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Admissibility of the Results of Blood Test in a Criminal Case Arising Out of an Auto Accident

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CASES NOTED

ADMISSIBILITY OF THE RESULTS OF BLOOD TEST IN A CRIMINAL CASE ARISING OUT OF AN AUTO ACCIDENT

The defendant was charged and convicted of manslaughter through the operation of an automobile while intoxicated. The death followed a collision between a car operated by the defendant and a motorcycle operated by the victim. A police officer was dispatched to the scene to investigate the accident. Upon learning of the victim's death, the officer advised the defendant that thenceforth the investigation would become criminal and anything the defendant said could be used against him. The defendant was also advised of his right to counsel before making any statement. Subsequently, the defendant was asked if he would submit to a blood alcohol test and was advised that the results of the test could be used against him in the event of a manslaughter charge. The defendant voluntarily agreed to submit to the test. The blood alcohol test showed that the defendant was intoxicated and at trial the results of the blood test were admitted in evidence over the timely objection of the defendant. On appeal to the District Court of Appeal, First District, the defendant claimed that the admission of this evidence was prejudicial error. The court *held*, reversed: Even though the investigating officer advises a person involved in an accident that the results of a sobriety test might be used in a subsequent criminal proceeding, such test result is nonetheless privileged under Florida Statutes, section 317.171. *Coffey v. State*, 205 So.2d 559 (Fla. 1st Dist. 1968).

There appears to be little dispute concerning the admissibility of blood alcohol tests under the usual circumstances. Courts today generally accept the reliability of such tests as being valuable evidence in the determination of a person's sobriety. Many jurisdictions now hold that the consent of the person being tested is not necessary in order for the test results to be admissible.[1] Thus, in a case similar to the one under consideration, the evidence may be admissible, even if the investigating officer does not advise the party that the results can be used in a subsequent criminal action. In a recent decision of the Supreme Court of the United States, the Court held that the results of a blood test were real evidence rather than communicative evidence and, therefore, an individual's right against self-incrimination was not violated by the intro-

1. Vigil v. People, 133 Colo. 126, 300 P.2d 545 (1956); State v. Smith, 47 Del. 334, 91 A.2d 188 (1952); Allen v. State, 183 Md. 603, 39 A.2d 820 (Ct. App. 1944); State v. Sturtevant, 96 N.H. 99, 70 A.2d 909 (1950); State v. Alexander, 7 N.J. 585, 83 A.2d 441 (1951); State v. Cram, 176 Ore. 577, 160 P.2d 283 (1945); Commonwealth v. Statti, 166 Pa. Super. 577, 73 A.2d 688 (1950); Green Lake County v. Domes, 247 Wis. 90, 18 N.W.2d 348 (1945).

duction of the results of these tests.[2] Other earlier cases also held that the test results were not to be likened to confessions.[3]

When the above decisions are considered, it is evident that the results of the blood tests in the case under consideration are admissible unless they are privileged under the accident report privilege of section 317.171 of the Florida Statutes.[4] Thus, the real question is whether the legislature intended to make such results privileged when the driver has been fully apprised of his right not to submit to the test but does so anyway.[5]

The first significant interpretation of the Florida statute in question was made in the decision of *Stevens v. Duke*.[6] The court held that testimony by the officer who took a statement containing an admission against interest from one of the drivers involved in an accident was inadmissible in evidence. The court stated that the Florida statute[7] applied because the circumstances under which the statement was procured indicated that the statement was taken for the purpose of compiling facts for the accident report. The court distinguished a leading Illinois case involving similar facts and a similar statute on the basis that the statement in the Illinois case was not taken for the purpose of filling out the accident report required by statute.[8]

Other Florida decisions have indicated that the courts do not desire an interpretation that excludes any evidence that is not expressly privileged by the legislature.[9] In the case of *Wise v. Western Union Telegraph*

2. Schmerber v. California, 384 U.S. 757 (1966). The petitioner contended that the use of the results of a blood test taken without his consent was a violation of the fourth, fifth, sixth and fourteenth amendments to the United States Constitution. The Court stated:

> We hold that the privilege protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature, and that the withdrawal of blood and use of the analysis in question in this case did not involve compulsion to these ends.

Id. at 761.

3. State v. Duguid, 50 Ariz. 276, 72 P.2d 435 (1937).

4. FLA. STAT. § 317.171 (1967):

> All accident reports made by persons involved in accidents shall be without prejudice to the individual so reporting and shall be for the confidential use of the department or other state agencies having use of the records for accident prevention purposes. . . . No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident . . . .

5. The Florida statute and similar statutes in other jurisdictions are derived from section 16 of the UNIFORM ACT REGULATING TRAFFIC, which requires the filing of accident reports and provides that such reports shall be for the use of the highway department in the various states. The Act also provides that the reports shall be inadmissible in evidence in an action arising out of the accident.

6. 42 So.2d 361 (Fla. 1949).

7. FLA. STAT. § 317.17 (1941), *renumbered*, § 317.171 (1967).

8. Ritter v. Nieman, 329 Ill. App. 163, 67 N.E.2d 417 (1946). If this distinction were applied in the *Coffey* case it would seem that the evidence should have to be admitted. Even though the test results in *Coffey* found their way into the report, they were not *necessary* for the report. In fact, it was made clear to the party taking the test that the results were to be used in the event of a criminal action rather than for the accident report.

9. Goodis v. Finkelstein, 174 So.2d 600 (Fla. 3d Dist. 1965); Rosenfeld v. Johnson, 161 So. 2d 703 (Fla. 3d Dist. 1964); Lobree v. Caporossi, 139 So.2d 510 (Fla. 2d Dist. 1962).

Co.,[10] the court stated that the statute was in derogation of the common law and thus would be strictly construed. The court stated further that:

> It is not every statement made to an officer that comes within the privilege granted by the statute. The statement must have some reasonable bearing upon an investigation properly undertaken by the officer . . . .[11]

The key in Florida as to whether the privilege applies is the determination of whether or not the evidence has a bearing upon the filing of the accident report.[12] If the statements made by the party have a direct relationship to the report, they are inadmissible in evidence, even if the testimony concerning the statement comes from a disinterested bystander who overheard the statement.[13]

To determine whether or not the evidence in a case has a direct relationship to the accident report, it is helpful to look to statutory interpretations of other states that have statutes similar to section 317.161. Some jurisdictions that require the driver to file a report hold that only the written report itself is privileged.[14] Thus, in these jurisdictions, oral statements or other evidence presented to the officer at the scene of the accident may be admissible into evidence.[15] Many jurisdictions have held that it is contrary to the intent of statutes granting a privilege to accident reports to exclude evidence of admissions against interest made by a party to an accident.[16] The leading case of *Ritter v. Nieman*[17] stated a logical interpretation of this privilege by concluding the following:

> The statute specifically enjoins the use of the report in a civil or criminal trial. For this court to hold that a party making such report could not testify to 'admissions against interest' made by a party to an accident would extend the language of the statute to include prohibitions not contained therein.[18]

The Michigan Supreme Court, interpreting a similar statute, also held that admissions were not privileged.[19] The court held that it "was not

10. 177 So.2d 765 (Fla. 1st Dist. 1965).

11. *Id.* at 768.

12. St. Germain v. Carpenter, 84 So.2d 556 (Fla. 1956).

13. Herbert v. Garner, 78 So.2d 727 (Fla. 1955); Wiggen v. Bethel Apostolic Temple, 192 So.2d 796 (Fla. 3d Dist. 1966).

14. Carroll v. Beavers, 126 Cal. App. 2d 828, 273 P.2d 56 (1954); Carpenter v. Gibson, 80 Cal. App. 2d 269, 181 P.2d 953 (1947); Carlson v. Brunette, 339 Mich. 188, 63 N.W.2d 428 (1954); Heiman v. Kolle, 317 Mich. 548, 27 N.W.2d 92 (1947); Larson v. Montpetit, 275 Minn. 394, 147 N.W.2d 580 (1966).

15. Carpenter v. Gibson, 80 Cal. App. 2d 269, 181 P.2d 953 (1947); Curry v. Jones, 258 Iowa 129, 138 N.W.2d 101 (1965); Heiman v. Kolle, 317 Mich. 548, 27 N.W.2d 92 (1947).

16. Ritter v. Nieman, 329 Ill. App. 163, 67 N.E.2d 417 (1946); Carlson v. Brunette, 339 Mich. 188, 63 N.W.2d 428 (1954); Heiman v. Kolle, 317 Mich. 548, 27 N.W.2d 92 (1947); Jacobs v. Gelb, 271 App. Div. 101, 62 N.Y.S.2d 782 (1946).

17. 329 Ill. App. 163, 67 N.E.2d 417 (1946).

18. *Id.* at 169, 67 N.E.2d at 421.

19. Heiman v. Kolle, 317 Mich. 548, 27 N.W.2d 92 (1947).

the purpose of the act to keep admissions by the defendant from the ears of the court or jury."[20]

The Iowa Legislature has limited the privilege so that it applies only when the subsequent action is civil in nature.[21] Thus, if the driver is subsequently tried for a criminal offense arising out of the accident, the report may be used in evidence against him.[22]

In all of the above-mentioned jurisdictions, the important consideration is a balancing of the need for full and accurate disclosure of the causes of accidents against the need for use of the information in criminal actions against one or both of the drivers.

The Florida statute is also designed to further the cause of traffic safety. In view of this purpose, the decision in the *Coffey* case is clearly erroneous. Once a person is adequately informed that the accident investigation is over, the privilege is no longer necessary. Indeed, an analysis of the ultimate outcome of the decision shows how erroneous the decision really is. For example, if the defendant had not collided with anyone and had been arrested solely for driving while intoxicated, the result of the blood test could have been used at the trial. Very likely a conviction would have followed. As it happened, however, the defendant was involved in an accident which resulted in the death of the other party. Because of the accident and the need for its investigation the evidence became inadmissible. Does this not reward drunk drivers who are involved in accidents by excluding evidence of their state of intoxication? The moral seems to be: When you drink, don't drive, *unless you cause an accident*. Such a result was certainly not intended by the legislature.

In its decision in the *Coffey* case, the District Court of Appeal, First District, based its holding on two cases. In the first case, *Cooper v. State*,[23] the facts were very similar to the facts in the *Coffey* case. In *Cooper* there was only one point raised on appeal, the assignment of error being:

> Did the trial judge commit prejudicial error in allowing the doctor to testify that the blood test consented to by appellant indicated the appellant was intoxicated . . . where the officers testified that the sole purpose of taking the blood test was to complete the accident report . . . .[24]

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20. *Id.* at 553, 27 N.W.2d at 94.

21. IOWA CODE ANN. § 321.271 (1966):
All accident reports shall be in writing and the written report shall be without prejudice to the individual so reporting and shall be for the confidential use of the department. . . . A written report filed with the department shall not be admissible in or used in evidence in any civil case arising out of the facts on which the report is based.

22. State v. Rullestad, 143 N.W.2d 278 (Iowa 1966).

23. 183 So.2d 269 (Fla. 1st Dist. 1966). *See also* Cannon v. Giddens, 210 So.2d 714 (Fla. 1968).

24. *Id.* at 270.

Even though the investigating officer in *Cooper* told the defendant that the test results could be used against her, this case can be distinguished from *Coffey* on the basis that the test requested in *Cooper* was solely for the purpose of getting information for the accident report.[25]

The courts must make it clear that an officer can stop the accident investigation and begin an investigation of possible criminal charges arising from the accident. To prevent the officer from making such an investigation would impede justice and make the highways more dangerous than they already are. Such a result was not a part of the intent of the legislature when it adopted the statute granting a privilege to accident reports.

The other case relied on by the court was *Nash Miami Motors, Inc. v. Ellsworth*,[26] in which the defendant was told that any statements made to the investigating officer could be used at a subsequent criminal proceeding, if one should arise. The plaintiff in the subsequent civil action claimed that statements made to the officer by the defendant should be admitted because they were not taken for the purpose of the accident report, but for the discovery of possible criminal charges. The court rejected the plaintiff's contention by stating:

> From the viewpoint of the person interrogated there is little difference. The distinction, to have meaning, would require realization by a person charged with giving such a report that one officer was reporting the accident, while a second, who asked the same questions, was not reporting the accident.[27]

The above quotation from the *Nash Motors* case could have provided the basis for admitting the blood test results in the *Coffey* case. Although the quoted exerpt is only dictum, it does show that the court felt that the defendant's knowledge of the intended use of the evidence is important. An important point made in many of the decisions seems to be that the person being questioned must be told the purpose of the investigation.[28] In the *Coffey* case it can hardly be controverted that the defendant knew the purpose for the taking of the blood alcohol test.

Prior Florida decisions have stated that not all statements made to an investigating officer are privileged.[29] The privilege should not extend to statements that do not form a necessary part of the accident report.[30]

25. In the *Cooper* case the court stated: "There can be no question but that the taking of the blood sample was intended as a part of the investigation for the purpose of *completing the report*, required of the officer. *Id.* at 272.

26. 129 So.2d 704 (Fla. 3d Dist. 1961).

27. *Id.* at 706.

28. In the *Coffey* case the defendant was specifically told that the other party to the accident had died and that all future investigation would be with a view to possible criminal charges. Coffey v. State, 205 So.2d 559 (Fla. 1st Dist. 1968).

29. Wise v. Western Union Tel. Co., 177 So.2d 765 (Fla. 1st Dist. 1965).

30. Kaplan v. Roth, 84 So.2d 559 (Fla. 1956); Goodis v. Finkelstein, 174 So.2d 600 (Fla. 3d Dist. 1965); Rosenfeld v. Johnson, 161 So.2d 703 (Fla. 3d Dist. 1964).

Therefore, even though the test results in the case under consideration found its way into the report, it should not have been excluded on that basis because it was not a necessary part of the report.

It should also be noted that the privilege applying to the accident report can be waived.[31] Thus, even if the privilege can apply in *Coffey*, it could have been found that it was waived. Therefore, where the person being questioned or being asked to take a test realizes the purpose for obtaining the evidence, such evidence should be admissible even if a part of it winds up in the accident report. A blanket rule privileging all information received by an officer will not greatly aid in accomplishing the purpose of the statute, but certainly will hinder the conviction of people who are involved in accidents while intoxicated.

The Florida Legislature has recently demonstrated its concern over the problem presented by the drunk drivers when it passed an implied consent law which requires a driver to submit to a test if there is reasonable cause to believe that he is drunk.[32] The statutory accident report privilege should not be used in a manner that will cause the exclusion of evidence obtained under this new implied consent law when an accident results. When an investigation has reached a point at which it becomes criminal in nature, the parties involved in the accident should be fully apprised of their rights under criminal law.[33] The logic of this procedure is evident when one considers the fact that even though the officer in the *Coffey* case did everything he could have done to protect the rights of the person being investigated, the evidence that he had obtained still was not permitted to be introduced. The result of *Coffey* is to place a person in a better position if he has an accident than if he does not.

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31. Southern Life & Health Ins. Co. v. Medley, 161 So.2d 19 (Fla. 3d Dist. 1964). The court did not find a waiver in this case, but it was stated affirmatively that the privilege could be waived.

32. FLA. STAT. § 322.261 (1967). This law states that any person driving a motor vehicle in Florida impliedly consents to the taking of a sobriety test, if there should be probable cause to believe that he is intoxicated. The results of the tests are to be admissible to the same extent that they were previously. The law is effective July 1, 1968. *See* Comment, *Florida's Implied Consent Statute*, 22 U. MIAMI L. REV. 698 (1968).

33. Once the investigation becomes criminal in nature, the party being questioned should be given all of the protection afforded any other person suspected of a crime. The guidelines to be followed were set down in the case of Miranda v. Arizona, 384 U.S. 478 (1964).