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Attorney's Right to Inspect Motor Vehicle Accident Reports - Pressman v. Elgin

ATTORNEY'S RIGHT TO INSPECT MOTOR VEHICLE ACCIDENT REPORTS

Pressman v. Elgin[1]

Petitioner-appellant, a member of the Bar, brought the present mandamus proceeding against defendant-appellee, the State Commissioner of Motor Vehicles, to compel the latter to keep open for public inspection the reports of motor vehicle accidents received by him. The trial court denied the petition but, on appeal, the Court of Appeals reversed and held the petitioner entitled to inspect the records, subject to necessary amendment as to the scope of his request.[2]

The Court held that the older provision of the Motor Vehicle law[3] which required the Commissioner to permit public inspection of all statements filed with him prevailed over the later provision of the Financial Responsibility Act,[4] which merely provided that the compulsory reports required of motorists concerning accidents should not be admissible in evidence, nor otherwise referred to, in any damage suit litigation concerning the accident reported.

The decision in the principal case suggests some interesting considerations of the ideas of policy underlying the

[20] *Supra*, n. 9.

[1] 50 A. 2d 560 (Md. 1947).

[2] Petitioner was held entitled to inspect only the public records on file at the time of the granting of the prayer, whereas his petition included those thereafter to be filed, 50 A. 2d 560, 564.

[3] Md. Code Supp. (1943) Art. 66½, Sec. 12, formerly Md. Code (1939) Art. 56, Sec. 149.

[4] Md. Laws 1945, Ch. 456, Art. 66½, Secs. 10A, 10H.

various rules of evidence which are concerned. Let us first consider, in order to provide a background, (A) the general law as to the accessibility of official records to public inspection, (B) the established media of proving them in court if made accessible and if admissible in evidence when so made, and (C) by what evidential basis these compulsory reports from motorists might be admissible in evidence, were it not so that the statute specifically forbids such more extensive use of them than was herein sought.

In general, but for specific rules of privilege stemming from the common or statute law, official records are held to be open to public inspection.[5] In fact, the older statutory provision here involved specifically reiterated that proposition, so that the particular point was whether the later one, privileging the reports from use in evidence, also repealed the right of inspection.

When an official record is both open to public inspection and admissible in evidence the traditional method of proving it in litigation is by a properly certified copy, unless it be a record of the same court, in which case the original record is exhibited, or from an agency not having a seal, in which case production and proof of the original, if possible, or testimony of a witness as to its contents must be used.[6] In fact, there is some authority that a certified copy must be used, at least for the records of another court than the sitting one, possibly for any agency having power to certify, so that the originals thereof, or private copies made by witnesses may not be used. But it is not the purpose of this note directly to go into the details of the above problems.

Finally, the question arises, how is it that these compulsory reports by motorists would be admissible in evidence, if made accessible and if not privileged, when properly proved by whatever device was appropriate? What of the hearsay rule? But for the explicit statutory privilege, such reports could be offered in evidence by the reporting motorist's adversary on the basis of their constituting evidential admissions. Thus, the hearsay rule objection would be surmounted under that principle, just as

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[5] There is a full discussion of the right of the public to inspect official records in 45 Am. Jur., Records and Recording Laws, Secs. 14-27. And see also 60 A. L. R. 1356 (Enforceability by mandamus of right to inspect public records); 102 A. L. R. 756 (Right to examine records or documents of municipality relating to public utility conducted by it); 108 A. L. R. 1395 (Right to examine and copy automobile records).

[6] Hahn v. State, 52 A. 2d 113 (Md. 1947).

for any statement of one's adversary offered as an admission.[7]

But for this specific privilege there would be no objection to the use of such statements as admissions merely because of the compulsory nature of making them. The normal rule is that compulsion or duress is no obstacle to the admissibility of any evidential admission,[8] save in the sole instance of a formal confession of guilt offered against a criminal defendant.[9] Save for confessions, the objection of duress is thought only to go to the weight rather than the admissibility of the admission. The exceptional rule for confessions by the traverser is to be explained by the greater than usual damaging effect of such a complete admission.[10]

Despite the general rule that there is no objection, based on compulsion, to the admissibility of a casual admission, some specific rules, usually statutory, have been provided in order to privilege statements or reports made under compulsion. These must be distinguished from the impact of the privilege against self-incrimination, which, when applicable, privileges against making the statements at all, rather than against their use, if made.[11]

A first type is the one in the pending case, whereby the citizen is required to report something probably not incriminating, but is protected against the court room use of what he does report. The policy of this is to encourage him to be as complete and accurate as he might be, without fear of being unduly damaged by the use of his report against him in litigation.

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[7] 4 WIGMORE, EVIDENCE (3rd ed. 1940) Sec. 1048.

[8] 4 WIGMORE, EVIDENCE (3rd ed. 1940) Secs. 815, 1050.

[9] *Ibid.*

[10] This distinction between formal confessions and casual admissions leads to neat points of distinction, as in People v. Wynekoop, 359 Ill. 124, 194 N. E. 276 (1934), where the prosecution was allowed to prove a formal statement taken from the accused, without a preliminary hearing as to its voluntariness, as would have been necessary for a confession, which statement by itself exculpated the accused but which was offered by the State along with other inconsistent ones as showing an attempt to fabricate as to the cause of the victim's death.

[11] *Cf.* Md. Code (1939) Art. 35, Sec. 4 which provides that in all criminal cases the party accused is not to be a witness unless he so requests and that "the neglect or refusal of any such person to testify shall not create any presumptions against him"; and Art. 35, Sec. 7, apparently broader, for it stipulates that "In the trial of any civil suit, action or proceeding, no evidence shall be admissible to prove that any party thereto neglected or refused to testify in any criminal proceeding involving the same transaction, occurrence or subject matter." These differ from the privilege not to testify or answer in that such privilege prevents the witness from having to make a statement that might constitute a personal admission, where the statutes protect against the claim of the privilege being showable as an admission by conduct, i. e., by the suppression of evidence.

A second type frequently does just the opposite of what the Court ruled to be the law concerning motor vehicle reports. It may be required for the recipient to keep the information confidential and away from public scrutiny except where necessary to be used in litigation.[12] This method may be more appropriate for trade secrets and the like, where it is recognized that the public interest in valid decision of court cases provides the only reason for breaching the confidence.

A third type has more to do with the privilege against self-incrimination, and the problem of relaxing that privilege, in order to compel an implicated person to testify against others also guilty. For example, the Maryland Liquor laws, which punish both the bartender, who sells to a minor, and the minor who buys, provide that a minor may be compelled to testify against the bartender on the latter's trial, but that his testimony may not be used against him if he is himself later tried.[13] There is some doubt of the constitutionality of this type of provision, and some authority that nothing short of complete immunity from prosecution will suffice to make this compulsion constitutional.[14] Such complete immunity has been provided by Maryland statutes applicable to gambling,[15] conspiracy,[16] and other crimes.[17]

In fact, some doubt on this score has been thrown on the compulsion of reports of accidents from motorists, as well as on the compulsory disclosure of name and address at the scene of an accident, but there is case law[18] upholding the constitutionality of such requirements, and no such question seems to have been raised about the Maryland requirements of this sort.[19]

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[12] Md. Code (1939) Art. 11, Sec. 23 so provides for confidential information obtained by the Bank Commissioner and his staff.

[13] Md. Code (1939) Art. 56, Sec. 93. See also Md. Code (1939) Art. 75, Sec. 149.

[14] 8 WIGMORE, EVIDENCE (3rd ed. 1940) Sec. 2283.

[15] Md. Code (1939) Art. 27, Sec. 304.

[16] Md. Code (1939) Art. 27, Sec. 43.

[17] See Md. Code (1939) Art. 27, Sec. 27, dealing with bribery and Art. 27, Sec. 420, dealing with lotteries. Consider also Md. Code (1939) Art. 1A, Sec. 18; *ibid.* Art. 48A, Secs. 42, 45, 228, and *ibid.* Art. 101, Sec. 7.

[18] Ule v. State, 208 Ind. 255, 194 N. E. 140 (1935); Ex parte Kneedler, 243 Mo. 632, 147 S. W. 983 (1912); State v. Sterrin, 78 N. H. 220, 98 Atl. 482 (1916); People v. Rosenheimer, 128 N. Y. Supp. 1093, 130 N. Y. Supp. 544, 209 N. Y. 115, 102 N. E. 530 (1913).

[19] However, compare the cases of Downs v. Swann, 111 Md. 53, 73 Atl. 653 (1909) where the Court of Appeals held that the Police Commissioner of Baltimore City may photograph and measure a person charged with a felony before he is tried but cannot put his photograph in the rogues' gallery unless he has been convicted; and the case of Allen v. State, 183

An earlier Maryland case having to do with the usability in evidence of compulsory reports of accidents was *Weissman v. Hokamp.*[20] This case might be relevant in connection with an incidental problem not before the Court in the principal one. It involved the admissibility in evidence of a compulsory report by a taxi-cab driver, which report was required both under the Public Service Commission law,[21] and another older provision of the motor vehicle law,[22] (still in force as slightly changed in the meanwhile)[23] both of which called for reports of accidents. The Public Service Commission section specifically privileged the report from use in evidence, but the motor vehicle law section did not. The Court found no error in allowing its use because, even though privileged by the former law, it was permissible to be used under the latter.

Inasmuch as the latter section was apparently not repealed[24] by the Financial Responsibility Act, it might be remarked, by the principle of the above case, that any report now made, and required to be made, both[25] under the old provision and the Financial Responsibility Section would, therefore, be admissible, despite the Financial Responsibility provision's attempt to privilege such report from use in evidence.

Be that as it may, the doctrine of the principal case concerning the privilege of parties, or their counsel, of inspecting the records for whatever clues they can obtain, seems a sound one. It is inevitable that some public use will be made of such reports, at least, by the Commissioner in directing whether to revoke a license, and it would be ludicrous to deprive adverse parties of such sources of information as they might obtain. It seems a sufficient guaranty to the reporting motorist that he shall be immune

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Md. 603, 39 A. 2d 820 (1944) which held that a defendant in a criminal case could not be required to try on a hat found at the scene of the crime and concededly worn by the culprit, in order to prove his ownership of it.

[20] 171 Md. 197, 188 A. 923 (1936).

[21] Md. Code (1939) Art. 23, Sec. 380.

[22] Md. Code (1939) Art. 56, Sec. 198.

[23] Md. Laws 1943, Ch. 1007 repealed Art. 56, Secs. 145-239A. Whereas Art. 56, Sec. 198 had required reports of all accidents resulting in injury to any person, Md. Laws 1943, Ch. 1007, Sec. 150 (Md. Code Supp., Art. 66½, Sec. 150) required reports of accidents resulting in total property damage to an apparent extent of $100 or more as well as those resulting in personal injury or death.

[24] Unless, as might be, the doctrine of implied repeal be applied, in which case the speculation in the text is irrelevant. .

[25] Under Md. Laws 1945, Ch. 456, Sec. 110A reports of accidents must be made where there is death or injury, or property damage in excess of $50 is sustained by any one person. Thus, save for property damage only between $50 and $100, all reports come under both laws.

from the greater damage from having his report offered against him in the court room. But it does not seem necessary to go further and protect him against his adversary's locating such otherwise admissible evidence as he might, if he is to have the benefit of inspecting the compulsory report.

The rule of the principal case that permits inspection, even if it is not permitted to offer the report in evidence against the reporting motorist, achieves in substance a species of discovery practice, and merely adds another technique of that useful procedure.[26]

The upshot of the situation under the Court's ruling is to assimilate the matter to the rule which prevails both in State and Federal courts concerning evidence obtained illegally, or by unconstitutional search and seizure. In State misdemeanor cases under the Bouse Act,[27] and in all Federal criminal cases, under the doctrine of the *Weeks* case,[28] evidence obtained by illegal search and seizure cannot be used as evidence in court.[29] So it is with the compulsory motorist's report under the Financial Responsibility Act.

But the State and Government are permitted to pursue their clues they obtain from the evidence they may have wrongfully seized and to offer any admissible evidence they can locate. So it is that under the doctrine of this case the motorist's adversary is privileged to obtain clues from the compulsory report, and to offer such admissible evidence other than the report as he may be able to obtain after inspecting the report itself.

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[26] The difference is, of course, that typical discovery relates to compulsory disclosure by the adversary of something in his control.

[27] Md. Code (1939) Art. 35, Sec. 5.

[28] Weeks v. United States, 232 U. S. 383, 58 L. Ed. 652, 34 Sup. Ct. Rep. 341 (1914).

[29] The difference is that, under the Federal practice, the evidence illegally obtained is suppressed by pre-trial motion for its return, and under the State practice it is merely made inadmissible if and when offered at trial, Sugarman v. State, 173 Md. 52, 195 A. 324 (1937), noted (1938) 2 Md. L. Rev. 147; and State v. Mariana, 174 Md. 85, 197 A. 620 (1938), noted (1940) 4 Md. L. Rev. 303.