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Constitutional Law--Constitutionality of the Hit-and-Run Drivers' Act

RECENT CASE NOTES

Constitutional Law—Constitutionality of the Hit-and-Run Drivers' Act. The defendant, while driving an automobile in Indianapolis, struck and hit one John Batkin, who died from the injuries received. Defendant was then indicted on the ground that he unlawfully and feloniously failed to stop his automobile and render and offer assistance to Batkin; that he failed to report the accident to any police officer, peace officer, or police station, and he failed to give his name, address, and license number of his car. The indictment was in harmony with the Hit-and-Run Drivers' Act, which in substance requires a person to stop immediately after the accident and give his name, address, and license number to the person injured or to the police. The defendant filed a motion to quash the indictment, which was overruled. He was tried and found guilty, sentenced to imprisonment for one year, and fined one hundred dollars. He thereupon appealed to the Supreme Court. Some of his contentions were that the act is in conflict with Section 14, Article 1, of the Indiana Constitution, which guarantees immunity from double jeopardy and self-crimination; that it violates the Thirteenth Amendment of the Federal Constitution as authorizing involuntary servitude; and also that the act is unconstitutional for the reason that it requires his services without just compensation. Held, the act did not contravene the defendant's constitutional rights.[1]

The old common-law maxim, nemo tenetur seipsum prodere, that no man is bound to accuse himself of any crime, is founded in great principles of constitutional right and was not only settled in early times in England but was brought by our ancestors to America as part of their birthright.[2] The Constitution of the United States, as well as those of practically all of the

39 (1880), 69 Ind. 505.
40 Kettleborough, Constitution Making in Indiana, Vol. II, pp. 620-629.
1 Ule v. State (1935), 194 N. E. 140 (Inc.).
2 Marshall v. Riley (1849), 7 Ga. 367.

states, contain guaranties against self-crimination. Compulsion is the keynote of the prohibition, and to render evidence inadmissible on the ground that the defendant was compelled to produce it against himself, it must appear that such compulsion was used as to rob him of volition in the matter.[3] But whether the various compulsory acts themselves produce self-crimination is a matter of some conjecture among the courts. There is a line of decisions which holds that it is error to compel the defendant to submit to a comparison of footprints,[4] while on the other hand there are decisions to the contrary.[5] Some courts do not compel the defendant to submit to an examination of his person, or compel him to exhibit to the jury marks, scars, or other physical deformities,[6] while a few courts have been inclined to reach an opposite result.[7] The first line of cases proceed upon the theory that the constitutional prohibition applies to acts as well as words. Hence, to compel a person to exhibit himself for the sake of identification, or for any other purpose which tends or may tend to aid the prosecution in securing a conviction, is in direct conflict with his constitutional privilege. The fundamental concept back of the privilege is to protect a person from being compelled to give evidence that will directly criminate him or will furnish a link in a chain of evidence that will produce the same result. Logic would seem to require that the privilege be extended to protect the accused from compulsory acts as well as from compulsory utterance to any fact by word or pen.

Though the act at bar was never before constitutionally tested by the Indiana Supreme Court, other state courts have long before been confronted with the identical problem. The overwhelming weight of authority supports the present case.[8] It is argued in some of the cases that to compel a driver to identify himself after having injured another person is to compel such driver to criminate himself. Every accident, of course, does not necessarily mean that the driver has been guilty of some crime, but at the same time many of the accidents do give rise to criminal offenses. So where the driver has been guilty of culpable negligence, he may be subject to a prosecution of manslaughter. The public prosecutor must prove as a prerequisite to a lawful conviction the identity of the person prosecuted with the person causing the injury. It is then urged that the identity of the driver furnishes a definite link in the chain of evidence against him. This line of argument, though it has technical merit, is untenable. As pointed out in the Ex parte Kneedler case,[9] the statute does not make the accident a crime. A criminal prosecution for culpability in causing the accident must necessarily arise from some other statute. It is true that the identity of the driver may furnish a definite link in a chain of evidence that may tend to convict him of reckless

[3] Eaker v. State (1908), 4 Ga. A. 649, 62 S. E. 99.

[4] Stokes v. State (1875), 5 Baxt. (Tenn.) 619; Blackwell v. State (1894), 67 Ga. 76, 44 Am. Rep. 717; People v. Mead (1883), 50 Mich. 228, 15 N. W. 95; State v. Heigh (1902), 117 Iowa 650, 91 N. W. 935.

[5] State v. Thompson (1912), 161 N. C. 238, 76 S. E. 249; State v. Ah Chuey (1879), 14 Nev. 79, 33 Am. Rep. 530; State v. Johnson (1872), 67 N. C. 55; Pitts v. State (1910), 60 Texas Cr. 524, 132 S. W. 801.

[6] State v. Jones (1900), 153 Mo. 457, 55 S. W. 80; State v. Miller (1905), 71 N. J. Law 527, 60 A. 202; Davis v. State (1902), 131 Ala. 101, 31 So. 569; People v. Mead (1883), 50 Mich. 228, 15 N. W. 95; Union Pacific Ry. v. Batsford (1890), 141 U. S. 250, 11 S. Ct. 1000.

[7] State v. Johnson (1872), 67 N. C. 55; State v. Ah Chuey (1879), 14 Nev. 79, 33 Am. Rep. 530; Holt v. U. S. (1910), 218 U. S. 245, 31 S. Ct. 2.

[8] Woods v. State (1916), 15 Ala. App. 251, 73 So. 129; State v. Razey (1929), 129 Kan. 328, 282 Pac. 755; Ex Parte Kneedler (1912), 243 Mo. 632, 147 S. W. 983; People v. Rosenheimer (1913), 209 N. Y. 115, 102 N. E. 530; People v. Diller (1914), 24 Cal. App. 799, 142 Pac. 797; State v. Sterrin (1916), 78 N. H. 220, 98 Atl. 482; Stalling v. State (1922), 92 Texas Crim. Rep. 354, 243 S. W. 990.

[9] Ex Parte Kneedler (1912), 243 Mo. 632, 147 S. W. 983.

driving, yet if this is to be taken as a valid objection, then to require the driver to register his automobile and name before he can drive upon the highway is also unconstitutional. The validity of the latter requirement is beyond argument.

The legislature, in the exercise of its police power, may enact statutes for the preservation of public safety, health or morals which may sometimes impinge upon the liberty of individuals by restricting their use of their property or abridging their freedom in the conduct of their business.[10] The courts in their discretion must balance the social interest that is attempted to be protected by a statute against the delimitation of some personal or property right. In a general way, it may be said that the state's police power extends to all of the great public needs. It may be put forward in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Since motor vehicles have become a common means of travel upon the highways, then certain restrictions in the use of the highway must become paramount over many former private rights and privileges. It is to be realized that a person's constitutional guaranty against self-crimination is a privilege and not an absolute right. The defendant may exercise his privilege or he may waive it. If he chooses to waive it and takes the witness stand in his own behalf, he cannot thereafter reclaim the privilege.[11] The use of the highways is a privilege and not a right.[12] It has been said that the legislature may prohibit altogether the use of motor vehicles upon the highways or streets of the state.[13] The orthodox view that the state may grant upon condition that which it might withhold is the keynote for the constitutionality of the statute at bar. But whether the legislature has this power or not, it is essential that a person, in the exercise of his privilege, must use the highway not inconsistent with the equal rights of others.[14] Thus the state gives to a person the privilege of using its highways which he is at liberty to accept or reject. But having once accepted, he cannot be heard to object to conditions which have been attached thereto.[15] The conditions attached to a privilege are as important as the privilege itself, and to separate them by granting the privilege devoid of the condition would be the twisting of legislative intent, which the courts are not prone to do. If, then, the driver does furnish a link in a chain of evidence against himself by giving his name, he has no grounds for complaint. He has waived his privilege against self-crimination in this respect, for he has chosen to use the highways. He has given up one privilege in barter for another.

In grasping for legal loopholes, the defendant brought into play the Thirteenth Amendment of the Federal Constitution. It was pointed out that to require the defendant to render assistance was to create involuntary servitude and not as a punishment for a crime. Little need to be said on this point. The principal case very ably brought out the fallacy in such an argument. The leading purpose of this amendment was to effect the abolition of African slavery in the United States.[16] Thus the courts have given the word "slavery," as used in the amendment, a philosophical meaning, and have consistently held that it does not include such reasonable regulations as

[10] Black, Interpretation of Laws, Sec. ed., page 482.
[11] Brown v. Walker (1895), 161 U. S. 591, 40 L. ed. 819; Greenl. Ev., para. 451.
[12] Commonwealth v. Kingsbury (1908), 199 Mass. 542, 85 N. E. 848.
[13] State v. Mayo (1909), 16 Me. 62, 75 Atl. 295.
[14] People v. Rosenheimer (1913), 209 N. Y. 115, 102 N. E. 530.
[15] State v. Corron (1905), 73 N. H. 434, 62 Atl. 1044; State v. Sterrin (1916), 78 N. H. 220, 98 Atl. 482.
[16] Civil Right Cases (1883), 109 U. S. 3, 27 L. ed. 835; Butchers' Benevolent Association v. Crescent City Livestock Landing, etc., Co. (1872), 16 Wall. 36, 21 L. ed. 394.

the state may impose upon individuals in order to establish decent social control.[17] It follows that the purpose of the amendment was not to destroy the state by depriving it of essential powers.[18] The requirement in the statute is an important police regulation and the courts have not hesitated to recognize it as such. The magnitude of the social interest on one side so completely outweighs the private rights involved, that the courts find no difficulty whatever in overruling such a contention. And, as already pointed out, one has only a privilege granted by the state to use the highway, and if he is to exercise this privilege, he must acquiesce in the conditions attached thereto.

Article 1, Paragraph 21, of the Constitution of Indiana, which provides that "No man's particular services shall be demanded without just compensation," is not a restraint upon the state's police power. In pointing this out, the principal case cites the case of State v. Richcreek.[19] It is true that the taking of private property or of personal service for a public use is an exercise of eminent domain for which the state must pay compensation. But the requirement at hand is not the exercise of the right of eminent domain; it is the exercise of the state's police power. As such, no compensation is called for, although the exercise of the latter power may injure or destroy a business, decrease the value of property, impose inconvenience or loss upon individuals, or subject them to economic restraint or burdens.[20]

Regardless of the fact that the case at bar is the initial one in Indiana on the points involved, it would have indeed been a rare phenomenon if the court had reached a contrary result. In light of the many decisions on similar cases which have been handed down by other courts, the issues in the present case were perhaps dead before they were tried. L. E. B.

Constitutional Law—Due Process—The Known Use of Perjured Testimony by the Prosecution Not an Orderly Course of Procedure. Petitioner seeks an original writ of habeas corpus. He states that he is unlawfully restrained of his liberty under a commitment pursuant to a conviction, in February, 1917, of murder in the first degree and sentence of death, later commuted to life imprisonment. Petitioner charges that the state holds him in confinement without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. The grounds of his charge are that the sole basis of his conviction was perjured testimony which was knowingly used by the prosecuting authorities in order to obtain that conviction, and also that these authorities deliberately suppressed evidence which would have impeached and refuted the testimony thus given against him. He alleges that he could not by the exercise of reasonable diligence have discovered, prior to the denial of his motion for a new trial and his appeal to the state Supreme Court, the evidence which was subsequently developed and which proved the testimony against him to have been perjured. Held, the known use of perjured testimony and suppression of testimony which would refute the perjured testimony, by the prosecuting authorities of a state in a criminal trial, violates the constitutional guaranty that no person shall be deprived of his life, liberty or property without due process

[17] Butler v. Perry (1916), 240 U. S. 328, 60 L. ed. 672.

[18] Slaughter House Cases (1872), 16 Wall. 36; Plessy v. Ferguson (1896), 163 U. S. 537.

[19] State v. Richcreek (1906), 167 Ind. 217, 77 N. E. 1085.

[20] State v. Jacobson (1916), 80 Or. 648, 157 Pac. 1108; Fougera v. N. Y. (1917), 166 N. Y. S. 248, 178 App. Div. 824; Haller Sign Works v. Physical Culture Training School (1911), 249 Ill. 436, 94 N. E. 920.