

Recent Decisions

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Constitutional Law — Psychological Coercion Held To Void Confessions Obtained By Long Questioning Of Unrepresented Mental Defective. *Fikes v. State of Alabama*, 352 U. S. 191 (1957). Defendant, a negro of very low mentality and of a highly suggestible nature, was apprehended by private citizens in a white neighborhood during a rape scare. He was turned over to the police who intermittently questioned him at sessions of from two to three hours each, though these sessions were spaced well apart. On some days only one session was held while on other days there were both morning and afternoon sessions. Two days after his arrest, defendant was taken to the state prison and placed in solitary confinement and held there incommunicado, except for the questionings, until the confessions were obtained. After four days there, defendant confessed to burglary with intent to commit rape, his confession being mostly in the form of yes and no answers to questions, some of which were quite leading or suggestive. Five days after the first confession was obtained, a second confession was obtained in the same form. On the basis of these two confessions, the defendant was tried, convicted, and sentenced to death, and the Supreme Court of Alabama affirmed the decision. On appeal, the Supreme Court of the United States reversed. Though there was no evidence of physical brutality, in view of defendant's mental deficiency, the circumstances preceding the confessions amounted to psychological coercion, and therefore the use of the confessions was a denial of due process.

Although not specifically referring to "psychological coercion", the Maryland Court of Appeals in the case of *Driver v. State*, 201 Md. 25, 29, 92 A. 2d 570 (1952), in affirming the admission of a confession, said "the systematic persistence of interrogation, the length of the periods of questioning, the failure of the police to advise the prisoner of his rights, *the absence of counsel or friends, and the character of the prisoner* are circumstances that may be considered by the trial court in determining whether the accused was deprived of due process of law". (Italics added.) See also *Grammer v. State*, 203 Md. 200, 218, 100 A. 2d 257 (1953), for a good statement of the general Maryland rule that a confession must be obtained without force, coercion, or hope or promise held out as inducement.

Constitutional Law — Use Tax Collected From Foreign Corporation On Local Sales By Solicitors On Commission. *Topps Garment Corp. v. State*, 212 Md. 23, 128 A. 2d 595 (1957). Appellant, an Indiana corporation having no place of business in Maryland, sold its products to Maryland purchasers through solicitors. The solicitor received an order from a purchaser, retained the deposit on the purchase price as his commission, and then sent the order, on the appellant's order-blank, to the appellant who had the option of accepting or rejecting it. If it was accepted, the goods were mailed directly to the purchaser. The solicitors were neither on the appellant's payroll nor under its supervision. In 1954, the Maryland Comptroller, under Md. Code (1951), Article 81 [Sections 368(b) and (k), 369, and 371], which imposes a duty on corporations engaged in doing business in this state to collect a use tax, assessed the appellant \$3,065, which went unheeded. An attachment was then issued against a Maryland creditor in which the garnishee admitted a debt owing to the appellant. On appeal from a judgment for the state and judgment of condemnation in favor of the state, the Court of Appeals affirmed. Even though the solicitors were independent contractors and not servants of the appellant, their activities caused a stream of goods to flow into Maryland which created such competition between the company, in whose behalf they were acting, and Maryland merchants, that the company must be considered equivalent to a local merchant. A tax on such activities is not contrary to the "fair and orderly" administration of the laws which is insured by the due process clause of the Fourteenth Amendment to the Federal Constitution. The tax is also not void under the Commerce Clause because the Commerce Clause does not absolutely prevent the levying of state taxes which may have some incidental effect on interstate commerce.

Although in *Miller Bros. v. State of Md.*, 347 U. S. 340 (1954), noted 14 Md. L. Rev. 376 (1954), the Supreme Court in a 5-4 decision overruling the Maryland Court of Appeals said that the statute requiring a foreign merchant to collect and remit a use tax to the state was contrary to due process, the circumstances and the extent of corporate activity was different from the present case. In that case, the corporate activity in Maryland consisted only of advertising in Delaware newspapers and on Delaware radio stations which happened to reach Maryland residents, plus an occasional circular sent to all its customers including Maryland residents. This type of activity did not create an

invasion of Maryland consumer markets and was not taxable. There is a wide gulf between this type of contact and that of the foreign corporation in *General Trading Co. v. Tax Commission*, 322 U. S. 335 (1944), cited as authority by the Maryland court in the present case, where the Supreme Court upheld the Iowa use tax on facts analogous to the present case. To the same effect, see *Thompson v. Rhodes-Jennings Furniture Co. etc.*, 223 Ark. 705, 268 S. W. 2d 376 (1954), *cert. den.* 348 U. S. 872 (1954), discussed Summary of October, 1953 Term, 74 S. Ct. 192, 194 (1954).

Criminal Law — Appeal Of Escaped Defendant Dismissed. *Ramsey v. State*, 212 Ga. 793, 96 S. E. 2d 250 (1957). Defendant was convicted of robbery and was granted a new trial. At the second trial, defendant was convicted again. His motion for a new trial was denied and he filed a bill of exceptions. While the case was pending before the Georgia Supreme Court, he escaped from jail and became a fugitive from justice. A report of the escape was sent to the court which issued an order giving defendant one month to furnish evidence of his surrender or recapture. This order was not complied with and the defendant having made no response thereto so as to show submission to the judgment, the court held that the writ must be dismissed.

In 24 C. J. S. 650-2, Criminal Law, Sec. 1825, it is pointed out that an appeal may be dismissed if the fugitive does not surrender himself within a time fixed by the court, and this is the rule by statute in some states. In absence of statute, it is not imperative for the appellate court to dismiss. In *Harrelson v. State*, 222 Miss. 514, 76 So. 2d 516 (1954), it was held that where defendant, pending his appeal from a felony conviction, escaped from custody and was still at large, the appeal would not be dismissed, but the case would be remanded to the files to be brought up again on proper motion if and when he was again in custody.

Criminal Law — Epileptic Driver Held Guilty Of Criminal Negligence. *People v. Decina*, 2 N. Y. 2d 133, 138 N. E. 2d 799 (1956). Defendant, knowing that he was subject to epileptic attacks, was driving alone on a public street when he had an attack. His automobile swerved onto the sidewalk, killing four persons. He was charged with criminal negligence (N. Y. PENAL LAW, Sec. 1053-a) in the operation of an automobile. A demurrer to the indictment was overruled and on appeal, the New York Court of Appeals

affirmed. By operating an automobile on a public highway with knowledge that, uncontrolled, it is a highly dangerous instrumentality and with knowledge that he was subject to epileptic attacks which might strike at any time, the motorist made a conscious choice of action in disregard of the consequences which he knew might ensue.

The Maryland statute, Md. Code (1951) Art. 27, Sec. 455, makes it a misdemeanor to cause the death of another as the result of operating a vehicle in a "grossly negligent manner". The statute does not define gross negligence, but *Duren v. State*, 203 Md. 584, circa 588, 102 A. 2d 277 (1954), discussing the interpretation of the section held that there was carried over into the statute the common law concept of gross negligence amounting to wanton or reckless disregard for human life. See also *State v. Gooze*, 14 N. J. Super. 277, 81 A. 2d 811 (1951), reaching the same result as the principal case where the driver was suffering from Meniere's Syndrome.

Eminent Domain — Evidence Of Reasonable Probability Of Zoning Reclassification Admissible In Determining Market Value. *State Roads Commission v. Warriner*, 211 Md. 480, 128 A. 2d 248 (1957). Defendants' land was taken by the State Roads Commission under eminent domain, and proceedings were brought to determine its fair market value. Although the property was zoned for residential use at the time of the taking, the defendants, over objection, showed population growth, commercial expansion, demands for industrial property, and the contiguity of existing light industrial zones in the area, and introduced expert testimony that the highest and best use of the condemned tract was for light industrial use. The jury was permitted to consider this evidence as indicative of the probability of reclassification of the property in the near future and as bearing upon the fair market value. On appeal from a determination based on this evidence, the Court of Appeals affirmed. In determining the fair market value of land taken by eminent domain proceedings the jury may consider evidence of a reasonable probability that zoning classification will be changed within a reasonable time and the influence of such changes upon the market value of the land taken. The evidence submitted supported such a probability of change.

This is the first Maryland case recognizing such an exception to the general rule acknowledged in *Bonaparte v. M. & C. C. of Balto.*, 131 Md. 80, 101 A. 594 (1917), and

Con. G. E. L. & P. Co. v. M. & C. C. of Balto., 130 Md. 20, 99 A. 968 (1917), that ordinarily only uses for which the land is adapted and presently available may be considered. Decisions in other states recognizing this exception indicate, however, that it should be limited to cases where the evidence of probable change in zoning is *reasonably* foreseeable and imminent enough actually to be reflected in the market place. The cases are collected in 173 A. L. R. 265.

Insurance — Lack Of Notice Invalidates “Financial Responsibility” Policy After Death Of Insured. *Inland Mutual Insurance Company v. Peterson*, 148 F. Supp. 392 (D. C. Md., 1957). One Webb was convicted of drunken driving and was required under the provision of Md. Code (1951), Art. 66½, Sec. 116, to give and maintain proof of his financial responsibility before a new license would be issued to him. The policy, approved by the Department of Motor Vehicles, contained the standard clause that if the insured dies the policy shall, if written notice be given the insurer within sixty days after such death, cover as an insured the insured’s legal representative and any person having proper temporary custody of the automobile. Webb died intestate leaving as next of kin his mother, the defendant, who took charge of his automobile but failed to notify the insurance company. Within the month, the automobile was involved in an accident in which a third party was injured. The insurance company refused to defend the resulting suit and filed this action praying a judgment declaring that it is not obligated to defend that suit nor to pay any claims arising out of the accident. The District Court held for the plaintiff insurer. Giving notice to the insurer within sixty day after the death of the insured was clearly a condition precedent to the continued liability of the insurer and is valid unless something in the Financial Responsibility Law precludes the operation of the provision. While Art. 66½, Sec. 143, provides that all forms of proof shall be released “when such proof is no longer required by this Article”, the certification of the policy was required because the insured had been convicted of drunken driving, not because the vehicle was a commercial vehicle; the purpose here was to protect the public against Webb rather than his automobile. There is nothing in the statute that can be construed as requiring proof of financial responsibility beyond the life time of a bad risk.

Torts — Injured Fisherman May Rely On Res Ipsa Loquitor And Is Not Barred By Assumption Of Risk. *Hawayek v. Simmons*, 91 So. 2d 49 (La., 1956). Plaintiff and defendant were fishing, sitting back to back in a small boat. In making an overhand cast, the defendant struck plaintiff in the eye with his lure. Plaintiff did not see how the accident happened. He sued, relying on *res ipsa loquitor*, and recovered medical expenses, but the trial court disallowed damages on the ground that there was not sufficient evidence of negligence. Plaintiff appealed and the Court of Appeals amended the judgment to include damages, and as amended, it was affirmed. Under the circumstances, when one makes an overhead-forward cast, his lure would not be expected to strike another person in the boat but for some fault or negligence on the caster's part. Under such facts there necessarily arises the presumption that the caster was negligent from the happening of the accident itself — *res ipsa loquitor*. Generally, a participant in a game or sport can by participation assume all risks incidental to it which are obvious and foreseeable. But while one who becomes part of a fishing party may assume all ordinary and normal hazards incidental to the sport, he is not required to assume all risks of negligence of other persons in the party (p. 55).

On *res ipsa loquitor* generally, see articles by Thomsen, 3 Md. L. Rev. 285 (1939) and Farinholt, 10 Md. L. Rev. 337 (1949).