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# Constitutional Law -- Due Process -- Admissibility of Evidence in State Courts Obtained by Invasion of Bodily Integrity

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# NOTES AND COMMENTS

**Constitutional Law—Due Process—Admissibility of Evidence in State Courts Obtained by Invasion of Bodily Integrity**

That the due process clause of the fourteenth amendment of the federal Constitution prohibits the use in state courts of evidence obtained through coerced confessions was first decided in *Brown v. Mississippi*,[1] where three defendants were convicted of murder in a state court solely on the basis of confessions wrung from them by physical torture. In reversing the conviction, the Supreme Court of the United States held that the use of confessions obtained in such a manner was a denial of due process. The Court held four years later that the due process clause was violated when a defendant's confession was obtained after protracted questioning lasting five days and climaxed by an all night session.[2] But protracted questioning alone does not necessarily violate due process, and information thus obtained may be admissible.[3] On the other hand, a confession was found to be coerced where defendant was subjected to psychological humiliation by being kept naked for several hours and put in fear of being tortured.[4] The Court further extended due process protection by excluding a confession obtained by a state employed psychiatrist who extracted the confession from a physically exhausted defendant by subtle, suggestive questioning.[5]

In this line of cases the test used to determine whether the requirements of due process of law had been met was whether or not the conduct of state officers had offended what the Court terms a "sense of justice."[6] Furthermore, the use of a coerced confession may result in

[1] 297 U. S. 278 (1936). For an extensive review of the state court cases through 1948, see Bader, *Coerced Confessions and the Due Process Clause*, 15 BROOKLYN L. REV. 51 (1949).

This Note will only be concerned with cases which have originated in state, as opposed to federal, courts. The self incrimination clause of the fifth amendment of the Constitution prohibits the use in federal courts of evidence obtained through coerced confessions. Bram v. United States, 168 U. S. 532 (1897). However, in later cases arising in federal courts, the Supreme Court has held "involuntary" confessions inadmissible on an evidentiary, rather than constitutional, basis. Upshaw v. United States, 335 U. S. 410 (1948); Adamson v. United States, 318 U. S. 350 (1943); McNabb v. United States, 318 U. S. 332 (1943).

[2] Chambers v. Florida, 309 U. S. 227 (1940).

[3] Lisenba v. California, 314 U. S. 219 (1941).

[4] Malinski v. New York, 324 U. S. 556 (1945).

[5] Leyra v. Denno, 347 U. S. 556 (1954).

[6] Brown v. Mississippi, 297 U. S. 278, 286 (1936). In Leyra v. Denno, 347 U. S. 556 (1954), the Court gives little or no indication of the application of a particular test. After an extensive review of the facts, Mr. Justice Black merely stated: "We hold that the use of confessions extracted in such a manner . . . is not consistent with due process of law as required by our Constitution." *Id.* at 561.

a reversal of conviction even though statements made in the confession be independently established as true[7] or even where other evidence alone would be adequate to sustain a conviction if the Court cannot determine that the verdict was based solely on the admissible evidence.[8]

In 1952, in *Rochin v. California*,[9] the concept of inadmissibility of coerced confessions was broadened to include real, as opposed to verbal, evidence obtained by a flagrant violation of bodily integrity. In this case police officers entered the defendant's home without a warrant and unsuccessfully attempted forcibly to prevent him from swallowing two morphine capsules. The defendant was then handcuffed and taken to a hospital where the capsules were obtained by the forcible use of an emetic solution. The use of this evidence resulted in his conviction in the state court of illegal possession of morphine. Since the Supreme Court was of the view that "to sanction the brutal conduct . . . would be to afford brutality the cloak of law,"[10] the conviction was reversed. The Court could not rely for reversal on the privilege against self incrimination,[11] nor could it rely on the unreasonable search and seizure cases without overruling the well-established *Wolf* case.[12] Thus, in order to condemn such police practice, the Court resorted to the coerced confession type cases.[13] In determining that the *coercion* and *brutality* present here was a violation of due process, the Court used the same nebulous criterion it applied in *Brown v. Mississippi*,[14] *i.e.*, "that convictions cannot be brought about by methods that offend 'a sense of justice,' "[15] and spoke with approval of the lack of well defined limits in determining what constitutes an invasion of human rights.[16]

[7] Watts v. Indiana, 338 U. S. 49, 50 n. 2 (1949), 28 N. C. L. REV. 390 (1950).

[8] Haley v. Ohio, 332 U. S. 596, 606 (1948); Malinski v. New York, 324 U. S. 401, 402 (1945); Lyons v. Oklahoma, 322 U. S. 596, 597 (1944); Note, 40 CALIF. L. REV. 311, 314 (1952). *But see* Stein v. New York, 346 U. S. 156, 189-92 (1953), 32 N. C. L. REV. 98.

[9] 342 U. S. 165 (1952), 30 N. C. L. REV. 287.

[10] 342 U. S. at 173.

[11] Twining v. New Jersey, 211 U. S. 78 (1908). This case held that the fifth amendment's exemption from compulsory self incrimination was not included within the due process clause of the fourteenth amendment. Therefore, abridgment of this privilege by the states constituted no violation of the federal Constitution.

[12] In Wolf v. Colorado, 338 U. S. 25 (1949), the Court, through Mr. Justice Frankfurter, held that the due process clause of the fourteenth amendment included protection of the individual from unwarranted search and seizure, but that the exclusion of evidence thus obtained from a state criminal prosecution was not "an essential ingredient of that right," *id.* at 29, and that the doctrine of excluding such evidence, Weeks v. United States, 232 U. S. 383 (1914), would be limited to federal courts.

[13] "It would be a stultification of the responsibility which the course of constitutional history has cast upon this Court to hold that in order to convict a man the police cannot extract by force what is in his mind but can extract what is in his stomach." Rochin v. California, 342 U. S. 165, 173 (1952).

[14] 297 U. S. 278 (1936).

[15] Rochin v. California, 342 U. S. 165, 173 (1952).

[16] "In dealing not with the machinery of government but with human rights, the absence of formal exactitude, or want of fixity of meaning, is not an unusual or even regrettable attribute of constitutional provisions." *Id.* at 169.

In *Irvine v. California*,[17] an effort was made by the petitioner to extend the *Rochin* rule to evidence obtained by illegal entries into his home. The Court, while finding the officers' conduct reprehensible,[18] held firmly to the principle of *Wolf v. Colorado*,[19] *viz.*, "that in a prosecution 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."[20] In distinguishing *Rochin* from the facts before it, the Court, through Mr. Justice Jackson, stated:

> An effort is made, however, to bring this case under the sway of *Rochin v. California* [Citation omitted]. That case involved, among other things, an illegal search of the defendant's person. But it also presented an element totally lacking here—coercion . . . applied by a physical assault upon his person to compel submission to the use of a stomach pump. This was the feature which led to a result in *Rochin* contrary to that in *Wolf*. Although *Rochin* raised the search-and-seizure question, this Court studiously avoided it and never once mentioned the *Wolf* case. Obviously, it thought that illegal search and seizure alone did not call for reversal. However obnoxious are the facts in the case before us, they do not involve *coercion, violence* or *brutality* to the *person,* but rather a trespass to property, plus eavesdropping.[21] (Emphasis added.)

Another unsuccessful attempt was made recently to have the Supreme Court apply the *Rochin* doctrine, this time to a case involving the making of a blood test. After a motor vehicle collision in which three persons were killed, the defendant driver was suspected of being intoxicated. While he was still unconscious from the accident, a physician in the emergency room at the hospital took a blood sample of defendant upon request of a police officer. On the basis of the results of the blood test, defendant was convicted of involuntary manslaughter. The conviction was affirmed by the United States Supreme Court in *Breithaupt v. Abram*,[22] which held that the admission of the evidence did not violate the due process clause of the fourteenth amendment.

The defendant's primary contention was that a conviction based on evidence obtained from his body without his consent was a violation

[17] 347 U. S. 128 (1954), 33 N. C. L. Rev. 100.
[18] "Few police measures have come to our attention that more flagrantly, deliberately, and persistently violated the fundamental principle declared by the Fourth Amendment . . . ." 347 U. S. at 132.
[19] 338 U. S. 25 (1949).
[20] *Id.* at 33.
[21] Irvine v. California, 347 U. S. 128, 133 (1954).
[22] 352 U. S. 432 (1957).

of due process.[23] The Court rejected the argument that *Breithaupt* was indistinguishable from *Rochin* on the grounds that: (1) Although defendant had not given his consent to the blood test, he had not expressly withheld it;[24] (2) the only person actively engaged in extracting the evidence from the defendant's body was a skilled technician; and (3) the blood test procedure, as opposed to the administration of an emetic solution, is a routine occurrence in the life of almost everyone. Thus, the Court concluded that the action taken against the defendant was "not such conduct that 'shocks the conscience' . . . nor . . . offends a 'sense of justice.' "[25]

In reaching the above conclusion the Court considered the degree of the invasion of bodily integrity as weighed against its justification in the light of the public interest in detection and deterrence of crime. The degree of invasion in the taking of a blood test was found to be less than that in the *Rochin* case where a "stomach pump" was used. The menace to society from drunken driving tends toward vindication of the bodily integrity invasion in the *Breithaupt* case.[26] Public awareness that judicial evidence may be obtained through blood tests is more likely to deter drunken driving than the knowledge that judicial evidence may be acquired by a "stomach pump" is apt to deter the illegal use of narcotics.

An interesting point made by the Court in *Breithaupt* was that due to the proven accuracy of the blood test for determining intoxication, its judicial use will prevent the sober defendant-driver from being the victim of unreliable lay testimony. For this reason, it would seem that the Court has wisely excluded real evidence taken from the defendant's body only when there has been coercion coupled with brutality, while still excluding verbal confessions extracted by subtle, non-violent, yet coercive means.[27] Involuntary verbal confessions, whether obtained by physical or psychological coercion, may well be forced from the innocent,

[23] *Id.* at 435. Defendant further contended that the use of the evidence constituted an unreasonable search and seizure and also violated the privilege against self incrimination. These arguments were summarily dismissed by the Court on the authority of Wolf v. Colorado, 338 U. S. 25 (1949), and Twining v. New Jersey, 211 U. S. 78 (1908). See notes 11 and 12 *supra.*

[24] For an argument that this point was not pertinent, see Chief Justice Warren's dissent. Breithaupt v. Abram, 352 U. S. 432, 440 (1957).

[25] *Id.* at 437.

[26] "The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield." *Id.* at 439.

To be sure, the curbing of the traffic in dope (*Rochin*) is as meritorious as the reduction of traffic deaths due to intoxicated drivers, but the universality of the latter problem makes it of primary public concern. But see the dissent of Chief Justice Warren. *Id.* at 440.

[27] Leyra v. Denno, 347 U. S. 556 (1954); Haley v. Ohio, 332 U. S. 596 (1948); Malinski v. New York, 324 U. S. 401 (1945); Ashcraft v. Tennessee, 322 U. S. 143 (1944).

while real evidence such as a blood test would seem to speak for itself.

From the foregoing, it appears that real evidence obtained by an invasion of bodily integrity may be found inadmissible in state criminal prosecutions as a violation of due process only if the obtaining of the evidence is accompanied by brutality and coercion.[28] However, this exclusionary principle will be limited to evidence acquired from the body and will not be extended to evidence procured by an unreasonable search and seizure no matter how great the trespass of the close.[29] Moreover, the Court, in determining whether such conduct "shocks the conscience," apparently will consider the importance of detection and deterrence of the particular crime as against the degree of the invasion of bodily integrity.[30]

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**Criminal Law—Trial De Novo—Power of Superior Court to Amend Warrant**

In a recent case[1] the North Carolina Supreme Court held that when warrants upon which defendants were convicted in a municipal county court were amended in the superior court so as to charge a trespass on property of a person other than the person named in the original warrant, the court substituted one criminal charge for another. Since on the appeal the defendants could only be tried for the crime for which they were convicted in the lower court, the judgment on the amended warrant was arrested.

The decision in this case raises the question of the power of the superior court to allow amendments to warrants upon which defendants were convicted in a lower court. As a general rule, upon appeal from a court of inferior jurisdiction, the defendant is granted a trial de novo in the superior court.[2] The state may then try the defendant on the original warrant[3] or by indictment charging the same offense of which he was convicted in the lower court.[4]

As to the power of the superior court to allow amendments to proceedings begun before an inferior court, it is provided by statute that "the court in which any such action shall be pending shall have power to amend any warrant, process, pleading or proceeding in such action, either in form or substance, for the furtherance of justice, on such terms

[28] Rochin v. California, 342 U. S. 165 (1952), as limited by Breithaupt v. Abram, 352 U. S. 432 (1957).
[29] Irvine v. California, 347 U. S. 128 (1954).
[30] Breithaupt v. Abram, 352 U. S. 432 (1957).

[1] State v. Cooke, 246 N. C. 518, 98 S. E. 2d 885 (1957).
[2] State v. Goff, 205 N. C. 545, 172 S. E. 407 (1934).
[3] State v. Thomas, 236 N. C. 454, 73 S. E. 2d 283 (1952).
[4] State v. Wilson, 227 N. C. 43, 40 S. E. 2d 449 (1946).