

Research Memorandum #72: Fifth Amendment

Fifth Amendment (generally) –

Huvestern v. State, 261 Maj. 529 (20XX-40): “The Fifth Amendment prevents compelled self-incrimination. In this case Mr. Huvestern, a grand jury witness, has refused to answer certain inquiries put to him on the stand while claiming protection of this privilege. In assessing his claim we are mindful that ‘the privilege extends not only to disclosures which would in themselves support a conviction, but also to those which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime.’ *State v. Rodrege*, 260 Maj. 114, 119 (20XX-41).”

Fifth Amendment and prosecution request for notice of alibi and list of alibi witnesses –

Wilson v. Superior Court of Nettle, 256 Nettle App. 3d 917 (20XX-2): “Petitioner contends that the trial court’s order under a Notice of Alibi statute, which requires that he provide the prosecution with notice if he intends to raise an alibi and a list of names and addresses of alibi witnesses, violates his right against compelled self-incrimination. We disagree. Trials are filled with situations which ‘compel’ a defendant to risk incrimination. A strong prosecution case may force a defendant to put on witnesses and/or take the stand. This may, in turn, result in incriminating cross-examination and lead to incriminating rebuttal testimony. Such natural compulsions from our adversary system do not, however, offend the 5th Amendment. The pressures from a pretrial order to provide a notice of alibi and alibi witness, such as here, are not different. The order does not force Petitioner to either choose an alibi defense or prevent him from later abandoning it. The reality of the prosecution’s case, not the pretrial order, will determine that. At most, the order only compels Petitioner to disclose this information at an earlier point than he intended. Nothing in the 5th Amendment privilege entitles a defendant as a matter of constitutional right to await the end of the State’s case before announcing the nature of his defense. Moreover, without such an order the prosecution could surely get a continuance to investigate

Petitioner’s alibi witnesses once they took the stand. Such an order thus both avoids a delay of the trial and protects the State from having an all too easily manufactured alibi sprung upon them at trial.”

Dissent. Lift, J.; Hoist, J.: “Our Constitution has given a criminal accused certain advantages over his powerful government accuser. Today, the majority takes one of those advantages away; for, contrary to the majority’s fiat, the ‘right to await the end of the State’s case before announcing the nature of his defense’ is the essence of the 5th Amendment. That amendment allows the defendant to stand mute and require the government to ‘Prove it!’ at every juncture without his aid. Without the court order here, defendant could listen to the prosecution case, determine that the prosecution cannot carry its burden, and decide not to put on a case. With the court order, petitioner could have made the same decision yet still have been compelled to give names and addresses of witnesses who could provide a ‘link in the chain of evidence needed to prosecute [him].’ *Huvestern v. State*, 261 Maj. 529 (20XX-40).”

Wilts v. Warden, 269 Nettle 3d 1193 (20XX-6): “Due process requires that when an order under the Notice of Alibi Act is made, the prosecution *must* be likewise required to provide reciprocal discovery regarding alibi rebuttal witnesses to the defendant.”