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Abstracts on Recent Cases

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Police Chief Not Privileged from Disclosing Police Records in Civil Suit—A writ of habeas corpus was sought to discharge petitioner, a city chief of police, who was held in custody for refusing to produce records of the police department in accordance with a *subpeona duces tecum* served upon him in connection with the taking of a deposition. This deposition involved a wrongful death action against a policeman. The petitioner was not a party to this civil action. The court held that one who has custody and control of police records made in the detection and prevention of crime is not privileged from disclosing those records on the taking of a deposition in a civil suit. The petitioner was thus in contempt and properly committed to custody. *In re Story,* 111 N.E.2d 385 (Ohio 1953). The common law does not recognize any privilege as to information in the hands of administrative officers aside from state secrets, the disclosure of which may adversely affect the public. Any privilege which a public official may have rests upon statute. The court construed a statute here in accord with the doctrine of *expressio unius* to infer that any privilege not specifically named was meant to be excluded. Here there was no compelling reason to recognize any other exceptional privilege.

Plea of Guilty to Reckless Driving Charge Admissible in Civil Suit—In a civil suit for personal injuries arising out of an automobile accident it was held that the defendant's prior plea of guilty in a criminal action for reckless driving was admissible into evidence, since it was a "judicial confession". *Kossouth* v. *Bear,* 114 N.E.2d 80 (Ohio 1953).

Improper Summation Causes Reversal—The defendants, two servicemen, were convicted of grand larceny in the trial court. The case was reversed because of inflammatory and prejudicial remarks made by the prosecutor in his summation. These remarks called the jury's attention to "the other acts" and "revolting circumstances" which were irrelevant to the issue of larceny. The prosecutor also stated his personal opinion of the defendants' guilt and made an appeal to the jury based upon the disgracing of the uniform. This he did by stating that the army did not want the defendants back because "they've got too many good boys that are being hurt and killed in Korea who never committed a crime". *People* v. *Burley,* 122 N.Y.S.2d 760 (App. Div. 1953). Also see 42 J. Crim. L. & Criminology 73 (1951).

Discrimination in Selection of Jury—The defendant, a negro, was convicted of rape by a Georgia trial court and sentenced to death. The Supreme Court of Georgia affirmed but the United States Supreme Court reversed on the ground that the jury "had been selected by a means repugnant to the Equal Protection clause of the Fourteenth Amendment". *Avery* v. *Georgia,* 345 U.S. 559 (1953).

The facts in issue were undisputed. The names of white persons on the jury list are printed on white slips; the names of negroes are printed on yellow slips. Then the two types of tickets are placed in a jury box. The trial judge then draws a number of tickets from the box. In the instant case 60 person were selected to make up the jury panel. Not one Negro was on that panel.

The court held that this procedure established a prima facie case of discrimination and that the state failed to meet the burden of overcoming it.

Therefore, since state officials are under a constitutional duty to follow "a course of conduct" which does not "operate to discriminate in the selection of jurors on racial grounds" the conviction must be reversed notwithstanding evidence of the defendant's guilt. Also see *Hill* v. *Texas*, 316 U.S. 400 (1942).

Intrusion by Prosecution Into Conference Held by Defense a Violation of Due Process — The defendant was convicted of violating the federal obstruction of justice statute and of bribery. He appealed claiming that he had been denied a fair trial by reason of the tactics used by the prosecution. In order to investigate what was behind the defendant's offences, the prosecution had hired an agent who won the confidence of the defense and gained free access into conferences between the defense lawyer and defense witnesses. The court granted the defendant's motion for a new trial holding that such intrusion between an accused and his counsel violated the constitutional prohibition against unreasonable searches, the constitutional guaranty of due process of law, and the right of effective representation by counsel. *Caldwell* v. *United States*, 205 F.2d 879 (D.C. Cir. 1953).

District Attorney Not Required to Produce a Pre-Trial Statement Made by Defendant—The defendant was indicted for criminal negligence in the operation of a motor vehicle. By motion for a bill of particulars he attempted to obtain a statement made by him to the police immediately following the automobile accident. The defendant alleged that the statement was made without the benefit of counsel, that it was signed without an opportunity to examine it, and that it was made while defendant was in a state of shock. The defendant claimed that a refusal to furnish the statement for his inspection would prejudice his rights and deprive him of a fair trial. The court denied the motion, holding that the defendant's statements to the police should be peculiarly within the defendant's knowledge. There were no unusual circumstances, said the court, which would warrant the necessity of compelling discovery in the interest of justice. The court was of the opinion that the state's burden is already a heavy one and no further obligations should be added except in exceptional circumstances. *People* v. *Donnelly*, 124 N.Y.S.2d 72 (1953).

Bail Bond Forfeiture Upheld Although Defendant Subsequently Found Not Guilty — The petitioner was indicted by a grand jury for second degree murder. A bail bond was executed to secure his appearance for trial but before the state's case had been completed the petitioner fled the jurisdiction. The district court entered an order adjudging the bond forfeited and the surety voluntarily paid this amount. The defendant was sentenced in absentia to life imprisonment. Eighteen months later he was apprehended. Because the court felt that the petitioner had been denied due process of law he was tried again and in this proceeding found not guilty. He then petitioned the district court to vacate the order forfeiting the bail money. The district court denied this petition and this appeal resulted. The Supreme Court of Minnesota held that the district court did not abuse its discretion in denying the petition to set aside the court order of bail forfeiture and for partial refund of the bail money even though the petitioner was acquitted at the subsequent trial. *Shetsky* v. *Hennepin County*, 60 N.W.2d 40 (Minn. 1953). The majority opinion reasoned that the purpose of the bail bond is to secure the attendance of the accused at the trial and, therefore, it follows that in a proceeding for

the mitigation of a bail forfeiture criminal guilt or innocence of the accused is immaterial.

The Chief Justice dissented feeling that under the circumstances there were extreme factors which had prompted the defendant to flee. The petitioner had fled in the belief that he could not get a fair trial because of certain religious, racial, and political considerations. There was apparently good ground for his belief. Further, the dissents points out that there was no showing that the state had been prejudiced by the eighteen months delay. Thus the Chief Justice felt that if the majority were correct here that it would seem futile under any circumstances to apply for relief from forfeiture.

Jurors Cannot Impeach Their Own Verdict By Affidavits—The defendant, a police officer, was convicted of assaulting prisoners. On appeal he sought a new trial on the ground that certain jurors were prejudiced against him. To support this claim he filed the affidavits of three jurors which stated in effect that certain members of the jury thought cops were tough and overbearing and that they should make an example of this defendant as a "warning to all cops that they can't beat people and get away with it". It was argued that a new trial should be granted for the misconduct of the jurors on voir dire examination where this was not discovered prior to the verdict. The court, however, held that there was no proof that any juror had concealed his true state of mind at the time of the voir dire inquiry as each had said that he had not formed an opinion regarding the guilt or innocence of the accused. The presumption was that these answers were true and there was no evidence to the contrary. The only evidence of the jurors' convictions were their statements made after hearing all the testimony. These statements do not prove that they had such opinions prior to the trial. Therefore, the affidavits cannot be used to impeach the jury's verdict. *People* v. *McCaffrey*, 258 P.2d 557 (Calif. 1953).