North Dakota Law Review

Volume 33 | Number 4 Article 4

1957

Constitutional Law - Due Process of Law - Admissibility of Blood Sample Obtained from an Unconscious Person

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RECENT CASES

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — ADMISSIBILITY OF BLOOD SAMPLE OBTAINED FROM AN UNCONSCIOUS PERSON. — Petitioner was convicted of involuntary manslaughter as a result of an automobile collision which killed three occupants in the other car and seriously injured the petitioner. A physician, at the request of a state patrolman, withdrew a sample of blood from the petitioner while he was unconscious. Subsequent laboratory analysis disclosed that the blood contained .17 per cent alcohol. Petitioner, after having been denied habeas corpus by the Supreme Court of New Mexico, obtained a writ of certiorari to the United States Supreme Court where he contended that his conviction, based as it was on the involuntary blood test, deprived him of his liberty without due process of law as guaranteed by the fourteenth amendment. The Court *held* that the results of a blood test, withdrawn from the petitioner while unconscious, were admissible as evidence and did not violate the requirement of due process of law. Chief Justice Warren, Justices Douglas and Black dissented. *Breithaupt v. Abram*, 77 S.Ct. 408 (1957).

Evidence secured by federal agents in violation of the Constitution is inadmissible in federal courts.[1] Since the first ten amendments to the United States Constitution have no bearing on the states, they are bound only by the due process clause of the fourteenth amendment,[2] thus such evidence is admissible if obtained by state officers.[3] It is generally recognized that the accused can consent to various tests and thereby waive his constitutional rights;[4] but the admissibility of evidence obtained from an accused while unconscious is unsettled.[5]

The majority of the states are in accord with the common law rule which states that illegally obtained evidence is admissible.[6] The injured party's only recourse is a tort action against the wrongdoer.[7] It is an assault and battery to subject a person to a blood test against his will, and it is also an invasion

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1. Weeks v. United States, 232 U.S. 383 (1914).

2. Twining v. New Jersey, 211 U.S. 78, 114 (1908). In Jackman v. Rosenbaum, 260 U.S. 22 (1922) the Court held that if a practice is of ancient standing in a state, that is a reason for holding it unaffected by the 14th amendment. In Miller v. United States, 50 F.2d 505 (3d Cir. 1931) the court stated that the protection against unreasonable search and seizures afforded by the 4th amendment is not directed to the individual misconduct of state officers.

3. *Compare* Willis v. United States, 85 F.Supp. 745 (S.D. Cal. 1949) *with* In Re Guzzardi, 84 F.Supp. 294 (N.D. Tex. 1949).

4. *E.g.*, Piester v.State, 161 Tex. Crim. R 436, 277 S.W.2d 723 (1955); Brown v. State, 156 Tex. Crim. R 144, 240 S.W.2d 310 (1951).

5. State v. Weltha, 228 Ia. 519, 292 N.W. 148 (1940) (Such evidence was inadmissible). *Accord*, State v. Kroening, 274 Wis. 266, 79 N.W.2d 810 (1956). *Contra*, People v. Haeussler, 41 Cal.2d 252, 260 P.2d 8 (1953), *cert. denied*, 247 U.S. 931 (1954).

6. Wigmore, Evidence § 2183 (3d ed., 1940).

7. Nueslein v. District of Columbia, 115 F.2d 690, 695 (D.C. Cir. 1940). But to follow this procedure means delay, expense, unwanted publicity and to the non-legal mind this affords no remedy to one whose security has already been violated and is already convicted. Furthermore, research denotes very few have sought this redress; fewer still have been satisfied. However, subsection c of rule 25 of the Uniform Rules of Evidence is in accordance with the common law rule. It states, "no person has a privilege to refuse to furnish or to permit the taking of samples of body fluids or substances for analysis."

of the right of privacy.[8] At present, many states, including North Dakota, have passed legislation which limits the courts and law enforcement agencies in procurring evidence by use of chemical tests without consent.[9]

The instant case held that the absence of conscious consent, without more, does not render the taking of fluid a violation of a constitutional right.[10] In *Rochin v. California*[11] the Court would not sanction the use of evidence procurred by forcibly pumping the stomach of the accused. The Court stated that this procedure violated the due process clause as it "shocks the conscience of the courts and is bound to offend even hardened sensibilities". The dissent in the instant case points out that in both the *Rochin* case and the instant case evidence which had been obtained from the accused involuntarily was used to convict him. The dissenting Justices refuse to distinguish between involuntary extraction of: words from the lips of the accused, contents of his stomach, and fluids of his body, when the evidence obtained is used to convict him.

No doubt, it is socially desirable to supress crime, but there is a greater social need the law shall not be flouted by enforcement agencies.[12] It is submitted that the majority decision in the instant case places undue emphasis on the needs of speedy and efficient law enforcement at the expense of personal integrity and other constitutional guarantees.

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DAMAGES — INADEQUATE AND EXCESSIVE — ADDITUR. — Plaintiff, a guest, sued his host and the driver of another automobile for injuries sustained in an automobile accident. The trial judge denied plaintiff's motion for a new trial on the condition that the defendants consent to an increase in the jury's verdict from $3,000 to $9,830.92. The defendants consented to the "additur" and the plaintiff appealed from the resulting order of the trial court. The Supreme Court of Minnesota, in affirming the lower court's decision, *held*

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8. Bednarik v. Bednarik, 18 N.J.Misc. 633, 16 A.2d 80 (1940). This case represents very sound logic and should be considered in future litigation of this type, however, the case was over-ruled in Cortese v. Cortese, 10 N.J.Super. 152, 76 A.2d 717 (1950). Justice Douglas in Rochin v. Calif., 342 U.S. 165, 179 (1952) (concurring opinion) stated that ". . . words taken from his lips, capsules taken from his stomach and blood taken from his veins are all inadmissible provided they are taken from him without his consent."

9. See N.D. Rev. Code § 39-0801 (1953 Supp.). However, in State v. Severson, 75 N.W.2d 316 (N.D. 1956) the court held that evidence of refusal of defendants to take blood test is inadmissible.

10. Still, the courts do protect certain fundamental rights and will not permit articles to be introduced in evidence which have been obtained without a valid search warrant, United States v. Di Re, 332 U.S. 581 (1948), nor do they permit the use of involuntary confessions, Brown v. Mississippi, 297 U.S. 278 (1936), McNabb v. United States, 318 U.S. 332 (1943).

11. 342 U.S. 165 (1952).

12. People v. Defore, 242 N.Y. 13, 150 N.E. 585 (1926). In Watts v. Indiana, 338 U.S. 49 (1949), the Court pointed out that society carries the burden of proving its charge against the accused. Justice Jackson in United States v. Di Re, 332 U.S. 581, 595 (1949) stated in regard to finding incriminating evidence without a search warrant that, "It is said that if such arrests and searches cannot be made, law enforcement will be more difficult and uncertain. But the forefathers after consulting the lessons of history, designed our Constitution to place obstacles in the way of a too permeating police surveillance, which they seemed to think was a greater danger to a free people than the escape of a few criminals from punishment."