University of Miami Law Review

Volume 11
Number 4 *Miami Law Quarterly*

Article 13

7-1-1957

Constitutional Law -- Due Process -- Taking Blood as Evidence

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CASES NOTED

CONSTITUTIONAL LAW — DUE PROCESS— TAKING BLOOD AS EVIDENCE

The petitioner in a habeas corpus proceeding alleged that the taking of his blood while he was unconscious, and the subsequent use of the blood analysis as evidence against him in a criminal prosecution, was a violation of the due process clause of the fourteenth amendment.[1] *Held*, taking of blood by a licensed physician was not a violation of constitutional rights. *Briethaupt v. Abram*, 352 U.S. —, 77 S.Ct. 408 (1957).

As early as 1904 the courts decided that evidence obtained from an unlawful search and seizure was admissible if otherwise competent.[2] In 1914, the "*Weeks* Doctrine"[3] interpreted the fourth amendment as barring the use of evidence in a federal prosecution secured by an illegal search and seizure. Although sixteen states have followed this doctrine,[4] the other thirty-two have rejected it. The majority have adopted the rationale of *Wolf v. Colorado*,[5] where the court held that "in a prosecution

1. U.S. CONST. amend. XIV ". . . nor shall any state deprive any person of life, liberty, or property without due process of law. . . ."

2. Adams v. New York, 192 U.S. 585 (1904) (Papers and other subjects of evidence were taken illegally from the defendant's possession. The Court held this not a valid objection to their admissibility, if they were pertinent to the issue.); *accord*, Holt v. United States, 218 U.S. 245 (1910) (Evidence that a garment fit the defendant was admissible even though duress may have been used. The Court held that the prohibition against compulsion applied to extorting communications, not to the use of the defendant's body.); Twining v. New Jersey, 211 U.S. 78 (1908) (It was held that due process of law as used in the fourteenth amendment did not require that an individual be exempted from compulsory self-incrimination in the courts of a state that has not adopted the policy of such an exemption).

3. Weeks v. United States, 232 U.S. 383 (1914). (This doctrine applies to the inadmissibility of evidence in federal courts, and is not imposed on the states by the fourteenth amendment).

4. Atz v. Andrews, 84 Fla. 43, 94 So. 329 (1922); State v. Arregui, 44 Idaho 43, 254 P. 788 (1927); People v. Castree, 311 Ill. 392, 143 N.E. 112 (1924); Flum v. State, 193 Ind. 585, 141 N.E. 353 (1923); Youman v. Commonwealth, 189 Ky. 152, 224 S.W. 860 (1920); People v. Marxhausen, 204 Mich. 559, 171 N.W. 557 (1919); Tucker v. State, 128 Miss. 211, 90 So. 845 (1922); State v. Owens, 302 Mo. 348, 259 S.W. 100 (1924); State ex rel King v. District Court, 70 Mont. 191, 224 Pac. 862 (1924); Gore v. State, 24 Okla. Cr. 394, 218 Pac. 545 (1923); State v. Gooder, 57 S.D. 619, 234 N.W. 610 (1930); Hughes v. State, 145 Tenn. 544, 238 S.W. 588 (1922); State v. Gibbons, 118 Wash. 171, 203 Pac. 390 (1922); State v. Andrews, 91 W.Va. 720, 114 S.E. 257 (1922); Hoyer v. State, 180 Wis. 407, 193 N.W. 89 (1923); State v. George, 32 Wyo. 223, 231 Pac. 683 (1924).

5. 338 U.S. 25 (1949); Adamson v. California, 332 U.S. 46, 50 (1947) "It is settled law that the clause of the Fifth Amendment, protecting a person against being compelled to be a witness against himself, is not made effective by the Fourteenth Amendment as a protection against state action. . . ."; Palko v. Connecticut, 302 U.S. 319 (1937) (The fourteenth amendment does not embody the prohibitions of the fifth.); People v. Kiss, 125 Cal. App.2d 138, 269 P.2d 924 (1954); Davis v. State, 189 Md. 640, 57 A.2d 289 (1948); State v. Dillon, 34 N.M. 366, 281 Pac. 474 (1929); State v. Barela, 23 N.M. 395, 168 Pac. 545 (1917); State v. Hillman, 125 A.2d 94 (R.I. 1956); State v. Olynik, 113 A.2d 123 (R.I. 1955).

in a state court for a state crime the fourteenth amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure."[6]

It is well settled that the highest courts of the individual states have discretionary power to accept or reject evidence obtained through an unlawful search and seizure.[7] The United States Supreme Court will not reverse the decision of a state court solely because the evidence was obtained by unreasonable methods.[8] However, aggravating circumstances in the procurement of evidence may offer grounds for reversal.[9] In *Rochin v. California,* the defendant was convicted in a state court by the admission of pills into evidence containing narcotics that had been removed from his stomach. These pills were retrieved by a physical assault upon the person of the defendant, compelling his submission to the use of a stomach pump. On appeal, the United States Supreme Court, in holding such conduct contrary to due process, pointed out that its reasons for reversal lay in the appalling methods[10] used to obtain the evidence, and not the unreasonableness of the search and seizure.[11] This matter of "shocking the conscience of the court" is one of degree and discretion. In contrast to the *Rochin* case is *Irvine v. California,*[12] where the Supreme Court in a five to four decision held that evidence obtained by way of a concealed microphone in a private home was not a violation of the fourteenth amendment.

In the principal case, the defendant's relied upon the Court's "sense of justice" as interpreted in the *Rochin* case.[13] It was held, however, that the method used in obtaining the evidence did not shock the conscience of the Court.[14] But while the instant case did not offend the sensibilities of the majority of the Court, it motivated a strong minority to state emphatically that they found it "repulsive."[15]

It is difficult to distinguish between the taking of blood by a licensed physician from an unconscious individual, to be used as evidence against

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6. 338 U.S. at 33.
7. 20 AM. JUR., *Evidence* § 394-5 (1930).
8. See Rochin v. California, 342 U.S. 165 (1952).
9. *Id;* Chambers v. Florida, 309 U.S. 227 (1940); Brown v. Mississippi, 297 U.S. 278 (1936).
10. Rochin v. California, 342 U.S. 165, 172 (1952) "This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents—this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and screw to permit of constitutional differentiation."
11. 8 WIGMORE, EVIDENCE § 2183(a) (Supp. 1955).
12. Irvine v. California, 347 U.S. 128 (1954) (Dissented to by Justices Black, Burton, Douglas, and Frankfurter); *contra,* People v. Cahan, 44 Cal.2d 434, 282 P.2d 905 (1955).
13. See note 7 *supra.*
14. Breithaupt v. Abram, 352 U.S. —, 77 S.Ct. 408 (1957).
15. *Id.* at 414.

him in a criminal prosecution, and accomplishing the same result over the defendant's resistance. When the body is invaded for the purpose of procuring evidence, there is a violation of the person's rights, regardless of whether he struggles or is incapable of struggling due to unconsciousness. The taking of body fluids, whether by drawing blood,[16] by stomach pump,[17] or by any other unlawful means,[18] clearly seems a violation of basic procedural due process.

MYRON SHAPIRO

INSURANCE — RECOVERY — VALUED POLICY STATUTES

The plaintiff insured a school building against loss by fire in compliance with the Florida Valued Policy Statute.[1] The valuation placed upon the building was $6,500. Two years later, the defendant contracted to sell the building for $2,300. Before title to the property was transferred, the building was totally destroyed by fire. In an action for declaratory relief, *held*, the plaintiff was liable for the agreed insurable value determined at the time the policy was issued, and its liability was not limited to the interest of the defendant in the property at the time of the fire. *National Fire Insurance Company v. Board of Public Instruction*, 239 F.2d 370 (5th Cir. 1956).

Valued policy statutes, such as the one applied in this case,[2] are founded upon what legislatures in several states have considered to be

16. Trammell v. State, 287 S.W.2d 487 (TEX. CIV. APP. 1956); Turvey v. State, 95 Okla. Crim. 418, 247, P.2d 304, 307 (1952) (dictum); *contra*, People v. Haeussler, 41 Cal.2d 252, 260 P.2d 8 (1953); Block v. People, 240 P.2d 512 (Colo. 1952), *cert. denied*, 343 U.S. 978 (1952); State v. Smith, 8 Ter. 334 (Del. Super. Ct.), 91 A.2d 188 (1952).

17. See note 7 *supra*.

18. People v. Martinez, 130 Cal. App.2d 54, 278 P.2d 26 (1955); *contra*, People v. Woods, 139 Cal. App.2d 515, 293 P.2d 901 (1956); State v. Berg, 76 Ariz. 96, 259 P.2d 261 (1953).

1. FLA. STAT. § 631.04 (1955). "Value of buildings insured to be fixed in policy of insurance."

"Any insurer insuring any building or other structure in this state against loss or damage by fire or lightning, shall cause such building . . . to be examined by an agent or other representative of the insurer and full description thereof to be made. . . .

". . . in case of total loss the whole amount mentioned in the policy upon which the insurers receive a premium shall be paid. . . .

"The insurer shall be estopped from denying that the property insured was worth, at the time of insuring, the amount of the insurable value as fixed by the agent or other representative."

FLA. STAT. § 631.05 (1955). "Measure of damage in case of loss."

"In case of the total loss of the property insured the measure of damage shall be the amount upon which the insured paid a premium. . . ."

FLA. STAT. § 92.23 (1955). "Rule of evidence in suits on fire policies for loss or damage to building."

"In all suits or proceedings brought upon policies of insurance on buildings against loss or damage by fire . . . the insurer shall not be permitted to deny that the insured therein on such property."

property insured was worth, at the time of insuring it by the policy, the full sum

2. *Ibid.*