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Police Science Legal Abstracts and Notes

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Threat of Lie-Detector Test Not "Undue Influence" in Obtaining Confession—In *Pinter v. State*, 34 So. (2d) 723 (Miss. 1948), the unique question was raised whether the threat of a lie-detector test which "scared" the accused into a confession was undue duress sufficient to render the confession incompetent. The court ruled the confession competent, saying, "A desire to anticipate by voluntary disclosure, the supposed revelations of a lie-detector has its origin in the mind and conscience of the defendant, and is not an undue influence."

The facts of the *Pinter* case, as stated by the court, indicate, however, that there was not a direct threat of a lie-detector test, but that it was merely mentioned in a conversation among the officers en route to the jail. Thus the case does not present the narrower question of whether such a confession is admissible where the suspect is actually threatened with the test. Since it is fairly clear that a suspect cannot be compelled to submit to such a test, the obtaining of a confession in this fashion might be said to be trickery. The use of tricks in obtaining confessions, so long as the results may be deemed "trustworthy" has long been approved. 3 Wigmore, *Evidence* (3d. ed. 1940) §841. The Supreme Court of Pennsylvania has ruled admissible a confession obtained in a manner more closely constituting a threat than the present case. *Commonwealth v. Hipple*, 333 Pa. 33, 3 A.(2d) 353 (1939). But see the case of *People v. Sims*, 395 Ill. 69, 69 N.E. (2d) 336 (1946), in which the Illinois Supreme Court held inadmissible a confession obtained from a subject as she was about to be given a lie-detector test which she had previously refused to take, but to which she had been ordered to submit by the prosecuting attorney and police investigators. (For a discussion of other recent confession cases, see page 202 of this Journal.)

Photographic Identification of Assailant Permitted Even Though Assailant is Present in Court—In *Brown v. State*, 210 S.W. (2d) 670 (Tenn. 1948), the defendant was convicted of assaulting an eight year old girl. Immediately following the incident, the girl was shown a photograph of the defendant, and she positively identified him as her assailant. At the trial, on direct examination the girl was offered a group of photographs and asked to select those of the man who assaulted her. She picked out two of the defendant. On direct examination she was not asked whether the defendant (who was present in the courtroom) was the man who attacked her. On cross-examination this question was asked of her and she stated "No'm, that is not him."

The defendant urged on appeal that, on the basis of the best evidence rule, the photographs ought not to have been admitted in evidence since he himself was present during the trial. The court dismissed his argument by stating that the best evidence rule applies only to documents or things bearing writing.

Scott, in his treatise on *Photographic Evidence* (1942) §652, states that where the party involved is present in the courtroom, and no sub-

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stantial change in his appearance has taken place, the photographs should not be admitted in evidence. (See e.g. *Farina v. Commonwealth*, 278 S.W. 1097, 212 Ky. 303 (1926) which follows Scott and is an opposite holding to that in the present case.)

Powder Burn Experiments Made With Different Type Powder Held Competent—The recent case of *State v. Phillips*, 46 S.E. (2d) 720 (N.C., 1948), presented the problem of the admissibility in evidence of experiments relating to powder burns made with the pistol from which a fatal shot had been fired.

According to accepted practice, the distance of firing can be ascertained accurately by a comparison of the powder burn area on a body with the experimental burn areas made by firing the weapon at varying ranges into targets such as cardboard, etc. In the instant case, involving a prosecution for murder, the principal defense was that defendant's wife had committed suicide, and the defendant testified on cross-examination that the pistol was "probably 6 inches" from her arm when it went off. The evidence disclosed, however, that there were no powder burns on her clothing or body. Experiments were made, therefore, by firing the pistol into targets covered by white cheesecloth of the same thickness as her garment and yielded powder burns up to 18 inches.

The defendant's objection to the experimental evidence on the ground that the experiments were not conducted under substantially similar circumstances as in the fatal shooting itself, since the same type of cartridge was not used in the experiment. The fatal shot was fired from a German made cartridge, which contained a special powder designed to reduce the flash. One of the officers who made the experiment testified on cross-examination that the amount and type of powder would vary only the discoloration "but would have nothing to do with what we call powder burns." The court accepted the expert's statement as meeting the requirement of "substantial similarity," and affirmed the conviction. (See comment on the subject of experimental evidence in (1940) 34 Ill. L. Rev. 206.)

Signature on Appearance Bond Held Admissible for Comparison of Handwriting—*Reining v. United States*, 167 F. (2d) 362 (C.C.A. 5th, 1948) presents a situation where the signature of the defendant as written on an appearance bond was admitted for purposes of comparison with letters allegedly signed by him in perpetrating a mail fraud. On appeal, the defendant urged (1) that the admission of the appearance bond did not satisfy the requirements of the act of Feb. 26, 1913, 37 Stat. 683 (28 U.S.C.A. §638) on the basis that it was not admitted or proved to be his handwriting; and (2) that in exacting his signature on the bond, the officers compelled him to testify against himself since the bond was later used to prove his handwriting.

The Court of Appeals stated that the Act of 1913 is merely an enlargement of the common law on the subject, and points out that at common law, any pleading or document which forms a part of the record is competent for purposes of comparison. The court also cites *Moore v. United States*, 91 U.S. 270 (1875) as holding that documents admitted in evidence for other purposes are competent as a basis for comparison. As to

the duress argument, the court held that lawful arrest is not duress and that he was in no way compelled to sign the document, since he was privileged to have another person sign for him or even place only his mark on it. "There was nothing like an unlawfully extorted confession," the court said.

Federal Courts Accept Blood Tests as Evidence in Homicide Cases—In *Kemp v. The Government of the Canal Zone,* 167 F. (2d) 938 (C.C.A. 5th, 1948), a federal court for the first time admitted in evidence a showing by expert testimony that blood stains on the clothing of the accused were of the same blood type as that of the victim and of a different type from that of the accused. The court recognized that the blood types do not give a positive identification, but held that the testimony was of some weight and should go to the jury, particularly since the defendant had stated that all of the blood stains on his clothing were of his own blood. (For additional information upon this issue, see Dickerson, Admissibility of Blood Tests to Show Possibility of Source (1947) 37 J. Crim. L. & Criminology 300.)

Tissues Taken from Fingernails Held Proper Evidence in Rape Case—In *Coleman v. State,* 209 S.W. (2d) 925 (Tex., 1948), the defendant, who was convicted of rape, urged that the scraping of his fingernails for samples of tissue to compare with the tissue of the prosecutrix amounted to forcing him to testify against himself. The court ruled that scraping his fingernails was not different from the taking of any other item of evidence from the person of the defendant, and was, therefore, a perfectly proper procedure.

Return of Police Records to Acquitted Party Refused—*State ex rel Mavity v. Tyndall,* 74 N.E. (2d) 914 (Ind. 1947) involves a suit by an acquitted defendant in a criminal trial to have the photographs, fingerprints, and measurements taken by police returned to him. In a previous case involving the same parties, 66 N.E. (2d) 755 (Ind., 1946), the court awarded an injunction prohibiting the exhibition of his photograph in a "rogue's gallery" but did not award the return of the police records. In his amended complaint plaintiff dropped all allegations concerning the exhibition and sought the return of the records exclusively. His case relied mainly on a broad constitutional argument that a man's property may not be taken without due process of law and that the state may take it only after just compensation has been paid.

The court in the second appeal held that individual liberties are always subject to the power of the State to act in order to protect the health and welfare of its citizens, and the limits of what may be done by the State in this direction are constantly expanding "as our society grows and becomes more complex." It found that the keeping of records is a proper public function and denied the appeal. (For a more detailed discussion of the problems presented by this case see comment by Leighton. Protection of Innocent Persons Against Misuse by Police Authorities of Photographs and Fingerprints (1947) J. Crim. L. & Criminology 519.)