,* 21 U.S.L.Week 2381 (Jan. 26, 1953), the defendant was charged with manslaughter. Prior to this he had been tried and acquitted by the municipal court of reckless driving. The defendant claims that the trial for manslaughter places him in double jeopardy. The New Jersey court held that the validity of such a plea should be tested by the identity of the offenses involved, which is determined by whether the same evidence will sustain both. *State v. Pa. R.R.Co.,* 9 N.J. 194 (1952). Here the evidence required is different. Reckless driving does not complete the crime of manslaughter as it also must be shown that a death resulted. The first trial did not involve proof of a death and, therefore, the second trial does not violate the Fifth Amendment.

A Police Officer Arresting Without a Warrant Must Have Real Belief of a Person's Guilt Based Upon Reasonable Grounds—The defendant was arrested on suspicion of larceny, searched and a number of articles seized. He contended that his arrest was illegal and that the trial court erred in admitting in evidence exhibits taken from his person without a warrant of arrest. The Supreme Court of Washington did not support his view. *State v. Mason,* 252 P.2d 298 (1953). The court stated the Washington rule as being that in cases

amounting to a felony if the officer has good reason to believe that a person has committed or is about to commit the crime he may arrest without a warrant, search the person arrested, and take from him any evidence tending to prove the crime. The officer must, however, have *real belief* of the guilt of the person and such belief must be *based upon reasonable grounds.* The court felt that in this case there was such reasonable belief. A full disclosure of the crime had been given to the police and the only information which they lacked was the identity of the criminals. Police officers were stationed in a hotel lobby and were given a signal designating the criminals. These facts constituted probable cause for arrest under the Washington rule and search and seizure incident to such arrest was, therefore, proper.

Search of Home Without a Warrant Upheld in a Misdemeanor Case—The defendant was convicted in the Criminal Court of Baltimore of unlawful possession of a hypodermic syringe and another implement adapted for use in hypodermic injections. This offense is a misdemeanor in violation of Article 27, Section 366, 1951 Maryland Code. The Court of Appeals held that the evidence obtained by a police officer during his search of the defendant's apartment, even though made without a search and seizure warrant after the defendant's arrest without a warrant, was admissible. *Stephens v. State,* 95 A.2d 877 (1953). The arresting officer had information leading him to believe that the defendant had been violating the narcotic's laws and placed him under arrest. The officer searched both the defendant and his apartment and offered the objects found in evidence. He did not have a warrant for either of these searches. The defendant contended that this violated his rights guaranteed under Articles 22 and 26 of the Bill of Rights of Maryland and also the Fourth, Fifth, and Fourteenth Amendments of the Constitution of the United States and, therefore, the evidence obtained as the result of these searches should not have been admitted in evidence. The court held that the evidence was not made inadmissible. According to Article 35, Section 5, of the 1951 Maryland Code (commonly known as the Bouse Act) no evidence is admissible in the trial of misdemeanors if it has been obtained by illegal search or by any search prohibited by the Declaration of Rights of Maryland. However, Article 27, Section 368 of the 1951 Maryland Code, which relates to narcotic drugs, specifically states that Article 35, Section 5 shall not apply as to this section. Therefore, the court held that prosecutions for narcotic act violations are exempted from the Bouse Act and that the articles here were properly admitted in evidence.

The court also held that *Rochin v. California,* 342 U.S. 165 (1952), where evidence was obtained by use of a stomach pump against the defendant's will, was not comparable and that the method of obtaining evidence in the instant case was not in derogation of the defendant's rights to due process under the Fourteenth Amendment of the Constitution of the United States.

It would seem, however, that the court has still left unanswered the larger issue of whether such a statute is itself constitutional. The question which is presented is if a legislature can by statute make search and seizure in a particular type of misdemeanor legal without a warrant where otherwise there would have been an illegal arrest. (Submitted by Bernard T. Welsh, Attorney-at-law, Rockville, Maryland.)