Journal of Criminal Law and Criminology

Volume 46 | Issue 5 Article 19

1956

Police Science Legal Abstracts and Notes

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

John A. Chernak*

Arson: When Is a Trailer a Dwelling House?—A conviction of arson in the first degree was reversed and remanded for a new trial by the Supreme Court of Indiana on the ground that the state had failed to prove the *corpus delicti* independent of the confession of the defendant. Reasserting the general rule that the *corpus delicti* must be shown by some evidence of probative value aside from the confession, the court found that the failure of the prosecution to introduce any evidence to show that the fire had been ignited pursuant to a criminal design fell short of satisfying this requirement. *Simmons v. State*, 129 N.E.2d 121 (Ind. 1955). However, the court disagreed on a second point raised on the appeal. This was that the trial court had erroneously concluded that the structure destroyed by the fire, a home-made trailer set up on blocks with its wheels removed and occupied continuously as a residence and place of habitation, was a "dwelling-house" within the first degree arson statute. IND. ANN. STAT. act 1927, c.44, §1 (Burns 1942). Chief Justice Emmert took the position that since there are no common law crimes in Indiana the structure destroyed in the fire had to fall within the popular meaning of one of the terms employed in the arson statutes. He then reasoned that since the statute on motor vehicles regulates house trailers, since the word "house" has been popularly defined as being synonymous with "building" and since the state had failed to establish that this structure was a building of any sort, that the logical conclusion was that the trailer was still a vehicle and therefore should be regarded as personality falling within the third degree arson section.

Four justices, a majority on this point, concluded that the house trailer in this case was a "dwelling-house" within the meaning of that term as used in the first section of the arson act. They interpreted the crime of first degree arson as an offense against the security of a person's home and found that the clear intent of the legislature was to protect the home from wilful and malicious destruction by fire. "Dwelling-house" was defined as being a structure intended or used for human habitation—a "home." The character of such a structure was deemed generally immaterial if it was occupied as a dwelling, as it clearly was in this case. Characterizing a house trailer as a mobile house, it was noted that in one case a trailer placed on boxes and jacks and connected with water and electric lines had been held to be subject to a building code ordinance. *Lower Merion Twp. v. Gallup*, 158 Pa.Super. 572, 46 A.2d 35 (1946). As disclosed in the record the trailer here had been withdrawn from use as a vehicle and was being used as a place of habitation, thus making it immaterial that it may also have been properly denominated as personal property.

It is submitted that this decision serves as a caution to state legislators to re-examine their local arson statutes. Since the number of house trailers and semi-permanent trailer "camps" is steadily increasing throughout the United States, it is foreseeable that this problem will arise again. Therefore, local arson statutes should be scrutinized in order to ascertain whether any ambiguity exists as to the status of house trailers and, if so, to cure the defect before the possibility of a miscarriage of justice occurs.

Constitutional Privilege Against Self-Incrimination Relates Solely to Testimonial Utterances—In a prosecution for operating a motor vehicle while intoxicated, the trial judge refused to admit the testimony of a police officer that the defendant had refused to supply

* Senior Law Student, Northwestern University School of Law.

a sample of his urine for a chemical test. The plaintiff city appealed arguing that this constituted prejudical error. The Supreme Court of Wisconsin held that the privilege against self-incrimination does not extend to evidence secured from the body of the accused, absent an exertion of physical force which "shocks the conscience." Furthermore, testimony of a police officer relating to the refusal of an accused to furnish a sample of his blood or urine for chemical analysis also cannot be properly excluded on the ground that it is violative of the privilege. However, under a Wisconsin statute, WISC. STAT. c.325, §85.13(4) (1954), a trial court is vested with the discretion either to admit or to exclude evidence of a refusal to submit a specimen of body fluid. The court construed this statute only in regard to the narrow issue in this case and expressly declined to issue a ruling on whether or not the statute permitted the trial court to exclude the evidence obtained as a result of a chemical test. *City of Barron v. Covey*, 72 N.W.2d 387 (Wisc. 1955). See also, INBAU, SELF-INCRIMINATION 70 (1950).

Reversible Error to Admit Evidence that Accused Refused to Submit to Intoxication Test—The defendant was tried and convicted of criminal negligence for striking and killing a pedestrian while driving in a state of intoxication. At the trial of the case the principal fact in issue was the defendant's intoxication. Purportedly for the purpose of establishing that the defendant had had a "fair examination," the prosecution introduced over the objection of counsel testimony to the effect that the defendant had refused to allow a doctor to take a blood specimen. On appeal it was held that under New York law an accused has a right to refuse a test for intoxication. Under the cloak of the privilege against self-incrimination "the receipt of evidence . . . of a defendant's complete silence or refusal to answer" when requested to submit to a test constitutes reversible error. *People v. Stratton*, 143 N.Y.S.2d 362 (N.Y.App.Div. 1955).

Refusal of Trial Court to Admit Results of Lie-Detector Test Performed upon the Accused Does Not Constitute Error—The defendant was convicted of second degree murder in the death of his wife; his primary defense was that the killing was accidental. Prior to the trial a lie-detector test was performed upon the accused, evidently by Alex L. Gregory, a member of the Detroit Police Department and experienced in the use of the lie-detector. At the trial defendant's counsel sought to introduce the results of the test but the trial judge sustained an objection to their admission. However, the defense counsel was permitted to make an offer of proof for the record and he then qualified as an expert witness Dr. LeMoyne Snyder. Dr. Snyder's testimony, in substance, established that: (1) there is a definite relationship between wilful lying and an elevation of blood pressure, fluctuations and the depth of respiration and variations in the resistance to electric current; (2) such a relationship can be accurately recorded by a lie-detector; (3) about ten percent of the population, for mental or medical reasons, are not proper subjects for an accurate recording; (4) an operator can err in his interpretations; (5) such evidence is more accurate than many types of admissible evidence, including that of eye-witnesses; and, (6) it is successfully used by many judges in pre-sentence investigations. Despite this testimony contained in the offer of proof, the Supreme Court of Michigan held that the refusal to admit the evidence did not constitute error. *People v. Davis*, 72 N.W.2d 269 (Mich. 1955).

In effect the court followed its ruling in *People v. Becker*, 300 Mich. 562, 2 N.W.2d 503 (1942) where it had held that until such time as there is a general scientific recognition of such tests and until it is reasonably certain that they have achieved a high degree of accuracy, it is error to admit the results thereof. Quoting with approval from INBAU AND REID, LIE DETECTION AND CRIMINAL INTERROGATION (3d ed. 1953), the court found that such tests have not as yet "reached the stature of evidence admissible in a court of law." Expanding upon its conclusion, the court stated that it did not

belittle or detract from the role of the lie-detector in the fields of criminal interrogation and detection in which the lie-detector has been of great value. However, because there still remains a ten to twenty-five percent chance of error, the validity of the results hinges to a large degree upon the training and expertness of the examiner, no commonly accepted standards for interpretation presently exist, a significant percentage of the populace does not present proper subjects for examination, and such tests would carry a tremendous weight in the minds of the jury, the court decided against according lie-detector tests "the dignity of positive evidence."

Determination of Gestation Period in Bastardy Proceedings—Evidence introduced by the prosecutrix in a prosecution for fornication and bastardy tended to establish that the last time that the defendant had had intercourse with her was 310 days before the birth of the child. The prosecutrix testified that she had not had intercourse with anyone subsequent to her last meeting with the defendant and also that she had a menstrual period about one month subsequent to her last intercourse with the defendant. The only positive medical testimony appearing in the case was to the effect that a normal gestation period runs for 282 days from the date of the last menstruation, but that there can be a leeway of two weeks either way. In charging the jury the trial judge quoted from a previous decision by the Superior Court of Pennsylvania in which a medical text had in turn been quoted. The substance of the charge was that gestation could vary from 220 to 330 days from the date of the last act of intercourse. To this charge the defendant excepted. He subsequently prosecuted an appeal from a finding of guilty and an order of support, contending that the evidence was insufficient to sustain the conviction.

The majority of the court held that under previous decisions it was permissible for the trial judge to take judicial notice of accepted medical opinions, which the trial judge had in effect done in this case. The majority also rejected the argument that the charge had to be based upon the medical evidence appearing in the record, remarking that the testimony setting up limits of 268 to 296 days from the last menstrual period "was obviously a quick generalization." A concurring opinion turned primarily on the issue of credibility, stating that the testimony if believed established the guilt of the defendant beyond a reasonable doubt. The concurring judge was also of the opinion that even if the trial judge had erred in his charge to the jury concerning the length of gestation that this did not constitute prejudicial error.

A well-documented dissent argued that the guilt of the defendant had not been established beyond a reasonable doubt. Taking the evidence most favorable to the prosecutrix, the dissent pointed out that the child had been born 312 days from the last act of intercourse with the defendant; and that the child had been born 283 days after the last menstrual period, which had occurred one month after the last act of intercourse. The dissenting judges did not argue that it was *impossible* [they noted that there was one chance in 3,500,000] for the defendant to be the father of the child, but merely that the probability of his being the father was so remote that it raised a serious doubt as to his guilt. When this fact was coupled with what the dissent felt to be a serious error in the charge to the jury concerning the period of gestation it was felt that there should be a new trial to determine whether the defendant was the father. A close examination of a number of medical authorities led to the conclusion that in modern medical history there are about twelve documented instances where birth occurred more than 312 days after intercourse. After establishing that these facts showed more than a reasonable doubt of guilt the dissent concluded that to allow the trial judge to pick one medical authority at random, charge the jury therefrom and then fail to give any additional warning that gestation lasting more than 300 days is unusual and improbable, is to confuse the jury and to invite injustice. *Commonwealth v. Watts*, 116 A.2d 844 (Pa. Super. 1955).

Tape-Recorded Conversation Held Admissible in Bribery Case—The defendant, who had taken bribes in connection with his duties as chief of detectives investigating a burglary, appealed from a conviction on four counts of asking and receiving a bribe to influence his official acts. Among the errors alleged on appeal was the assertion that certain tape recorded evidence had been erroneously admitted. Specifically, the defendant argued that partial inaudibility, improper identification, the best evidence rule, the secret and involuntary manner in which it was secured and prejudicial obscenity contained thereon, all served to render the recording inadmissible. After finding that partial inaudibility does not render the entire recording inadmissible, the court explored the contention of improper identification. This problem arose when it was established that the recorded conversation had been "dubbed" from a miniature wire recorder to a tape, so as not to require the use of earphones. Since the record showed that this had been done by a standard method, that two persons had testified as to the identical nature of the two recordings, that one of these two had been present at the "dubbing" and that the voice had been identified as being that of the defendant, the court found that the tracing shown was sufficient to identify the exhibit. In dealing with the argument that the tape recording was not the best evidence, the court analogized this recording to a photograph and the original wire recording to a negative and stated that the same principles apply equally well to both. The involuntary nature of the recording and the possible prejudicial effect of obscene language were found not to effect admissibility. *State v. Lyskoski*, 287 P.2d 114 (Wash. 1955).