Journal of Criminal Law and Criminology

Volume 46 | Issue 2 Article 21

1955

Police Science Legal Abstracts and Notes

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

John L. Flynn*

Driver's License Restricted to Use "To and From School" Means Regular School Sessions Only—Defendant, a sixteen year old high school student, was convicted of a misdemeanor for driving at night from a school basketball game to his home. A statute authorized the issuance of junior operator's licenses to minors between sixteen and eighteen years of age with the provision that such license shall not entitle a licensee to operate a motor vehicle after dark unless "going to and from school". The court, in affirming, held that only formal school sessions were intended, and concluded that the exception was designed to allow driving from school in the wintertime when darkness comes in the late afternoon. *People v. Harmes*, 123 N.E. 2d 627 (N.Y. 1955).

The dissent contended that such an interpretation violated the principle that penal statutes are to be strictly construed against the state, and ignored the fact that extra-curricular activities are as much a part of the educational process as formal class instruction.

Lie-Detector Test Not a Matter of Right—The Supreme Court of Wisconsin has decided that an accused has no right to take a lie-detector test. An argument that a statute providing for analysis of evidence submitted to the crime laboratory by defendants upon approval of the court bestows such a right was rejected. The court also indicated that lie-detector evidence was not admissible "in any event." *State v. Perlin*, 68 N.W. 2d 32 (Wis. 1955).

Use of Radar in Measuring Vehicle's Speed Not a Speed Trap—Defendant was convicted of speeding solely on the basis of radar evidence. On appeal he contended that the use of the radar device constituted a speed trap—defined by statute as "a particular section of a highway measured as to distance and with boundaries marked, designated or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes said vehicle to travel such known distance." The court, in affirming the conviction, relied on the fact that radar determines speed without reference to any particular section of the highway. *People v. Beamer*, 279 P.2d 205 (Cal. 1955). The dissent argued that the use of radar devices violates the spirit of the statute since the legislature intended that officers should patrol the highways.

Civil Service Employee Not Allowed to Enjoin Civil Service Commission in an Effort to Prove Alleged Defect in Examination—According to a recent Illinois case, a person who has unsuccessfully taken a civil service examination has no right to a court injunction in an effort to prove some alleged irregularity or defect respecting the examination.

Plaintiffs, unsuccessful candidates in a civil service examination, brought an action to have the eligible register resulting from the examination declared void and to enjoin the Commissioner of the City of Chicago from certifying anyone named on the register. The court declared that a prayer for injunctive relief must provide grounds upon which a court can fix its equitable jurisdiction; the acts complained of must not only be unauthorized and injurious, but injurious to civil, personal or property rights as distinguished from rights political in nature. The court concluded that the acts of which plaintiff complained were those of public officers and as such were political in nature. Moreover, positions under civil service were held to be in the nature of public offices, political in charac-

* Senior Law Student, Northwestern University School of Law.

ter, in which the plaintiffs have no property right. *People ex rel Carter v. Hurley*, 4 Ill. App. 2d 24 (1955).

Urine Specimen Obtained by Use of Catheter Over Oral Protest of Accused Held Inadmissible by Court of Military Appeals—Acting upon the suspicion that the accused had been using narcotics, military officials procured his consent to provide them with a sample of body fluid. When the accused was unable to urinate an intravenous injection of glucose and water was employed, without objection by the accused, but again without success. A sample was then obtained by catheterization, to which process the accused orally objected. The United States Court of Military Appeals reversed a conviction based upon the evidence secured through an analysis of the urine sample. *United States v. Jones*, 5 U.S.C.M.A. 161 (1955). The evidence was found to be inadmissible on the basis that such an invasion of the body constituted "a denial of military due process." The majority opinion implicitly applied the test formulated in *Rochin v. California*, 342 U.S. 165 (1952) (evidence obtained by means of "conduct that shocks the conscience" held inadmissible), finding that the use of the catheter was an invasion of "the sanctity of the human body". A concurring opinion distinguished the holding in *United States v. Williamson*, 4 U.S.C.M.A. 320 (1954) (evidence obtained by catheterization of unconscious accused held admissible) on the ground that here the accused had lodged an active protest. The decision in *United States v. Barnaby*, 5 U.S.C.M.A. 63 (1955) (accused may be ordered by superior officer to produce sample of body fluid) was distinguished on the ground that in the present case there had been no order issued but only a solicitation of the accused's permission, which permission had been denied. Thus, the admissibility of the evidence was found to turn on the method employed by the investigator to obtain it, the same point which controlled the *Rochin* decision.

A strong dissent criticized the holding of the court as an unwarranted extension of the rule in the *Rochin* case, noting that the Supreme Court of the United States has itself narrowly limited that ruling by its decision in *Irvine v. California*, 342 U.S. 165 (1954) (due process not violated absent coercion, violence, or brutality to the person of the accused). Stating that "[i]t is only when the Government seeks to take advantage of the wrong of its agents that it should be denied the right to use evidence. . . ." the dissent noted that no force, violence, or physical coercion had been applied to the person of the accused. Furthermore, the doctor had the requisite authority to order the accused to submit to the catheterization but had no need to do so since the accused submitted without resort to physical resistance.

Since this decision is apparently derived from the "civilized standards" criteria of due process evolved in the *Rochin* case, there would seem to be serious doubts as to its validity. Here not only is the evidence upon which the conviction was based reliable, but, in addition, the methods used to obtain the evidence do not violate the principle that humane standards should be employed by law enforcement officers in the administration of criminal law. For an excellent article examining, among others, the humane standards principle as one of the implications of the *Rochin* decision see Allen, *Due Process and State Criminal Procedures: Another Look*, 48 *NW. U. L. REV.* 16 (1953).