Journal of Criminal Law and Criminology

Volume 34 | Issue 6 Article 11

1944

Police Science Legal Abstracts and Notes

John E. Reid

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

John E. Reid

Expert Testimony—Direction and Sequence of Knife Wounds is Competent Opinion Evidence.

It is in the province of the jury to determine whether a suicide attempt by the accused indicates guilt—Motive is not an essential element in a murder prosecution.

In the recent case of Commonwealth v. Goldenberg (5 N. E. (2) 762, Mass., 1943), defendant was convicted of murdering his female companion. The defense alleged that the crime was committeed by a robber who first struck the defendant on the head rendering him unconscious and then proceeded to kill his companion by an unprovoked assault with a knife. He testified that the robber propelled his assault on the victims from the rear seat in the automobile. There were no definite indications the deceased was the victim of a robbery in that she had valuables in her possession after the assault, nor were there any indications that her person was sexually violated. It is claimed that the court erred in submitting the fact to the jury that the accused tried to commit suicide while awaiting trial. It is further alleged as error that no motive was proven for committing the crime and that the reconstruction of the crime was based on purely circumstantial evidence.

The medical examiner testified that the nine knife wounds on the deceased were delivered by a person who was standing by the open right front door of the automobile and not by a person located in the rear of the automobile. He further testified that the condition of the coagulated blood on the deceased's face indicated that she slumped down into a large quantity of blood which was deposited upon the vacant seat behind the steering wheel and that she died within a few minutes. A physician who examined the accused after the assault stated that in his opinion the defendant was not rendered unconscious by the blow on the head. The medical examiner not only testified as to the direction the wounds were inflicted but as to the sequence of the assault. He stated that in his opinion the seven back wounds were inflicted after the victim was rendered helpless by two previous wounds.

The Supreme Court of Massachusetts affirmed the judgment of the Trial Court and ruled first that although evidence showing motive is always competent and usually important it is not an essential element of the crime; second, that an attempt to commit suicide, like an attempt to escape jail or a flight after the commission of a crimte, may indicate the efforts of a guilty person to avoid punishment and, therefore, it is not error to submit it to a jury for an evaluation as to its weight as evidence. The Court further stated that the opinion evidence given by the medical examiner that the stab wounds could not have been caused by a person sitting in the back seat but must have been inflicted by a person standing outside the door of the automobile was sufficient to take issue of the defendant's guilt to the jury and warrant a conviction.

Confessions are Competent Evidence Only When They are Voluntarily Made.

In the case of People v. Goldblatt (49 N. E. (2) 36 Ill., 1943) defendant was convicted of murder and claims the court erred in admitting his confession because it was obtained by duress. The deceased, a truck driver, was beaten to death, it is alleged, in an altercation resulting from his acquiring some new customers for his company, a cleaning establishment.

The accused had been followed for six months prior to his arrest and then held without charge for three nights and two days during which time he made three conflicting statements of guilt. The defendant testified that he was continually abused, beaten, tortured and mistreated during the time he was in custody and this was corroborated to a certain extent by the testimony of four doctors regarding bruises and discolorations found on the accused's body. The police allege that these injuries were self-inflicted.

The Illinois Supreme Court reversed the decision of the Trial Court and ruled that the confession was involuntarily made and stated that when a prisoner is interrogated during the greater part of three days it seems clear that the accused became convinced that he was bound to make a statement to secure relief from the continuous questioning. The Court cited Chapter 38, paragraph 660 of the Illinois Review Statute: "When an arrest is made without a warrant, either by an officer or a private person, the person arrested shall, without unnecessary delay, be taken before the nearest magistrate in the County who will hear the case for examination and the prisoner shall be examined and dealt with as in cases of arrests upon warrant."

The Court stated that the "principles in this case appear to be in full accord with those contained in the recent decision of the U. S. Supreme Court, McNabb v. U. S. 63 S. Ct. 608."

[Editor's note: This case was decided under the old rule that a confession must be voluntarily given and free from any threats or promises, but the Court seemed to be influenced to some extent by the McNabb decision. The McNabb decision ignored the rule that a confession must be voluntarily given and declared that admission securied "prior to the suspects being taken before a committing magistrate" was a flagrant disregard of criminal procedure and therefore should not be the basis for a conviction in the Federal Courts.]

The Expert Witness

In the December, 1943, issue of the *American Bar Association Journal*, Max W. Ball, consulting petroleum geologist and engineer, presents for the edification of Bench and Bar his reactions to and views on expert witness testimony. This timely and pointed article which ventilates a subject of great importance to the trial lawyer also advances a good outline of the preparation necessary by the expert witness for his day in court.

The first and perhaps most important prerequisite cited by Mr. Ball is that of honesty. The expert must, if he is to preserve his own sense of integrity and at the same time convince judge and jury, believe wholeheartedly in his testimony as it relates to his client's case. The converse of this situation is also true in that the client and attorney should fully acquaint the expert with all the facts. Objectivity in the expert is desired until he has decided the relative merits of his prospective client's case, but there, to quote Mr. Ball, ". . . his detachment should end and he should give everything he honestly can to winning . . . . he should cease to be an observer and become a partisan; unless he does so—unless he makes his client's case his own—he will not be worth his fee. He should not let his partisanship affect his judgment or his perspective, or lead him to distort facts or to draw too favorable conclusions from them—to do so would be a poor service to his client and might lead to disaster in court—but his heart should be in his client's honest success."

Much will be added to the expert's testimony if he makes it his business to delve into the theory of his client's case and then aligns his testimony so that it forges a link in this chain of theory. A word of warning is interjected at this point: "However much he may know or think he knows

about the case, the expert witness should remember that the ultimate responsibility is with the lawyer and that the counsel's word is final as to the conduct of the case." In choosing the expert, thorough knowledge of the subject matter is much more to be desired than a big reputation; however, if the case warrants, wide experience and established reputation is the best investment.

The expert should never forget that his chief function is to clarify in the minds of the judge and jury the facts at issue. He is not addressing his equals nor is he on the lecture platform. A good system for the expert to follow is to put himself in the place of those he is trying to convince and then suit his testimony to their educational and background levels. The use of charts, diagrams, maps, sketches and photographs, so long as they are kept simple, greatly aid effective presentation. Technical terms are necessary and should be used, but only to the extent that they will help the hearers understand the expert's testimony and no more. In relation to use of technical terms Mr. Ball puts forth this rule: ". . . . it is better to describe the thing or concept first and then give the technical term, rather than to use the technical term and then attempt to define it." The expert, however, should never let himself appear to be "talking down." His is a specialized knowledge, "It is his job to pass on . . . . some of his special education . . . . without condescension or mental arrogance."

A summation of the things that a man should require of himself if he goes on the stand as an expert, according to Mr. Ball, are: "Honesty so sincere it will permit no evasion, wholehearted partisanship in his client's cause, interest in every aspect of the case in which he is qualified to be helpful, readiness to abide by the decisions of counsel, such thoroughness of preparation and such ability to put himself in the position of judge, juror or commissioner that he can make his evidence clear to them, and such freedom from condescension or arrogance that he creates friendliness rather than hostility toward his client's case."

RICHARD E. GORMAN.

Chicago Police
Scientific Crime Detection Laboratory