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present interpretation of our statute, a fleeing culprit may not only escape criminal conviction, but also might ultimately regain possession of his automobile.

Thus the writer suggests that the legislature take cognizance of the various questions raised from the language of G. S. § 18-6 and the ultimate confusion resulting therefrom, with a view towards clarification, or better still an adherence to what seems to be the general trend toward allowing condemnation and forfeiture proceedings without regard to prior arrest and convictions of the criminal defendant.

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Evidence—Admissibility of Truth Serum Test Results

The *Truth Serum Test*[1] has received practically no judicial recognition since its recent debut into the truth discovery field. The results of this test, usually taken voluntarily by the accused,[2] have continually been excluded by the courts primarily because statements or confessions made while examinees are under the influence of such drugs as sodium amytal and sodium pentothol are (1) unreliable,[3] (2) self-serving or

feiture, the required burden of proof to support forfeiture is proof beyond a reasonable doubt.

[1] This term has been frequently applied even though actually misleading, for the drugs are neither serum, nor do they always produce the "empirical" truth. After the drug is injected, the patient falls into a state of partial consciousness (twilight sleep) and becomes susceptible to interrogation until recovery which usually requires several hours. The drug eliminates repressive influences and ordinary restraints which under normal conditions lead to embarrassment and fear. Hallucinations in some instances have occurred. After recovery the patient is said to have no recollection of the transpired interview. The technical label for such an examination is *narcoanalysis.* Dession, Freedman, Donnelly & Redlich, *Drug-Induced Revelation and Criminal Investigation,* 62 YALE L. J. 315 (1953); Muehlberger, *Interrogation Under Drug Influence,* 42 J. CRIM. L., C. & P. S. 513 (1951).

[2] Assuming defendant confesses during drug-induced interview to which he voluntarily submits, no claim of self-incrimination would bar such confession from evidence; however, such confessions are at present deemed unreliable, and hence, inadmissible. 3 WIGMORE, EVIDENCE § 841 (a) (1940). Evidence obtained from these interviews or from clues tendered therein, most likely would be admissible as would confessions given after presentation of test results to the examinee. Note, 62 YALE L. J. 315, 337 (1953); STANSBURY, EVIDENCE, § 186 (1946). Tests taken involuntarily must necessarily raise issues of self-incrimination and illegally obtained confessions. Such confessions will of course be held inadmissible when extracted while examinee is under the influence of injected drugs. Whether evidence discovered in such interview or whether confessions induced by test results would be held admissible will depend upon the laws applicable to particular jurisdictions in question. Despres, *Legal Aspects of Drug-Induced Statements,* 14 U. CHI. L. REV. 601 (1946). See, Note 32 N. C. L. REV. 98 (1954); 3 WIGMORE, EVIDENCE § 859 (1940); STANSBURY, EVIDENCE §§ 182-86 (1946). In regard to due process see Silving, *Testing of the Unconscious in Criminal Cases,* 69 HARV. L. REV. 683 (1955).

[3] State v. Thomas, 79 Ariz. 158, 285 P. 2d 612 (1955); State v. Lindemuth, 56 N. M. 257, 243 P. 2d 325 (1952); Henderson v. State, 94 Okla. Crim. 45, 230 P. 2d 495 (1951), *cert. denied,* 342 U. S. 898 (1951). See notes 62 YALE L. J. 315 (1953); 46 J. CRIM. L., C. & P. S. 259 (1956); *annot.,* 23 A. L. R. 2d 1306

conjectural,[4] (3) violations of the hearsay rule,[5] (4) and once because no foundation for such evidence had been laid.[6]

Both legal and medical experts seem to agree that truth drugs, as such, have not transcended the experimental stages.[7] These drugs are not reliable to the extent that they will force the examinee to tell the truth, the whole truth, and nothing but the truth. On the contrary, not only are some examinees able to retain the deception of fabrication, but some neurotics are apt to give false confessions.[8]

When confronted with the truth serum test courts have frequently referred to *Frye v. United States*,[9] where results of a lie-detector test were offered into evidence for the first time and refused because the technique had not yet gained the general acceptance of psychiatry, the particular field in which it belonged.

It remains to be seen however, whether drugs such as sodium amytal have become sufficiently established in psychiatric medicine to receive judicial recognition for limited purposes, *i.e.*, foundation material upon which expert opinions can be based regarding issues of sanity and credibility, as contrasted with the truthfulness of various claims of guilt or of innocence. It is true that these drugs are currently being utilized by the medical professions for both analysis and curative treatments. Whether this will constitute a general acceptance in application of the *Frye* test for these limited purposes the courts have not yet fully indicated.

(1952); People v. McCracken, 39 Cal. 2d 336, 246 P. 2d 913 (1952) (matter of court's discretion); and State v. Hudson, 314 Mo. 599, 289 S. W. 920 (1926) (where such evidence was termed "clap-trap" and as being "unworthy of serious consideration").

[4] People v. Cullen, 37 Cal. 2d 614, 234 P. 2d 201 (1951); People v. McNichol, 100 Cal. App. 2d 554, 224 P. 2d 21 (1950). For disapproval of this rule see STANSBURY, EVIDENCE § 140 (1946); 52 W. VA. L. REV. 81 (1950).

[5] People v. Cullen, 37 Cal. 2d 614, 234 P. 2d 201 (1951); People v. McNichol, 100 Cal. App. 2d 554, 224 P. 2d 21 (1950). For application of the hearsay rule to these cases see 62 YALE L. J. 315, 323-24 (1953).

[6] Orange v. Commonwealth, 191 Va. 423, 61 S. E. 2d 267 (1950). In rejecting the evidence the court commented, "The record does not show the drug that was used or the quantity of it that was administered, nor is there any evidence with respect to the value or the reliability of the tests. The answers given by the defendant are at times maudlin and at times obviously self-serving and indicative of a conscious purpose to avoid self-incrimination."

This case is also interesting from the standpoint of stipulation. The defendant and state prosecutor agreed that defendant be examined under drugs. The court refused the evidence because there had been no agreement to allow the results into evidence, inferring that stipulation agreements would be recognized as in the lie-detector field. For a stipulation in a lie-detector case see State v. Lowry, 163 Kan. 622, 185 P. 2d 147 (1947); and for validity of stipulation agreements, 46 HARV. L. REV. 138 (1932).

[7] 3 WIGMORE, EVIDENCE § 998 (1948); 20 AM. JUR., *Evidence* § 762 (1939); *annot.*, 23 A. L. R. 2d 1308 (1952).

[8] 46 J. CRIM. L., C. & P. S. 259 (1956); 62 YALE L. J. 315 (1953). *Contra* 42 J. CRIM. L., C & P. S. 513 (1952).

[9] 293 Fed. 1013 (D. C. Cir. 1923).

In *People v. Esposito*,[10] the defendants pleaded insanity to the charge of murder. Upon their own motion they were committed to the observation of court appointed psychiatrists, who in the course of the examination injected metrazol and sodium amytal. After proof that such drugs were frequently used in psychiatric examinations, one psychiatrist was permitted to testify that in his opinion, based upon narcoanalysis, the defendants were sane at the time of the alleged crime. The Court of Appeals of New York held on appeal that in claiming the defense of insanity the defendants ". . . were subject to the use of methods set up objectively by the medical profession for the proper determination of such claims. . . ."[11]

This same court ten years later in *People v. Ford*,[12] allowed a psychiatrist to testify after three interviews that in his opinion the defendant, being charged with first degree murder, did not have the mental ability for premeditation. However, the witness was not permitted to testify regarding the second interview in which he had administered sodium amytal. The basis for the court's ruling seemed to be that no New York court had ever permitted such into evidence before.

The dissenting opinion, ably written by Judge Desmond, reasoned that in all probability the expert had based his conclusion upon all three interviews regardless of the court's exclusion of the second. Therefore, continued the dissent, the excluded testimony should have been admitted since ". . . the jury are entitled to all the facts on which the expert bases his opinion."[13] The dissent also pointed out that the sole issue was one of mental condition, the defendant having admitted the crime prior to the exclusion, and not whether the defendant was guilty of fabrication. On the basis of this distinction, it seems consistent to speculate that drugs such as sodium amytal, although not generally accepted for one purpose, might be acceptable for another.

Of all the truth serum cases, a California case, *People v. Jones*,[14] appears to be the most controversial. Here the defendant was indicted for violation of Section 288 of the California Penal Code:

> "Any person who shall wilfully and lewdly commit any lewd or lascivious act . . . upon or with the body . . . of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony."

Prior California cases had held that this statute required proof of a

[10] 287 N. Y. 389, 39 N. E. 2d 925 (1942).
[11] *Id.* at 397-98, 39 N. E. 2d at 928.
[12] 304 N. Y. 679, 107 N. E. 2d 595 (1952).
[13] *Id.* at 682, 107 N. E. 2d at 597.
[14] 42 Cal. 2d 219, 266 P. 2d 38 (1954).

specific intent. The defense produced a psychiatrist willing to testify that (1) he had administered sodium pentothol to the defendant for purposes of interrogation, (2) that it was his opinion based upon the results of said interview that the defendant was not a sexual deviate and that he was incapable of having the necessary intent. Because of the trial court's exclusion of this evidence, the conviction was reversed on appeal. After ruling that the evidence was admissible as circumstantial or character evidence[15] and that the exclusion thereof amounted to reversible error, the Supreme Court of California held that the results of a sodium pentothol examination are only improper ". . . if the statements are offered for the purpose of proving the truth of the matter asserted . . . here the proffered evidence was not the answers of Jones to certain questions, but the interrogator's expert analysis of those answers for the purpose of determining whether Jones was a sexual deviate. . . ."[16]

Lindsey v. United States,[17] the first federal case involving sodium amytal, possibly extends the *Jones* rationale even further to credibility and character traits of a prosecuting witness. The defendant was indicted in the District Court of Alaska on three counts of statutory rape and three counts of sodomy committed on the person of his fifteen year old adopted daughter. The prosecuting witness testified on direct examination as to the offenses charged. On cross-examination the defense sought to impeach the state's witness by introducing into evidence certain letters and an affidavit wherein she had retracted all original accusations. The prosecution then called a qualified psychiatrist attempting to rehabilitate its witness. The expert testified, over defendant's objection, as to a sodium amytal examination of said witness upon which he based his opinion that the state's witness had been telling the truth on direct examination. He testified that the witness was not a fabricator or liar, and that she could not have gained the information she had related to him in the examination unless she had personally experienced such acts. In the process of delivering this testimony the

[15] Prior to the *Jones* case, California had followed the orthodox rule that character must be proved by general reputation. See 42 CALIF. L. REV. 880 (1954). For contrary views over *Jones* decision see 102 U. PA. L. REV. 980 (1954) and 103 U. PA. L. REV. 999 (1955).

[16] 42 Cal. 2d at 226, 266 P. 2d at 43 (1954). But see State v. Sinnott, 43 N. J. Super. 1, 127 A. 2d 424 (1956), where the defendant was convicted of sodomy. The testimony of a psychiatrist who had examined the defendant while under the influence of sodium pentothol was refused by the trial court. The record indicates the psychiatrist would have testified that the examinee exhibited no manifestations of homosexual perversions, nor was he a sexual deviate. The Superior Court of New Jersey in affirming the conviction expressly rejected the *Jones* decision, adhering to the orthodox rule pertaining to character evidence, see note 15 *supra*. The court further maintained that the use of narcoanalysis should be limited to issues of insanity.

[17] 237 F. 2d 893 (9th Cir. 1956).

psychiatrist was permitted to explain the use and operation of the truth serum test (actually referring to it as such), to explain that its effect would prevent this witness from falsifying, and finally, to play an actual tape recording of the interview to the jury. The court instructed the jury to consider the recording only as corroborating the testimony of the state's witness. The United States Court of Appeals reversed the lower court's decision because prior consistent statements are not admissible ". . . except in cases where it affirmatively appears that the prior consistent statement was made at a time when the declarant had no motive to fabricate."[18] The court rejected the government's contention that sodium amytal would destroy the witness' ability and motive to fabricate, thus adhering to the current weight of authority that sodium amytal, when used as a truth drug, is neither trustworthy nor reliable.

Although the introduction of the same testimony in relation to credibility was considered, the court specifically declined to make any ruling thereon. The court did comment that ". . . [t] here has been . . . an increasing tendency to allow expert psychiatric opinion testimony as to the credibility and character traits of a witness . . . and the need is said to be especially great in prosecutions for rape where the guilt of the accused is often dependent solely upon the uncorroborated testimony of an under-age girl."[19]

After assuming arguendo that the expert opinions, based upon sodium amytal examinations, would be admissible for limited purposes, *i.e.,* credibility, the court stated that the playing of the tape recording to the jury would amount to reversible error because of the difficulty that it would have in properly evaluating the evidence. The court criticized both the fact that the expert witness in testifying had referred to the drug as *Truth Serum,* and, *a fortiori,* that said expert was permitted to expound upon the *pseudoscientificus* aspect of the drug whereby the examinee was bound to tell the truth.

Whether the courts come to embrace the liberal *Jones* attitude or not, the logical inference to be drawn is that the propounder of such evidence would greatly increase the possibility of its admission relating to issues of insanity and credibility if reference to such terms as "Truth," "Test," "Truth-Test," "Truth Serum," were completely abandoned and

[18] *Id.* at 895. This seems to be the prevailing rule, 58 AM. JUR., *Witnesses* § 825 (1948); 4 WIGMORE, EVIDENCE § 1126 (1940). North Carolina is contra. STANSBURY, EVIDENCE §§ 51, 52 (1946).

[19] *Id.* at 897. Also see United States v. Hiss, 88 F. Supp. 559 (1950), *aff'd,* 185 F. 2d 822 (1950), *cert. denied,* 340 U. S. 948 (1951); State v. Armstrong, 232 N. C. 727, 62 S. E. 2d 50 (1950); 59 YALE L. J. 1324 (1950); 3 WIGMORE, EVIDENCE §§ 924(a), 997 (1940); 26 IND. L. J. 98 (1950); 39 J. CRIM. L., C. & P. S. 750 (1949).

if the *pseudoscientificus* aspect were never mentioned or expounded during the trial.

It is also apparent that the possibility of admission would be increased if narcoanalysis were included in a long term examination as opposed to one or two brief interviews. This would afford the expert other data on which to base his opinion, thus constructing a sounder foundation and diverting the spot-light which now seems to be focused on the reliability of truth drugs.[20]

In conclusion, narcoanalysis seems to be generally recognized by the courts and favored by legal writers when utilized in cases of insanity. There is conflict, however, in relation to milder mental conditions. Some courts seem to be willing to extend the use of such drugs into the area of credibility and character evidence both of the accused and of the witness; while others, as indicated, are not so willing. In addition, local rules pertaining to exclusion of evidence will continue to be an important variant in regard to the use and acceptance of narcoanalysis, in that such rules will encourage greater court discretion.

J. N. GOLDING.

Guardian and Ward—Dissent by an Incompetent Widow Through Her Guardian

The guardian of an incompetent widow has many problems, a few of which may best be pointed out in a hypothetical situation. Assume a seventy-year old incompetent widow has a personal estate of $100,000.00. The husband left no children or collateral heirs. His estate, valued at $500,000.00, is predominantly personalty such as stock in his family corporation. Under his will the widow is to receive the income from one fourth of this estate for life. The residue of the estate is devised to what had been the widow's favorite charity before she became incompetent. She did not make a will while she was competent. She has a brother living who has not seen her for 10 years. What should the widow's guardian do in regard to the will—should he dissent for her, or should he elect for her to take under the will? What standard should govern him in making this deicsion? As her brother will be her heir upon her death,[1] how can the guardian be sure that he has protected himself against suit by the brother since upon her death intestate the brother would have an interest sufficient to sue?[2]

[20] State v. Sinnott, 43 N. J. Super. 1, 127 A. 2d 424 (1956); STANSBURY, EVIDENCE § 136 (1946).

[1] N. C. GEN. STAT. § 29-1, Rule 5 (1950).

[2] N. C. GEN. STAT. § 1-57 (1953). The amount that the brother would receive upon his sister's death would very possibly bear a direct relationship to the amount which the widow received from her husband's estate.