HIGH COURT BACKS DRIVER BLOOD TEST FOR DRUNKENNESS

Holds Use of Compulsion by Police Does Not Violate the Fifth Amendment

Excerpts from court opinion are printed on Page 28.

Special to The New York Times

WASHINGTON, June 20—The Fifth Amendment's privilege against self-incrimination does not permit a driver to balk at giving a sample of his blood for a test to determine if he is drunk, the Supreme Court ruled today. The Court's vote was 5 to 4.

In the majority opinion, written by Justice William J. Brennan Jr., the Court declared that the Fifth Amendment protected an accused person only from giving "testimonial or communicative" evidence that could be used against him.

The decision apparently laid to rest speculation that the Court's decision last Monday extending the privilege against self-incrimination to all persons in police custody might rule out many police practices that use the suspect himself in building the prosecution's case.

Court's Term Ends

Today's ruling was handed down during the Court's last session of its 1965-66 term. It is to open its next term in October.

The decision was consistent with recent Supreme Court rulings urging law-enforcement agencies to develop and use scientific methods of crime detection, so that less reliance will have to be placed on confessions.

However, Justice Brennan said some scientific crime-detection devices might be unconstitutional because they caused the accused to respond in ways that were essentially testimonial. He mentioned lie-detector tests that measure changes in body functions in response to questions.

The case in which the decision was issued concerned Armando Schmerber of Los Angeles, who was convicted in 1964 of drunken driving on the basis of a blood sample that showed a blood-alcohol level of 0.18 per cent. California — and most other states—consider 0.15 per cent as presumptive proof of drunkenness.

Refused Breath Test

Hospitalized for injuries suffered in an automobile accident, Mr. Schmerber refused to take a breath-analysis test to determine alcohol consumption. He objected also to a blood test, saying his lawyer had advised him against it; but he agreed to let a physician withdraw a blood sample under protest.

He was subsequently given a 30-day jail term and a $250 fine.

The Supreme Court had upheld the constitutionality of an identical blood test in 1957. However, this ruling was placed in doubt in 1964 when the Supreme Court ruled that the Fifth Amendment's self-incrimination rule was binding on the states.

Justice Brennan wrote today

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The New York Times
Published: June 21, 1966

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that "compulsion which makes a suspect or accused the source of 'real or physical evidence'" did not violate the self-incrimination rule.

He made it clear that arrested persons might be required by the police to submit to fingerprinting, photographing or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk or to make a gesture.

The Fourth Amendment's guarantee against unreasonable searches and seizures applies to blood tests, and under certain circumstances an officer would have to obtain a search warrant before he could obtain the blood.

But in the case under consideration, where the evidence might have been lost as the alcohol was being absorbed into the body, a warrant was unnecessary, Justice Brennan said.

The four others in the majority today were Justices Tom C. Clark, John M. Harlan, Potter Stewart and Byron D. White.

In a dissent, Justice Hugo L. Black said that "it is a strange hierarchy of values that allows the state to extract a human being's blood to convict him of a crime because of the blood's content but proscribes compelled production of his lifeless papers."

Also dissenting were Chief Justice Earl Warren and Justices William O. Douglas and Abe Fortas.

Thomas M. McGurrin of Beverly Hills, Calif., argued for Mr. Schmerber. Edward L. Davenport, Assistant City Attorney of Los Angeles, argued for the state.

The New York Times
Published: June 21, 1966