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Criminal Law - Wiretap Evidence Procured Soley by State Officials Inadmissible in Federal Court

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ditioned on any prior demand for trial, as it is the state that has breached its duty to provide a speedy trial.[7] In *Ex Parte Trull*[8] the court stated:

> The rule is that the defendant need not take any affirmative action. The duty and responsibility of providing the accused with a speedy trial is on the officers of the state.[9]

And in *Zehrlaut v. State*[10] it was said:

> [The] statute . . . casts no burden on the defendant, but casts an imperative duty on the state and its officers, trial courts and prosecuting attorneys, to see that a defendant . . . is brought to trial agreeably [with this section of the constitution and its implementary statute][11]

Although the decisions which hold no demand is necessary speak of constitutional safeguards in relation to a speedy trial, it appears that many of the cases were actually decided on the basis of a statute of limitations.[12]

The court, in the instant case, followed the rule that a demand must be made. The decision contains no discussion of the opposing view. The court did, however, express a strong opinion as to the length of the delay by saying:

> These proceedings present a remarkable chronology which we hope will never be duplicated in the annals of New Jersey criminal jurisprudence. No explanation was given, but, in lieu thereof, an apology is submitted for the unprecedented delay of nearly a quarter of a century between arraignment and prosecution. This dismaying procrastination stands as an inerasable blot on our record of the expeditious administration of criminal justice as we proudly thought it had existed.[13]

[7] People v. Prosser, 309 N.Y. 353, 130 N.E. 2d 891 (1955); Zehrlaut v. State, 230 Ind. 175, 102 N.E. 2d 203 (1951); Davidson v. Garfield, 221 Iowa 424, 265 N.W. 645 (1936) (Overruled by Pines v. District Court, 233 Iowa 1284, 10 N.W. 2d 574 (1943)); State v. Carrillo, 41 Ariz. 170, 16 P. 2d 965 (1932); Ex Parte Trull, 135 Kan. 165, 298 Pac. 775 (1931); Ex Parte Chalfant, 81 W. Va. 93, 93 S.E. 1032 (1917); State v. Rosenberg, 71 Ore. 389, 142 Pac. 624 (1914). In Shafer v. State, 430 Ohio App. 493, 183 N.E. 774 (1932) the court stated the rule that no demand for a trial must be made. However, the court held that under the circumstances the eighteen month delay was not a denial of the right to a speedy trial.

[8] 135 Kan. 165, 298 Pac. 775 (1931).

[9] Ibid., at 167, 776.

[10] 230 Ind. 175, 102 N.E. 2d 203 (1951).

[11] Ibid., at 177, 204.

[12] But cf. Shafer v. State, 430 Ohio App. 493, 183 N.E. 774 (1932).

[13] 25 N.J. 104, 110, 135 A. 2d 321, 325 (1957).

CRIMINAL LAW–WIRETAP EVIDENCE PROCURED SOLELY BY STATE OFFICIALS INADMISSIBLE IN FEDERAL COURT

The New York Police, suspecting that Benanti was dealing illegally in narcotics, obtained a warrant (in accordance with state law)[1] authorizing

[1] N.Y. Const. Art. I, § 12; N.Y. Code of Criminal Procedure (McKinney, 1948), § 813-a.

them to tap the telephone wires of a bar which Benanti was known to frequent. By means of this wiretap, the police overheard a conversation between Benanti and another in which it was said that "eleven pieces" were to be transported that night. Acting on this information, the police followed and stopped a car driven by Benanti's brother. No narcotics were found, but in the car there were eleven cans of alcohol without the federal tax stamps required by law. The brother was arrested and the alcohol turned over to federal authorities. At the trial in the Federal District Court a state police officer testified that the information gained by the wiretap caused them to intercept the car which contained the alcohol. Benanti's motion to suppress the evidence was denied and he was convicted of the illegal possession and transportation of distilled spirits without tax stamps affixed thereto.[2] His conviction was affirmed[3] on the ground that while the action of the state officials violated Section 605 of the Federal Communications Act,[4] the evidence obtained from the violation was still admissible. The United States Supreme Court reversed, holding that, if the evidence was obtained by means forbidden by Section 605, whether by state or federal agents, it is inadmissible in a federal court. *Benanti v. United States*, 355 U.S. 96 (1957).

The use of wiretap evidence first came to the Supreme Court's attention in 1928. In that year the court held in *Olmstead v. United States*,[5] that use in evidence in a criminal trial in a federal court of an incriminating telephone conversation voluntarily conducted by the accused and secretly overheard from a tapped wire by a government officer, does not violate the Fourth or Fifth Amendment of the United States Constitution. The court further held that in order to violate the Constitution in such a case there must be a physical trespass to the premises. The court went on to say that it was within the province of Congress, through appropriate legislation, to protect the privacy of telephone messages. The dissenting opinion by Justices Holmes and Brandeis indicated that there was a need for federal legislation in this field. They were of the opinion that wiretapping was an invasion of personal security, personal liberty, private property,

[2] 26 U.S.C.A. § 5008(b) (1) (1942).

[3] United States v. Benanti, 244 F. 2d 389 (C.A. 2d, 1957).

[4] 47 U.S.C.A. § 605 (Supp., 1956), which states: "[N]o person, not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication to any person. . . . No person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto. . . ."

[5] 277 U.S. 438 (1928).

and that it should be strictly controlled, if not prohibited entirely.

As a result of the *Olmstead* case, Congress, in 1934, passed Section 605 of the Federal Communications Act, which made it a crime to "intercept and divulge" any communication whether interstate or intrastate.[6] Under this section wiretapping is not an offense, but *interception and disclosure* of the contents of the message constitute the crime.[7]

In *Nardone v. United States*,[8] the rule was adopted by the federal courts that evidence procured by federal officials in the tapping of wires was a violation of the Communications Act of 1934, and is inadmissible. This applies not only to intercepted conversations themselves, but also to evidence procured through the use of knowledge gained from such conversations. This case clearly sets forth the rule that evidence obtained by wiretapping by a federal agent is not admissible in a federal court.

A different result is reached when evidence is obtained in violation of Section 605 by state officials for a state prosecution. In *Schwartz v. Texas*,[9] the defendant was convicted of robbery in a Texas State Court upon evidence obtained by wiretapping. The defendant claimed that Section 605 made the records of intercepted telephone conversations without the defendant's consent inadmissible. The United States Supreme Court said:

> We hold that § 605 applies only to the exclusion in federal court proceedings of evidence obtained and sought to be divulged in violation thereof; it does not exclude such evidence in state court proceedings.[10]

Since the Federal Communications Act does not apply to the states, there was nothing to prevent state officials from turning over to federal authorities evidence obtained by wiretapping. This is the so-called "Silver-Platter Doctrine" which originated in a 1927 case[11] relating to search and seizure. This case held that if the federal authorities took no part in procuring the illegally obtained evidence turned over by state officials, it was admissible in a federal court.

Therefore, it was urged in the *Benanti* case that so long as the wiretapping occurred without the participation or knowledge of the federal law enforcement officers the evidence should be admitted in the federal court. The federal government urged that it was without fault and should not be handicapped in its prosecution of violators of the federal law. The Supreme Court did not agree and said that although Section 605 was not violated by the wiretap itself, it was violated when the intercepted communication was disclosed to the jury. This Section expressly forbids di-

[6] Weiss v. United States, 308 U.S. 321 (1939).

[7] United States v. Coplon, 185 F. 2d 629 (C.A. 2d, 1950).

[8] 302 U.S. 379 (1937). [9] 344 U.S. 199 (1952). [10] Ibid., at 203.

[11] Byars v. United States, 273 U.S. 28 (1927).

vulgence of the intercepted communication or, "the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto."[12] The Supreme Court having found that Section 605 was violated said, "evidence obtained by means forbidden by Section 605 whether by state or federal agents, is inadmissible in a federal court."[13]

The Supreme Court in the *Benanti* case has abolished the "Silver-Platter Doctrine" in relation to wiretap evidence. This construction of Section 605 is consistent with the spirit of the Holmes and Brandeis dissent in *Olmstead v. United States.*[14]

[12] Authority cited note 4 supra.

[13] Benanti v. United States, 355 U.S. 96, 100 (1957).

[14] 277 U.S. 438 (1928).

DISCOVERY–INSURANCE COVERAGE SUBJECT TO PRE-TRIAL INTERROGATORIES

Plaintiff, during the pendency of a personal injury action, requested the defendant to answer discovery interrogatories which would disclose the name of the defendant's insurer, if any; and if there was one, the policy limits for each person. The defendant refused to answer and the lower court ruled that the plaintiff was entitled to receive answers to the interrogatories. The defendant then brought a mandamus proceeding to compel the Circuit Court judge to expunge from the record the orders requiring petitioner to answer. The Illinois Supreme Court denied the writ and held that discovery interrogatories respecting the existence and amount of defendant's insurance were relevant to the merits of the matter in litigation as provided in Section 58(1) of the Civil Practice Act and the Supreme Court Rules.[1] *People v. Fisher,* 12 Ill. 2d 231, 145 N.E. 2d 588 (1957).

The principal issues raised are: (1) How broad is the scope of discov-

[1] Ill. Rev. Stat. (1957) c. 110, § 58(1). "Discovery, admissions of fact and of genuineness of documents and answers to interrogatories shall be in accordance with rules." Ill. Rev. Stat. (1957) c. 110, § 101.19-4 says, "(1) Discovery Depositions–Upon a discovery deposition, the deponent may be examined regarding any matter, not privileged, relating to the merits of the matter in litigation, whether it relates to the claim or defense of the examining party or of any other party, including the existence, description, nature, custody, condition and location of any documents or tangible things and the identity and location of persons having knowledge of relevant facts. . . . Ill. Rev. Stat. (1957) c. 110, § 101.19-10 says, ". . . (2) Discovery Depositions–Discovery depositions may be used only: (a) for the purpose of impeaching the testimony of deponent as a witness in the same manner and to the same extent as any inconsistent statement made by a witness; or (b) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person; (c) if otherwise admissible as an exception to the hearsay rule. . . ."