Recent Cases: Due Process — Self-Incrimination — Unreasonable Search and Seizure — Blood Tests In Evidence

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Recommended Citation
Robert Berkshire, Recent Cases: Due Process — Self-Incrimination — Unreasonable Search and Seizure — Blood Tests In Evidence, 33 Neb. L. Rev. 511 (1953)
Available at: https://digitalcommons.unl.edu/nlr/vol33/iss3/17

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Due Process—Self-Incrimination—Unreasonable Search and Seizure—
Blood Tests In Evidence

Defendant was injured in an automobile accident and while unconscious a blood sample was taken by a hospital attendant for the purpose of typing the defendant’s blood for a transfusion. One of the five centimeters removed was given to a lab technician for analysis. The alcohol content measured .180. This was admitted as evidence when the defendant was prosecuted in a state court for driving while intoxicated. Held: the taking of blood from an unconscious person does not violate rights guaranteed by the Fourteenth Amendment.¹

The Supreme Court of the United States has held that the Fourteenth Amendment² does not necessarily require the states to grant to

¹ People v. Haeussler, 260 P.2d 8 (Cal. 1953).
² U.S. Const. Amend. XIV: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
citizens' rights guaranteed by the Fourth and Fifth Amendments of the Constitution, but the standard the states must maintain is the protection of those personal immunities which are "... so rooted in the traditions and conscience of our people as to be ranked as fundamental." In practice there is a conflict between the effective administration of the law and the preservation of personal liberty.

The majority of the authorities and cases have held that the admission of evidence taken from inside the body does not violate self-incrimination or unlawful search and seizure rights under the Fourteenth Amendment. In 1952, however, the Supreme Court ruled that the forceful use of a stomach pump by police officers to obtain narcotics which the defendant swallowed in their presence constituted a violation of the "due process clause.

There are a number of factors which support the instant court's refusal to invoke the Fourteenth Amendment for the protection of the defendant. Courts are generally more favorable toward admitting scientific evidence taken from the person. Penetration of a person's skin with a needle to obtain a blood specimen does not strike one as being as revolting and humiliating as using the stomach pump, for accepted laws require that a blood test be taken when entering the military service, applying for a marriage license, and during pregnancy. Courts, also have held that taking of blood from an un-

5 U.S. Const. Amend. IV: "The right of the people to be secure in their person, houses, papers, and effects against unreasonable searches and seizures, shall not be violated...."
6 U.S. Const. Amend. V: "...nor shall [any person] be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law...."
7 Snyder v. Massachusetts, 291 U.S. 97, 105 (1934).
8 This is the underlying problem discussed in numerous Supreme Court opinions. Wolf v. Colorado, 338 U.S. 25 (1949); Adamson v. California, 332 U.S. 46 (1947); Betts v. Brady, 316 U.S. 455 (1942); Palko v. Connecticut, 302 U.S. 319 (1937); Snyder v. Massachusetts, 291 U.S. 97 (1934); Powell v. Alabama, 287 U.S. 45 (1932); Twining v. New Jersey, 211 U.S. 78 (1908). In the absence of constitutional or statutory restrictions, evidence which is otherwise admissible, will not be excluded because it has been obtained fraudulently, or illegally. 8 Wigmore, Evidence, § 2183 (3d ed., 1940).
9 8 Wigmore, Evidence §§ 2264, 2265 (3d ed. 1940); Model Code of Evidence, Rule 205 (1942) (generally limits self-incrimination privilege to verbal admissions); Inbau, Self-Incrimination 70-79 (1950); Note 164 A.L.R. 967 (1946); Morgan, The Privilege against Self-Incrimination, 34 Minn. L. Rev. 1, 38 (1949); Ladd and Gibson, The Medico-Legal Aspects of the Blood Test to Determine Intoxication, 24 Iowa L. Rev. 191 (1939). There has been confusion between the right of illegal search and seizure and the privilege against self-incrimination. See Fraenkel, Concerning Searches and Seizures, 34 Harv. L. Rev. 361 (1921).
conscious person does not violate the unlawful search and seizure rights under the Fourteenth Amendment, because force is not necessary to obtain the evidence.\textsuperscript{13}

However, there are arguments supporting a contrary view. The search and seizure was made while the accused was undergoing hospital treatment and no arrest had been made. One court refused to admit a blood test taken under similar circumstances, using unreasonable search and seizure as a basis for its decision.\textsuperscript{14} There are other means available for obtaining evidence concerning intoxication such as urine and breath tests which do not require an entry into the body to obtain the substance and consequently are not an invasion of the person to the same extent as taking blood.\textsuperscript{15} Also the evidence taken was body fluid (blood). One court denied the admission of a test for intoxication on the ground that the evidence was self-incriminating,\textsuperscript{16} although in another case decided the same year the same court accepted stolen articles in evidence which were taken from the defendant by means of a stomach pump.\textsuperscript{17}

Personal liberties can be granted to the defendant in a situation such as the instant case without unduly hampering law enforcement authorities. It is submitted that this is justification for invoking the protection of the Fourteenth Amendment.

\textbf{Robert Berkshire, '55}


\textsuperscript{14} State v. Weltha, 228 Iowa 519, 292 N.W. 148 (1940).

\textsuperscript{15} See Harger, Some Practical Aspects of Chemical Tests, 35 J. Crim. L. & Criminology 202 (1944). In many respects the breath and urine tests prove more satisfactory and are easier to run than the blood tests.

\textsuperscript{16} Apodaca v. State, 140 Tex. Crim. Rep. 593, 146 S.W.2d 381 (1940) (alcoholic test held inadmissible).

\textsuperscript{17} Ash v. State, 139 Tex. Crim. Rep. 420, 141 S.W.2d 341 (1940) (stolen rings obtained by stomach pump from the defendant held admissible); See Inbau, Self-Incrimination 70-73 (1950).