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Recent Decisions Concerning "Lie Detector" Examinations

Two murder cases involving the use of "Lie Detector" tests were decided recently by the Wisconsin Supreme Court. The first: State of Wisconsin v. Herman DeHart (8 N. W. (2) 360, 1943). The defendant voluntarily submitted to a "Lie Detector" examination in Chicago and after the tests, upon further interrogation, admitted to the examiner that he did participate in the murder of an "old shacker" in Oneida County, Wisconsin in 1935. He made and signed a confession incorporating the details as to his part in the robbery-murder of the "old recluse." After receiving a share in the proceeds of the robbery, the defendant travelled throughout several southern states for six years before he returned to Oneida County.

Soon after the murder, investigators learned that the shack was burned to the ground and only the charred remains of the victim were discovered. At the trial the defendant pleaded an alibi stating he was out of the state at the time the murder was committed and retracted his confession alleging it was not voluntarily made. The Supreme Court ruled the confession to be voluntarily given but conceded "there was some evidence that Mr. Reid, who gave the 'lie detector' test, used profane language in urging the defendant to tell the truth . . . but there is nothing to show that his conversation was coercive in manner or content." The defendant further alleged that he was strapped down during the tests, but the court found no evidence that such was the case and that only the ordinary appliances of the "lie detector" were attached.

[Editor's note: This case is unique because the "lie detector" so clearly indicated guilt even though the test was not made until six years after the crime. Another interesting point not alluded to by the court was the defendant's freehand drawing in the confession as to the position of the victim's body after the shooting. Since the shack was destroyed by fire the freehand drawing in the confession was corroborated by the coroner's report of six years before.]

The second case, Frank B. LeFevre v. State of Wisconsin (8 N. W. (2) 288, 1943), took a decidedly different turn. The defendant appealed his conviction for murder and states that on two separate occasions he voluntarily submitted to "lie detector" tests and that prior to each of these tests he signed a stipulation drawn by the District Attorney. These identical agreements in part provided: "It is further stipulated and agreed by and between the said Frank LeFevre and S. Richard Heath (District Attorney) that any fact, matter or thing disclosed by said lie detector examination of said Frank LeFevre and the findings thereon, may be admitted in any trial or preliminary examination before any of the courts of the County of Fond du Lac or State of Wisconsin."

The District Attorney was not satisfied with the results of the first test and two weeks later asked the defendant to submit to another "lie detector" test. The District Attorney was still not satisfied after the second test and the case was tried. The defendant asked that the reports and findings of Professor Mathews and Professor Keeler be admitted as evidence, but the state objected to those parts of the reports containing the findings.

The Supreme Court ruled that the testimony of the "lie detector" experts was properly excluded, but the District Attorney's testimony that the tests were favorable to the defendant came in without objection and therefore was significant. The court reviewed the whole record and decided there was not sufficient evidence to find the defendant guilty beyond a reasonable doubt and directed the accused to be released.

Procedure regarding Admissibility of Admission in the Federal Courts

In the recent case, McNabb v. U. S. (63 Sup. Ct. Rep. 608 (Tenn., 1943) the petitioners appealed from a conviction of second degree murder. It appears the petitioners were engaged in the sale of untaxed whiskey when they were surprised by Federal officers. During the melée that followed, one of the Federal agents was shot but no one could identify the assailant. The petitioners were arrested, brought to Chattanooga and kept in a Federal Building detention room for fourteen hours. The Federal agent in charge of questioning testified that he warned them of their constitutional rights and that in the presence of about six officers, after a twenty-one hour interrogation, preceded by four hours the night before, each of the petitioners made some admissions. These admissions were the crux of the Government case against the petitioners.

Counsel for the defense challenged and appealed the admissibility of the admissions on the ground that the constitution forbade their use by the guarantee of the Fifth Amendment that no person "shall be compelled in any criminal case to be a witness against himself . . . without due process of law."

The United States Supreme Court in an opinion written by Mr. Justice Frankfurter held the admissions were not admissible. The court did not base its conclusion however upon the guarantees of the Fifth Amendment, nor did it find that the admissions were made involuntarily. In substance, the opinion states that a conviction resting solely on admissions secured "prior to the suspects being taken before a committing magistrate" was such a flagrant disregard for proper criminal procedure, that it cannot be made the basis of conviction in the Federal Courts. Mr. Justice Reed dissented on the ground that the established test of only admitting voluntary confessions is adequate and the addition of the requirement of promptly bringing the prisoner before the committing magistrate offers a less clear rule which will not advance civilized standards.