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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Person Apprehended for Driving While Intoxicated Need Not Be Arrested Immediately in Order for Him to Take a Blood Test—Defendant, chief of police, parked his car near a tavern where other local police officers and state liquor inspectors were busily engaged in the investigation of alleged violations of the liquor laws. He staggered from his car quite drunk. His friends told him to get back into his car so he would not be seen. He did so and was not arrested for eleven days.

The State of Maine has a typical alcoholic blood test statute prescribing what legal effect should be given to the finding of certain percentages of alcohol in the blood. The statute began, "Evidence that there was . . ." and concluded that the failure to take a test should not be admitted against the individual. The defendant contended that the failure to make a prompt arrest deprived him of constitutional rights since he was then no longer able to have a blood test. This argument was dismissed and the conviction affirmed. *State v. Demerritt*, 103 A.2d 106 (Maine, 1953). The court reasoned that defendant was deprived of no right since he had the opportunity to obtain a test if he desired.

Blood Groupings Tests Are Entitled to Such Weight As the Trial Court Wishes to Give Them—In paternity proceedings a doctor testified that the defendant could not be the father of the child in question. His expert opinion was based on blood grouping tests which established that the child's blood contained the *S* factor while neither parent had such factor. According to the doctor, paternity was excluded because of the genetic rule that a child cannot have the *S* factor unless *S* is also present in the blood cells of at least one of the parents. The doctor conceded, however, that the genetic data is much greater in the blood groups *A-B-O*, *M-N* and *Rh*. The trial court was upheld in ruling that this evidence, like other expert opinion evidence, was entitled to as much weight as the trial court wished to accord it. *Groulx v. Groulx*, 103 A.2d 188 (N.H. 1954). In upholding the finding of lack of paternity, the court noted that scientific and medical evidence from qualified experts is generally accepted in New Hampshire in both civil and criminal cases. The court also said that whatever defects might be found in this modern trend it at least avoids the criticism that trial courts have tended to lag far behind in utilizing probative methods developed by medicine and science. Moreover, this court specifically held that the blood grouping tests were entitled to whatever weight the trial court wished to give them even though the tests in the instant case did not have the benefit of the full genetic data that is available in the more common blood group tests such as *A-B-O*, *M-N* and *Rh-Hr*.

This court was not faced with the problem of whether the blood grouping tests should be regarded as conclusive or merely evidentiary since under prior state law it was established that the presumption of legitimacy need not be rebutted by conclusive evidence but may be rebutted by clear and convincing proof. But *cf*, *Arais v. Kalensnikoff*, 74 P.2d 1043 and *Berry v. Chaplin*, 169 P.2d 442.

Scientific Disagreement As to the Accuracy of Harger Drunkometer Tests Does Not Result in Making Such Evidence Inadmissible—Defendant objected to the admissibility of the result of a Harger drunkometer test because of

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lack of scientific unanimity as to the accuracy of such tests. The court declined to follow this argument and rather followed the Illinois rule as expressed in *People v. Bobczyk*, 99 N.E.2d 567, to the effect that where there is a lack of unanimity in the medical profession whether intoxication can be determined by breath, the scientific disagreement affects only the weight and not the admissibility of evidence. *State v. Olivas*, 267 P.2d 893 (Ariz. 1954). Apparently, however, there is authority for the proposition that such disagreement does affect admissibility. See, *People v. Morse*, 325 Mich. 270.

Does Blood Continue to Use Alcohol After the Blood Sample Is Removed From the Body?—In *Vore v. State*, 63 N.W.2d 141 (Neb. 1954), defendant was convicted of motor vehicle homicide. By statute the following presumptions were to be given to the results of blood tests: (1) not intoxicated if less than 0.05 percent; (2) no presumption whatever if more than 0.05 but less than 0.15 percent; (3) intoxicated if more than 0.15 percent. The expert witness for the state testified that he did not receive the sample of defendant's blood until fifteen hours had elapsed from the time it was drawn. The results of the test taken then showed a percentage of 0.11. This expert further stated that blood drawn from a living person continues to use alcohol unless the blood cells are killed by the addition of a preservative. Therefore the witness offered his opinion that at the time the blood was drawn it must have had an alcohol content of at least 0.18 or 0.19 percent. The defendant also produced an expert who claimed that blood does not use up an appreciable amount of alcohol within the first twenty-four hours after its removal.

In spite of this conflicting testimony the trial court instructed that the defendant be presumed intoxicated. The state supreme court reversed on the well-reasoned theory that the statutory presumption was intended to rest on scientific certainty, free of additional evidence upon which disagreement might well arise. When the test was made it showed only 0.11 percent alcohol and therefore it could not speculate as to what the test might have shown had it been taken promptly after the blood was withdrawn.